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

**WHEN:** Tuesday, February 7, 2006  
9:00 a.m.–Noon

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

**RESERVATIONS:** (202) 741-6008



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**Reader Aids**

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# Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 337

RIN 3206-AK35

#### Examining System

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a final regulation to designate two sections of the Alternative Ranking and Selection Procedures from the Chief Human Capital Officers Act of 2002 (Title XIII of the Homeland Security Act) as veterans' preference requirements for purposes of a prohibited personnel practice violation, thereby aligning these sections with other statutory provisions covering veterans' preference.

**DATES:** This rule is effective February 22, 2006.

**FOR FURTHER INFORMATION CONTACT:** Linda Watson by telephone at (202) 606-0830; by fax at (202) 606-2329; by TTY at (202) 418-3134; or by e-mail at [linda.watson@opm.gov](mailto:linda.watson@opm.gov).

**SUPPLEMENTARY INFORMATION:** On April 7, 2005, OPM published a proposed rule at **Federal Register** 70 FR 17160 designating sections 3319(b) and (c)(2) of title 5, United States Code (U.S.C.) as veterans' preference requirements for purposes of 5 U.S.C. 2302(b)(11). OPM's authority to designate in regulation a provision of law as a "veterans' preference requirement" is prescribed in 5 U.S.C. 2302(e)(1)(G). The purpose of this designation is to align sections 3319(b) and (c)(2) with the other statutory provisions covering veterans' preference that are listed in section 2302(e)(1) as constituting veterans' preference requirements.

As background, this action completes the implementation of specific provisions of the Chief Human Capital Officers Act of 2002 (Act), Public Law 107-296. The Act provides Federal agencies with a number of human resources flexibilities to enhance their recruitment and hiring programs. These flexibilities include the alternative (category) rating and selection procedures which were codified in 5 U.S.C. 3319. This section provides agencies with the authority to develop a category-based rating method to assess and rate job applicants for positions filled through the competitive examining process.

Section 3319(b) protects the rights of preference eligibles by placing them ahead of non-preference eligibles within each category in lieu of adding veterans' preference points or applying the "rule of three."

Section 3319(c)(2) prohibits appointing officials from passing over a preference eligible in the same quality category from which a selection is made to select a non-preference eligible unless the requirements of section 3317(b) or 3318(b) are satisfied.

This rule designates sections 3319(b) and (c)(2) as veterans' preference requirements, for which, failure to comply constitutes a prohibited personnel practice. For additional background information, please refer to the proposed rule.

During the comment period, OPM received six comments to the proposed regulation. Two agencies submitted their comments supporting the proposed regulation and the remaining comments were outside the scope of this rule.

We are therefore issuing the final regulation with only stylistic changes.

#### E.O. 12866, Regulatory Review

This final rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

#### Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they would only apply to Federal agencies and employees.

#### List of Subjects in 5 CFR Part 337

Government employees.

**Linda M. Springer,**

*Director, U.S. Office of Personnel Management.*

■ Accordingly, OPM is amending 5 CFR part 337 as follows:

#### PART 337—EXAMINING SYSTEM

■ 1. Revise the authority citation for part 337 to read as follows:

**Authority:** 5 U.S.C. 1104(a)(2), 1302, 2302, 3301, 3302, 3304, 3319, 5364; Sec. 1413, Pub. L. 108-136, 117 Stat. 1392, 1665; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; 33 FR 12423, Sept. 4, 1968; 45 FR 18365, Mar. 21, 1980.

#### Subpart C—Alternative Rating and Selection Procedures

■ 2. Revise § 337.304 to read as follows:

##### § 337.304 Veterans' preference.

In this subpart:

(a) Veterans' preference must be applied as prescribed in 5 U.S.C. 3319(b) and (c)(2);

(b) Veterans' preference points as prescribed in section 337.101 of this part are not applied in category rating; and

(c) Sections 3319(b) and 3319(c)(2) of title 5, U.S.C. constitute veterans' preference requirements for purposes of 5 U.S.C. 2302(b)(11)(A) and (B).

[FR Doc. 06-550 Filed 1-20-06; 8:45 am]

BILLING CODE 6325-39-P

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 223

RIN 0596-AC29

#### Sale and Disposal of National Forest System Timber; Timber Sale Contracts; Indices To Determine Market-Related Contract Term Additions

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** In this final rule, the Forest Service is selecting Producer Price Indices (PPI) for use by the Chief of the Forest Service to determine whether there has been a drastic reduction in



wood prices warranting market-related contract term additions. The indices selected in this final rule replace certain PPI indices that were discontinued by the Bureau of Labor Statistics (BLS) after December 2003. An interim final rule and request for comments was published in the **Federal Register** on June 29, 2005 (70 FR 37266). In this final rule, the Forest Service makes appropriate changes, reflecting public comments and its own analysis of the replacement indices. A detailed summary of Forest Service responses to public comments is available for review as provided in the **ADDRESSES** section of this notice.

**DATES:** This final rule is effective January 23, 2006.

**ADDRESSES:** The Forest Service response to public comments is available for public review on the Forest Service World Wide Web/Internet site at <http://www.fs.fed.us/forestmanagement/infocenter/index.shtml>. Alternatively, these can be viewed in the office of the Director of Forest Management, Third Floor, Southwest Wing, Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205-1496 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Lathrop Smith, Forest Management Staff, at (202) 205-0858, or Richard Fitzgerald, Forest Management Staff, at (202) 205-1753.

**SUPPLEMENTARY INFORMATION:**

**Background**

In order to protect timber purchasers and the public from severe downturns in the wood products industry, the Forest Service has granted market-related contract term additions for timber sale contracts when a drastic reduction in wood prices has occurred. Applying regulations promulgated under the Federal Timber Contract Payment Modification Act (16 U.S.C. 618), the Chief of the Forest Service has determined the existence of a drastic reduction in prices by using BLS PPI indices for certain wood products. However, as of December 2003, BLS discontinued three of the four PPI indices contained in the previous iteration of this regulation: Hardwood Lumber (SIC 24211), Eastern Softwood Lumber (SIC 24213), and Western Softwood Lumber (SIC 24214). BLS also re-designated Wood Chips (SIC 21215) as (NAICS 3211135). Accordingly, in the interim final rule and request for comments, the Forest Service selected two replacement indices—Softwood Lumber (0811) and Hardwood Lumber (0812)—and adopted the re-designation

of the Wood Chips index. The Forest Service made no other changes to 36 CFR 223.52.

Before selecting the foregoing replacement indices in the interim final rule, the Forest Service evaluated several possible replacements. For example, the Forest Service examined the Random Lengths indices and Western Wood Products Association indices. Additionally, the Forest Service examined certain regional indices. The Forest Service found that indices other than the replacement indices were inadequate for determining the existence of a drastic reduction in wood prices. For example, regional indices were unsuitable because of variance in their timing of publication, collection of information, and processing of data. Accordingly, the Forest Service selected the BLS Softwood Lumber (0811) and Hardwood Lumber (0812) indices because they represent the best-available replacement indices, which most closely replicate the historical results of the discontinued indices.

The three indices contained in this final rule are not seasonally adjusted. Each PPI is adjusted to a constant dollar base by dividing it by the PPI for All Commodities (00000000) to eliminate changes due to inflation and deflation.

As noted in the interim rule, the Forest Service adopted the replacement indices retroactively to January 2004. For purposes of this final rule, the indices shall have the same retroactive application.

The Forest Service received a total of twenty-six replies to the interim final rule. Nineteen were unresponsive because they did not address MRCTA procedures. Four were statements not requiring a response. Three were responsive to the interim rule and proposed changes. As noted in the Introduction, a detailed summary of Forest Service responses to public comments is available for review, as provided in the **ADDRESSES** section of this notice.

In response to the relevant comments, the Forest Service has made changes to the interim final rule, which are contained in this final rule. Based on public comments and its own analysis, the Forest Service changed the percentage decrease applied to the replacement indices, contained at 36 CFR 223.52(b)(ii)(2), from 15% to 11.5%. The percentage change in wood prices is used to balance the public interest in having a reasonable term on a timber sale contract and minimizing the risk of defaults on timber sale contracts. Setting the percent change in price too low could result in unnecessary contract term additions.

Setting the percent change in price to high could result in contract defaults. The 15% decrease in the discontinued indices provided this balance for the last two decades. The new replacement indices are broader than the discontinued indices and less sensitive to changes in market conditions. Internal agency analysis compared the replacement indices to the discontinued indices for the years 1981 through 2003. The replacement indices only triggered a qualifying quarter about one third as often as the discontinued indices when a 15% decrease in wood prices was used. Changing the decrease in wood prices to 11.5% better tracks the historical results generated under the discontinued indices for the purpose of determining qualifying quarters and maintaining the balance between extending the term of a timber sale contract and the number of defaults on timber sale contracts. Because the Wood Chips index was merely re-designated, the Forest Service has retained the 15% value applied to that index.

Additionally, in response to public comments, the Forest Service herein clarifies ambiguity as to the timing of qualifying quarters. A qualifying quarter must be a quarter that follows the date of the contract award. This change is consistent with language in timber sale contracts and with the Forest Service's previous application of this rule.

**Regulatory Certifications**

*Regulatory Impact*

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this rule is not a significant regulatory action and is not subject to Office of Management and Budget ("OMB") review. This rule will not have an annual effect of \$100 million or more on the economy and will not adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. In short, little or no effect on the national economy will result from this regulatory action, which consists of necessary, technical changes to the regulation governing market-related contract term additions. Using the replacement indices and the modified formula contained in this final rule, the Forest Service will be able to determine whether a drastic decline in wood products prices has occurred. Finally, this action will not alter the

budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 610 *et seq.*), and it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that act. As revised in this rule, the formula better corresponds to the historical performance of the discontinued indices and allows the Forest Service to grant market-related contract term additions to small and large purchasers when market conditions warrant. Refining the formula for determining when a drastic reduction in wood product prices has occurred will have the intended effect of allowing purchasers additional time to complete contracts when severe adverse conditions have occurred in the wood products market.

#### *Unfunded Mandates Reform*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Forest Service has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of \$100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

#### *Environmental Impact*

This final rule concerns the extension of timber sale contracts when warranted by a drastic reduction in wood product prices, and, as such, has no direct effect upon the amount, location, or manner of timber offered for purchase. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement “rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.” The Forest Service’s assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

#### *Controlling Paperwork Burdens on the Public*

This final rule does not contain any recordkeeping or reporting requirements

or other information collection requirements as defined in 5 CFR part 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

#### *Energy Effects*

This final rule has been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this rule does not constitute a significant energy action as defined in the Executive order.

#### *Federalism*

The agency has considered this final rule under the requirements of Executive Order 13132, Federalism. The agency has made an assessment that the rule conforms with the federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would 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.

#### *Consultation and Coordination With Indian Tribal Governments*

This final rule does not have tribal implications as defined in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with tribes is not required.

#### *No Takings Implications*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally-protected private property.

#### *Civil Justice Reform*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The agency has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this rule. In any event, after adoption of this final rule: (1) All State and local laws or regulations that conflict with this rule or that would impede full implementation would be preempted; (2) no retroactive effect would be given to this final rule, except as described herein; and (3) the

final rule would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

#### **List of Subjects in 36 CFR Part 223**

Administrative practice and procedure, Exports, Forests and forest products, Government contracts, National forests, Reporting and recordkeeping requirements.

■ Therefore, for the reasons set forth in the preamble, part 223 of Title 36 of the Code of Federal Regulations is amended as follows:

#### **PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER**

■ 1. The Authority citation for part 223 continues to read as follows:

**Authority:** 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213; 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j, unless otherwise noted.

■ 2. Revise § 223.52 (b)(2) to read as follows:

#### **§ 223.52(b)(2) Market-related contract term additions.**

\* \* \* \* \*

(b) \* \* \*

(2) For PPI index codes 0811 and 0812, the Chief of the Forest Service shall determine that a drastic reduction in wood prices has occurred when, for any 2 or more consecutive qualifying quarters, the applicable adjusted price index is less than 88.5 percent of the average of such index for the 4 highest of the 8 calendar quarters immediately prior to the qualifying quarter. A qualifying quarter is a quarter, following the contract award date, where the applicable adjusted index is more than 11.5 percent below the average of such index for the 4 highest of the previous 8 calendar quarters. For PPI index code 3211135, the Chief of the Forest Service shall determine that a drastic reduction in wood prices has occurred when, for any 2 or more consecutive qualifying quarters, the adjusted price index is less than 85 percent of the average of such index for the 4 highest of the 8 calendar quarters immediately prior to the qualifying quarter. A qualifying quarter is a quarter, following the contract award date, where the adjusted index is more than 15 percent below the average of such index for the 4 highest of the previous eight calendar quarters. Qualifying quarter determinations will be made using the Producer Price Indices for the months of March, June, September, and December.

\* \* \* \* \*

Dated: January 13, 2006.

**David P. Tenny,**

*Deputy Under Secretary, Natural Resources and Environment.*

[FR Doc. 06-548 Filed 1-20-06; 8:45 am]

BILLING CODE 3410-11-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R04-OAR-2005-TN-0006-200519(c); FRL-8023-5]

#### Approval and Promulgation of Implementation Plans; Tennessee; Nashville Area Second 10-Year Maintenance Plan for the 1-Hour Ozone National Ambient Air Quality Standard; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** On November 1, 2005, at 70 FR 65838, EPA published a document concerning the Nashville, Tennessee area's second 10-year maintenance plan for the 1-hour ozone national ambient air quality standard. The new 2016 motor vehicle emissions budgets (MVEBs) were incorrectly stated in one location in the publication. This document corrects this incorrect reference.

**DATES:** *Effective Date:* This correction is effective January 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Lynorae Benjamin of the Air Quality Modeling and Transportation Section or Sean Lakeman of 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. Ms. Benjamin can be reached by phone at (404) 562-9040 or via electronic mail at [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov). Mr. Lakeman can be reached by phone at (404) 562-9043 or via electronic mail at [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA is making a correction to the document published on November 1, 2005 (70 FR 65838), approving a revision to the second 10-year maintenance plan for the Nashville 1-Hour Ozone Maintenance Area. This action included approval of the new 2016 MVEBs (70 FR 65840), but subsequently reference them incorrectly in another portion of the document. Specifically, at 70 FR 65841, the new 2016 MVEBs were erroneously stated as the 2016 on-road emissions (*i.e.*, 19.18

tons per day (tpd) for volatile organic compounds (VOC) and 36.01 tpd for nitrogen oxides (NO<sub>x</sub>) for this area. On page 65841, under the heading "IV. What Is an Adequacy Determination and What Is EPA's Adequacy Determination for the Nashville Area's New MVEB for the Year 2016?," in the second column at the end of the last sentence, EPA is correcting the reference to the 2016 MVEBs to read as follows: "VOC of 21.93 tpd and for NO<sub>x</sub> 45.76 tpd for the Nashville area."

Dated: January 11, 2006.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 06-582 Filed 1-20-06; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 213 and 253

[DFARS Case 2003-D075]

#### Defense Acquisition Regulations System; Defense Federal Acquisition Regulation Supplement; Simplified Acquisition Procedures

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text addressing the use of simplified acquisition procedures. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Effective January 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; facsimile (703) 602-0350. Please cite DFARS Case 2003-D075.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures

that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule—

- Updates and consolidates text on the use of imprest funds and third-party drafts at DFARS 213.305;

- Deletes unnecessary cross-references at DFARS 213.7001 and 213.7003-2; and

- Deletes guidance on the use of unilateral contract modifications at DFARS 213.302-3, and deletes procedures for use of forms at DFARS 213.307, 253.213, and 253.213-70. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

DoD published a proposed rule at 70 FR 19042 on April 12, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change. In addition, statutory references have been updated at DFARS 213.305-3(d)(iii)(A) and 213.306(a)(1)(B).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

##### B. Regulatory Flexibility Act

DoD certifies that this final rule 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., because the rule updates and streamlines DFARS text, but makes no significant change to DoD contracting policy.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

##### List of Subjects in 48 CFR Parts 213 and 253

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 213 and 253 are amended as follows:

■ 1. The authority citation for 48 CFR parts 213 and 253 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

### **PART 213—SIMPLIFIED ACQUISITION PROCEDURES**

■ 2. Section 213.302–3 is amended by revising paragraph (2) to read as follows:

#### **213.302–3 Obtaining contractor acceptance and modifying purchase orders.**

\* \* \* \* \*

(2) See PGI 213.302–3 for guidance on the use of unilateral modifications.

\* \* \* \* \*

#### **213.305–1 [Removed]**

■ 3. Section 213.305–1 is removed.

■ 4. Section 213.305–3 is revised to read as follows:

#### **213.305–3 Conditions for use.**

(d)(i) On a very limited basis, installation commanders and commanders of other activities with contracting authority may be granted authority to establish imprest funds and third party draft (accommodation check) accounts. Use of imprest funds and third party drafts must comply with—

(A) DoD 7000.14–R, DoD Financial Management Regulation, Volume 5, Disbursing Policy and Procedures; and

(B) The Treasury Financial Manual, Volume I, Part 4, Chapter 3000.

(ii) Use of imprest funds requires approval by the Director for Financial Commerce, Office of the Deputy Chief Financial Officer, Office of the Under Secretary of Defense (Comptroller), except as provided in paragraph (d)(iii) of this subsection.

(iii) Imprest funds are authorized for use without further approval for—

(A) Overseas transactions at or below the micro-purchase threshold in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8); and

(B) Classified transactions.

#### **213.306 [Amended]**

■ 5. Section 213.306 is amended in paragraph (a)(1)(B) by removing “10 U.S.C. 2302(7)” and adding in its place “10 U.S.C. 2302(8)”.

■ 6. Section 213.307 is revised to read as follows:

#### **213.307 Forms.**

See PGI 213.307 for procedures on use of forms for purchases made using simplified acquisition procedures.

#### **213.7001 [Removed]**

■ 7. Section 213.7001 is removed.

#### **213.7002 and 213.7003 [Redesignated]**

■ 8. Sections 213.7002 and 213.7003 are redesignated as sections 213.7001 and 213.7002, respectively.

■ 9. Newly designated section 213.7002 is revised to read as follows:

#### **213.7002 Purchase orders.**

The contracting officer need not obtain a contractor’s written acceptance of a purchase order or modification of a purchase order for an acquisition under the 8(a) Program pursuant to 219.804–2(2).

#### **213.7003–1 and 213.7003–2 [Removed]**

■ 10. Sections 213.7003–1 and 213.7003–2 are removed.

### **PART 253—FORMS**

■ 11. Section 253.213 is revised to read as follows:

#### **253.213 Simplified acquisition procedures (SF’s 18, 30, 44, 1165, 1449, and OF’s 336, 347, and 348).**

(f) DoD uses the DD Form 1155, Order for Supplies or Services, instead of OF 347; and OF 336, Continuation Sheet, instead of OF 348. Follow the procedures at PGI 253.213(f) for use of forms.

■ 12. Section 253.213–70 is revised to read as follows:

#### **253.213–70 Completion of DD Form 1155, Order for Supplies or Services.**

Follow the procedures at PGI 253.213–70 for completion of DD Form 1155.

[FR Doc. 06–567 Filed 1–20–06; 8:45 am]

**BILLING CODE 5001–08–P**

## **DEPARTMENT OF DEFENSE**

### **48 CFR Part 215**

[DFARS Case 2003–D077]

#### **Defense Acquisition Regulations System; Defense Federal Acquisition Regulation Supplement; Contracting by Negotiation**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to contracting by negotiation. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**EFFECTIVE DATE:** January 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2003–D077.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule—

- Deletes unnecessary text at DFARS 215.000, 215.204–1, 215.304(c)(ii), and 215.305(b).

- Deletes text at DFARS 215.303 and 215.304 containing procedures for preparation of source selection plans and examples of source selection evaluation factors. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

- Updates references to the clauses at FAR 52.219–8 and 52.219–9, to reflect the current clause titles.

DoD published a proposed rule at 70 FR 14624 on March 23, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule. The final rule contains a paragraph 215.304(c)(ii) that was not included in the proposed rule, as this paragraph was added to the DFARS (as 215.304(c)(iii)) in the interim rule published at 70 FR 29643 on May 24, 2005.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

##### **B. Regulatory Flexibility Act**

DoD certifies that this final rule 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.*, because the rule updates and streamlines DFARS text, but makes no significant change to DoD contracting policy.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

#### List of Subjects in 48 CFR Part 215

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 215 is amended as follows:

#### PART 215—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for 48 CFR part 215 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

#### 215.000 [Removed]

■ 2. Section 215.000 is removed.

#### Subpart 215.2 [Removed]

■ 3. Subpart 215.2 is removed.

■ 4. Sections 215.303 through 215.305 are revised to read as follows:

#### 215.303 Responsibilities.

(b)(2) For high-dollar value and other acquisitions, as prescribed by agency procedures, the source selection authority shall approve a source selection plan before the solicitation is issued. Follow the procedures at PGI 215.303(b)(2) for preparation of the source selection plan.

#### 215.304 Evaluation factors and significant subfactors.

(c)(i) In acquisitions that require use of the clause at FAR 52.219-9, Small Business Subcontracting Plan, other than those based on the lowest price technically acceptable source selection process (see FAR 15.101-2), the extent of participation of small businesses and historically black colleges or universities and minority institutions in performance of the contract shall be addressed in source selection. The contracting officer shall evaluate the extent to which offerors identify and commit to small business and historically black college or university and minority institution performance of

the contract, whether as a joint venture, teaming arrangement, or subcontractor.

(A) See PGI 215.304(c)(i)(A) for examples of evaluation factors.

(B) Proposals addressing the extent of small business and historically black college or university and minority institution performance may be separate from subcontracting plans submitted pursuant to the clause at FAR 52.219-9 and should be structured to allow for consideration of offers from small businesses.

(C) When an evaluation assesses the extent that small businesses and historically black colleges or universities and minority institutions are specifically identified in proposals, the small businesses and historically black colleges or universities and minority institutions considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219-9 to facilitate compliance with 252.219-7003(g).

(ii) In accordance with 10 U.S.C. 2436, consider the purchase and use of capital assets (including machine tools) manufactured in the United States, in source selections for all major defense acquisition programs, as defined in 10 U.S.C. 2430, when it is pertinent to the best value determination.

#### 215.305 Proposal evaluation.

(a)(2) *Past performance evaluation.* When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219-8, Utilization of Small Business Concerns, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause. When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219-9, Small Business Subcontracting Plan, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause.

[FR Doc. 06-566 Filed 1-20-06; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF DEFENSE

### 48 CFR Part 219 and Appendix I to Chapter 2

[DFARS Case 2004-D028]

#### Defense Acquisition Regulations System; Defense Federal Acquisition Regulation Supplement; DoD Pilot Mentor-Protégé Program

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Sections 841 and 842 of the National Defense Authorization Act for Fiscal Year 2005. Section 841 extends the length of the DoD Pilot Mentor-Protégé Program for 5 additional years. Section 842 expands the Program to permit service-disabled veteran-owned small business concerns and HUBZone small business concerns to participate in the Program as protégé firms.

**EFFECTIVE DATE:** January 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Tronic, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0289; facsimile (703) 602-0350. Please cite DFARS Case 2004-D028.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD published an interim rule at 70 FR 29644 on May 24, 2005, to implement Sections 841 and 842 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375). Section 841 extends, through September 30, 2010, the period during which companies may enter into agreements under the DoD Pilot Mentor-Protégé Program; and extends, through September 30, 2013, the period during which mentor firms may incur costs that are eligible for reimbursement or credit under the Program. Section 842 expands the Program to permit service-disabled veteran-owned small business concerns and HUBZone small business concerns to participate in the Program as protégé firms.

One source submitted comments on the interim rule. The respondent supported the rule, but recommended that DoD amend the rule to permit historically black colleges and universities and minority institutions (HBCU/MIs) to participate in the Program as protégé firms. DoD was unable to adopt this recommendation, as there is presently no statutory authority that would permit expanding the Program to include HBCU/MIs. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

## B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This final rule implements Sections 841 and 842 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375). Section 841 extends, through September 30, 2010, the period during which companies may enter into agreements under the DoD Pilot Mentor-Protégé Program; and extends, through September 30, 2013, the period during which mentor firms may incur costs that are eligible for reimbursement or credit under the Program. Section 842 expands the Program to permit service-disabled veteran-owned small business concerns and HUBZone small business concerns to participate in the Program as protégé firms. The Program provides incentives for DoD contractors to assist protégé firms in enhancing their capabilities and increasing their participation in Government and commercial contracts.

DoD received no public comments in response to the initial regulatory flexibility analysis. However, DoD received a comment in response to the interim rule that recommended amendment of the rule to permit historically black colleges and universities and minority institutions (HBCU/MIs) to participate in the DoD Pilot Mentor-Protégé Program as protégé firms. DoD was unable to adopt this recommendation, as there is presently no statutory authority that would permit expanding the Program to include HBCU/MIs.

Presently, there are 5,737 service-disabled veteran-owned small business concerns and 12,281 HUBZone small business concerns registered in the Central Contractor Registration database; and presently, there are 134 active mentor-protégé agreements. Each protégé firm must provide data to its mentor firm, annually for submission to the Government, regarding the progress of the protégé firm in employment, revenues, and participation in DoD contracts. The data is required for each fiscal year of the Program participation term and for each of the two fiscal years following the expiration of the Program participation term. This information should be readily available to a company as part of its normal business practices.

The rule is expected to have a beneficial impact on service-disabled veteran-owned small business concerns and HUBZone small business concerns. There are no known significant

alternatives to the rule. Participation in the DoD Pilot Mentor-Protégé Program is voluntary.

## C. Paperwork Reduction Act

The information collection requirements of the DoD Pilot Mentor-Protégé Program have been approved by the Office of Management and Budget under Control Number 0704-0332, for use through May 31, 2007.

### List of Subjects in 48 CFR Part 219

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

### Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Part 219 and Appendix I to Chapter 2, which was published at 70 FR 29644 on May 24, 2005, is adopted as a final rule without change.

[FR Doc. 06-568 Filed 1-20-06; 8:45 am]

**BILLING CODE 5001-08-P**

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 237 and 252

#### [DFARS Case 2003-D041]

### Defense Acquisition Regulations System; Defense Federal Acquisition Regulation Supplement; Specialized Service Contracting

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to the acquisition of mortuary and laundry and dry cleaning services. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** *Effective Date:* January 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; facsimile (703) 602-0350. Please cite DFARS Case 2003-D041.

**SUPPLEMENTARY INFORMATION:**

## A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule—

- Revises DFARS Subpart 237.70 to delete procedures for defining the geographical area to be covered by mortuary services contracts, and procedures for distribution of those contracts. These procedures have been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

- Deletes the clause at DFARS 252.237-7010 containing facility requirements for mortuary services, as these requirements are adequately addressed in State law.

- Revises DFARS Subpart 237.71 to delete unnecessary requirements relating to contracting for laundry and dry cleaning services.

DoD published a proposed rule at 70 FR 8563 on February 22, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

## B. Regulatory Flexibility Act

DoD certifies that this final rule 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.*, because the rule updates and streamlines DFARS text, but makes no significant change to DoD contracting policy.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not

impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

#### List of Subjects in 48 CFR Parts 237 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 237 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 237 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

#### PART 237—SERVICE CONTRACTING

■ 2. Subpart 237.70 is revised to read as follows:

##### Subpart 237.70—Mortuary Services

Sec.

237.7000 Scope.

237.7001 Method of acquisition.

237.7002 Area of performance and distribution of contracts.

237.7003 Solicitation provisions and contract clauses.

##### 237.7000 Scope.

This subpart—

(a) Applies to contracts for mortuary services (the care of remains) for military personnel within the United States; and

(b) May be used as guidance in areas outside the United States for mortuary services for deceased military and civilian personnel.

##### 237.7001 Method of acquisition.

(a) *Requirements type contract.* By agreement among the military activities, one activity in each geographical area will contract for the estimated requirements for the care of remains for all military activities in the area. Use a requirements type contract (see FAR 16.503) when the estimated annual requirements for the activities in the area are ten or more.

(b) *Purchase order.* Where no contract exists, use DD Form 1155, Order for Supplies or Services, to obtain mortuary services.

##### 237.7002 Area of performance and distribution of contracts.

Follow the procedures at PGI 237.7002 for—

(a) Defining the geographical area to be covered by the contract; and

(b) Distributing copies of the contract.

##### 237.7003 Solicitation provisions and contract clauses.

(a) Use the provision at 252.237-7002, Award to Single Offeror, in all sealed bid solicitations for mortuary services.

Use the basic provision with its Alternate I in all negotiated solicitations for mortuary services.

(b) Use the following clauses in all mortuary service solicitations and contracts, except do not use the clauses at 252.237-7004, Area of Performance, in solicitations or contracts that include port of entry requirements:

(1) 252.237-7003, Requirements, (insert activities authorized to place orders in paragraph (e) of the clause).

(2) 252.237-7004, Area of Performance.

(3) 252.237-7005, Performance and Delivery.

(4) 252.237-7006, Subcontracting.

(5) 252.237-7007, Termination for Default.

(6) 252.237-7008, Group Interment.

(7) 252.237-7009, Permits.

(8) 252.237-7011, Preparation

History.

(c) Use the clause at FAR 52.245-4, Government-Furnished Property (Short Form), in solicitations and contracts that include port of entry requirements.

■ 3. Section 237.7100 is revised to read as follows:

##### 237.7100 Scope.

This subpart—

(a) Applies to contracts for laundry and dry cleaning services within the United States; and

(b) May be used as guidance in areas outside the United States.

##### 237.7101 [Removed]

■ 4. Section 237.7101 is removed.

##### 237.7102 [Redesignated]

■ 5. Section 237.7102 is redesignated as section 237.7101.

#### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

##### 252.237-7002 [Amended]

■ 6. Section 252.237-7002 is amended in the introductory text, and in Alternate I in the introductory text, by removing “237.7004” and adding in its place “237.7003”.

##### 252.237-7003 through 252.237-7009 [Amended]

■ 7. Sections 252.237-7003 through 252.237-7009 are amended in the introductory text by removing “237.7004” and adding in its place “237.7003”.

##### 252.237-7010 [Removed and Reserved]

■ 8. Section 252.237-7010 is removed and reserved.

##### 252.237-7011 [Amended]

■ 9. Section 252.237-7011 is amended in the introductory text by removing “237.7004” and adding in its place “237.7003”.

##### 252.237-7012 through 252.237-7015 [Amended]

■ 10. Sections 252.237-7012 through 252.237-7015 are amended in the introductory text by removing “237.7102” and adding in its place “237.7101”.

##### 252.237-7016 [Amended]

■ 11. Section 252.237-7016 is amended in the introductory text, and in Alternates I and II in the introductory text, by removing “237.7102” and adding in its place “237.7101”.

##### 252.237-7017 and 252.237-7018 [Amended]

■ 12. Sections 252.237-7017 and 252.237-7018 are amended in the introductory text by removing “237.7102” and adding in its place “237.7101”.

[FR Doc. 06-562 Filed 1-20-06; 8:45 am]

BILLING CODE 5001-08-P

#### DEPARTMENT OF DEFENSE

##### 48 CFR Part 241

[DFARS Case 2003-D069]

##### Defense Acquisition Regulations System; Defense Federal Acquisition Regulation Supplement; Acquisition of Utility Services

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to the acquisition of utility services. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

EFFECTIVE DATE: January 23, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; facsimile (703) 602-0350. Please cite DFARS Case 2003-D069.

**SUPPLEMENTARY INFORMATION:****A. Background**

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule—

- Deletes text on use of competitive procedures and delegated authority to acquire utility services at DFARS 241.202 and 241.203, as these issues are adequately addressed in the Federal Acquisition Regulation;

- Deletes obsolete text on preaward contract reviews at DFARS 241.270; and
- Deletes procedures and corresponding definitions related to connection charges and award of separate contracts for utility services at DFARS 241.101, 241.202, and 241.205. Text on these subjects has been

relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

DoD published a proposed rule at 70 FR 8566 on February 22, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD certifies that this final rule 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., because the rule updates and streamlines DFARS text, but makes no significant change to DoD contracting policy.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply, because the rule does not

impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

**List of Subjects in 48 CFR Part 241**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR part 241 is amended as follows:

**PART 241—ACQUISITION OF UTILITY SERVICES**

■ 1. The authority citation for 48 CFR part 241 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 241.101 is amended by removing the definitions of “Definite term contract”, “Dual service area”, and “Indefinite term contract”, and by revising the definition of “Service power procurement officer” to read as follows:

**241.101 Definitions.**

\* \* \* \* \*

*Service power procurement officer* means for the—

- (1) Army, the Chief of Engineers;
- (2) Navy, the Commander, Naval Facilities Engineering Command;
- (3) Air Force, the head of a contracting activity; and
- (4) Defense Logistics Agency, the head of a contracting activity.

■ 3. Section 241.103 is revised to read as follows:

**241.103 Statutory and delegated authority.**

(1) The contracting officer may enter into a utility service contract related to the conveyance of a utility system for a period not to exceed 50 years (10 U.S.C. 2688(c)(3)).

(2) See PGI 241.103 for statutory authorities and maximum contract periods for utility and energy contracts.

■ 4. Section 241.202 is revised to read as follows:

**241.202 Procedures.**

(1) *Connection and service charges.* The Government may pay a connection charge when required to cover the cost of the necessary connecting facilities. A connection charge based on the estimated labor cost of installing and removing the facility shall not include salvage cost. A lump-sum connection charge shall be no more than the agreed cost of the connecting facilities less net salvage. The order of precedence for contractual treatment of connection and service charges is—

(i) No connection charge.

(ii) Termination liability. Use when an obligation is necessary to secure the required services. The obligation must be not more than the agreed connection charge, less any net salvage material costs. Use of a termination liability instead of a connection charge requires the approval of the service power procurement officer or designee.

(iii) Connection charge, refundable. Use a refundable connection charge when the supplier refuses to provide the facilities based on lack of capital or published rules which prohibit providing up-front funding. The contract should provide for refund of the connection charge within five years unless a longer period or omission of the refund requirement is authorized by the service power procurement officer or designee.

(iv) Connection and service charges, nonrefundable. The Government may pay certain nonrefundable, nonrecurring charges including service initiation charges, a contribution in aid of construction, membership fees, and charges required by the supplier's rules and regulations to be paid by the customer. If possible, consider sharing with other than Government users the use of (and costs for) facilities when large nonrefundable charges are required.

(2) *Construction and labor requirements.* Follow the procedures at PGI 241.202(2) for construction and labor requirements associated with connection and service charges.

**241.203 [Removed]**

■ 5. Section 241.203 is removed.

■ 6. Section 241.205 is revised to read as follows:

**241.205 Separate contracts.**

Follow the procedures at PGI 241.205 when acquiring utility services by separate contract.

**241.270 [Removed]**

■ 7. Section 241.270 is removed.

[FR Doc. 06-565 Filed 1-20-06; 8:45 am]

BILLING CODE 5001-08-P



**DEPARTMENT OF DEFENSE****48 CFR Part 241****[DFARS Case 2003–D096]****Defense Acquisition Regulations System; Defense Federal Acquisition Regulation Supplement; Utility Rates Established by Regulatory Bodies**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to utility rates established by independent and nonindependent regulatory bodies. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** *Effective Date:* January 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2003–D096.

**SUPPLEMENTARY INFORMATION:****A. Background**

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule—

- Revises DFARS 241.201 to clarify that utility rates established by independent regulatory bodies may be relied upon as fair and reasonable; and
- Adds DFARS 241.501 to clarify requirements for use of contract clauses addressing changes in rates for regulated and unregulated utility services.

DoD published a proposed rule at 70 FR 8565 on February 22, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD certifies that this final rule 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.*, because the rule contains clarifying DFARS amendments, with no significant change to DoD contracting policy.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 241**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR part 241 is amended as follows:

**PART 241—ACQUISITION OF UTILITY SERVICES**

■ 1. The authority citation for 48 CFR part 241 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 241.201 is revised to read as follows:

**241.201 Policy.**

(1) DoD, as a matter of comity, generally complies with the current regulations, practices, and decisions of independent regulatory bodies. This policy does not extend to nonindependent regulatory bodies.

(2) Purchases of utility services outside the United States may use—

- (i) Formats and technical provisions consistent with local practice; and
- (ii) Dual language forms and contracts.

(3) Rates established by an independent regulatory body—

- (i) Are considered “prices set by law or regulation”;
- (ii) Are sufficient to set prices without obtaining cost or pricing data (see FAR Subpart 15.4); and

(iii) Are a valid basis on which prices can be determined fair and reasonable.

(4) Compliance with the regulations, practices, and decisions of independent regulatory bodies as a matter of comity is not a substitute for the procedures at FAR 41.202(a).

■ 3. Section 241.501 is added to read as follows:

**241.501 Solicitation provision and contract clauses.**

(d)(1) Use a clause substantially the same as the clause at FAR 52.241–7, Change in Rates or Terms and Conditions of Service for Regulated Services, when the utility services to be provided are subject to an independent regulatory body.

(2) Use a clause substantially the same as the clause at FAR 52.241–8, Change in Rates or Terms and Conditions of Service for Unregulated Services, when the utility services to be provided are not subject to a regulatory body or are subject to a nonindependent regulatory body.

[FR Doc. 06–564 Filed 1–20–06; 8:45 am]

BILLING CODE 5001–08–P

**DEPARTMENT OF TRANSPORTATION****Pipeline and Hazardous Materials Safety Administration****49 CFR Parts 171, 172, and 173**

[Docket No. RSPA–2004–18795 (HM–237)]

RIN 2137–AD88

**Hazardous Materials: Requirements for Lighters and Lighter Refills**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends requirements in the Hazardous Materials Regulations (HMR) pertaining to the examination, testing, certification, and transportation of lighters and lighter refills. This action will clarify regulatory requirements and, where appropriate, decrease the regulatory burden, while continuing to provide for the safe transportation of lighters and lighter refills in commerce.

**DATES:** *Effective Date:* The effective date of these amendments is January 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Michael G. Stevens or Kurt Eichenlaub, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, telephone (202) 366–8553.

**SUPPLEMENTARY INFORMATION:****List of Topics**

- I. Background
- II. Summary of Regulatory Changes and Analysis of Comments
- III. Regulatory Analyses and Notices
  - A. Statutory/Legal Authority for this Rulemaking
  - B. Executive Order 12866 and DOT Regulatory Policies and Procedures
  - C. Executive Order 13132
  - D. Executive Order 13175
  - E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies
  - F. Paperwork Reduction Act
  - G. Regulation Identifier Number (RIN)
  - H. Unfunded Mandates Reform Act
  - I. Privacy Act
- IV. List of Subjects

**I. Background**

On August 16, 2004, the Research and Special Programs Administration (RSPA), the predecessor agency to the Pipeline and Hazardous Materials Safety Administration (PHMSA, we) issued a notice of proposed rulemaking (NPRM; 69 FR 50976) proposing to amend requirements in the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) pertaining to the examination, testing, certification, and transportation of lighters and lighter refills. The purpose of the rulemaking is to clarify regulatory requirements and decrease regulatory burdens without compromising the safe transportation in commerce of lighters and lighter refills.

We proposed: (1) Definitions for “lighter” and “lighter refill” based on the definition in regulations for lighters issued by the Consumer Product Safety Commission (CPSC); (2) revisions to the § 172.101 Hazardous Materials Table (HMT) to include separate entries for “lighters” and “lighter refills”; (3) adoption of requirements for the design, capacity, and pressure capability of lighters that are generally consistent with definitions in the American Society for Testing and Materials (ASTM), *Standard Consumer Safety Specification for Lighters* (ASTM F–400); (4) revised approval procedures that permit lighter designs to be examined, tested and assigned a unique identification number by a qualified person authorized by PHMSA; (5) provisions for the transportation of lighter samples; and (6) revised packaging requirements for lighters and lighter refills.

In the NPRM, we noted the CPSC denied a petition from the Lighter Association to require all lighters manufactured or imported into the United States conform to ASTM F–400. Instead, CPSC urged voluntary compliance with the standard. However,

on November 30, 2004 CPSC voted to initiate development of a mandatory safety standard to prevent mechanical malfunction of lighters that could be based on the voluntary ASTM F–400. CPSC determined it was necessary to develop a mandatory safety standard to address safety concerns associated with reported incidents involving defective lighters.

**II. Summary of Regulatory Changes and Analysis of Comments**

In response to the NPRM, we received seven comments from representatives of the domestic and international lighter industries, carrier trade associations, safety associations, and individual citizens. In this final rule, we discuss comments submitted to the docket, concerns raised by commenters, and the provisions of this final rule.

**Section 171.8**

In the NPRM, we proposed to add definitions for “lighter” and “lighter refill” in § 171.8. The proposed definition for “lighter” was based on the current definition found in the CPSC regulations, 16 CFR parts 1210 and 1212, the ASTM F400–00 *Standard Consumer Safety Specification for Lighters*, and the International Organization for Standardization’s (ISO) 9994:1995(E) *Lighters—Safety Specification*. We proposed to define the term “lighter” to mean a mechanically operated flame-producing device that employs an ignition device, and contains a Division 2.1 liquefied gas fuel such as butane, isobutane, propane, or mixture thereof, where the vapor pressure of the Division 2.1 material exceeds a gauge pressure of 101.3 kPa (14.7 psia) at 20 °C. The definition includes “cigarette” lighters and multi-purpose lighters. A multi-purpose lighter is: (1) A utility lighter, that is, a lighter greater than four inches in length that may be used to light a fireplace or grill; (2) a micro torch or torch lighter or jet turbo lighter, that is, a high-intensity wind-resistant or wind-proof style that has little or no visible flame that may or may not be operated in a hands-free mode; and (3) a portable soldering or brazing torch with self-contained fuel supply.

One commenter is concerned that the definition of lighter does not include non-pressurized “wick” lighter styles containing absorbed or unabsorbed flammable liquid fuel. The commenter asserts that these devices are hazardous and should be classed and described as lighters when they are offered into transportation.

The commenter is correct that, for purposes of the HMR, the proposed

definition of “lighter” does not include non-pressurized (*i.e.*, gauge vapor pressure of fuel not more than 34.5 kPa (5.0 psi) at 24 °C (75 °F)) “wick” lighter styles containing absorbed or unabsorbed flammable liquid fuel. We agree that non-pressurized lighter styles pose a hazard when offered for transportation in a fueled condition. Therefore, in this final rule, we have modified the definition of “lighter” to mean a mechanically operated flame-producing device employing an ignition device and containing a Class 3 or Division 2.1 material. In addition we have added an entry to the HMT for “Lighters, *non-pressurized, containing flammable liquid*, 3, NA1057, PG II.” Under this final rule, non-pressurized wick type lighters containing flammable liquid fuel are forbidden in transportation unless the design has been approved for transportation by the Associate Administrator for Hazardous Materials Safety (Associate Administrator) under the conditions specified in § 172.102, Special Provision 168. In addition, in this final rule, we are clarifying in Special Provision 168 that a new or never filled lighter or one that is cleaned and purged of all its fuel or vapors is not subject to the HMR.

In the NPRM, we proposed to define the term “lighter refill” to mean a pressurized container of not more than 4 fluid ounces capacity (7.22 cubic inches) and containing 65 grams of fuel or less that does not contain an ignition device but does contain a release device and is intended for use as a replacement cartridge in a lighter or to refill a lighter with a Division 2.1 (Flammable gas) fuel. The NPRM also included the proposed capacity limitations in § 173.306.

Commenters did not address the capacity limitations proposed for lighter refills transported in commerce. However, we determined that capacity limitations should not be included in the regulatory definition of “lighter,” but are more appropriately addressed in operational requirements applicable to their transportation. Therefore, in this final rule we are defining lighter refill in § 171.8 to mean a pressurized container that does not contain an ignition device but does contain a release device and is intended for use as a replacement cartridge in a lighter or to refill a lighter with a Division 2.1 flammable gas fuel. The capacity limitations for lighter refills are specified in § 173.306(h).

**Section 172.101**

We are amending the note to paragraph (c)(11) by adding the words “lighter samples” and by adding a

reference to § 173.308(b)(2) for the transportation requirements applicable to lighter samples.

We are finalizing changes to the § 172.101 Hazardous Materials Table (HMT) for the shipping description "Lighters or Lighter refills." Both "Lighters" and "Lighter refills" have the same United Nations (UN) identification number (UN 1057). However, the approval, special provisions, and packaging requirements are different for lighters and lighter refills and we are therefore separating the two articles in the HMT. To facilitate the transportation of lighters containing flammable liquid fuel, we are adding the entry "Lighters, non-pressurized, containing flammable liquid, NA 1057." A lighter containing a flammable liquid fuel is excepted from examination and testing; however, a lighter containing a flammable liquid fuel must be specifically approved by the Associate Administrator. Unapproved lighters containing flammable liquids are forbidden in transportation (*see* § 173.21).

#### Section 172.102

Commenters did not address the revisions proposed in the NPRM to this section. Therefore, in this final rule, we are adopting the revisions. We are adding two new numerical special provisions, 168 and 169, to specify what may be described under the description "lighters" and "lighter refills," respectively. Special Provision 168 specifies that certain lighter designs must be examined and tested by a person authorized by the Associate Administrator. In addition, it references specific paragraphs in § 173.308 for determining what constitutes a "new" lighter design, procedures for offering and transporting lighter samples for examination and testing, and provides transitional dates for the continued use of lighter design approvals issued by RSPA or PHMSA prior to October 1, 2006. Special Provision 168 also specifies that a non-pressurized wick style lighter does not require examination and testing, but does require approval by the Associate Administrator to be offered for transportation or transported in commerce in a fueled condition. This design approval will specify the packaging and most appropriate shipping description for the device on a case-by-case basis. Finally, Special Provision 168 codifies our long-standing interpretation that a new or unused lighter or a lighter that is empty or purged of all fuel or vapors is not subject to the HMR.

Special Provision 169 sets forth requirements for lighter refills that do

not require approval (*i.e.*, certification) under the HMR. A refill that exceeds 4 fluid ounces or contains more than 65 grams of fuel must be classed and described for the material contained therein, and may not be classed and described as a "Lighter refill."

In addition, we are removing Special Provision N10 and relocating the packaging, marking, and shipping paper requirements for lighters to § 173.308 (*see* preamble discussion under § 173.308).

#### Section 173.6

Based on a number of recent telephone and written inquiries to PHMSA, it appears that individuals in the lighter industry are unclear on the applicability of the materials of trade (MOTS) exception in § 173.6 to lighters and lighter refills. While we do not believe that specific revisions to § 173.6 are necessary, we offer the following clarification.

Lighters and lighter refills are typically regulated as Division 2.1 materials. The MOTS exception is limited to Division 2.1 and 2.2 materials in cylinders with a gross weight not over 100 kg (220 pounds) or a permanently mounted tank manufactured to the ASME Code of not more than 70 gallon water capacity for a non-liquefied Division 2.2 material with no subsidiary hazard (§ 173.6(a)(2)). A cylinder is defined in § 171.8 as a pressure vessel designed for pressures higher than 40 psia and having a circular cross section. It does not include a portable tank, multi-unit tank car tank, cargo tank, or tank car. The primary packagings for lighters and lighter refills generally do not meet the definition of a cylinder. Therefore, lighters and lighter refills generally do not qualify for the MOTS exception in § 173.6.

#### Section 173.21

We are revising § 173.21(i) to permit unapproved lighter design samples to be offered and transported to an examination and testing facility under certain conditions set forth in § 173.308(b)(2). In addition, we are clarifying that lighters containing flammable liquid fuel are not authorized for transportation in the fueled condition unless they have been approved by the Associate Administrator. A new or never filled lighter or one that is cleaned and purged of all its fuel or vapors is not subject to the HMR.

#### Section 173.306

In the proposed rule we did not include language to exclude lighter

refills from the limited quantity exception for containers of not more than 4 fluid ounces capacity (7.22 cubic inches or less) in § 173.306(a)(1). It was our intent in the NPRM to require lighter refills to be shipped in accordance with the new paragraph in § 173.306(h). Therefore, we are amending § 173.306(a)(1) to exclude lighter refills.

In § 173.306, paragraph (h) is redesignated as paragraph (i), and a new paragraph (h) is added to prescribe requirements for lighter refills. Consequently, current paragraphs (i) and (j) are redesignated as paragraphs (j) and (k) respectively. We are requiring a lighter refill to conform to a volumetric capacity limit of 4 fluid ounces (7.22 cubic inches) and a net mass of 65 grams of fuel. Because they contain a release device, lighter refills may not be described as "Gas cartridges (*flammable*) (UN2037)."

Consistent with the UN Model Regulations, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) and the International Maritime Organization's International Maritime Dangerous Goods Code (Amendment 32; IMDG Code), in the NPRM we proposed to require lighter refills to be packaged in outer packagings meeting the Packing Group II performance level. This specification packaging requirement is currently prescribed in the ICAO Technical Instructions for transport by aircraft and under the 13th Revised Edition of the UN Model Regulations and Amendment 32 of the IMDG Code (both effective January 1, 2005). Unless otherwise excepted, we proposed to require UN specification outer packaging for lighter refills transported by all modes under the HMR. We solicited comments on whether the requirement for PG II outer packagings for lighter refills was overly restrictive for shipments of lighter refills by highway and rail.

One commenter believes the requirement for Packing Group II outer packagings for lighter refills is overly restrictive for highway transportation. The commenter states, "Lighter refills have been treated as ORM-D for over thirty years. To the best of our knowledge, there have not been any safety incidents with the transportation of any size lighter refills. We understand the need to harmonize with international standards. However, we see no reason for the industry to bear the additional cost of testing and certifying to PG II when there is no known safety reason for such a change."

The current exceptions in the HMR applicable to lighter refills do not treat lighter refills as ORM-D as the comments suggests. Currently, lighter refills are listed in the hazardous materials table as "Lighter refills, 2.1, UN1057". Column (8A) of the HMT provides no exceptions for lighter refills, and column (8B) refers to § 173.308 for packaging requirements. The packaging requirements do not include a provision to rename lighter refills as "Consumer commodity, ORM-D." Thus, regardless of transport mode, lighter refills are not eligible for the exceptions under the ORM-D hazard class and may not be renamed "Consumer commodity."

We do agree, however, that the proposed requirement to package lighter refills in specification outer packagings for transportation by highway or rail is overly restrictive given the risks posed by such transportation. Therefore, in this final rule, non-specification outer packagings are authorized for lighter refills offered for transportation or transported by highway or rail as specified in § 173.306(h).

In this final rule, in paragraph (h)(2), we continue to allow the current exception from Subparts C through H of Part 172 (i.e., shipping papers, marking, labeling, placarding, emergency response information, and training), and Part 177, for no more than 1,500 lighter refills carried aboard a transport vehicle (see discussion under § 173.308(e)). In addition, this exception allows the use of non-specification outer packaging meeting the general requirements of Subpart B of Part 173.

#### Section 173.308

We proposed in the NPRM revision of paragraph (a) to prescribe requirements for the design, capacity, and pressure capability of lighters so they are generally consistent with definitions in ASTM F-400, ISO 9994, UN Model Regulations (Twelfth Revised Edition) and the current HMR. We proposed a volumetric capacity limit of 4 fluid ounces for lighters consistent with limited quantity requirements for compressed gases.

One commenter suggests the volumetric capacity limit of 4 fluid ounces is too large. The commenter states, "It is unclear to us why such a large capacity was selected. If the maximum fuel quantity is 0.35 fluid ounces, the maximum fuel capacity for a lighter could be as low as 1 fluid ounce. We suppose that acetylene torches, hobby lighters or so-called micro-torches might have a fuel capacity of 4 fluid ounces. However, most

conventional lighters and utility lighters have a capacity of 1 fluid ounce or less."

Although most conventional lighters and utility lighters do have a capacity of 1 fluid ounce or less, the capacity limit of 4 fluid ounces provides flexibility for a variety of alternative lighter designs. The capacity limit of 4 fluid ounces is consistent with the current requirement for limited quantities of compressed gases in § 173.306. The limit provides flexibility without compromising safety in transportation.

In § 173.308(a)(3), the HMR require a cigarette lighter or similar device, including closures, to be capable of withstanding without leakage or rupture an internal pressure of at least two times the vapor pressure of the fuel at 55 °C (131 °F). In addition, the HMR require each lighter design be subject to a leakage test (see § 173.308(b)(3) of the regulatory text for actual test procedures). We solicited comments on whether the pressure test should be required, or if it should remain as a capability measure. We did not receive comments on this issue, and, therefore, we are maintaining the pressure test as a capability standard.

In this final rule, we are adopting the provisions proposed in the NPRM to require lighters containing a Division 2.1 material to be examined and successfully tested in accordance with § 173.308(a). After the effective date of this final rule, PHMSA will no longer approve lighter designs for Division 2.1 materials. Paragraph (a) specifies that a person who is qualified and authorized by the Associate Administrator under the provisions of subpart E of part 107 as limited by the conditions specified in § 173.308(a)(4) may examine and test a lighter design. Each authorized person will be assigned a unique identification code by PHMSA to examine and test lighter designs, and the identification code must appear on the test report with a unique test report identifier for each design tested. The new requirement permits testers to use the same unique design identifier that manufacturers register with CPSC, allowing for increased flexibility and less regulatory burden.

In the NPRM, we invited comments on whether foreign entities should be allowed to examine and test lighter designs on behalf of the Competent Authority of the United States. Several commenters request amending the regulations to allow foreign entities to examine and test lighter designs on behalf of the Competent Authority of the United States. They suggest geographic location and citizenship have no bearing on transportation safety. They assert that any regulation that does not permit

foreign examination of lighters initiates an unnecessary technical barrier to international trade.

We disagree. According to the Lighter Association, approximately fifty percent of the lighters transported in the United States are imported. We have not been able to determine, and commenters have not furnished data, supporting that all foreign testing facilities possess the technical expertise and capability to adequately evaluate lighter designs. Further, we believe that oversight of approval agencies located in foreign countries is likely to present significant logistical hurdles to the agency due to resource limitations. Therefore, we would be unable to determine the adequacy of foreign testing facilities and thus, the appropriate level of safety. For these reasons, in this final rule, we are adopting paragraph (a)(4) as it was proposed. We will continue to evaluate this issue as the provisions of this final rule are implemented.

In paragraph (b) we proposed to define a "new" lighter design type and prescribed the requirements under which a lighter design sample may be offered for transportation and transported for examination and testing. We invited comments on whether the definition of a "new" lighter design needed further clarification or if it was overly restrictive. One commenter suggests the definition of "new" lighter design type should be revised to be more specific. This commenter states lighters that use the same ignition mechanism and the same reservoir capacity to provide the same safety performance should be considered as the same design.

We disagree. The definition does not require a lighter produced by a single manufacturer with the same ignition mechanism and same reservoir capacity as a previous design to be tested as a new design unless it was altered in a way that may affect the escape (leakage) of gas. To clarify, any lighter altered in a manner that does not affect the escape (leakage) of gas—labeling, color, texture, etc.—is not considered a "new" lighter design according to this definition. Consistent with CPSC policy, private labelers and distributors of such devices will not be required to maintain copies of test reports, provided no changes are made to a device that would affect the ability of the device to pass the specified tests. A private labeler is someone who might place an approved device in a gift set, or someone who places advertisement logos in the form of labels on an approved device for resale. We are adopting the definition of a "new" lighter design type as it was proposed.

Paragraph (b) proposed that outer packagings for lighter samples must meet the requirements of Subpart M of Part 178 at the Packing Group I performance level. One commenter suggests the requirement for specification packaging at the Packing Group I performance level is not necessary for shipments of lighter samples. The commenter states lighter samples have historically been offered for transportation as Division 2.1 materials in Packing Group II outer packagings. This commenter asserts there have been no known incidents involving lighter samples offered into transportation for testing, and requests a revision to the packaging requirements for lighter samples to permit transport of lighters in Packing Group II outer packagings.

We disagree. Historically, lighters, including lighter samples, were forbidden in transportation unless the device and inner packaging had been examined by the Bureau of Explosives and specifically approved by the Associate Administrator for Hazardous Materials Safety (§ 173.21(i)). Unapproved lighter designs may not be capable of meeting the specific testing and approval requirements required by the HMR. Because the quality of an unapproved lighter is unknown, these lighters could pose a more significant hazard in transportation than lighter already approved. Therefore, in this final rule, we are adopting the packaging requirements for lighter samples as they were proposed.

In the NPRM, we solicited comments on whether to incorporate by reference transportation-related portions of the ASTM and International Organization for Standardization (ISO) standards for lighters, thereby making compliance mandatory, or to include them in the HMR as suggested methods by which the performance standard may be met. We also solicited comments on whether the leakage test currently required by the HMR is overly restrictive or unnecessary or whether the same level of safety can be achieved by requiring the elevated temperature and sealed fluid fuel reservoir leakage tests prescribed in the ASTM and ISO standards for lighters.

Some commenters support the adoption of the ASTM/ISO tests for lighters. They state the ASTM/ISO standards provide for an adequate level of safety. Other commenters state the current testing required by the HMR provides an adequate level of safety for the storage and transportation of lighters. They also note certain parts of the ASTM/ISO test would not be

applicable to transportation (*e.g.*, flame height measurement and compatibility).

The Lighter Association, Inc. submitted the following comment:

The association has carefully reviewed the proposed gas leakage test at proposed Part 173.308(b)(3). Based upon our initial testing, the proposed test is not workable because it does not account for the absorption of moisture into the plastic bodies of lighters. When placed in an oven for 96 hours at 100 degrees F, the weight loss from the burning off or evaporation of this moisture easily exceeds 20 mg. Moreover, placing the lighters in a dessicator for 24 hours does not appear to resolve this problem. Second, we do not believe that 100 degrees F is sufficiently high to reflect real world transportation conditions. We believe that a temperature in the range of 120 degrees F or higher is going to be necessary to reflect transportation conditions. Third, we suspect that 20 mg is too low at the higher temperatures that we are considering. Accordingly we are requesting an opportunity to conduct further testing and to come back to the agency no later than March 15, 2005 with a new, more rigorous, elevated temperature test.

We have taken these comments into consideration and have determined that we do not have sufficient data at this time to warrant a change to the current testing requirements for lighters. We believe that the current testing requirements may be improved to more accurately represent transportation conditions. However, we are not convinced the ASTM/ ISO testing requirements for lighters provide a satisfactory alternative. In this final rule, we are maintaining current testing requirements for lighter designs and their inner packagings; however, we encourage persons to submit data, statistics, or alternative test methods for further review. We will continue to evaluate this issue, and, if necessary, may consider alternative testing procedures for lighters in a future rulemaking. In this final rule, we are maintaining the current leakage test requirement for lighter samples and we are incorporating the test procedure as proposed in § 173.308(b)(3).

In this final rule, paragraph (c) is amended to provide specific packaging requirements for lighters. Lighters must be placed in an inner packaging designed to prevent movement of the lighters and inadvertent ignition or leakage. In addition, the ignition device and gas control lever of each lighter must be designed, or securely sealed, taped, or otherwise fastened or packaged to protect against accidental functioning. The lighters must then be placed in an authorized outer packaging at the Packing Group II performance level.

Paragraph (d) prescribes the shipping paper and package marking

requirements for lighters. Consistent with the current shipping paper and marking requirements in the HMR—which require packages of lighters to be marked and shipping papers to be annotated with the approval number assigned by PHMSA—in this final rule, we are requiring the identification code and test report identifier to be annotated on a shipping paper, in association with the basic description, and marked on a package, for all designs contained therein. The shipping paper notation and package marking requirements will enable enforcement personnel to identify the person who tested and approved the lighters for transportation should they identify a problem with the shipment. In addition, for transportation by vessel, a closed transport vehicle or closed freight container must be marked with the warning statement as currently required by the HMR, as currently required.

In paragraph (e) we proposed in the NPRM to continue to allow the current exception from Subparts C through H of Part 172, and Part 177, for no more than 1,500 lighters carried aboard a transport vehicle by highway. The exception allows the use of non-specification outer packaging meeting the general requirements of Subpart B of Part 173. This paragraph does not, however, contain an exception from marking the test report identifier on the outer package because of the potential for transportation by common or contract carriage. We invited comments on whether this exception was necessary, no longer relevant, or if its use should be discontinued in the interest of safety.

One commenter suggests that the requirement to mark the test report identifier on the outside of a package under the exception for 1,500 lighters or less in § 173.308(e)(1) should be removed. This commenter states, “This requirement has always been problematic since typically persons transporting 1,500 lighters or less are distributors, who carry several different brands of lighters. They do not know when they order their boxes or plastic totes what lighters will be shipped in the outer packaging. Thus, they are faced with the dilemma of arbitrarily picking one T number, or putting several on the packaging.”

We agree. However, under this exception, the test report identifier marking is the only information available to enforcement personnel and carriers to identify the types of lighters that are contained in a package and to ascertain whether the lighters have been examined in accordance with the HMR. Distributors should be aware of the test report identifiers for each design type in

their inventory. We agree that marking the outside of the packaging may impose an unnecessary burden on distributors; however, we still believe that some record of the test report identifiers for lighters transported in a package must be available to enforcement personnel and carriers during transportation. Therefore, as an alternative to marking the package, we are allowing a list of test report identifiers to be included inside, or attached to the outside of a package as a means of complying with the requirement.

Another commenter is concerned the exception from the shipping paper requirement would make it difficult for the carrier to comply with the requirement for less than 1,500 lighters carried on a single transport vehicle. This commenter suggests that many carriers rely on the shipping papers to determine compliance with the hazmat regulations. The commenter suggests that a carrier that picks up multiple shipments from different shippers may not be aware that it has exceeded the 1,500 lighter limit.

We disagree. The exception in § 173.308(e)(1) still requires shippers to mark the outer packaging with the number of lighters contained in the package; thus, a carrier should know whether it has exceeded the 1,500 limit. Although we except shippers from the shipping paper requirements, a carrier may develop an agreement with its customers requiring them to provide the driver with information on the quantity of lighters that they are offering into transportation.

One commenter suggests revisions to the exception in § 173.308(e)(1) requiring a person transporting lighters under that exception to be specifically informed of the requirements of that section. This commenter states it is unnecessary and burdensome to train drivers in aspects of § 173.308(e)(1) that apply to shippers.

We disagree. Under the exception, we are providing relief from the formal training requirements in Subpart H to Part 172. The requirement for training in § 173.308(e)(1) simply requires persons who carry lighters in accordance with the exception to be informed of the requirements. To ensure safety and compliance it is necessary for both shippers and carriers to be informed of all of the exception requirements.

Based on the lower level of risk posed by limited numbers of lighters, we are allowing additional exceptions for the private carriage of lighters in paragraph (e)(2). This exception allows lighters to be transported by private carriers in non-specification rigid outer packagings

where the outer package contains 300 or fewer lighters. The total number of lighters that may be transported on a single vehicle is limited to a maximum of 1,500. These limits are based on current industry practice. In addition, the test report identifier is not required to be marked on the outer packaging.

### III. Regulatory Analyses and Notices

#### A. Statutory/Legal Authority for This Rulemaking

This final rule is published under authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*). Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. In accordance with § 5103(a) of Federal hazmat law, the Secretary is authorized to designate a material or a group or class of materials as hazardous when transportation of that material in commerce may pose an unreasonable risk to health and safety, or property. A lighter fueled by a flammable gas or a flammable liquid is a hazardous material for purposes of regulation under Federal hazmat law and the HMR. As described in detail in this preamble, this final rule amends HMR requirements applicable to the transportation of lighters and lighter refills to provide increased flexibility to shippers and carriers while maintaining the level of safety provided in the current regulations.

#### B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not formally reviewed by the Office of Management and Budget. This final rule is not a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

This final rule will not impose increased compliance costs on the regulated industry. The revised definitions for “lighters” and “lighter refills” are consistent with the definition used by CPSC and with definitions in the ASTM and ISO industry consensus standards. Consistent definitions will reduce confusion in the regulated community and promote voluntary compliance. In addition, the testing provisions adopted for lighters in this final rule are consistent with industry consensus standards, and the packaging requirements adopted for lighters and

lighter refills are consistent with international transportation standards. Again, consistent requirements will provide additional flexibility, reduce confusion, and promote compliance, thereby enhancing transportation safety.

In this final rule, PHMSA is revising requirements applicable to the approval of lighter designs for transportation. Currently, designs for lighters intended for transportation in commerce must be approved by PHMSA. We receive about 100 requests each year for lighter design approvals. Each submission costs an applicant about \$175.50 for professional, clerical, and testing expenses. There is one testing laboratory currently authorized to support PHMSA’s approval process. The laboratory tests the lighter design and provides the applicant with a test report. The applicant then submits the test report to PHMSA with its application for approval. We review the application and test report and issue an approval; this process may take two to three weeks to complete. Once this final rule is implemented, PHMSA will no longer approve lighter designs. Instead, PHMSA will authorize third parties to test lighter designs and certify compliance with HMR requirements, thus eliminating the two-to-three-week delay between completion of testing and issuance of an approval and reducing the industry’s professional and clerical costs for obtaining an approval by about 50 percent. We expect that between 10 and 20 laboratories will seek authorization to grant lighter design approvals. The increased number of available testing facilities may result in reductions in the costs associated with performing the required tests.

In addition, this final rule excepts certain shipments from the specification packaging requirements of the HMR; these exception provisions will increase shipping options and reduce shipment costs. Overall, this final rule will reduce the compliance burden on the regulated industry without compromising transportation safety.

#### C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This final rule would preempt State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the

consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (i), (ii), (iii), and (v) above and preempts State, local, and Indian tribe requirements not meeting the “substantively the same” standard. This final rule is necessary to update, clarify, and provide relief from regulatory requirements.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA has determined that the effective date of Federal preemption for these requirements will be 1 year from the date of publication of a final rule in the **Federal Register**.

#### D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Because this final rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

#### E. Regulatory Flexibility Act, Executive Order 13272, and DOT Regulatory Policies and Procedures

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule will not impose increased compliance costs on the regulated industry. Rather, the final rule incorporates current approval procedures for the transportation of lighters and lighter refills into the HMR and provides additional flexibility for persons seeking to obtain such approval. In addition, the final rule excepts certain shipments from the specification packaging requirements of the HMR; these exception provisions will increase shipping options and reduce shipment costs. Overall, this final rule should reduce the compliance burden on the regulated industry without compromising transportation safety. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”) and DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

#### F. Paperwork Reduction Act

PHMSA currently has an approved information collection under Office of Management and Budget (OMB) Control Number 2137–0557, “Approvals for Hazardous Materials,” with an expiration date of June 30, 2007. This final rule imposes no new information collection and recordkeeping requirements.

#### G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### H. Unfunded Mandates Reform Act

This final rule imposes no unfunded mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

#### I. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://dms.dot.gov>.

#### IV. List of Subjects

##### 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

##### 49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

##### 49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

■ In consideration of the foregoing, 49 CFR chapter I is amended as follows:

#### PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

■ 2. In § 171.8, new definitions of “lighter” and “lighter refill” are added, in appropriate alphabetical sequence, to read as follows:

#### § 171.8 Definitions and abbreviations.

\* \* \* \* \*

*Lighter* means a mechanically operated flame-producing device employing an ignition device and containing a Class 3 or a Division 2.1 material. For design, capacity, and filling density requirements for lighters containing a Division 2.1 material, see § 173.308.

*Lighter refill* means a pressurized container that does not contain an ignition device but does contain a release device and is intended for use as a replacement cartridge in a lighter or to refill a lighter with a Division 2.1

flammable gas fuel. For capacity limits, see § 173.306(h) of this subchapter.

\* \* \* \* \*

■ 3. In § 171.11, in paragraph (d), a new paragraph (19) is added to read as follows:

**§ 171.11 Use of ICAO Technical Instructions.**

\* \* \* \* \*

(d) \* \* \*

(19) Lighters and lighter refills containing Division 2.1 or Class 3 materials (see § 171.8 of this subchapter) must conform to the requirements of this subchapter.

■ 4. In § 171.12, in paragraph (b), a new paragraph (23) is added to read as follows:

**§ 171.12 Import and export shipments.**

\* \* \* \* \*

(b) \* \* \*

(23) Lighters and lighter refills containing Division 2.1 or Class 3 materials (see § 171.8 of this subchapter)

must conform to the requirements of this subchapter.

\* \* \* \* \*

■ 5. In § 171.12a, in paragraph (b), a new paragraph (21) is added to read as follows:

**§ 171.12a Canadian shipments and packagings.**

\* \* \* \* \*

(b) \* \* \*

(21) Lighters and lighter refills containing Division 2.1 or Class 3 materials (see § 171.8 of this subchapter) must conform to the requirements of this subchapter.

**PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS**

■ 6. The authority citation for part 172 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 7. In § 172.101, in paragraph (c)(11), the Note to paragraph (c)(11) is revised to read as follows:

**§ 172.101 Purpose and use of hazardous materials table.**

\* \* \* \* \*

(c) \* \* \*

(11) \* \* \*

Note to Paragraph (c)(11): For the transportation of samples of self-reactive materials, organic peroxides, explosives or lighters, see §§ 173.224(c)(3), 173.225(c)(2), 173.56(d) or 173.308(b)(2) of this subchapter, respectively.

\* \* \* \* \*

■ 8. In § 172.101, the Hazardous Materials Table is amended to read as follows:





\* \* \* \* \*

**§ 172.102 [Amended]**

■ 9. In § 172.102, the following changes are made:

- a. In paragraph (c)(1), new Special Provisions 168 and 169 are added.
- b. In paragraph (c)(5), Special Provision N10 is removed.

The additions read as follows:

**§ 172.102 Special provisions.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

\* \* \* \* \*

168 For lighters containing a Division 2.1 gas (see § 171.8 of this subchapter), representative samples of each new lighter design must be examined and successfully tested as specified in § 173.308(b)(3). For criteria in determining what is a new lighter design, see § 173.308(b)(1). For transportation of new lighter design samples for examination and testing, see § 173.308(b)(2). The examination and testing of each lighter design must be performed by a person authorized by the Associate Administrator under the provisions of subpart E of part 107 of this chapter, as specified in § 173.308(a)(4). For continued use of approvals dated prior to January 1, 2012, see § 173.308(b)(5).

For non-pressurized lighters containing a Class 3 (flammable liquid) material, its design, description, and packaging must be approved by the Associate Administrator prior to being offered for transportation or transported in commerce. In addition, a lighter design intended to contain a non-pressurized Class 3 material is excepted from the examination and testing criteria specified in § 173.308(b)(3). An unused lighter or a lighter that is cleaned of residue and purged of vapors is not subject to the requirements of this subchapter.

169 This entry applies to lighter refills (see § 171.8 of this subchapter) that contain a Division 2.1 (flammable) gas but do not contain an ignition device. Lighter refills offered for transportation under this entry may not exceed 4 fluid ounces capacity (7.22 cubic inches) or contain more than 65 grams of fuel. A lighter refill exceeding 4 fluid ounces capacity (7.22 cubic inches) or containing more than 65 grams of fuel must be classed as a Division 2.1 material, described with the proper shipping name appropriate for the material, and packaged in the packaging specified in part 173 of this subchapter for the flammable gas contained therein. In addition, a container exceeding 4 fluid ounces

volumetric capacity (7.22 cubic inches) or containing more than 65 grams of fuel may not be connected or manifolded to a lighter or similar device and must also be described and packaged according to the fuel contained therein. For transportation by passenger-carrying aircraft, the net mass of lighter refills may not exceed 1 kg per package, and, for cargo-only aircraft, the net mass of lighter refills may not exceed 15 kg per package. See § 173.306(h) of this subchapter.

\* \* \* \* \*

**PART 173—SHIPPERS-GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS**

■ 10. The authority citation for part 173 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

■ 11. In § 173.21, paragraph (i) is revised to read as follows:

**§ 173.21 Forbidden materials and packages.**

\* \* \* \* \*

(i) Except for a package containing a lighter design sample that meets the requirements of § 173.308(b)(2), a package containing a lighter (see § 171.8 of this subchapter) containing a Division 2.1 material, of a design that has not been examined and successfully tested by an authorized person under the criteria specified in § 173.308(a)(4) or, a lighter design containing a Class 3 material, that has not been approved by the Associate Administrator.

\* \* \* \* \*

**§ 173.306 [Amended]**

■ 12. In § 173.306, the following changes are made:

- a. In paragraph (a)(1), in the first sentence, the wording “cigarette lighters” is removed and the wording “lighter refills (see 171.8 of this subchapter)” is added in its place. In the last sentence, the wording “paragraph (h)” is removed and the wording “paragraph (i)” is added in its place.
- b. In paragraph (a)(3) introductory text, in the last sentence, the wording “paragraph (h)” is removed and the wording “paragraph (i)” is added in its place.

- c. In paragraph (b) introductory text, in the last sentence, the wording “paragraph (h)” is removed and the wording “paragraph (i)” is added in its place.

- d. Paragraph (i) is redesignated as paragraph (j), paragraph (h) is redesignated as paragraph (i), and a new paragraph (h) is added to read as follows:

**§ 173.306 Limited quantities of compressed gases.**

\* \* \* \* \*

(h) *Lighter refills.* (1) Lighter refills (see § 171.8 of this subchapter) must not contain an ignition element but must contain a release device. Lighter refills offered for transportation under this section may not exceed 4 fluid ounces capacity (7.22 cubic inches) or contain more than 65 grams of a Division 2.1 fuel. For transportation by highway or rail, lighter refills must be tightly packed and secured against movement in strong outer packagings. For transportation by aircraft or vessel, lighter refills must be tightly packed and secured against movement in any rigid specification outer packaging authorized in Subpart L of Part 178 of this subchapter at the Packing Group II performance level.

(2) *Exceptions.* For highway transportation, when no more than 1,500 lighter refills covered by this paragraph are transported in one motor vehicle, the requirements of subparts C through H of part 172, and Part 177 of this subchapter do not apply. Lighter refills covered under this paragraph must be packaged in rigid, strong outer packagings meeting the general packaging requirements of subpart B of this part. Outer packagings must be plainly and durably marked, on two opposing sides or ends, with the word “LIGHTER REFILLS” and the number of devices contained therein in letters measuring at least 20 mm (0.79 in) in height. No person may offer for transportation or transport the lighter refills or prepare the lighter refills for shipment unless that person has been specifically informed of the requirements of this section.

\* \* \* \* \*

■ 13. Section 173.308 is revised to read as follows:

**§ 173.308 Lighters.**

(a) *General requirements.* No person may offer for transportation or transport a lighter (see § 171.8 of this subchapter) containing a Division 2.1 (flammable gas) material except under the following conditions:

(1) The lighter must contain a fuel reservoir not exceeding 4 fluid ounces capacity (7.22 cubic inches), and must contain not more than 10 grams (0.35 ounce) of flammable gas.

(2) The maximum filling density may not exceed 85 percent of the volumetric capacity of each fluid reservoir at 15 °C (59 °F).

(3) Each lighter design, including closures, must be capable of withstanding, without leakage or

rupture, an internal pressure of at least two times the pressure of the flammable gas at 55 °C (131 °F).

(4) Each appropriate lighter design must be examined and successfully tested by a person or agency (authorized testing agency) who is authorized by the Associate Administrator to perform such examination and testing under the provisions of subpart E of part 107 of this chapter and who—

(i) Has the equipment necessary to perform the testing required to the level of accuracy required;

(ii) Is able to demonstrate, upon request, the knowledge of the testing procedures and requirements of the HMR relative to lighters;

(iii) Does not manufacture or market lighters, is not financially dependent or owned in whole or in part, by any entity that manufactures or markets lighters;

(iv) Is a resident of the United States; and

(v) Performs all examination and testing in accordance with the requirements of paragraph (b)(3) and (4) of this section.

(5) The Associate Administrator will assign an identification code to each person who is authorized to examine and test lighters. This identification code must be incorporated into a unique test report identifier for each successfully tested lighter design.

(b) *Examination and testing of lighter design types.* (1) *Lighter design type definition.* A new lighter design is one that has never been examined and tested or one that differs from a previous design in any manner that may affect the escape (leakage) of gas. Lighter characteristics that may affect the escape of gas include changes in materials of construction, ignition mechanism, burner valve design, wall thickness, sealing materials, and type of fuel (e.g., vapor pressure differences).

(2) *Lighter samples submitted for examination and testing.* Samples of a new lighter design are excepted from the requirements of (a)(4) and (d) of this section and may be offered for transportation and transported under the following conditions:

(i) The samples must be transported only to an authorized testing agency;

(ii) No more than 12 lighters may be packaged in a single outer packaging;

(iii) Inner packagings must conform to the requirements of paragraph (c)(1) of this section. For transportation by aircraft, intermediate or outer packagings must meet the pressure differential requirements of § 173.27(c) of this part;

(iv) The outer packaging must conform to the requirements of Subpart M of Part 178 of this subchapter at the

Packing Group I performance level and to the requirements of § 173.24 of this subpart;

(v) The word “sample” must appear on the shipping paper as part of the proper shipping name or in association with the basic description; and

(vi) In addition to other required markings and labels, the package must be marked “SAMPLE FOR EXAMINATION AND TESTING.”

(vii) All other applicable requirements of this subchapter must be met.

(3) *Examination and testing of sample lighters by an authorized testing agency.* Each sample lighter must be examined for conformance with paragraph (a) of this section by a person authorized by the Associate Administrator. In addition, lighters must be subjected to the following leakage test:

(i) A minimum of six lighters must be examined and tested at one time. Store the lighters in a desiccator for 24 hours. After drying, weigh each lighter on an analytical balance capable of accurately measuring to within  $\frac{1}{10}$  of a milligram (0.0001 grams).

(ii) After weighing, place the lighters together in an explosion-proof, controlled-temperature laboratory oven capable of maintaining  $38.7 \pm 1$  °C ( $100 \pm 3$  °F) for 96 continuous hours (4 days). At the end of 96 hours, remove the lighters from the oven and place them in the same desiccator and allow the lighters to cool to ambient temperature.

(iii) After cooling, weigh each lighter and determine the net weight differences for each lighter tested (subtract the mass after oven exposure from the original mass before oven exposure).

(iv) Weight losses must be assessed to determine the quantity of gas that leaked from the lighters and from the weight change as a result of absorbed moisture. If the net weight has increased, the test facility must run the required test using six empty lighters in parallel with the six filled lighters. The parallel tests are conducted to determine the weight of moisture absorbed in the plastic in order to determine the weight loss of the lighters from gas leakage.

(v) If the net weight loss for any one of the six lighters exceeds 20 milligrams (0.020 grams), the design must be rejected.

(vi) Lighters manufactured to a rejected lighter design may not be offered for transportation or transported in commerce unless approved in writing by the Associate Administrator.

(4) *Recordkeeping requirements.* (i) Following the examination of each new lighter design, the person or agency that conducted the examination and test

must prepare a test report and make that test report available to the manufacturer. At a minimum, the test report must contain the following information:

(A) Name and address of test facility;

(B) Name and address of applicant;

(C) A test report identifier, that is, the authorized person or agency identifier code immediately followed by an alpha/numeric identifier of four or more characters assigned to the specific lighter design by the authorized person or agency (e.g., “LAA\*\*\*\*,” where, “LAA” is the identification code assigned to the authorized person or agency by the Associate Administrator and “\*\*\*\*” is replaced with the unique test report identifier assigned to the specific lighter design by the authorized person or agency);

(D) Manufacturer of the lighter. For a foreign manufacturer, the U.S. agent or importer must be identified;

(E) Description of the lighter design type (e.g., model, dimensions, ignition mechanism, reservoir capacity, lot/batch number) in sufficient detail to ensure conformance with paragraph (b)(4)(iii) of this section; and

(F) A certification by the authorized testing agency that the lighter design conforms to paragraph (a) of this section and passes or does not pass the required leakage test in paragraph (b) of this section.

(ii) For as long as any lighter design is in production and for at least three years thereafter, a copy of each lighter’s test report must be maintained by the authorized testing agency that performed the examination and testing and the manufacturer of the design. For a foreign manufacturer, each test report must be maintained in accordance with this paragraph by the foreign manufacturer’s U.S. agent or importer.

(iii) Test reports must be traceable to a specific lighter design and must be made available to a representative of the Department upon request.

(5) *Transitional provisions.* Until January 1, 2012, approval numbers issued by the Associate Administrator prior to January 1, 2007 may continue to be marked on packages and annotated on shipping papers, where applicable. After that time, previously issued approvals (i.e., T-\*\*\*\*) will no longer be valid and each lighter design currently in production must be re-examined and tested under the provisions of this section.

(c) *Packaging requirements.* (1) *Inner containment.* Lighters must be placed in an inner packaging that is designed to prevent movement of the lighters and inadvertent ignition or leakage. The ignition device and gas control lever of each lighter must be designed, or

securely sealed, taped, or otherwise fastened or packaged to protect against accidental functioning or leakage of the contents during transport. If lighters are packed vertically in a plastic tray, a plastic, fiberboard or paperboard partition must be used to prevent friction between the ignition device and the inner packaging.

(2) *Outer packaging.* Lighters and their inner packagings must be tightly packed and secured against movement in any rigid specification outer packaging authorized in Subpart L of Part 178 of this subchapter at the Packing Group II performance level.

(d) *Shipping paper and marking requirements.* (1) In addition to the requirements of subpart C of part 172, shipping papers must be annotated with the lighter design test report identifier (see paragraph (b)(4)(i)(C) of this section) traceable to the test report assigned to the lighters or, if applicable, the previously issued approval number (*i.e.*, T\*\*\*), in association with the basic description.

(2) In addition to the requirements of subpart D of part 172, a lighter design test report identifier (see paragraph (b)(4)(i)(C) of this section) or, if applicable, the previously issued approval number (*i.e.*, T\*\*\*), must be marked on a package containing lighters.

(3) For transportation by vessel in a closed transport vehicle or a closed freight container, the following warning must be affixed to the access doors:

**WARNING—MAY CONTAIN  
EXPLOSIVE MIXTURES WITH AIR—  
KEEP IGNITION SOURCES AWAY  
WHEN OPENING**

The warning must be on a contrasting background and must be in letters measuring at least 12.7 mm (0.5 inch) in height.

(e) *Exceptions.* (1) *Common or contract carriage.* For highway transportation by common or contract carrier, when no more than 1,500 lighters covered by this section are transported in one motor vehicle, the requirements of subparts C through H of part 172, and Part 177 of this subchapter do not apply. Lighters transported in accordance with this paragraph are also excepted from the specification packaging, shipping paper, and marking requirements specified in §§ 173.308(c) and (d). Inner packagings must conform to paragraph (c)(1) of this section. Lighters must be further packaged in rigid, strong outer packagings meeting the general packaging requirements of subpart B of part 173. Outer packagings must be plainly and durably marked, on two opposing sides or ends, with the

word “LIGHTERS” and the number of devices contained therein in letters measuring at least 20 mm (0.79 in) in height. In addition, the package must include the test report identifier for each lighter design as specified in paragraph (b)(4)(i)(C) of this section or, if applicable, the previously issued approval number (*i.e.*, T\*\*\*). The test report identifier or approval number must be durable, legible, in English, and located in, attached to, or marked directly on the package. No person may offer for transportation or transport the lighters or prepare the lighters for shipment unless that person has been specifically informed of the requirements of this section.

(2) *Private carriage.* For highway transportation by a private carrier, lighters that have been examined and successfully tested in accordance with this section are not subject to any other requirements of this subchapter under the following conditions:

(i) No person may offer for transportation or transport the lighters or prepare the lighters for shipment unless that person has been specifically informed of the requirements of this section;

(ii) Lighters must be placed in an inner packaging that is designed to prevent accidental activation of the ignition device or valve, release of gas, and movement of the lighters (*e.g.*, tray, blister pack, etc.);

(iii) Inner packagings must be placed in a securely closed rigid outer packaging that limits movement of the inner packagings and protects them from damage;

(iv) The outer package may contain not more than 300 lighters;

(v) A transport vehicle may carry not more than 1,500 lighters at any one time;

(vi) The lighters may not be placed in an outer packaging with other hazardous materials; and

(vii) Outer packagings must be plainly and durably marked with the words “LIGHTERS, excepted quantity.”

**Authority:** 49 CFR part 1.

Issued in Washington, DC, on January 11, 2006.

**Brigham A. McCown,**

*Acting Administrator.*

[FR Doc. 06-464 Filed 1-20-06; 8:45 am]

**BILLING CODE 4910-60-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[I.D. 120805C]

#### Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Halibut and Sablefish Individual Fishing Quota Cost Recovery Program

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

**ACTION:** Notification of standard prices.

**SUMMARY:** The National Marine Fisheries Service publishes IFQ standard prices for the Individual Fishing Quota (IFQ) Cost Recovery Program in the halibut and sablefish fisheries of the North Pacific. NMFS published a standard price notice for 2005 on December 15, 2005. NMFS subsequently discovered calculation errors in the published standard prices. This notice corrects the calculation errors and replaces the December 15, 2005, **Federal Register** document. This action is intended to provide holders of halibut and sablefish IFQ permits information to calculate the payments required for IFQ cost recovery fees due by January 31, 2006.

**DATES:** Effective January 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Troie Zuniga, Fee Coordinator, 907-586-7231.

#### SUPPLEMENTARY INFORMATION:

##### Background

NMFS, Alaska Region, administers the halibut and sablefish IFQ programs in the North Pacific. The IFQ programs are limited access systems authorized by section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982. Fishing under the IFQ programs began in March 1995. Regulations implementing the IFQ program are set forth at 50 CFR part 679.

In 1996, the Magnuson-Stevens Act was amended by Public Law 104-297 to, among other things, require the Secretary of Commerce to “collect a fee to recover the actual costs directly related to the management and enforcement of any . . . individual fishing quota program” (section 304(d)(2)(A)). Section 304(d)(2) of the Magnuson-Stevens Act specifies an upper limit on these fees, when the fees must be collected, and where the fees

must be deposited. Section 303(d)(4) allows NMFS to reserve up to 25 percent of the fees collected for use in an IFQ loan program to aid in financing the purchase of IFQ or quota share (QS) by entry-level and small-vessel fishermen.

On March 20, 2000, NMFS published regulations implementing the IFQ Cost Recovery Program (65 FR 14919), which are set forth at 50 CFR 679.45. Under the regulations, an IFQ permit holder incurs a cost recovery fee liability for every pound of IFQ halibut and IFQ sablefish that is landed on his or her IFQ permit(s). The IFQ permit holder is responsible for self-collecting the fee liability for all IFQ halibut and IFQ sablefish landings on his or her permit(s). The IFQ permit holder is also responsible for submitting a fee liability payment to NMFS on or before the due date of January 31 following the year in which the IFQ landings were made. The dollar amount of the fee due is determined by multiplying the annual IFQ fee percentage (3 percent or less) by the ex-vessel value of each IFQ landing made on a permit and summing the totals of each permit (if more than one).

#### Standard Prices

The fee liability is based on the sum of all payments of monetary worth made to fishermen for the sale of the fish during the year. This includes any retro-payments (e.g., bonuses, delayed partial payments, post-season payments) made to the IFQ permit holder for previously landed IFQ halibut or sablefish.

For purposes of calculating IFQ cost recovery fees, NMFS distinguishes between two types of ex-vessel value: "actual ex-vessel value" and "standard ex-vessel value." "Actual ex-vessel value" is the amount of all compensation, monetary or non-monetary, that an IFQ permit holder received as payment for his or her IFQ fish sold. "Standard ex-vessel value" is the default value on which to base fee liability calculations. However, IFQ permit holders have the option of using "actual ex-vessel value" if they can satisfactorily document those values.

Regulations at § 679.45(c)(2)(i) require the Regional Administrator to publish IFQ standard prices during the last quarter of each calendar year. These standard prices are used, along with estimates of IFQ halibut and IFQ

sablefish landings, are used to calculate standard values. The standard prices are described in U.S. dollars, per IFQ equivalent pound, for IFQ halibut and IFQ sablefish landings made during the year. IFQ equivalent pound(s) means the weight, recorded in pounds for an IFQ landing. For sablefish, the IFQ poundage is calculated as round weight. For halibut, the IFQ equivalent poundage is calculated as the headed and gutted ("net") weight.

NMFS calculates the standard prices to reflect, as closely as possible, by month and port or port-group, the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings. NMFS published a standard price notice for 2005 at 70 FR 74208 on December 15, 2005. NMFS subsequently discovered calculation errors in the published standard prices. This notice corrects the calculation errors and replaces the original notice at 70 FR 74208. The corrected standard prices for IFQ halibut and IFQ sablefish are listed in the following table. Data from ports are combined as necessary to protect confidentiality of data submissions.

#### REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2005 IFQ SEASON

LANDING LOCATION	PERIOD ENDING	HALIBUT STANDARD EX-VESSEL PRICE	SABLEFISH STANDARD EX-VESSEL PRICE
CORDOVA	March 31	—	—
	April 30	—	—
	May 31	\$2.88	\$1.97
	June 30	—	—
	July 31	—	—
	August 31	—	—
	September 30	\$3.08	—
	October 31	\$3.08	—
	November 30	\$3.08	—
DUTCH HARBOR	March 31	—	—
	April 30	—	—
	May 31	—	—
	June 30	\$2.82	—
	July 31	\$2.87	—
	August 31	\$2.89	—
	September 30	\$2.95	—
	October 31	\$2.95	—
	November 30	\$2.95	—
HOMER	March 31	—	—

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2005 IFQ SEASON—  
Continued

LANDING LOCATION	PERIOD ENDING	HALIBUT STANDARD EX-VESSEL PRICE	SABLEFISH STANDARD EX-VESSEL PRICE
	April 30	\$3.01	—
	May 31	—	—
	June 30	\$3.04	—
	July 31	\$3.02	—
	August 31	\$3.07	—
	September 30	\$3.19	—
	October 31	\$3.19	—
	November 30	\$3.19	—
KETCHIKAN	March 31	—	—
	April 30	—	—
	May 31	—	—
	June 30	\$2.96	—
	July 31	—	—
	August 31	\$3.04	—
	September 30	—	—
	October 31	—	—
	November 30	—	—
KODIAK	March 31	\$2.99	\$1.87
	April 30	\$2.84	\$1.87
	May 31	\$2.80	\$2.00
	June 30	\$2.86	\$2.05
	July 31	\$2.86	\$1.89
	August 31	\$2.91	\$2.22
	September 30	\$3.00	\$2.32
	October 31	\$3.00	\$2.32
	November 30	\$3.00	\$2.32
PETERSBURG	March 31	—	—
	April 30	—	—
	May 31	\$2.90	—
	June 30	—	—
	July 31	\$3.11	—
	August 31	\$3.02	—
	September 30	\$3.06	—
	October 31	\$3.06	—
	November 30	\$3.06	—
SEWARD	March 31	\$3.26	—

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2005 IFQ SEASON—  
Continued

LANDING LOCATION	PERIOD ENDING	HALIBUT STANDARD EX-VESSEL PRICE	SABLEFISH STANDARD EX-VESSEL PRICE
	April 30	\$2.95	\$2.00
	May 31	—	—
	June 30	—	—
	July 31	—	—
	August 31	—	—
	September 30	—	—
	October 31	—	—
	November 30	—	—
SITKA	March 31	\$3.34	—
	April 30	\$3.04	\$2.05
	May 31	\$2.95	\$2.10
	June 30	\$2.98	\$2.30
	July 31	\$3.02	\$2.36
	August 31	\$3.02	\$2.43
	September 30	\$3.03	\$2.57
	October 31	\$3.03	\$2.57
	November 30	\$3.03	\$2.57
YAKUTAT	March 31	—	—
	April 30	\$2.70	—
	May 31	\$3.00	—
	June 30	\$2.68	—
	July 31	\$2.80	—
	August 31	—	—
	September 30	\$3.07	—
	October 31	\$3.07	—
	November 30	\$3.07	—

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY PORT GROUP FOR 2005 IFQ SEASON

PORT GROUP	PERIOD ENDING	HALIBUT STANDARD EX-VESSEL PRICE	SABLEFISH STANDARD EX-VESSEL PRICE
BERING SEA <sup>1</sup>	March 31	—	—
	April 30	—	—
	May 31	\$2.83	\$1.85
	June 30	\$2.87	\$2.09
	July 31	\$2.91	\$2.07
	August 31	\$2.91	\$2.22
	September 30	\$2.95	\$2.10

## REGISTERED BUYER STANDARD EX-VESSEL PRICES BY PORT GROUP FOR 2005 IFQ SEASON—Continued

PORT GROUP	PERIOD ENDING	HALIBUT STANDARD EX-VESSEL PRICE	SABLEFISH STANDARD EX-VESSEL PRICE
	October 31	\$2.95	\$2.10
	November 30	\$2.95	\$2.10
CENTRAL GULF <sup>2</sup>	March 31	\$3.20	\$1.97
	April 30	\$2.92	\$1.97
	May 31	\$2.87	\$2.01
	June 30	\$2.96	\$2.16
	July 31	\$2.98	\$2.14
	August 31	\$3.27	\$2.50
	September 30	\$3.05	\$2.40
	October 31	\$3.05	\$2.40
	November 30	\$3.05	\$2.40
SOUTHEAST <sup>3</sup>	March 31	\$3.27	\$2.10
	April 30	\$3.43	\$1.97
	May 31	\$2.82	\$2.09
	June 30	\$2.98	\$2.22
	July 31	\$3.07	\$2.62
	August 31	\$3.11	\$2.39
	September 30	\$3.10	\$2.44
	October 31	\$3.10	\$2.44
	November 30	\$3.10	\$2.44
ALL <sup>4</sup>	March 31	\$3.22	\$1.99
	April 30	\$3.13	\$1.95
	May 31	\$2.85	\$2.02
	June 30	\$2.95	\$2.17
	July 31	\$2.99	\$2.27
	August 31	\$3.12	\$2.40
	September 30	\$3.04	\$2.40
	October 31	\$3.04	\$2.40
	November 30	\$3.04	\$2.40

1. *Landing locations Within Port Group - Bering Sea:* Adak, Akutan, Akutan Bay, Atka, Bristol Bay, Chefornak, Dillingham, Captains Bay, Dutch Harbor, Egegik, Ikatan Bay, Hooper Bay, King Cove, King Salmon, Kipnuk, Mekoryuk, Naknek, Nome, Quinhagak, Savoonga, St. George, St. Lawrence, St. Paul, Togiak, Toksook Bay, Tununak, Beaver Inlet, Ugadaga Bay, Unalaska.

2. *Landing Locations Within Port Group - Central Gulf of Alaska:* Anchor Point, Anchorage, Alitak, Chignik, Cordova, Eagle River, False Pass, West Anchor Cove, Girdwood, Chinitna Bay, Halibut Cove, Homer, Kasilof, Kenai, Kenai River, Alitak, Kodiak, Port Bailey, Nikiski, Ninilchik, Old Harbor, Palmer, Sand Point, Seldovia, Resurrection Bay, Seward, Valdez, Whittier.

3. *Landing Locations Within Port Group - Southeast Alaska:* Angoon, Baranof Warm Springs, Craig, Edna Bay, Elfin Cove, Excursion Inlet, Gustavus, Haines, Hollis, Hoonah, Hyder, Auke Bay, Douglas, Tee Harbor, Juneau, Kake, Ketchikan, Klawock, Metlakatla, Pelican, Petersburg, Portage Bay, Port Alexander, Port Graham, Port Protection, Point Baker, Sitka, Skagway, Tenakee Springs, Thorne Bay, Wrangell, Yakutat.

4. *Landing Locations Within Port Group - All:* **For Alaska:** All landing locations included in 1, 2, and 3. **For California:** Eureka, Fort Bragg, Other California. **For Oregon:** Astoria, Aurora, Lincoln City, Newport, Warrenton, Other Oregon. **For Washington:** Anacortes, Bellevue, Bellingham, Nagai Island, Edmonds, Everett, Granite Falls, Ilwaco, La Conner, Port Angeles, Port Orchard, Port Townsend, Ranier, Fox Island, Mercer Island, Seattle, Standwood, Other Washington. **For Canada:** Port Hardy, Port Edward, Prince Rupert, Vancouver, Haines Junction, Other Canada.



**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: January 11, 2006.

**John H. Dunnigan,**

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

[FR Doc. 06-594 Filed 1-20-06; 8:45 am]

**BILLING CODE 3510-22-S**

# Proposed Rules

Federal Register

Vol. 71, No. 14

Monday, January 23, 2006

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1033

[Docket No. AO-166-A72; DA-05-01-A]

#### Milk in the Mideast Marketing Area; Final Partial Decision on Proposed Amendments to Marketing Agreement and to Order

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to adopt as a final rule order language contained in the interim final rule published in the *Federal Register* on September 26, 2005, concerning pooling standards of the Mideast milk marketing order. This document also sets forth the final decision of the Department and is subject to approval by producers. A separate decision will be issued that will address proposals to deter the de-pooling of milk, transportation credits and clarification of the *Producer* definition.

**FOR FURTHER INFORMATION CONTACT:**

Gino Tosi, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250—0231, (202) 690—3465, e-mail address: [gino.tosi@usda.gov](mailto:gino.tosi@usda.gov).

**SUPPLEMENTARY INFORMATION:** This final partial decision permanently adopts amendments that prohibit the ability to simultaneously pool the same milk on the Mideast Federal milk order and on a marketwide pool administered by another government entity. Additionally, this decision permanently adopts amendments that increase supply plant performance standards and lower diversion limit standards.

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, (the Act), as amended (7 U.S.C. 601–674), 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 request modification or exemption from such order by filing with the Department of Agriculture (Department) 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 the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department 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 its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

#### Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees.

For the purposes of determining which dairy farms are "small businesses," the \$750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it

should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During March 2005, the month during which the hearing occurred, there were 9,767 dairy producers pooled, and 36 handlers regulated by, the Mideast order. Approximately 9,212 producers, or 94.3 percent, were considered small businesses based on the above criteria. Of the 36 handlers regulated by the Mideast order during March 2005, 26 handlers, or 72.2 percent, were considered small businesses.

The permanent adoption of the proposed pooling standards serve to revise established criteria that determine those producers, producer milk and plants that have a reasonable association with and are consistently serving the fluid needs of the Mideast milk marketing area. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I fluid needs and, by doing so, determine those producers who are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities. Therefore, the adopted amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This decision does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond

currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports from all handlers does not significantly disadvantage any handler that is smaller than the industry average.

No other burdens are expected to fall on the dairy industry as a result of overlapping Federal rules. This rulemaking proceeding does not duplicate, overlap, or conflict with any existing Federal rules.

#### Prior Documents in This Proceeding

*Notice of Hearing:* Issued February 14, 2005; published February 17, 2005 (70 FR 8043).

*Amendment to Public Hearing on Proposed Rulemaking:* Issued March 1, 2005; published March 3, 2005 (70 FR 10337).

*Tentative Partial Decision:* Issued July 21, 2005; published July 27, 2005 (70 FR 43335).

*Interim Final Rule:* Issued September 20, 2005; published September 26, 2005 (70 FR 56111).

#### Preliminary Statement

The proposed amendments set forth below are based on the record of a public hearing held in Wooster, Ohio, on March 7–10, 2005, pursuant to a notice of hearing issued February 14, 2005, published February 17, 2005 (70 FR 8043), and an amendment to the hearing notice issued March 1, 2005, published March 3, 2005 (70 FR 10337).

The material issues, findings, conclusions and rulings of the tentative partial decision are hereby approved, adopted and are set forth herein. The material issues on the record of the hearing relate to:

1. Pooling Standards
  - A. Standards for *Producer Milk*.
    - a. Simultaneous pooling of milk on the order and on a marketwide pool administered by another government entity.
    - b. Diversion limit standards.
  - B. Supply Plant performance standards.
2. Determination that emergency marketing conditions exist that warranted the omission of a recommended decision.

#### Findings and Conclusions

This partial final decision specifically addresses proposals, published in the

hearing notice as Proposals 1 and 2, along with a portion of Proposal 3, seeking to change the performance standards and producer milk provisions of the order. The portion of Proposal 3, seeking to clarify the definition of “temporary loss of Grade A approval”, Proposals 4–8, seeking to establish provisions to deter the “de-pooling” of milk, and Proposal 9, seeking to establish transportation credits, will be addressed in a separate decision. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

##### 1. Pooling Standards

###### A. Standards for Producer Milk

Three proposals were presented at the hearing that would amend certain features of the *Producer milk* provision of the Mideast order. A proposal, published in the hearing notice as Proposal 1, seeking to eliminate the ability to simultaneously pool the same milk on the Mideast Federal milk order and on a marketwide equalization pool administered by another government entity, commonly referred to as “double dipping,” previously adopted on an interim basis, is adopted on a permanent basis by this partial final decision. Additionally, a portion of a proposal published in the hearing notice as Proposal 2, seeking to seasonally adjust the percentage of total receipts a pool plant can divert to nonpool plants to 50 percent for the months of August through February and to 60 percent for the months of March through July, previously adopted on an interim basis, is adopted on a permanent basis by this partial final decision. Proposal 3, which sought to adjust the number of days of the milk production of a producer that must be physically received at a Mideast order pool plant before being eligible for diversion to a nonpool plant, commonly referred to as “touching base”, was abandoned at the hearing and will no longer be referenced.

Proponents contend that milk has been simultaneously pooled on the Mideast order and on a marketwide pool administered by another government entity since January of 2000, and although no milk is currently simultaneously pooled on the Mideast order and a marketwide pool administered by another government entity, the possibility exists and provisions should be adopted to eliminate its occurrence. Additionally, proponents contend that inadequate limits on the amount of milk that pool plants can divert to non-pool plants is allowing large volumes of milk to be

pooled on the Mideast order that does not demonstrate a reliable and consistent service to the fluid milk needs of the order.

The Mideast order currently does not prohibit the simultaneous pooling of the same milk on the order and on a marketwide equalization pool operated by another government entity. Although no milk is currently simultaneously pooled on the Mideast order and a marketwide equalization pool operated by another government entity, the situation has occurred in the past and should be prevented from occurring in the future.

The current *Producer milk* provision of the Mideast order considers the milk of a dairy farmer to be producer milk when the milk has been delivered to a pool plant of the order. As a condition for pooling the milk of a producer diverted to a nonpool plant on the Mideast order, a dairy farmer must ship two days’ milk production to a pool plant during each of the months of December through July. This standard is applicable only if two days’ milk production was not shipped to a Mideast pool plant in each of the previous months of August through November. A producer must also deliver two days’ milk production to a pool plant during the months of August through November in order for the milk diverted to nonpool plants to be pooled. A pool handler may not divert more than 60 percent of its total receipts to a nonpool plant during the months of August through February and no more than 70 percent of its total receipts during the months of March through July.

Proposals 1 and 2 were submitted by Dairy Farmers of America (DFA), Michigan Milk Producers Association (MMPA), Dairylea Cooperative Inc. (Dairylea) and the National Farmers Organization (NFO). DFA is a member owned Capper-Volstead cooperative of 13,500 farms that produce milk in 49 states. MMPA is a member owned Capper-Volstead cooperative of 1,350 farms producing milk in four states. Dairylea is a member owned Capper-Volstead cooperative of 2,400 farms producing milk in seven states. NFO is a member owned Capper-Volstead cooperative with over 1,500 members in 18 states. Hereinafter, this decision will refer to DFA, MMPA, Dairylea and NFO collectively as the “Cooperatives.”

A witness appearing on behalf of the Cooperatives testified that adoption of Proposal 1 would eliminate the potential for the same milk to be simultaneously pooled on the Mideast Federal milk order and on a marketwide pool administered by another

government entity. The witness referred to this practice as "double dipping" and as a practice resulting in disorderly marketing conditions. The witness noted that regulatory action has been taken in the Northeast, Central, Upper Midwest, Pacific Northwest and Arizona-Las Vegas Federal milk marketing orders to prohibit the practice. The witness testified that little milk is currently associated with the Mideast marketing order that is simultaneously pooled by another government entity, but should be prohibited in the same manner as in other Federal milk marketing order areas. The Cooperatives noted in their post-hearing briefs that no opposition to adoption of Proposal 1 was received at the hearing.

A witness appearing on behalf of Dean Foods (Dean) testified in support of Proposal 1. Dean Foods owns and operates several distributing plants regulated by the Mideast order. The witness testified that double dipping should be prohibited in the Mideast order in the same manner as in other Federal orders. In their post-hearing brief, Dean added that if the ability to simultaneously pool milk is eliminated, the wording of the order language should be similar to the order language used to prohibit simultaneous pooling in the Central and Upper Midwest orders.

Continental Dairy Products (Continental) noted support for adoption of Proposal 1 in their post-hearing brief. Continental is a member owned Capper-Volstead cooperative that pools milk on the Mideast order. Continental was of the opinion that double dipping should be prohibited for the Mideast marketing area as it has been in other Federal milk marketing orders.

A witness appeared on behalf of the Cooperatives in support of the portion of Proposal 2 that would lower the diversion limit standards. The witness was of the opinion that current diversion limit standards are inadequate and have resulted in milk pooled on the order which does not demonstrate regular and consistent performance in supplying the Class I needs of the marketing area. The witness cited market administrator data showing that during the months of January through February and August through December of 2004, many pool distributing plants and cooperative handlers diverted more than 50 percent of their total milk receipts to nonpool plants. Adoption of the portion of Proposal 2 to limit diversions to no more than 50 percent of total milk receipts in August through February and 60 percent in March

through July for distributing plants and cooperative handlers would increase shipments to distributing plants and raise returns for Mideast producers, the witness noted.

A witness for MMPA appeared on behalf of the Cooperatives in support of the portion of Proposal 2 that would lower diversion limit standards. The witness was of the opinion that an adjustment to the diversion limit standards will serve to decrease market reserves and increase proceeds for producers servicing the needs of the fluid market on a regular and consistent basis.

Several independent and cooperative member dairy farmers whose milk is pooled in the Mideast order also testified in support of the portion of Proposal 2 that would adjust diversion limit standards. Most were of the opinion that adjusting diversion limit standards will serve to more adequately identify the milk that is serving the needs of the Mideast order fluid market.

A witness appearing on behalf of Prairie Farms Dairy (Prairie Farms) testified that they were not in support of, nor in opposition to, adoption of the portion of Proposal 2 that would adjust diversion limits. Prairie Farms is a member owned Capper-Volstead cooperative that pools milk on the Mideast order.

A witness appeared on behalf of White Eagle Cooperative Federation (White Eagle) and "constituent members" in opposition to the portion of Proposal 2 that would lower diversion limit standards. The members of White Eagle Cooperative Federation include White Eagle Cooperative Association, Alto Dairy Cooperative, Scioto Cooperative, and Erie Cooperative Association. White Eagle Cooperative Federation also identified Superior Dairy, United Dairy, Family Dairies USA, Dairy Support Inc., Guggisberg Cheese and Brewster Cheese as constituent members.

The White Eagle witness testified that lowering diversion limit standards will decrease the volume of milk that manufacturing plants can pool, and will remove milk located in Wisconsin, Illinois, Minnesota and Iowa from pooling on the Mideast order. The witness was of the opinion that when the volume of milk pooled in manufacturing uses is decreased, producer milk that supplies manufacturing plants can face decreased returns. In their post-hearing brief White Eagle reiterated that lowering diversion limit standards will decrease returns to producers whose milk is marketed through White Eagle.

A consultant witness provided additional testimony on behalf of White Eagle in opposition to lowering the diversion limit standards of the order. The witness testified that reducing the diversion limit standards would disadvantage small cooperatives that pool milk on the Mideast order. The witness was of the opinion that lowering the diversion limit standards would increase the market power of large cooperatives and milk processors over small cooperatives and milk processors.

The consultant White Eagle witness relied on Market Administrator data to demonstrate the effects of a 10 percent reduction in the diversion limit standards for the period of 2003–2004. The witness stated that if the proposed diversion limit standards had been effective for the month of October 2004, the total volume of milk pooled in the Mideast market would have been reduced by 4.1 percent. The witness predicted that the reduction in milk volume pooled would have increased the PPD by about 2 cents per hundredweight (cwt.) for milk remaining pooled, but would have decreased the relative PPD by about \$0.73 per cwt. on the milk that was not able to be pooled because of lowered diversion limit standards. The witness noted that the majority of the milk not pooled would have been milk usually pooled by small cooperatives. Accordingly, the witness was of the opinion that lowering the diversion limit standards of the Mideast order should not be adopted until additional analysis is done on the possible negative effects on small cooperatives and processors.

White Eagle reiterated opposition to the lowering of diversion limit standards in exceptions to the tentative partial decision. The White Eagle exceptions noted that changes to the diversion limit standards of the order are unnecessary since the fluid milk needs of the Mideast order are adequately met, and will pose difficulties to their members since access to distributing plants is limited.

Exceptions to the tentative partial decision submitted by National All Jersey (NAJ), an organization promoting the Jersey breed with member farms in the Mideast marketing area, also opposed the lowering of diversion limit standards. The exception noted that the lowering of diversion limit standards is unnecessary since the fluid milk needs of the order are adequately met. NAJ commented that access to distributing plants for pooling is limited, and that producer milk able to service the fluid milk needs of the market may not be

able to be pooled. NAJ was also of the opinion that supply plants seeking to be pooled may have to pay increased pooling fees in order to be pooled via plants or cooperatives that may have excess pooling capacity.

In their exceptions to the tentative partial decision, NAJ noted that decreasing diversion limit standards will force the higher solid milk typically produced by the Jersey breed away from its optimum use, cheese plants, to distributing plants. NAJ was of the opinion that the processing efficiencies afforded to cheese plants using high-component Jersey milk will decrease, and put cheese plants in the Mideast at a disadvantage to competitor plants in surrounding areas. NAJ predicted that decreased diversion limits will lower the marketing options for Mideast dairy farmers and subsequently decrease the prices received for their milk.

#### B. Supply Plant Performance Standards

Several proposed changes to the supply plant pooling provisions of the Mideast order, contained in Proposal 2, are also adopted on a permanent basis by this partial final decision. The lack of adequate performance standards in the current supply plant pooling provisions allow large volumes of milk to be pooled on the order that do not demonstrate a regular service to the Class I needs of the market causing an unwarranted decrease in the order's blend price.

Specifically, the following amendments are permanently adopted: (1) Increasing supply plant performance standards for § 1033.7(c) by 10 percentage points, from 30 percent to 40 percent, for all months, (2) Increasing performance standards for supply plants operated by a cooperative association under § 1033.7(d) by five percentage points, from 30 percent to 35 percent, for the month of August, and by 10 percentage points, from 30 percent to 40 percent, for the months of September through November, and (3) Increasing performance standards for a supply plant with a marketing agreement with a cooperative under § 1033.7(e) by 10 percentage points, from 35 percent to 45 percent, for the months of August through November.

Currently, the Mideast order provides that a supply plant must ship 30 percent of its total monthly receipts to a pool distributing plant in order for the plant and all of the receipts of the plant to be pooled for the month. This same standard applies to supply plants owned and operated by a cooperative association. A supply plant operated under a marketing agreement with a cooperative, however, must ship 35

percent of total receipts to a pool distributing plant in every month of the year in order for the plant and all the receipts of the plant to be pooled.

A witness appeared on behalf of the Cooperatives in support of the portion of Proposal 2 that raises the performance standards for supply plants. The Cooperatives witness was of the opinion that supply plant performance standards are inadequate and in need of review and adjustment. Current supply plant performance standards, the witness testified, allow for more milk to be associated with the Mideast pool than is needed. Relying on market administrator data, the witness noted that the projected Class I utilization of the Mideast order of 58.9 percent, specified during Federal order reform, had only been achieved in one month since January 2000. The witness stressed that the Mideast order has ample reserve milk supplies located within the marketing area, but that milk located outside of the marketing area that is being pooled on the order is lowering the proceeds of producers who are consistently serving the fluid needs of the market.

The Cooperatives witness was of the opinion that increasing supply plant performance standards will provide greater incentive to deliver local milk supplies to the Class I market than the current standards. The witness was of the opinion that returns to producers are increased the shorter the distance milk must travel to distributing plants because transportation costs are lower.

The Cooperatives witness testified that the costs of transporting and procuring milk for Class I use is not being borne equally by all producers whose milk is pooled on the order even though Class I returns are shared by all. The witness added that increasing supply plant performance standards would prevent milk that does not service the fluid needs of the market from sharing in the additional proceeds generated from fluid sales in the marketing area.

The Cooperatives witness relied on market administrator data which showed an increase in the volume of milk pooled on the Mideast order from states outside the marketing area including Illinois, Iowa, Minnesota and Wisconsin. The witness testified that although the volume of milk pooled from states outside of the Mideast marketing area has increased, the volume of milk pooled from states within the marketing area has remained constant. The witness added that the increase in the volume of milk pooled from states outside of the marketing area has not resulted in increased volumes of

milk shipped to the order's pool distributing plants. When milk that does not service the needs of the Mideast fluid market is pooled from areas outside the states comprising the Mideast marketing area, the witness stressed, the blend price received by Mideast order producers who regularly demonstrate service to the fluid market is lowered.

The Cooperatives witness relied on market administrator data to illustrate that supply-demand relationships for milk in five different regions of the Mideast marketing area—Northern Ohio, Southern Ohio, Michigan, Indiana and Pennsylvania indicate that there is sufficient locally produced milk to meet the needs of the fluid market. According to the witness, only in the Southern Ohio/Southern Indiana region do total Class I sales exceed the total amount of milk locally supplied. The witness attributed the deficit local milk supply in Southern Ohio/Southern Indiana to local milk being shipped to the Appalachian milk marketing area.

The Cooperatives witness was also of the opinion that a "hard" 40 percent standard on cooperative owned supply plant shipments to distributing plants during the fall months is superior to using the "rolling annual average" method currently provided by the order. The witness added that if a cooperative owned supply plant shipped 40 percent of its total receipts to distributing plants during the fall months, the "rolling annual average" method could be used during the remainder of the year.

The Cooperatives witness testified that the performance standards for supply plants in the Mideast order were increased as a result of a previous Federal order hearing in 2001, but was of the opinion that the market is in need of further refinement. The witness emphasized that while there is a seasonal need for supplemental milk across certain regions of the Mideast market, the current standards allow far more milk to associate with the market than is reasonably warranted. The witness added that increasing supply plant performance standards will increase returns for Mideast dairy farmers who do regularly and consistently service the needs of the fluid market.

A witness appearing on behalf of Dean was also in support of increasing supply plant performance standards. Dean testified at the hearing, and reiterated in their post-hearing brief, that increasing supply plant performance standards will serve to better identify the milk that demonstrates a consistent ability to

service the fluid milk needs of the market.

In their post-hearing brief, Dean proposed a modification to Proposal 2 regarding cooperative owned supply plants. Specifically, Dean suggested that a cooperative owned supply plant should be located within the geographic boundaries of the Mideast marketing area and that qualifying shipments to distributing plants or nonpool plants must be classified as Class I.

A witness from MMPA appearing on behalf of the Cooperatives modified a portion of Proposal 2 at the hearing. The witness testified that Proposal 2 should increase the performance standards for a cooperative owned supply plant by 5 percentage points, from 30 to 35 percent of total receipts, for the month of August, and by 10 percentage points, from 30 to 40 percent of total receipts for the months of September through November. The witness was of the opinion that an increase in performance standards are needed in order to ensure that the proceeds generated from Class I sales are shared among those who regularly supply the needs of the fluid market.

The MMPA witness testified that their cooperative exceeded the current 30 percent performance standard (from 35 percent to 41 percent of total receipts) during the preceding months of August through November. The MMPA witness testified that they are in support of a "hard" performance standard during the August through November period, rather than the use of the annual rolling average provision currently provided for in all months by the order for cooperative owned supply plants. The witness also noted that if market conditions warrant a higher degree of performance, the Market Administrator has the authority to increase the performance standard.

Several independent and cooperative member dairy farmers whose milk is pooled in the Mideast order also testified in support of increasing supply plant performance standards. Most were of the opinion that increasing supply plant performance standards will more adequately identify what milk is consistently serving the needs of the Mideast fluid market.

A witness appeared on behalf of Smith Dairy in general support of any proposal that would serve to address the reduction of producer pay prices in the Mideast order and any proposals that will better identify milk that provides service to the Mideast fluid market. Smith Dairy operates two distributing plants regulated by the Mideast order that are primarily supplied by independent dairy farmers.

A witness appearing on behalf of White Eagle testified in opposition to increasing supply plant performance standards at the hearing and reiterated this position in their post-hearing brief. White Eagle is of the opinion that increasing supply plant shipping standards will displace milk from outside of the geographic boundaries of the Mideast marketing area that has historically supplied the milk needs of the Mideast market.

#### Discussion/Findings

The record of this proceeding supports finding that several amendments to the pooling standards of the Mideast order be permanently adopted. These amendments will better identify the milk of producers that should share in the order's blend price and establish more appropriate performance measures for providing regular and consistent service in meeting the market's fluid needs. Currently, milk located outside the Mideast marketing area that does not demonstrate regular and consistent performance in supplying the needs of the Class I market is able to qualify for pooling on the Mideast order and share in the increased revenues arising from Class I sales in the marketing area. The vast majority of this milk is pooled on the order at low classified use-values and in turn lowers the blend price to those producers who regularly and consistently supply the Class I needs of the Mideast market. Such milk is not demonstrating a reasonable level of performance in servicing the Class I market to receive the additional revenue arising from the Class I use of milk in the Mideast marketing area. Such milk should not be pooled.

The pooling standards of all Federal milk marketing orders, including the Mideast order, are intended to ensure that an adequate supply of milk is available to meet the Class I needs of the market and to provide the criteria for identifying the milk of those producers who are reasonably associated with the market as a condition for receiving the order's blend price. The pooling standards of the Mideast order are represented in the *Pool Plant, Producer*, and the *Producer milk* provisions of the order and are performance based. Taken as a whole, these provisions are intended to ensure that an adequate supply of milk is available to meet the Class I needs of the market and provide the criteria for determining the producer milk that has demonstrated reasonable measures of service to the Class I market and thereby should share in the marketwide distribution of pool proceeds.

Pooling standards that are performance based provide the only viable method for determining those eligible to share in the marketwide pool. It is primarily the additional revenue generated from the higher-valued Class I use of milk that adds additional income, and it is reasonable to expect that only those producers who consistently bear the costs of supplying the market's fluid needs should be the ones to share in the returns arising from higher-valued Class I sales.

Pooling standards are needed to identify the milk of those producers who are providing regular and consistent service in meeting the Class I needs of the market. If a pooling provision does not reasonably accomplish this end, the proceeds that accrue to the marketwide pool from fluid milk sales are not properly shared with the appropriate producers. The result is the unwarranted lowering of returns to those producers who actually incur the costs of servicing the fluid needs of the market.

Pool plant standards, specifically standards that provide for the pooling of milk through supply plants, need to reflect the supply and demand conditions of the marketing area. This is important because producers whose milk is pooled, regardless of utilization, receives the order's blend price. When the pooling provisions of the order result in pooling milk that cannot reasonably be considered as regularly and consistently serving the fluid needs of the market, it is appropriate to re-examine those standards.

The geographic boundaries of the Mideast order are not intended to limit or define which producers, which milk of those producers, or which handlers should enjoy the benefits of being pooled on the order. What is important and fundamental to all Federal orders, including the Mideast order, is the proper identification of those producers, the milk of those producers, and handlers that should share in the proceeds arising from Class I sales in the marketing area. The Mideast order's current pooling standards, specifically supply plant performance standards and diversion limit standards for producer milk do not reasonably accomplish this fundamental objective.

Since the 1960's, the Federal milk order program has recognized the harm and disorder that results to both producers and handlers when the same milk of a producer is simultaneously pooled on more than one Federal order, commonly referred to as "double-dipping". In the past, this situation caused price differences between producers and gave rise to competitive

equity issues. The need to prevent "double-dipping" became critically important as distribution areas expanded and orders merged.

When the same milk can be simultaneously pooled on a marketwide equalization pool operated by a government entity and on a Federal milk marketing order, it has the same undesirable outcomes as pooling the same milk on two Federal orders which was corrected many years ago. The Mideast order recently has experienced "double-dipping" and it is clear that the Mideast order should be permanently amended to prevent the ability to pool the same milk on the order and on a marketwide equalization pool operated by another government entity. This action is consistent with other recent Federal order amendatory actions regarding the simultaneous pooling of the same milk on a Federal order and on other government operated programs.

The hearing record clearly indicates that the milk of producers that does not regularly and consistently service the needs of the fluid market is able to receive the Mideast order's blend price. Inadequate diversion limit standards are allowing large volumes of milk to be diverted to non-pool manufacturing plants located far from the marketing area. Additionally, inadequate supply plant performance standards also enable milk which has insufficient physical association with the market for demonstrating regular and consistent service to the Class I needs of the marketing area to receive the Mideast order's blend price.

The Federal milk order system has consistently recognized that there is a cost incurred by producers in servicing an order's Class I market, and the order's blend price is the compensation to producers for performing such services. The amended pooling provisions will ensure that milk seeking to be pooled and receive the order's blend price will regularly and consistently service the marketing area's Class I needs. Consequently, the adopted pooling provisions will ensure the more equitable sharing of revenue generated from Class I sales among the appropriate producers.

Accordingly, supply plant performance standards are permanently increased by 10 percentage points, from 30 percent to 40 percent of total receipts, for all months; cooperative owned supply plant performance standards should be increased by 10 percentage points, from 30 percent to 40 percent of total receipts, for the months of September through November.

Additionally, cooperative owned supply plant performance standards for

the month of August are permanently increased by five percentage points, from 30 percent to 35 percent of total receipts, as proposed in MMPA's modification of Proposal 2. These standards will be met using the "rolling annual average" standard during December through July and the "hard" standard during August through November as proposed in Proposal 2. Also, as suggested by Dean in their post-hearing brief, a cooperative owned supply plant must be located in the marketing area. Limiting a cooperative owned supply plant to only those that are located within the marketing area is consistent with other pooling conveniences afforded to other supply plants. For example, system pooling of supply plants that regularly and consistently perform in supplying the Class I needs of the marketing area are a legitimate reserve supply source of milk and are restricted to supply plants located within the marketing area. Qualifying shipments, as already specified in the order, may only include shipments of Class I milk to distributing plants or non-pool plants.

Performance standards for a supply plant with a marketing agreement with a cooperative are permanently increased by 10 percentage points, from 35 percent to 45 percent of total receipts, for the months of August through November.

This final decision finds that permanent changes are necessary in the standards of the amount of milk that can be diverted from pool plants to nonpool plants to ensure that milk pooled on the order is part of the legitimate reserve supply of Class I handlers. The hearing record evidence clearly reveals that large volumes of milk not part of the legitimate reserve supply of the pooling handler can be reported as diverted milk by the pooling handler and receive the order's blend price.

Comments filed by the Cooperatives were in support of all changes to the order's pooling standards adopted in the tentative partial decision.

Exceptions to the tentative partial decision submitted by White Eagle and NAJ opposed the lowering of diversion limit standards on the basis that the fluid milk needs of the Mideast market are adequately met. Both entities also argued that the costs and difficulties in obtaining access to distributing plants for pooling will increase as a result of lowered diversion limit standards. NAJ predicted that decreased diversion limits will lower the marketing options for Mideast dairy farmers and subsequently decrease the prices received for their milk. These arguments are not persuasive.

Providing for the diversion of milk to nonpool facilities is a desirable and needed feature of an order because it facilitates the orderly and efficient disposition of milk when not needed for fluid use. Despite the comments by White Eagle and NAJ, this decision maintains that it is necessary to safeguard against excessive milk supplies becoming associated with the market through the diversion process. Associating more milk than is actually part of the legitimate reserve supply of the pooling handler unnecessarily reduces the potential blend price paid to dairy farmers who regularly and consistently service the market's Class I needs. Such milk should not be pooled. Without reasonable diversion limit provisions, the order's performance standards are weakened and give rise to disorderly marketing conditions. Accordingly, diversion limit standards for pool plants are permanently lowered by ten percentage points, from 60 percent to 50 percent for the months of August through February, and from 70 percent to 60 percent for the months of March through July.

### *3. Determination of Emergency Marketing Conditions*

Record evidence established that pooling standards of the Mideast order were inadequate and were resulting in the erosion of the blend price received by producers who were serving the Class I needs of the market and were changed on an emergency basis. The unwarranted erosion of such producer blend prices stemmed from improper diversion limits and supply plant performance standards.

It was also appropriate to prohibit the ability to simultaneously pool the same milk on the Mideast Federal milk order and on a marketwide pool administered by another government entity.

Consequently, it was determined that emergency marketing conditions existed in the Mideast marketing area and the issuance of a recommended decision was omitted. As stated in the tentative partial decision, a separate decision will be issued that will address proposals to deter the de-pooling of milk, establishing transportation credits and clarifying the Producer definition of the order.

### **Rulings on Proposed Findings and Conclusions**

Briefs, proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the

extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

### General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Mideast order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable with respect to the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreement upon which a hearing has been held.

### Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

### Marketing Agreement and Order

Annexed hereto and made a part hereof is one document: A Marketing Agreement regulating the handling of milk. An interim order amending the order regulating the handling of milk in the Mideast marketing area was approved by producers and published

in the **Federal Register** on September 26, 2005 (70 FR 56111), as an Interim Final Rule. Both of these documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire partial final decision and the Marketing Agreement annexed hereto be published in the **Federal Register**.

### Determination of Producer Approval and Representative Period

March 2005 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended in the Interim Final Rule, published in the **Federal Register** on September 26, 2005 (70 FR 56111), regulating the handling of milk in the Mideast marketing area is approved or favored by producers, as defined under the terms of the order (as amended) and as hereby proposed to be amended) who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

### List of Subjects in 7 CFR Part 1033

Milk Marketing order.

Dated: January 17, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

### Order Amending the Order Regulating the Handling of Milk in the Mideast Marketing Area

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

### Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Mideast marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

### Order Relative To Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Mideast marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the order amending the order contained in the interim amendment of the order issued by the Administrator, Agricultural Marketing Service, on September 20, 2005, and published in the **Federal Register** on September 26, 2005 (70 FR 56111), are adopted without change and shall be and are the terms and provisions of this order. [This marketing agreement will not appear in the Code of Federal Regulations]

### Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1033.1 to 1033.86 all inclusive, of the order regulating the handling of milk in the Mideast marketing area (7 CFR part 1033) which is annexed hereto; and



II. The following provisions: Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of September 2005, \_\_\_ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Department in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature By (Name)

(Title)

(Address)

(Seal) Attest

[FR Doc. E6-684 Filed 1-20-06; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1496

RIN 0560-AH39

#### Procurement of Commodities for Foreign Donation

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Proposed rule; reopening and extension of comment period.

**SUMMARY:** The Commodity Credit Corporation (CCC) is reopening and extending the comment period for the proposed rule, Procurement of Commodities for Foreign Donation. The original comment period for the proposed rule closed January 17, 2006, and CCC is reopening and extending it for 45 days from the date of this notice. CCC also will consider any comments received from January 17, 2006, to the date of this notice. This action responds to requests from the public to provide

more time to comment on the proposed rule.

**DATES:** Comments on the proposed rule published at 70 FR 74717, December 16, 2005, must be submitted by March 9, 2006, to be assured consideration. Comments received after that date will be considered to the extent practical. The deadline for comments on the information collections in the proposed rule remains February 14, 2006, as specified in the proposed rule.

**ADDRESSES:** CCC invites interested persons to submit comments. Comments may be submitted by any of the following methods:

- E-Mail: Send comments to [Richard.Chavez@USDA.gov](mailto:Richard.Chavez@USDA.gov).
- Fax: Submit comments by facsimile transmission to: (202) 690-2221.
- Mail: Send comments to: Director, Commodity Procurement Policy & Analysis Division, Farm Service Agency, United States Department of Agriculture (USDA), Rm. 5755-S, 1400 Independence Avenue, SW., Washington, DC 20250-0512.
- Hand Delivery or Courier: Deliver comments to the above address.
- Federal Rulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

**SUPPLEMENTARY INFORMATION:** On December 16, 2005, CCC published a proposed rule, Procurement of Commodities for Foreign Donation, in the **Federal Register** (70 FR 74717). The proposed rule would adopt new procedures to be used by CCC in the evaluation of bids in connection with the procurement of commodities for donation overseas. In general, CCC proposes to amend the existing regulations to provide for the simultaneous review of commodity and ocean freight offers when evaluating lowest-landed cost options in connection with the procurement of commodities. This proposed rule would enhance bidding opportunities for potential vendors while allowing CCC to more efficiently acquire commodities.

The Agency believes the request for additional time to comment on the proposed rule is reasonable and will allow the rulemaking to proceed in a timely manner. As a result of the reopening and extension, the comment period for the proposed rule will close on March 9, 2006.

Signed in Washington, DC, January 13, 2006.

**Teresa C. Lasseter,**

*Executive Vice-President, Commodity Credit Corporation.*

[FR Doc. E6-683 Filed 1-20-06; 8:45 am]

BILLING CODE 3410-05-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD07-05-138]

RIN 1625-AA11

#### Regulated Navigation Area: Savannah River, Savannah, GA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend the Regulated Navigation Areas for Savannah River, Georgia. Two new berths have been created at the Liquefied Natural Gas (LNG) facility on the Savannah River and the current regulation only addresses facility and vessel requirements when an LNG vessel is underway, or is moored parallel to the navigational channel outside of the slip. The current regulation is no longer adequate and the proposed changes address the addition of the new berths and requirements for three different mooring situations.

**DATES:** Comments and related material must reach the Coast Guard on or before March 24, 2006.

**ADDRESSES:** You may mail comments and related material to Coast Guard Marine Safety Unit Savannah, Juliette Gordon Low Federal Building, Suite 1017, 100 W. Oglethorpe, Savannah, Georgia 31401. Coast Guard Marine Safety Unit Savannah maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket [CGD07-05-138], will become part of this docket and will be available for inspection or copying at Marine Safety Unit Savannah, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Lawrence Greene, Chief of Response, Marine Safety Unit Savannah; (912) 652-4353 extension 205.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07-05-138], indicate the specific section of this document to which each comment applies, and give the reason for each

comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Unit Savannah (see **ADDRESSES** above) explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at the time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

In May of 2002, Southern LNG Inc. submitted a letter of intent to expand the LNG facility on Elba Island that would nearly double LNG storage capacity and substantially increase the number of LNG tankship arrivals. The Coast Guard's endorsement was based upon the relocation of the primary LNG mooring facility in order to reduce the risk of allision and subsequent breaching of an LNG tankship's cargo tank. In order to address the Coast Guard's concerns, Southern LNG Inc. initiated a project to create a protected docking slip that allows for simultaneous LNG transfers from vessels. This expansion, scheduled for completion in late 2005, significantly reduces the level of risk associated with LNG tankship operations and vessels transiting near the LNG facility. This rule updates the current RNA and accounts for future LNG operations involving all tankship mooring configurations.

#### Discussion of Proposed Rule

The proposed RNA accounts for three potential mooring arrangements during operations at the new berths. All of these requirements are intended to reduce the risk associated with marine LNG transfer operations. On-scene towing vessels will be able to respond immediately during an emergency involving an LNG tankship or vessel transiting near a moored LNG tankship conducting transfer operations.

Certain security operations will be exempt from the proposed rule. This will allow facility owned or operated security vessels as well as state and local law enforcement vessels to operate freely within the RNA.

The LNG facility will be required to station and provide a minimum of two

escort towing vessels each with a minimum of 100,000 pounds of bollard pull, 4,000 horsepower and capable of safely operating in the indirect mode, to escort transiting vessels 1600 gross tons or greater past LNG tankships that are moored outside of the LNG facility. Additionally, the LNG facility will be required to provide at least one standby towing vessel with a minimum of 90,000 pounds of bollard pull to take appropriate actions in an emergency as directed by the LNG vessel bridge watch.

When a LNG tankship is moored only inside the new slip, the LNG facility will be required to station two standby towing vessels each with a minimum capacity of 100,000 pounds of bollard pull, 4,000 horsepower, and the ability to operate safely in the indirect mode, to take appropriate actions in an emergency. These towing vessels will be on scene to respond to any emergency situation for the LNG tankship moored within the slip or for vessels transiting the Savannah River past the LNG facility.

To limit delays to other vessels operating within the RNA, we propose to allow vessels of 1600 gross tons or greater to pass the facility while the LNG tankships are maneuvering and mooring outside of the Savannah River shipping channel and within the facility confines (i.e., inside of the slip).

We propose to add a requirement for emergency towing wires (fire wires) to follow standard industry practice and ensure the vessels are immediately available for emergency towing.

We propose to add vessel operating restrictions to ensure safe LNG transfer operations due to anticipated hydrodynamic effects on the water within the LNG slip.

We propose to add safety and security requirements in 33 CFR 165.756(d)(6)(v) to prevent unnecessary vessels from entering the LNG slip.

In the interest of port security, this proposed rule also eliminates the requirement to issue a Broadcast Notice to Mariners on scheduled LNG tankship activities while the restrictions imposed by this section are in effect. The level of safety introduced by broadcasting LNG tankship schedules to the general public via marine radio does not outweigh the potential security impacts. Additionally, river pilots, who operate all vessels over 200 gross tons in the Savannah River, are aware of the LNG tankship transit times. While transiting within the RNA, the LNG tankships will generally be escorted by two towing vessels and security vessels that can affect notice of this rule to any vessels not requiring a river pilot.

To ensure the timeliness of response operations and maximize safety and security, the waiver authority in this rule has been modified to allow verbal or written waivers by the Captain of the Port.

#### Regulatory Evaluation

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

Because this proposed rule will minimize delays for inbound and outbound traffic during LNG vessel transits, we expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

#### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Delays for inbound and outbound traffic due to LNG transits will be minimized through this change and through pre-transit conferences between the pilots and the Coast Guard Captain of the Port. The amended RNA requirements are less burdensome for smaller vessels, which are more likely to be small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposal so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### Collection of Information

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

### Federalism

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

### Unfunded Mandates Reform Act

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

### Taking of Private Property

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

### Civil Justice Reform

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

### Protection of Children

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

### Indian Tribal Governments

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

### Energy Effects

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

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this proposed rule under Commandant Instruction

M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation as this regulation is a special local regulation. A preliminary “Environmental Analysis Check List” is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 reads as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.756 to read as follows:

#### § 165.756 Regulated Navigation Area; Savannah River, Georgia.

(a) *Regulated Navigation Area (RNA)*. The Savannah River between Fort Jackson (32°04.93' N, 081°02.19' W) and the Savannah River Channel Entrance Sea Buoy is a regulated navigation area. All coordinates are North American Datum 1983.

(b) *Definitions*. The following definitions are used in this section:

*Bollard pull* is an industry standard used for rating tug capabilities and is the pulling force imparted by the tug to the towline. It means the power that an escort tug can apply to its working line(s) when operating in a direct mode.

*Direct Mode* is a towing technique, which is defined as a method of operation by which a towing vessel generates towline forces by thrust alone at an angle equal to or nearly equal to the towline, or thrust forces applied directly to the escorted vessel's hull.

*Indirect Mode* is a towing technique that, for the purpose of this section, is defined as a method of operation by which an escorting towing vessel generates towline forces by a combination of thrust and hydrodynamic forces resulting from a presentation of the underwater body of the towing vessel at an oblique angle to the towline. This method increases the resultant bollard pull, thereby arresting and controlling the motion of an escorted vessel.

*LNG tankship* means a vessel as described in 46 CFR 154.

Made-up means physically attached by cable, towline, or other secure means in such a way as to be immediately ready to exert force on a vessel being escorted.

*Make-up* means the act of, or preparations for becoming made-up.

*Operator* means the person who owns, operates, or is responsible for the operation of a facility or vessel.

*Savannah River Channel Entrance Sea Buoy* means the aid to navigation labeled R W "T" Mo (A) WHIS on the National Oceanic and Atmospheric Administration's (NOAA) Nautical Chart 11512.

*Standby* means immediately available, ready, and equipped to conduct operations.

*Underway* means that a vessel is not at anchor, not made fast to the shore, or not aground.

(c) *Applicability.* This section applies to all vessels operating within the RNA, including naval and other public vessels, except vessels that are engaged in the following operations:

- (1) Law enforcement, security, or search and rescue;
- (2) Servicing aids to navigation;
- (3) Surveying, maintenance, or improvement of waters in the RNA; or
- (4) Actively engaged in escort, maneuvering, or support duties for an LNG tankship.

(d) *Regulations.* (1) *Requirements for the LNG facility while a LNG tankship is moored outside of the LNG facility slip or while LNG tankships are moored both inside the LNG facility slip and outside the LNG facility slip.* (i) The operator of the facility where an LNG tankship is moored outside of the LNG facility slip shall station and provide a minimum of two escort towing vessels each with a minimum of 100,000 pounds of bollard pull, 4,000 horsepower and capable of safely operating in the indirect mode, to escort transiting vessels 1600 gross tons or greater past the moored LNG tankship. (ii) In addition to the two towing vessels required by paragraph (d)(3)(i) of this section, the operator of the facility

where the LNG tankship is moored outside of the slip shall provide at least one standby towing vessel with a minimum of 90,000 pounds of bollard pull to take appropriate actions in an emergency as directed by the LNG vessel bridge watch required in (d)(7) of this section.

(2) *Requirements for the LNG facility while an LNG tankship is moored only inside the LNG facility slip.* The operator of the facility where one or more LNG tankships are moored in the LNG facility slip and no LNG tankship is present at the pier outside the slip, shall station two standby towing vessels, each with a minimum capacity of 100,000 pounds of bollard pull, 4,000 horsepower, and the ability to operate safely in the indirect mode, to take appropriate actions in an emergency as directed by the LNG vessel bridge watch required in (d)(7) of this section.

(3) *Requirements for vessel operations while a LNG tankship is underway within the Savannah River Shipping Channel within the RNA.* (i) Except for a vessel that is moored at a marina, wharf, or pier, and remains moored, no vessel 1600 gross tons or greater may approach within two nautical miles of a LNG tankship that is underway within the Savannah River shipping channel without the permission of the Captain of the Port (COTP).

(ii) All vessels under 1600 gross tons shall keep clear of transiting LNG tankships.

(iii) The owner, master, or operator of a vessel carrying liquefied natural gas (LNG) shall:

(A) Comply with the notice requirements of 33 CFR 160 and updates are encouraged at least 12 hours before arrival at the RNA boundaries. The COTP may delay the vessel's entry into the RNA to accommodate other commercial traffic.

(B) Obtain permission from the COTP before commencing the transit into the RNA.

(C) Not enter or get underway within the RNA if visibility during the transit is not sufficient to safely navigate the channel, and/or wind speed is, or is expected to be, greater than 25 knots.

(D) While transiting the RNA, the LNG tankship shall have sufficient towing vessel escorts.

(4) *Requirements for vessel operations while a LNG tankship is within the LNG Facility and outside the Savannah River Shipping Channel within the RNA.* Vessels of 1600 gross tons or greater may pass the facility while the LNG tankships are maneuvering and mooring outside of the Savannah River shipping channel and within the facility confines (i.e., inside of the slip).

(5) *Requirements for vessels 1600 gross tons or greater and within the RNA when passing a LNG Tankship moored outside of the LNG Facility slip.* (i) Transiting vessels 1600 gross tons or greater, when passing a LNG tankship moored outside of the LNG facility slip, shall have a minimum of two towing vessels, each with a minimum capacity of 100,000 pounds of bollard pull, 4,000 horsepower, and the ability to operate safely in the indirect mode, made-up in such a way as to be immediately available to arrest and control the motion of an escorted vessel in the event of steering, propulsion or other casualty. While it is anticipated that vessels will utilize the facility provided towing vessel services required in paragraph (d)(1) of this section, this regulation does not preclude escorted vessel operators from providing their own towing vessel escorts, provided they meet the requirements of this part.

(A) Outbound vessels shall be made-up and escorted from Bight Channel Light 46 until the vessel is safely past the LNG dock.

(B) Inbound vessels shall be made-up and escorted from Elba Island Light 37 until the vessel is safely past the LNG dock.

(ii) Vessels 1600 gross tons or greater shall not meet nor overtake within an area 1,000 yards on either side of the LNG facility slip and shall transit that area at minimum safe speed when an LNG tankship is present within the slip.

(6) *Requirements for all other vessels within the RNA.* All vessels less than 1600 gross tons shall not approach within 70 yards of an LNG tankship nor shall any vessel enter the LNG Facility slip without the permission of the Captain of the Port.

(7) *Requirements for moored LNG tankships.* (i) While moored within the RNA, LNG tankships shall maintain a bridge watch consisting of a docking pilot or licensed deck officer to monitor vessels passing and to coordinate the actions of the towing vessel(s) required in this section and in the event of emergency.

(ii) While moored within the RNA, LNG tankships shall have emergency towing wires (fire wires), positioned one meter above the waterline, both on the off-shore bow and quarter of the ship.

(e) *Waivers.* (1) The COTP may waive any requirement in this section, if the COTP finds that it is in the best interest of safety or in the interest of national security. Such waivers may be made verbally or in writing.

(2) An application for a waiver must state the compelling need for the waiver and describe the proposed operation

and methods by which adequate levels of safety and security are to be obtained.

(f) *Enforcement.* In accordance with the general regulations in § 165.13 of this part, no person may cause or authorize the operation of a vessel in the regulated navigation area contrary to the provisions of this section.

Dated: December 27, 2005.

**D.B. Peterman,**

Rear Admiral, U.S. Coast Guard, Commander,  
Seventh Coast Guard District.

[FR Doc. E6-654 Filed 1-20-06; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### 33 CFR Part 207

RIN 0710-AA62

#### Navigation Regulations

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) is withdrawing the proposed rule published on May 25, 2005 (70 FR 30042) which proposed to establish a procedure for modifying the scheduled operational hours at the Lake Washington Ship Canal, Hiram M. Chittenden Locks in Seattle, Washington. The proposed rule would have permitted the District Engineer to change the scheduled operational hours of the locks following issuance of a public notice and after providing a 30-day comment period for any proposed change. The Corps has determined that there is no present need to implement changes in the operation of the Hiram M. Chittenden Locks. The Corps intends to initiate rulemaking in the future if circumstances necessitate instituting a change in the schedule or other parameters of Locks operation.

**DATES:** The proposed rule is withdrawn as of January 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Post, Operations Manager, Hiram M. Chittenden Locks, at (206) 789-2622; or Ms. Andrea Takash, Public Affairs Office, (206) 764-3760.

Dated: January 12, 2006.

**Gerald W. Barnes,**

Chief, Operations, Directorate of Civil Works.

[FR Doc. E6-708 Filed 1-20-06; 8:45 am]

BILLING CODE 3710-92-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

**48 CFR Parts 201, 205, 211, 216, 217, 219, 223, 225, 228, 232, 236, 237, and 252**

[DFARS Case 2004-D022]

RIN 0750-AF16

### Defense Federal Acquisition Regulation Supplement; Inflation Adjustment of Acquisition-Related Thresholds

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to adjust acquisition-related thresholds for inflation. Section 807 of the National Defense Authorization Act for Fiscal Year 2005 requires periodic adjustment of statutory acquisition-related dollar thresholds for inflation, except those established by the Davis-Bacon Act, the Service Contract Act, or trade agreements. This proposed rule also amends other acquisition-related thresholds that are based on policy rather than statute.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before March 24, 2006, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2004-D022, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2004-D022 in the subject line of the message.
- Fax: (703) 602-0350.
- Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.
- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602-0328.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This proposed rule implements Section 807 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375). Section 807 provides for adjustment of statutory acquisition-related dollar thresholds every 5 years, except for those established by the Davis-Bacon Act, the Service Contract Act, or trade agreements. This case presented an opportunity to review all acquisition-related dollar thresholds, including those that are non-statutory. The proposed rule published at 70 FR 73415 on December 12, 2005 (FAR Case 2004-033), contained comparable changes to acquisition-related dollar thresholds in the FAR.

#### *Definition of Acquisition-Related Threshold*

The statute defines an acquisition-related threshold as a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency, as determined by the FAR Council. The statute also impacts acquisition-related thresholds in the DFARS, since the DFARS is part of the FAR System. Acquisition-related thresholds are generally tied to the value of a contract, subcontract, or modification. Examples of thresholds that are not viewed as "acquisition-related" are thresholds relating to claims, penalties, withholding, payments, required levels of insurance, small business size standards, and liquidated damages.

#### *Acquisition-Related Thresholds Not Subject to Escalation Adjustment Under This Proposed Rule*

The statute does not permit escalation of acquisition-related thresholds established by the Davis Bacon Act, the Service Contract Act, or trade agreements. Additionally, the statute does not authorize the escalation of thresholds set by Executive order or by the implementing agency, unless the Executive order or agency regulations are first amended.

#### *Analysis of Statutory Acquisition-Related Thresholds*

A matrix showing the thresholds reviewed in preparation of this proposed rule is available at <http://www.acq.osd.mil/dpap/dars/dfars/changenotice/index.htm#2004-D022>. The statute requires adjustment of acquisition-related thresholds for inflation using the Consumer Price Index (CPI) for all-urban consumers. Acquisition-related thresholds in

statutes that were in effect on October 1, 2000, are subject to 5 years of inflation. For purposes of this proposed rule, the matrix includes calculation of escalation based on the CPI from December 1999 to December 2004 (the most recent available data when the proposed rule was in preparation), which calculates as 13.07 percent. Acquisition-related thresholds in statutes that took effect after October 1, 2000, are escalated proportionately for the number of months between the effective date of the statute and October 1, 2005. The final rule will be adjusted to the actual CPI data for October 2000 through October 2005.

After the escalation factor is applied to the acquisition-related threshold, the threshold must be rounded as follows:

< \$10,000—Nearest \$500  
 \$10,000—<\$100,000—Nearest \$5,000  
 \$100,000—<\$1,000,000—Nearest \$50,000  
 \$1,000,000 or more—Nearest \$500,000

At the current rate of inflation, this means that thresholds of \$1,000, \$10,000, \$100,000, and \$1,000,000, although subject to inflation calculation, will not actually be changed until 2010, because the inflation is insufficient to overcome the rounding requirements.

#### *Analysis of Non-Statutory Acquisition-Related Thresholds*

No statutory authorization is required to escalate thresholds that were set as policy within the DFARS. Policy acquisition-related thresholds have been escalated using the same formula applied to the statutory thresholds.

#### *Further Explanation of Proposed Changes*

**217.170–217.174.** The thresholds relating to economic order quantity (\$20 million), unfunded contingent liability (\$20 million), and multiyear contracts for systems or components (\$500 million) are repeated annually in the Defense Appropriations Act and, therefore, cannot be escalated unless correspondingly increased in the Appropriations Act. The \$500 million threshold relating to multiyear contracts for services does not appear in the annual appropriations acts and, therefore, is proposed for escalation. The \$100 million threshold relating to a contract cancellation ceiling does not appear in annual appropriations acts, but was the basis for additional requirements in Section 814 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375). Therefore, the \$100 million threshold is not proposed for escalation.

**223.803(2).** This text is proposed for deletion, as it applies only to contracts

awarded before June 1, 1993, and the underlying statute has been repealed.

**228.102–1.** The threshold of \$25,000 is proposed for escalation to \$30,000, for consistency with the proposed change to FAR 28.102–1 published at 70 FR 73415 on December 12, 2005. The \$100,000 threshold at 228.102–1(1) was not implemented until June 2003, and, therefore, is not proposed for escalation.

**232.404(a)(9).** This threshold was increased from \$500 to \$2,500 in the final DFARS rule published at 70 FR 75412 on December 20, 2005. The threshold is now proposed for escalation to \$3,000, for consistency with the micro-purchase threshold of \$3,000 included in the proposed FAR rule published at 70 FR 73415 on December 12, 2005.

**237.170–2.** This approval requirement implements Section 801(b) of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107), but the threshold is not set by statute. The threshold of \$50 million was derived from the justification and approval (J&A) threshold for DoD senior procurement executive approval at FAR 6.304(a)(4). This J&A threshold is now \$75 million and was proposed for escalation to \$77.5 million in the proposed FAR rule published at 70 FR 73415 on December 12, 2005. Therefore, this proposed rule includes a corresponding increase at DFARS 237.170–2.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### **B. Regulatory Flexibility Act**

DoD does not expect this rule to 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.*, because the adjustment of acquisition-related dollar thresholds is intended to keep pace with inflation and thus maintain the status quo. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2004–D022.

### **C. Paperwork Reduction Act**

The proposed changes to the DFARS do not impose any new information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C.

3501, *et seq.* The information collection requirements of the provision and clauses at 252.225–7003, 252.225–7004, and 252.225–7006 are approved for use through May 31, 2007, under OMB Clearance Number 0704–0229.

### **List of Subjects in 48 CFR Parts 201, 205, 211, 216, 217, 219, 223, 225, 228, 232, 236, 237, and 252**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR parts 201, 205, 211, 216, 217, 219, 223, 225, 228, 232, 236, 237, and 252 as follows:

1. The authority citation for 48 CFR parts 201, 205, 211, 216, 217, 219, 223, 225, 228, 232, 236, 237, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

### **PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM**

2. Section 201.109 is added to read as follows:

#### **201.109 Statutory acquisition-related dollar thresholds-adjustment for inflation.**

(d) A matrix showing calculation of the most recent escalation adjustments of statutory acquisition-related dollar thresholds is available at PGI 201.109.

### **PART 205—PUBLICIZING CONTRACT ACTIONS**

#### **205.303 [Amended]**

3. Section 205.303 is amended by removing “\$5 million” and adding in its place “\$5.5 million” as follows:

- a. In paragraph (a)(i) introductory text, in the first and second sentences;
- b. In paragraph (a)(i)(A), in the second sentence; and
- c. In paragraph (a)(i)(B), in the first and second sentences.

### **PART 211—DESCRIBING AGENCY NEEDS**

#### **211.503 [Amended]**

4. Section 211.503 is amended in paragraph (b), in the first and second sentences, by removing “\$500,000” and adding in its place “\$550,000”.

### **PART 216—TYPES OF CONTRACTS**

#### **216.203–4 [Amended]**

5. Section 216.203–4 is amended in paragraph (c)(2), in the first sentence, by removing “\$50,000” and adding in its place “\$55,000”.

**PART 217—SPECIAL CONTRACTING METHODS**

6. Section 217.170 is amended by revising paragraph (d)(1)(i) to read as follows:

**217.170 General.**

\* \* \* \* \*

(d)(1) \* \* \*

(i) Exceed \$500 million for supplies (see 217.172(c) and 217.172(e)(4)) or \$565.5 million for services (see 217.171(a)(6));

\* \* \* \* \*

**217.171 [Amended]**

7. Section 217.171 is amended in paragraph (a)(6) by removing “\$500 million” and adding in its place “\$565.5 million”.

**PART 219—SMALL BUSINESS PROGRAMS****219.502–2 [Amended]**

8. Section 219.502–2 is amended in paragraph (a)(i) by removing “\$2 million” and adding in its place “\$2.5 million”.

**PART 223—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

9. Section 223.803 is revised to read as follows:

**223.803 Policy.**

No DoD contract may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard is specifically authorized at a level no lower than a general or flag officer or a member of the Senior Executive Service of the requiring activity in accordance with Section 326, Public Law 102–484 (10 U.S.C. 2301 (repealed) note). This restriction is in addition to any imposed by the Clean Air Act and applies after June 1, 1993, to all DoD contracts, regardless of place of performance.

**PART 225—FOREIGN ACQUISITION****225.7204 [Amended]**

10. Section 225.7204 is amended as follows:

a. In paragraphs (a) and (b) by removing “\$10 million” and adding in its place “\$11.5 million”; and

b. In paragraph (c) by removing “\$500,000” and adding in its place “\$550,000”.

**PART 228—BOND INSURANCE****228.102–1 [Amended]**

11. Section 228.102–1 is amended in the second sentence of the introductory text and in paragraph (1) by removing “\$25,000” and adding in its place “\$30,000”.

**PART 232—CONTRACT FINANCING****232.404 [Amended]**

12. Section 232.404 is amended in paragraph (a)(9) by removing “\$2,500” and adding in its place “\$3,000”.

**232.502–1 [Amended]**

13. Section 232.502–1 is amended in paragraph (b)(1) by removing “\$50,000” and adding in its place “\$55,000”.

**PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS****236.601 [Amended]**

14. Section 236.601 is amended in paragraph (1)(ii) by removing “\$500,000” and adding in its place “\$550,000”.

**PART 237—SERVICE CONTRACTING****237.170–2 [Amended]**

15. Section 237.170–2 is amended in paragraphs (a)(1) and (2) by removing “\$50,000,000” and adding in its place “\$77.5 million”.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

16. Section 252.209–7004 is amended by revising the clause date and paragraph (a) to read as follows:

**252.209–7004 Subcontracting with firms that are owned or controlled by the government of a terrorist country.**

\* \* \* \* \*

**Subcontracting With Firms That Are Owned or Controlled by the Government of a Terrorist Country (XXX 2006)**

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of \$30,000 with a firm, or a subsidiary of a firm, that is identified in the Excluded Parties List System as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

\* \* \* \* \*

**252.225–7003 [Amended]**

17. Section 252.225–7003 is amended as follows:

a. By revising the clause date to read “(XXX 2006)”;

b. In paragraph (b)(1) by removing “\$10 million” and adding in its place “\$11.5 million”; and

c. In paragraph (b)(2)(i) by removing “\$500,000” and adding in its place “\$550,000”.

**252.225–7004 [Amended]**

18. Section 252.225–7004 is amended as follows:

a. By revising the clause date to read “(XXX 2006)”;

b. In paragraph (b)(1) by removing “\$500,000” and adding in its place “\$550,000”.

**252.225–7006 [Amended]**

19. Section 252.225–7006 is amended as follows:

a. By revising the clause date to read “(XXX 2006)”;

b. In paragraph (f)(1) by removing “\$500,000” and adding in its place “\$550,000”.

**252.232–7009 [Amended]**

20. Section 252.232–7009 is amended as follows:

a. By revising the clause date to read “(XXX 2006)”;

b. By removing “\$2,500” and adding in its place “\$3,000”.

**252.249–7002 [Amended]**

21. Section 252.249–7002 is amended as follows:

a. By revising the clause date to read “(XXX 2006)”;

b. In paragraph (d)(1) by removing “\$500,000” and adding in its place “\$550,000”.

[FR Doc. E6–701 Filed 1–20–06; 8:45 am]

BILLING CODE 5001–08–P

**DEPARTMENT OF DEFENSE****48 CFR Part 225**

[DFARS Case 2005–D012]

RIN 0750–AF21

**Defense Acquisition Regulations System; Defense Federal Acquisition Regulation Supplement; Foreign Acquisition Procedures**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to delete text addressing internal DoD procedures pertaining to foreign

acquisition. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). The proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before March 24, 2006, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2005–D012, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2005–D012 in the subject line of the message.

- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602–0328.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This proposed rule is a result of the DFARS Transformation initiative. The proposed rule deletes DFARS text addressing internal DoD procedures in the following areas:

DFARS 225.670–4—Processing of requests for waiver of foreign source restrictions.

DFARS 225.871–4—Processing of requests for waiver under North Atlantic Treaty Organization cooperative projects.

DFARS 225.7017–3—Preparation of determinations regarding award of a contract for ballistic missile defense research, development, test, and evaluation to a foreign source.

DFARS 225.7502—Application of the Balance of Payments Program to an acquisition.

This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD does not expect this rule to 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.*, because the proposed rule addresses internal DoD procedural matters and makes no significant change to DoD contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2005–D012.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 225**

Government procurement.

**Michele P. Peterson,**  
*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR part 225 as follows:

1. The authority citation for 48 CFR part 225 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 225—FOREIGN ACQUISITION**

2. Section 225.670–4 is revised to read as follows:

**225.670–4 Waivers.**

The Secretary of Defense may waive this restriction on the basis of national security interests. To request a waiver, follow the procedures at PGI 225.670–4.

3. Section 225.871–4 is amended by revising paragraph (c) to read as follows:

**225.871–4 Statutory waivers.**

\* \* \* \* \*

(c) To request a waiver under a cooperative project, follow the procedures at PGI 225.871–4.

\* \* \* \* \*

4. Section 225.7017–3 is amended by revising paragraph (b) to read as follows:

**225.7017–3 Exceptions.**

\* \* \* \* \*

(b) If the head of the contracting activity certifies in writing, before contract award, that a U.S. firm cannot competently perform a contract for RDT&E at a price equal to or less than the price at which a foreign government or firm would perform the RDT&E. The contracting officer or source selection authority, as applicable, shall make a determination, in accordance with PGI 225.7017–3(b), that will be the basis for the certification.

5. Section 225.7502 is revised to read as follows:

**225.7502 Procedures.**

If the Balance of Payments Program applies to the acquisition, follow the procedures at PGI 225.7502.

[FR Doc. E6–706 Filed 1–20–06; 8:45 am]

BILLING CODE 5001–08–P

**DEPARTMENT OF DEFENSE**

**48 CFR Parts 242 and 252**

[DFARS Case 2005–D006]

RIN 0750–AF19

**Defense Acquisition Regulations System; Defense Federal Acquisition Regulation Supplement; Earned Value Management Systems**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update requirements for DoD contractors to establish and maintain earned value management systems (EVMS). The rule revises the dollar thresholds at which EVMS requirements are applied and eliminates requirements



for contractors to submit cost/schedule status reports under DoD contracts.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before March 24, 2006, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2005–D006, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2005–D006 in the subject line of the message.

- Fax: (703) 602–0350.

- Mail: Defense Acquisition Regulations System, Attn: Ms. Deborah Tronic, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Tronic, (703) 602–0289.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This proposed rule revises DFARS Subpart 242.11 and the corresponding clauses in DFARS Part 252 to reflect changes in DoD policy on the application of EVMS compliance requirements. The proposed changes—

- Require compliance with American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems, for cost or incentive contracts and subcontracts valued at \$20,000,000 or more;

- Require a formally validated and accepted EVMS for cost or incentive contracts and subcontracts valued at \$50,000,000 or more;

- Discourage the application of earned value management to fixed-price contracts and subcontracts; and

- Eliminate requirements for contractors to submit cost/schedule status reports.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. The analysis is summarized as follows:

This proposed rule amends the DFARS to update requirements for DoD contractors to establish and maintain earned value management systems (EVMS). The rule revises the dollar thresholds at which EVMS requirements are applied and eliminates requirements for contractors to submit cost/schedule status reports under DoD contracts. The objective of the proposed rule is to streamline, improve, and increase consistency in earned value management implementation and application.

The threshold at which a DoD contractor previously was required to have an EVMS that complied with American National Standards Institute/Electronic Industries Alliance Standard 748 (ANSI/EIA–748) was \$73 million for contracts and subcontracts funded with research, development, test and evaluation funding; and \$315 million for contracts and subcontracts funded with operation and maintenance or procurement funding. This proposed rule would lower those thresholds to a single \$20 million threshold for all cost or incentive contracts and subcontracts, regardless of funding type, and would establish a new threshold of \$50 million for an EVMS that has been formally validated and accepted as complying with the standard.

According to the Defense Contract Action Data System, in Fiscal Year 2004, 7 small businesses received a cost or incentive type award obligating funds in excess of \$20 million, and 46 small businesses received a fixed-price type award obligating funds in excess of \$20 million. EVMS compliance requirements would only be used in fixed-price contracts in extremely rare instances. The Dynamic Small Business Search database hosted on the Central Contractor Registration Web site indicates there are 304,961 small businesses registered in that database.

The proposed rule is consistent with the proposed changes to the Federal Acquisition Regulation (FAR) published in the **Federal Register** on April 8, 2005 (70 FR 17945), that would extend Governmentwide the requirement for a contractor to have an EVMS that complies with ANSI/EIA–748. The initial regulatory flexibility analysis for the proposed FAR rule anticipated that agencies would establish a threshold of \$20 million for EVMS compliance.

A copy of the analysis may be obtained from the point of contact specified herein. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such

comments should be submitted separately and should cite DFARS Case 2005–D006.

**C. Paperwork Reduction Act**

The proposed rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* The contract performance reports required by the rule are approved under Office of Management and Budget Clearance Number 0704–0188, Acquisition Management Systems and Data Requirements Control List, for use through May 31, 2006.

**List of Subjects in 48 CFR Parts 242 and 252**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR parts 242 and 252 as follows:

1. The authority citation for 48 CFR parts 242 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

2. Section 242.1106 is revised to read as follows:

**242.1106 Reporting requirements.**

(a)(i) See DoDI 5000.2, Operation of the Defense Acquisition System, for reporting requirements for defense technology projects and acquisition programs. The earned value management system requirement is applied as follows:

(A) For cost or incentive contracts and subcontracts valued at \$20,000,000 or more, the earned value management system shall comply with American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems.

(B) For cost or incentive contracts and subcontracts valued at \$50,000,000 or more, the contractor shall have an earned value management system that has been formally validated and accepted by the contracting officer.

(C) For cost or incentive contracts and subcontracts valued at less than \$20,000,000, earned value management application is optional and is a risk-based decision that is at the discretion of the program manager. See PGI 242.1106(a)(i)(C) for information on conducting a cost-benefit analysis.

(D) For firm-fixed-price contracts and subcontracts of any dollar value, the application of earned value management is discouraged. See PGI

242.1106(a)(i)(D) for information on obtaining a waiver before applying earned value management to a firm-fixed-price contract or subcontract.

(ii) When an offeror proposes a plan for compliance with earned value management system guidelines, follow the review procedures at PGI 242.1106(a)(ii).

(iii) The Defense Contract Management Agency is the DoD executive agency for earned value management system compliance reviews.

(iv) Additional guidance on earned value management can be found in the Defense Acquisition Guidebook at <http://akss.dau.mil/dag> and the DoD Earned Value Management Implementation Guide at [http://guidebook.dcm.mil/79/guidebook\\_process.htm](http://guidebook.dcm.mil/79/guidebook_process.htm).

3. Section 242.1107-70 is revised to read as follows:

**242.1107-70 Solicitation provisions and contract clauses.**

(a) For cost or incentive contracts valued at \$50,000,000 or more—

(1) Use the provision at 252.242-7001, Notice of Earned Value Management System—Validation Requirement, in the solicitations; and

(2) Use the clause at 252.242-7002, Earned Value Management System—Validation Requirement, in the solicitation and contract.

(b) For cost or incentive contracts valued at \$20,000,000 or more but less than \$50,000,000—

(1) Use the provision at 252.242-7005, Notice of Earned Value Management System—Compliance Requirement, in the solicitation; and

(2) Use the clause at 252.242-7006, Earned Value Management System—Compliance Requirement, in the solicitation and contract.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

4. Sections 252.242-7001 and 252.242-7002 are revised to read as follows:

**252.242-7001 Notice of Earned Value Management System—Validation Requirement.**

As prescribed in 242.1107-70(a)(1), use the following provision:  
NOTICE OF EARNED VALUE MANAGEMENT SYSTEM—VALIDATION REQUIREMENT (XXX 2006)

(a) The offeror shall provide documentation that its proposed earned value management system (EVMS) complies with the EVMS guidelines in American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748), or that the proposed EVMS has been validated and accepted by the Department of Defense.

(b) If the offeror proposes to use a system that does not meet the requirements of paragraph (a) of this provision, the offeror shall submit its comprehensive plan for compliance with the EVMS guidelines to the Government for approval.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contract;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the EVMS guidelines;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedure for administration of the EVMS guidelines as applied to subcontractors;

(v) Provide documentation describing the process, results, and any Government participation in any third-party or self-evaluation of the system's compliance with EVMS guidelines; and

(vi) Include a schedule that provides a timetable of events leading up to Government validation and acceptance of the Contractor's EVMS. This schedule should include a progress assistance visit no later than 30 days after contract award, and a compliance review as soon as practicable. The Department of Defense Earned Value Management Implementation Guide outlines the requirements for conducting a progress assistance visit and compliance review.

(2) The Government will review the offeror's EVMS plan before contract award.

(c) Offerors shall identify the subcontractors, or subcontracted effort if subcontractors have not been selected, to whom the EVMS requirements will apply. The offeror and the Government shall agree to the subcontractors or subcontracted effort selected.

(1) For proposed subcontracts with an estimated dollar value of \$50,000,000 or more, the offeror shall be responsible for ensuring that the selected subcontractors comply with the requirements of the Earned Value Management System—Validation Requirement clause of the contract.

(2) For proposed subcontracts with an estimated dollar value of \$20,000,000 or more but less than \$50,000,000, the

offeror shall be responsible for ensuring that the selected subcontractors comply with ANSI/EIA-748. The terms for compliance with ANSI/EIA-748 may be subject to negotiation between the offeror and the subcontractor. The conduct of integrated baseline reviews also may be subject to negotiation between the offeror and the subcontractor.

(d) The offeror shall incorporate its compliance evaluation factors for subcontractors into the plan required by paragraph (b) of this provision. (End of provision)

**252.242-7002 Earned Value Management System—Validation Requirement.**

As prescribed in 242.1107-70(a)(2), use the following clause:

**EARNED VALUE MANAGEMENT SYSTEM—VALIDATION REQUIREMENT (XXX 2006)**

(a) In the performance of this contract, the Contractor shall use—

(1) An earned value management system (EVMS) that has been accepted by the Administrative Contracting Officer (ACO) as complying with the EVMS guidelines in American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748); and

(2) Management procedures that provide for generation of timely and reliable information for the contract performance report (CPR) required by the CPR data item of this contract.

(b) If, at the time of award, the Contractor's EVMS has not been accepted by the ACO as complying with the EVMS guidelines, the Contractor shall apply the system to the contract and shall take timely action to implement its plan to obtain compliance. If the Contractor does not follow the implementation schedule in the compliance plan or, within a reasonable time, correct all system deficiencies identified during the compliance review specified in that plan, the Contracting Officer may take remedial action.

(c) The Government will require integrated baseline reviews. Such reviews shall be scheduled as early as practicable, and the review process should be initiated no later than 180 calendar days after (1) contract award, (2) the exercise of significant contract options, and (3) the incorporation of major modifications. The objective of the integrated baseline review is for the Government and the Contractor to jointly assess the Contractor's baseline to be used for performance measurement, to ensure complete coverage of the statement of work,

logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(d) Unless a waiver is granted by the ACO, Contractor-proposed EVMS changes require approval of the ACO prior to implementation. The ACO shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO, the Contractor shall disclose EVMS changes to the ACO at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the ACO or the ACO's authorized representative. Access is to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the EVMS guidelines referenced in paragraph (a) of this clause and to demonstrate—

(1) Proper implementation of the procedures generating the cost and schedule information being used to satisfy the contract data requirements;

(2) Continuing application of the accepted company procedures in satisfying the CPR data item through recurring program/project and contract surveillance; and

(3) Implementation of any corrective actions identified during the surveillance process.

(f) The Contractor shall require its subcontractors to comply with EVMS requirements as follows:

(1) For subcontracts with an estimated dollar value of \$50,000,000 or more, the following subcontractors shall comply with the requirement of this clause.

*(Contracting Officer to insert names of subcontractors selected for compliance with the EVMS validation requirement in accordance with 252.242-7001(c)(1).)*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(2) For subcontracts with an estimated dollar value of \$20,000,000 or more but less than \$50,000,000, the following subcontractors shall comply with ANSI/EIA-748.

*(Contracting Officer to insert names of subcontractors selected for compliance with ANSI/EIA-748 in accordance with 252.242-7001(c)(2).)*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(g) If indicated by the CPR, the Contractor shall submit a request for approval to begin implementation of an over-target baseline or over-target schedule to the Contracting Officer. This request shall include a top-level projection of cost and/or schedule growth, a determination of whether or not performance variances will be retained, and a schedule of implementation for the rebaselining. The Government will have 30 calendar days to respond after receipt of the request. Failure of the Government to respond within the 30-day period will constitute automatic approval. For cost-reimbursement contracts, the contract budget base should include authorized changes to the contract scope but should exclude changes for cost growth. (End of clause)

5. Sections 252.242-7005 and 252.242-7006 are revised to read as follows:

**252.242-7005 Notice of Earned Value Management System—Compliance Requirement.**

**NOTICE OF EARNED VALUE MANAGEMENT SYSTEM—COMPLIANCE REQUIREMENT (XXX 2006)**

As prescribed in 242.1107-70(b)(1), use the following provision:

(a) The offeror shall submit a written summary of the management procedures it will establish, maintain, and use in the performance of any resultant contract to comply with the requirements of the Earned Value Management System—Compliance Requirement clause of this contract. This description shall include a matrix that correlates each guideline in American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748), to the corresponding process in the Contractor's written summary.

(b) If the offeror proposes to use an earned value management system (EVMS) that has been previously accepted by the Administrative Contracting Officer as complying with the EVMS guidelines in ANSI/EIA-748, the offeror may submit a copy of the documentation of such acceptance instead of the written summary required by paragraph (a) of this provision.

(c) The offeror shall identify the subcontractors, or subcontracted effort if subcontractors have not been selected, to whom the EVMS requirements will apply. The offeror and the Government shall agree to the subcontractors or the subcontracted effort selected for application of the EVMS compliance requirement. The offeror shall be

responsible for ensuring that the selected subcontractors comply with ANSI/EIA-748. The offeror shall incorporate its compliance evaluation factors for the subcontractors into the plan required by paragraph (a) of this provision. (End of provision)

**252.242-7006 Earned Value Management System—Compliance Requirement.**

As prescribed in 242.1107-70(b)(2), use the following clause:

**EARNED VALUE MANAGEMENT SYSTEM—COMPLIANCE REQUIREMENT (XXX 2006)**

(a) The Contractor shall use management procedures in the performance of this contract that provide for—

(1) Planning and control of cost and schedule performance;

(2) Measurement of performance (value for completed tasks); and

(3) Generation of timely and reliable information for the contract performance report (CPR) required by the CPR data item of this contract.

(b) The Contractor shall use and maintain an earned value management system (EVMS) that complies with American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748), throughout the life of the contract. However, the terms for compliance with ANSI/EIA-748 may be subject to negotiation between the Contractor and the Contracting Officer. The Government will not formally accept the Contractor's EVMS with respect to this contract. The use of the Contractor's EVMS for this contract does not imply Government acceptance of the Contractor's EVMS for application to future contracts.

(c) The Contractor may elect to use an EVMS that has been formally reviewed and accepted by the Administrative Contracting Officer (ACO) as complying with the EVMS guidelines in ANSI/EIA-748.

(d) The Government will require integrated baseline reviews. Such reviews shall be scheduled as early as practicable, and the review process should be initiated not later than 180 calendar days after (1) contract award, (2) the exercise of significant contract options, and (3) the incorporation of major modifications. The objective of the integrated baseline review is for the Government and the Contractor to jointly assess the Contractor's baseline to be used for performance measurement, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(e) The Contractor shall provide access to all pertinent records, company procedures, and data requested by the ACO, or the ACO's authorized representative, to demonstrate—

(1) Proper implementation of the procedures generating the cost and schedule information being used to satisfy the contract data requirements;

(2) Continuing application of the company procedures in satisfying the CPR data item through recurring program/project and contract surveillance; and

(3) Implementation of any corrective actions identified during the surveillance process.

(f) The Contractor shall submit notification of any substantive changes to the EVMS procedures and the impact

of those changes to the ACO or the ACO's authorized representative.

(g) The Contractor shall require the following subcontractors to comply with the requirements of this clause:

*(Contracting Officer to insert names of subcontractors selected for application of the EVMS compliance requirement in accordance with 252.242-7005(c).)*

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(h) If indicated by the CPR, the Contractor shall submit a request for approval to begin implementation of an over-target baseline or over-target schedule to the Contracting Officer. This

request shall include a top-level projection of cost and/or schedule growth, a determination of whether or not performance variances will be retained, and a schedule of implementation for the rebaselining. The Government will have 30 calendar days to respond after receipt of the request. Failure of the Government to respond within this 30-day period will constitute automatic approval. For cost-reimbursement contracts, the contract budget base should include authorized changes to the contract scope but should exclude changes for cost growth. (End of clause)

[FR Doc. E6-705 Filed 1-20-06; 8:45 am]

**BILLING CODE 5001-08-P**

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Navy Timber Sale Environmental Impact Statement

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) on a proposal to harvest timber in the Navy Timber Sale project area on the Wrangell Ranger District, Tongass National Forest. The Proposed Action for this project is to harvest 70–80 million board feet from approximately 2,900 acres in one or more offerings and would construct approximately 33 files of new temporary and classified road to facilitate access for logging. The Proposed Action includes harvest units and road construction within Inventoried Roadless Areas, as identified in the Forest Plan SEIS. The Proposed Action includes the use of the existing Log Transfer Facility (LTF) at Anita Bay as well as the construction of a new LTF at the entrance to Burnett Inlet near Navy Creek. The Proposed Action includes a non-significant amendment to the Forest Plan to relocate and/or modify the boundaries of the Mosman and Quiet small old-growth reserves. The Forest Supervisor will decide if and how much timber harvest and road building will occur within the project area, as well as whether to modify the existing small old-growth reserves. The decision will be documented in a Record of Decision based on the information disclosed in the EIS.

**DATES:** A public mailing that outlines the project timeline and public involvement opportunities (Schedule of Proposed Actions) was distributed in January 2006. Individuals interested in receiving a scoping package should

contact us at the address listed in the addresses section within 30 days of the publication of this Notice of Intent (NOI). Opportunities for comment are available throughout the process. Comments on this project would be most helpful if received by February 17, 2006. Additional opportunities for comment will be provided after release of the Draft Environmental Impact Statement (DEIS). The DEIS is projected to be filed with the Environmental Protection Agency (EPA) in April 2007 and will begin a 45-day comment period. The Final Environmental Impact Statement (FEIS) and Record of Decision are anticipated to be published in October 2007.

**ADDRESSES:** Please send written comments to Wrangell Ranger District, Attn: Navy EIS, P.O. Box 51, Wrangell, AK 99929. Electronic comments can be e-mailed to [comments-alaska-tongass-wrangell@fs.fed.us](mailto:comments-alaska-tongass-wrangell@fs.fed.us). Please include the word “Navy” in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Jamie Roberts, Planning Team Leader, or Mark Hummel, District Ranger, Wrangell Ranger District, P.O. Box 51, Wrangell, AK 99929, telephone (907) 874–2323.

**SUPPLEMENTARY INFORMATION:** The Navy project area is located on central Etolin Island approximately 22 air miles southwest of Wrangell, Alaska. The project area is within portions of Value Comparison Units #464, 465, 466, 467 and 468. Portions of two Inventoried Roadless Areas, North Etolin #232 and Mosman #233 as identified in the Forest Plan SEIS, are located within the project area. Timber harvest and road building is proposed within the Inventoried Roadless Areas. The project area includes three small old-growth reserves (Mosman, Quiet and Burnett) as designated in the Forest Plan. A Forest Plan amendment would be required if a decision is made to modify any old-growth reserve. The Forest Supervisor will decide if and how much timber harvest and road building will occur within the project area, as well as whether to modify the existing small old-growth reserves. The decision will be based on the information that is disclosed in the EIS. The Forest Supervisor will consider comments, responses, the disclosure of environmental effects, and applicable laws, regulations, and policies in making the decision. The rationale for

the decision will be included in the Record of Decision.

**Purpose and Need for Action:** The purpose and need for the Navy timber Sale is: (1) To manage suitable lands to achieve 1997 Forest Plan goals and objectives in order to reach the desired future conditions prescribed for the Land Use Designations; (2) to assist in providing a continuous wood supply to meet society’s needs; (3) to contribute to the job market and the overall economy of southeast Alaska; and (4) to harvest 50–80 million board feet of timber.

**Public participation:** Public participation has been an integral component of the study process and will continue to be especially important at several points during the analysis. The Forest Service will seek information, comments and assistance from tribal governments, federal, state and local agencies, individuals and organizations that may be interested in or affected by the proposed activities. Written scoping comments have been solicited through a preliminary scoping package that was sent to persons on the project mailing list in November 2005. Additional written scoping comments are being solicited through a scoping package that will be sent to the project mailing list concurrent with the publication of this NOI. For the Forest Service to best use the scoping input, comments should be received by February 17, 2006. If comments have already been submitted during the November 2005 preliminary scoping period, they are being considered and it is not necessary to re-submit the same comments. Based on the results of scoping and the resource concerns and capabilities within the project area, alternatives including a no-action alternative will be developed for the DEIS. Subsistence hearings, as provided for in Title VIII, Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), will be provided, if necessary, during the comment period on the DEIS.

**Electronic Filing Address:** Electronic comments can be emailed to [comments-alaska-tongass-wrangell@fs.fed.us](mailto:comments-alaska-tongass-wrangell@fs.fed.us). Please include the word “Navy” in the subject line.

**Preliminary Issues:** Tentative issues identified for analysis in the EIS include the potential effects of the project on and the relationship of the project to: (1) Timber sale economics, (2) conflicts

with permitted outfitter/guides and other users of this area, (3) conflicts with Special Use permit holders in the vicinity of this area, (4) proximity to the South Etolin Wilderness area, (5) timber harvest and road building in Inventoried Roadless Areas, (6) economic trade-offs, and (7) modification of small old-growth reserves.

**Range of Alternatives:** The range of alternatives that will be developed to respond to the significant issues, besides no action, could range from 15–120 million board feet.

**Draft environmental Impact Statement:** A Draft Environmental Impact Statement (DEIS) will be prepared for comment. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the Federal Register. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the Final Environmental Impact Statement (FEIS) may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received,

including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

**Responsible Official:** Forrest Cole, Forest Supervisor, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901, is the responsible official. The responsible official will consider comments, responses, the disclosure of environmental effects, and applicable laws, regulations, and policies in making the decision. The rationale for the decision will be included in the Record of Decision.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

**Dennis Neill,**

*Acting Forest Supervisor.*

[FR Doc. 06–555 Filed 1–20–06 8:45am]

**BILLING CODE 3410–11–M**

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### Courthouse Access Advisory Committee; Meeting

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice of meeting.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to advise the Board on issues related to the accessibility of courthouses covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. The Courthouse Access Advisory Committee (Committee) includes organizations with an interest in courthouse accessibility. This notice announces the date, times and location of the next Committee meeting, which will be open to the public.

**DATES:** The meeting of the Committee is scheduled for February 9, 2006 (beginning at 9 a.m. and ending at 5 p.m.) and February 10, 2006 (beginning at 9 a.m. and ending at 3 p.m.).

**ADDRESSES:** The meeting will be held at the Doubletree Hotel, 1515 Rhode Island Avenue, NW., Washington DC.

**FOR FURTHER INFORMATION CONTACT:** David Yanchulis, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0026 (Voice); (202) 272–0082 (TTY). E-mail

[yanchulis@access-board.gov](mailto:yanchulis@access-board.gov). This document is available in alternate formats (cassette tape, Braille, large print, or computer disk). This document is also available on the Board's Internet site (<http://www.access-board.gov/caac/meeting.htm>).

**SUPPLEMENTARY INFORMATION:** In 2004, as part of the outreach efforts on courthouse accessibility, the Access Board established a Federal advisory committee to advise the Access Board on issues related to the accessibility of courthouses, particularly courtrooms, including best practices, design solutions, promotion of accessible features, educational opportunities, and the gathering of information on existing barriers, practices, recommendations, and guidelines. On October 12, 2004, the Access Board published a notice appointing 31 members to the Courthouse Access Advisory Committee. 69 FR 60608 (October 12, 2004). Members of the Committee include designers and architects, disability groups, members of the judiciary, court administrators, representatives of the codes community and standard-setting entities, government agencies, and others with an interest in the issues to be explored. The Committee held its initial meeting on November 4 and 5, 2004. Members discussed the current requirements for accessibility, committee goals and objectives and the establishment of subcommittees. The second meeting of the Committee was held in February, 2005. The Committee toured two courthouses and established three subcommittees: Education, Courtrooms and Courthouses (areas unique to courthouses other than courtrooms). Three additional meetings were held in May, August and November of 2005. Members of the Committee toured several courthouses and continued work in the three subcommittees. Minutes of the meetings may be found on the Access Board's web site at <http://www.access-board.gov/caac/index.htm>. At the February meeting of the Committee, members will continue to address issues both as a full Committee and in subcommittees.

Committee meetings are open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee during public comment periods scheduled on each day of the meeting. Members of groups or individuals who are not members of the Committee are invited to participate on the subcommittees. The Access

Board believes that participation of this kind can be very valuable for the advisory committee process.

The meeting will be held at a site accessible to individuals with disabilities. Real-time captioning will be provided. Individuals who require sign language interpreters should contact David Yanchulis by January 26, 2006. Notices of future meetings will be published in the **Federal Register**.

**Lawrence W. Roffee,**  
Executive Director.

[FR Doc. E6-743 Filed 1-20-06; 8:45 am]

**BILLING CODE 8150-01-P**

**DEPARTMENT OF COMMERCE**

**Office of the Secretary**

**Estimates of the Voting Age Population for 2005**

**AGENCY:** Office of the Secretary, Commerce.

**ACTION:** General notice announcing population estimates.

**SUMMARY:** This notice announces the voting age population estimates, as of July 1, 2005, for each State and the District of Columbia. We are giving this notice in accordance with the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e).

**FOR FURTHER INFORMATION CONTACT:** Signe I. Wetrogan, Acting Chief, Population Division, Bureau of the Census, Department of Commerce, Room 2019, Federal Building 3, Washington, DC 20233, telephone 301-763-2093.

**SUPPLEMENTARY INFORMATION:** Under the requirements of the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e), I hereby give notice that the estimates of the voting age population for July 1, 2005, for each State and the District of Columbia are as shown in the following table.

**ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 2005**

[In thousands]

Area	Population 18 and over
United States .....	222,940,420
Alabama .....	3,468,055
Alaska .....	475,337
Arizona .....	4,358,856
Arkansas .....	2,103,532
California .....	26,430,285

**ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 2005—Continued**

[In thousands]

Area	Population 18 and over
Colorado .....	3,484,652
Connecticut .....	2,675,291
Delaware .....	647,645
District of Columbia .....	437,684
Florida .....	13,721,987
Georgia .....	6,709,854
Hawaii .....	975,342
Idaho .....	1,054,916
Illinois .....	9,522,332
Indiana .....	4,669,126
Iowa .....	2,295,533
Kansas .....	2,070,402
Kentucky .....	3,193,245
Louisiana .....	3,375,977
Maine .....	1,044,169
Maryland .....	4,197,427
Massachusetts .....	4,940,707
Michigan .....	7,596,586
Minnesota .....	3,903,221
Mississippi .....	2,172,544
Missouri .....	4,422,078
Montana .....	730,676
Nebraska .....	1,327,158
Nevada .....	1,793,627
New Hampshire .....	1,006,789
New Jersey .....	6,556,124
New Mexico .....	1,438,902
New York .....	14,708,746
North Carolina .....	6,542,201
North Dakota .....	500,159
Ohio .....	8,704,930
Oklahoma .....	2,694,548
Oregon .....	2,791,112
Pennsylvania .....	9,612,877
Rhode Island .....	830,835
South Carolina .....	3,227,881
South Dakota .....	587,663
Tennessee .....	4,572,437
Texas .....	16,533,683
Utah .....	1,727,029
Vermont .....	490,431
Virginia .....	5,742,897
Washington .....	4,803,394
West Virginia .....	1,434,359
Wisconsin .....	4,240,206
Wyoming .....	394,973

I have certified these counts to the Federal Election Commission.

Dated: January 10, 2006.

**Carlos M. Gutierrez,**  
Secretary, Department of Commerce.

[FR Doc. E6-660 Filed 1-20-06; 8:45 am]

**BILLING CODE 3510-07-P**

**DEPARTMENT OF COMMERCE**

**Census Bureau**

**Submission for OMB Review; Comment Request**

DOC has submitted to the Office of Management and Budget (OMB) for

clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* 2007 Economic Census General Classification Report.

*Form Number(s):* NC-99023, NC-99023-L1, NC-99023-L11, NC-99023-L21, NC-99023-L31.

*Agency Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 33,333 hours.

*Number of Respondents:* 200,000.

*Avg. Hours per Response:* 10 minutes.

*Needs and Uses:* Accurate and

reliable industry and geographic codes are critical to the U.S. Census Bureau's economic statistical programs. New businesses are assigned industry classifications by the Social Security Administration (SSA). Over seven percent of these businesses cannot be assigned industry codes because insufficient information is provided on the Internal Revenue Service (IRS) Form SS-4. Since the 2002 Economic Census, the number of unclassified businesses has grown to over 110,000 (over 3% increase).

In order to provide detailed industry data for the 2007 Economic Census and the Business Register, the basic sampling frame for many of our current surveys, these unclassified businesses must be assigned North American Industry Classification System (NAICS) codes. During the 2007 Economic Census, the NC-99023 questionnaire will be used to collect information from unclassified single-unit establishments. In 2006, the year prior to the census, this form will be used to collect information from: (1) Unclassified establishments due to insufficient information provided on their SS-4 forms, and (2) partially classified establishments.

Establishments that are currently unclassified or partially classified could be misclassified in the economic census without a complete NAICS code. This refile operation will determine a complete and reliable classification in order to ensure the establishment is tabulated in the correct detailed industry for the 2007 Economic Census. Although the Bureau of Labor Statistics (BLS) provides industry codes for establishments that they have classified in their universe but which are unclassified in the Business Register, detailed industry classification would still be missing for the remaining units. If these establishments are not mailed as part of the economic census, economic data for these cases could be lost. Classification information obtained from these establishments will also be

included in the Census Bureau's County Business Patterns (CBP) publications. CBP publications provide annual data on establishment counts, employment, and payroll for all sectors of the economy at national, State, and county levels.

The economic census is the primary source of facts about the structure and functioning of the Nation's economy featuring industry and geographic detail. Economic census statistics and their derivatives serve as part of the framework for the national accounts and provide essential information for government, business, and the general public. The Federal Government uses census information as an important part of the framework for the national income and product accounts, input-output tables, economic indexes, and other composite measures that serve as the factual basis for economic policy-making, planning, and program administration. Further, the census provides sampling frames and benchmarks for current surveys of business which track short-term economic trends, serve as economic indicators, and contribute critical source data for current estimates of gross domestic product. State and local governments rely on the economic census as a unique source of small geographic area economic statistics for use in policy-making, planning, and program administration. Finally, industry, business, academia, and the general public use information from the economic census for evaluating markets, preparing business plans and making business decisions; conducting economic research, including forecasting and modeling; and establishing benchmarks for their own sample surveys.

The failure to collect this information would result in less reliable source data and benchmarks reflecting today's economy for the national accounts, input-output tables, and other measures of economic activity. This would lead to a substantial degradation in the quality of these important statistics.

**Affected Public:** Business or other for-profit, Not-for-profit institutions.

**Frequency:** Every 5 years.

**Respondent's Obligation:** Mandatory.

**Legal Authority:** 13 U.S.C. 131 and 224.

**OMB Desk Officer:** Susan Schechter, (202) 395-5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington,

DC 20230 (or via the Internet at [dhynek@doc.gov](mailto:dhynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, either by fax (202-395-7245) or e-mail ([susan\\_schechter@omb.eop.gov](mailto:susan_schechter@omb.eop.gov)).

Dated: January 17, 2006.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E6-675 Filed 1-20-06; 8:45 am]

**BILLING CODE 3510-07-P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### Proposed Collection: Request for Comments

**Title:** Voluntary Customer Service Survey.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before March 24, 2006.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, (or via the Internet at [DHynek@doc.gov](mailto:DHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Larry Hall, BIS ICB Liaison, Department of Commerce, Room 6703, 14th & Constitution Avenue, NW., Washington, DC 20230.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

This collection of information is required to obtain feedback on the quality of services BIS delivers to the public. This information will be used to improve the quality of services and to measure Government performance in accordance with the Government Performance and Results Act. This survey will be voluntary and not more than one page in length. BIS will offer

the survey in paper and electronic formats.

##### II. Method of Collection

Submitted on forms or electronically.

##### III. Data

**OMB Number:** 0694-01xx.

**Form Number:** BIS-xxx.

**Type of Review:** New collection.

**Affected Public:** Individuals, businesses or other for-profit and not-for-profit institutions.

**Estimated Number of Respondents:** 2,000.

**Estimated Time per Response:** 5 minutes per response.

**Estimated Total Annual Burden Hours:** 167 hours.

**Estimated Total Annual Cost:** No start-up capital expenditures.

##### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. In addition, the public is encouraged to provide suggestions on how to reduce and/or consolidate the current frequency of reporting.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 17, 2006.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E6-673 Filed 1-20-06; 8:45 am]

**BILLING CODE 3510-DT-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-809, A-583-821]

#### Continuation of Antidumping Duty Orders: Forged Stainless Steel Flanges from India and Taiwan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.



**SUMMARY:** As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (the Commission) that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), the Department hereby orders the continuation of the antidumping duty orders on forged stainless steel flanges (flanges) from India and Taiwan. The Department is publishing notice of the continuation of these antidumping duty orders.

**EFFECTIVE DATE:** December 29, 2005

**FOR FURTHER INFORMATION CONTACT:** Deborah L. Scott or Robert James, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482-2657 or 482-0649, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 1, 2005, the Department initiated and the Commission instituted sunset reviews of the antidumping duty orders on flanges from India and Taiwan pursuant to section 751(c) of the Act. See *Initiation of Five-year (Sunset) Reviews*, 70 FR 38101 (July 1, 2005), and *Forged Stainless Steel Flanges From India and Taiwan*, 70 FR 38195 (July 1, 2005). As a result of its review, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the orders to be revoked. See *Forged Stainless Steel Flanges from India and Taiwan; Expedited Five-year (Sunset) Reviews of the Antidumping Duty Orders; Final Results*, 70 FR 67137 (November 4, 2005).

On December 7, 2005, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on flanges from India and Taiwan would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See *Forged Stainless Steel Flanges from Taiwan*, 70 FR 76074 (December 22, 2005), and USITC Publication 3827 (December 2005) (Investigations Nos. 731-TA-639 and 640 (Second Review)).

**Scope of the Orders**

The products covered by these orders are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A-182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld-neck, used for butt-weld line connections; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of these orders are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A-351. The flanges subject to these orders are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the *Harmonized Tariff Schedule of the United States (HTSUS)*. Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the scope of the orders.

**Determination**

As a result of the determinations by the Department and the Commission that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on flanges from India and Taiwan.

U.S. Customs and Border Protection will continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise from all manufacturers and exporters of flanges from India and Taiwan, except Viraj Forgings, Ltd., for which the order on flanges from India was revoked. The effective date of the continuation for these orders is December 29, 2005. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of these antidumping orders not later than December 2010.

These sunset reviews and this continuation notice are in accordance with section 751(c) of the Act and published pursuant to 777(i) of the Act.

Dated: January 17, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6-724 Filed 1-20-06; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-122-838]

**Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products From Canada**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** January 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Constance Handley or Salim Bhabhrawala, at (202) 482-0631 or (202) 482-1784, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** On December 12, 2005, the Department of Commerce (the Department) determined that certain softwood lumber products from Canada are being sold in the United States at less than fair value, as provided in section 751(a) of the Tariff Act of 1930, as amended (the Act). See Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada, 70 FR 73437 (December 12, 2005) (Final Results). On December 14, 2005, the petitioner,<sup>1</sup> the Abitibi Group<sup>2</sup> (Abitibi), Buchanan Lumber Sales Inc.<sup>3</sup> (Buchanan), Canfor Corporation<sup>4</sup> (Canfor), Weyerhaeuser

<sup>1</sup> The petitioner in this case is the Coalition for Fair Lumber Imports Executive Committee. We note that during the review, submissions have been made interchangeably by the petitioner itself and by the Coalition for Fair Lumber Imports, a domestic interested party. For ease of reference, we will use the term "petitioner" to refer to submissions by either, although we recognize that the Coalition for Fair Lumber Imports is not the actual petitioner.

<sup>2</sup> Includes Abitibi-Consolidated Inc., Abitibi-Consolidated Company of Canada, Produits Forestiers Petits Paris Inc., Produits Forestiers La Tuque Inc. and Societe en Commandite Opitciwan.

<sup>3</sup> Including its affiliates Atikokan Forest Products Ltd., Long Lake Forest Products Inc., Nakina Forest Products Limited, Buchanan Distribution Inc., Buchanan Forest Products Ltd., Great West Timber Ltd., Dubreuil Forest Products Ltd., Northern Sawmills Inc., McKenzie Forest Products Inc., Buchanan Northern Hardwoods Inc., Northern Wood, and Solid Wood Products Inc.

<sup>4</sup> Including its affiliates and/or subsidiaries, Canfor Wood Products Marketing Ltd., Canadian Forest Products, Ltd., Bois Daaquam Inc./Daaquam Lumber Inc., Lakeland Mills Ltd., The Pas Lumber

Company (Weyerhaeuser) and, the Quebec Lumber Manufacturers Association (QLMA) filed timely ministerial error allegations pursuant to 19 CFR 351.224(c)(2). On December 19 and 21, we received rebuttal comments from the petitioner and Canfor. Also on December 21, we received a request from the Canadian Lumber Remanufacturers Association (CLRA) that a spelling error in the name of Britannia Lumber Company Limited be corrected.

### 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 U.S. Customs and Border Protection (CBP) purposes, the written description of the merchandise under investigation is dispositive. Preliminary scope exclusions and clarifications were published in three separate **Federal Register** notices.

Company Ltd./Winton Sales, Howe Sound Pulp and Paper Limited Partnership, Winton Global Lumber Ltd., and Skeena Cellulose.

Softwood lumber products excluded from the scope:

Trusses and truss kits, properly classified under HTSUS 4418.90  
I-joint 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  $\frac{3}{4}$  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 CBP's

satisfaction that the lumber is of U.S. origin.<sup>5</sup>

*Softwood lumber products contained in single family home packages or kits*,<sup>6</sup> 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

<sup>5</sup> For further clarification pertaining to this exclusion, see the additional language concluding the scope description below.

<sup>6</sup> 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.

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.<sup>7</sup> The presumption of non-subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

**Amended Final Results**

In accordance with section 751(h) of the Act, we have determined that ministerial errors were made in our Final Results margin calculations. For a

detailed discussion of the ministerial error allegations and the Department's analysis, see Memorandum to Stephen J. Claeys, Antidumping Duty Administrative Review of Certain Softwood Lumber Products from Canada, regarding Ministerial Error Allegations, dated January 12, 2006, which is on file in the Central Records Unit ("CRU"), room B-099 of the main Department building.

In accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the final results of the antidumping duty administrative review of lumber from Canada to correct these ministerial errors.

The revised weighted-average dumping margins for the period May 1, 2003, through April 30, 2004, are listed below:

Producer/exporter	Original weighted-average margin (percentage)	Amended weighted-average margin (percentage)
Abitibi (and its affiliates Abitibi Consolidated Company of Canada, <sup>8</sup> Produits Forestiers Petit Paris Inc., Produits Forestiers La Tuque Inc., Produits Forestiers Sagenay Inc. and Societe En Commandite Scierie Opticivan) .....	2.52	2.52
Buchanan (and its affiliates Atikokan Forest Products Ltd., Long Lake Forest Products Inc., Nakina Forest Products Limited, <sup>9</sup> Buchanan Distribution Inc., Buchanan Forest Products Ltd., Great West Timber Ltd., Dubreuil Forest Products Ltd., Northern Sawmills Inc., McKenzie Forest Products Inc., Buchanan Northern Hardwoods Inc., Northern Wood, and Solid Wood Products Inc.) .....	1.36	1.35
Canfor <sup>10</sup> (and its affiliates Canfor Wood Products Marketing Ltd., Canadian Forest Products, Ltd., Bois Daaquam Inc. / Daaquam Lumber Inc., Lakeland Mills Ltd., The Pas Lumber Company Ltd. / Winton Sales, Howe Sound Pulp and Paper Limited Partnership, Winton Global Lumber Ltd., and Skeena Cellulose) .....	4.02	4.02
Tembec (and its affiliates Marks Lumber Ltd., Excel Forest Products, Les Industries Davidson Inc., Produits Forestiers Temrex Limited Partnership, Tembec Industries Inc., Spruce Falls Inc.) .....	3.09	3.09
Tolko (and its affiliates Gilbert Smith Forest Products Ltd., Compwood Products Ltd., and Pinnacle Wood Products Ltd.) .....	3.09	3.09
Weldwood .....	0.61	0.61
West Fraser (and its affiliates West Fraser Forest Products Inc. and Seehta Forest Products Ltd.) .....	0.51	0.51
Weyerhaeuser (and its affiliate Weyerhaeuser Saskatchewan Ltd.) .....	4.43	4.43

REVIEW-SPECIFIC AVERAGE RATE APPLICABLE TO THE FOLLOWING COMPANIES<sup>11</sup>:  
 2 by 4 Lumber Sales Ltd.  
 605666 BC Ltd.  
 9027-7971 Quebec Inc. (Scierie Marcel Dumont)  
 9098-5573 Quebec Inc. (K.C.B. International)  
 A. L. Stuckless & Sons Limited

AJ Forest Products Ltd.  
 Alexandre Cote Ltee.  
 Allmac Lumber Sales Ltd.  
 Allmar International  
 Alpa Lumber Mills Inc.  
 American Bayridge Corporation  
 Apex Forest Products, Inc.  
 Apollo Forest Products Limited  
 Aquila Cedar Products Ltd.  
 Arbutus Manufacturing Limited

Ardew Wood Products, Ltd.  
 Armand Duhamel & Fils Inc.  
 Ashley Colter (1961) Limited  
 Aspen Planers Ltd.  
 Atco Lumber  
 Atlantic Pressure Treating Ltd.  
 Atlantic Warehousing Limited/Atlantic Warehousing Ltd.  
 Atlas Lumber (Alberta) Ltd.  
 AWL Forest Products

<sup>7</sup> 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.

<sup>8</sup> Abitibi Consolidated Company of Canada was inadvertently omitted for the final results.

<sup>9</sup> We note that Nakina Forest Products Limited is a division of Long Lake Forest Products, Inc., an affiliate of Buchanan Lumber Sales.

<sup>10</sup> Canfor's weighted-average margin is based upon a weighted-average of Canfor's and Slocan's respective cash deposit rates prior to the merger. See Memorandum from Salim Bhabhrwala, International Trade Compliance Analyst to The File, Re: Analysis Memorandum For Canfor Corporation (December 5, 2005). We also note that,

during the POR, Sinclar Enterprises Ltd. (Sinclar) acted as an affiliated reseller for Lakeland, an affiliate of Canfor. In this review, we reviewed the sales of Canfor and its affiliates; therefore, Canfor's weighted-average margin applies to all sales of subject merchandise produced by any member of the Canfor Group and sold by Sinclar. As Sinclar also separately requested a review, any sales of subject merchandise produced by another manufacturer and sold by Sinclar will receive the "Review-Specific Average" rate. Finally, we note that Canadian Forest Products, Ltd. is a wholly owned subsidiary of Canfor and will receive Canfor's weighted-average margin.

<sup>11</sup> In the Preliminary Results, we listed companies on the review-specific rate list that did not request

a review or have a review requested on them for the current review. Therefore, we have removed the following companies from the review specific-rate list for the final results: AFA Forest Products Inc., Associated Cedar Products, Ivis Wood Products, Lazy S Lumber, Mary's River Lumber, New West Lumber Ltd., Quadra Wood Products Ltd., Schols Cedar Products, Standard Building Products Ltd., Still Creek Forest Products Ltd., Taiga Forest Products, Western Cleanwood Preservers Ltd. and Western Wood Preservers Ltd. All of the above companies participated in the 1st Administrative Review and will continue to receive the review-specific average rate (3.78%) from that review.

- B&L Forest Products Ltd.  
 Bakerview Forest Products Inc.  
 Bardeaux et Cedres St-Honore Inc.  
 (Bardeaux et Cedres)  
 Barrett Lumber Company/Barrett  
 Lumber Company Limited  
 Barrette-Chapais Ltee.  
 Barry Maedel Woods & Timber  
 Bathurst Lumber (Division of UPM-  
 Kymmene Miramichi Inc.)  
 Beaubois Coaticook Inc.  
 Blackville Lumber (Division of UPM-  
 Kymmene Miramichi Inc.)  
 Blanchette et Blanchette Inc.  
 Bloomfield Lumber Limited  
 Bois Cobodex (1995) Inc.  
 Bois De L'Est F.B. Inc.  
 Bois Granval G.D.S. Inc.  
 Bois Kheops Inc.  
 Bois Marsoui G.D.S. Inc.  
 Bois Neos Inc.  
 Bois Nor Que Wood Inc.  
 Boisaco Inc.  
 Boscus Canada Inc.  
 Boucher Forest Products Ltd.  
 Bowater Canadian Forest Products Inc.  
 Bowater Incorporated  
 Bridgeside Forest Industries, Ltd.  
 Bridgeside Higa Forest Industries Ltd.  
 Britannia Lumber Company Limited  
 Brouwer Excavating Ltd.  
 Brunswick Valley Lumber/Brunswick  
 Valley Lumber Inc.  
 Buchanan Lumber  
 Busque & Laflamme Inc.  
 BW Creative Wood  
 Byrnexco Inc.  
 C. E. Harrison & Son Ltd./C. E. Harrison  
 & Son Limited  
 Caledon Log Homes (FEWO)  
 Caledonia Forest Products Ltd.  
 Cambie Cedar Products Ltd.  
 Canadian Lumber Company Ltd.  
 Cando Contracting Ltd.  
 Canex International Lumber Sales Ltd.  
 CanWel Building Materials Ltd.  
 CanWel Distribution Ltd.  
 Canyon Lumber Company Ltd.  
 Cape Cod Wood Siding Inc.  
 Cardinal Lumber Manufacturing & Sales  
 Inc.  
 Careau Bois Inc.  
 Carrier & Begin Inc  
 Carrier Forest Products Ltd.  
 Carrier Lumber Ltd.  
 Carson Lake Lumber  
 Cattermole Timber  
 CDS Lumber Products  
 Cedarland Forest Products Ltd.  
 Cedrico Lumber Inc. (Bois d'Oeuvre  
 Cedrico Inc.)  
 Central Cedar Ltd.  
 Centurion Lumber Manufacturing (1983)  
 Ltd.  
 Chaleur Sawmills  
 Chasyn Wood Technologies Inc.  
 Cheminis Lumber Inc.  
 Cheslatta Forest Products Ltd.  
 Chisholm's (Roslin) Ltd.  
 Choicewood Products Inc.  
 City Lumber Sales and Services Limited  
 Clair Industrial Dev. Corp. Ltd./Clair  
 Industrial Development Corp. Ltd.  
 Clermond Hamel Ltee.  
 Coast Clear Wood Ltd.  
 Colonial Fence Mfg. Ltd.  
 Columbia Mills Ltd.  
 Comeau Lumber Limited  
 Commonwealth Plywood Company Ltd.  
 dba Bois Clo-Val (formerly Bois Clo-  
 Val Inc.), W.C. Edwards Lumber  
 (formerly The W.C. Edwards Co., Ltd.)  
 and Les Entreprises Atlas (formerly  
 Les Entreprises Atlas (1985) Inc.)  
 Cooper Creek Cedar Ltd.  
 Cottles Island Lumber Co. Ltd.  
 Cowichan Lumber Ltd.  
 Crystal Forest Industries Ltd.  
 Curley Cedar Post & Rail  
 Cushman Lumber Company Inc.  
 D.S. McFall Holdings Ltd.  
 Dakeryn Industries Ltd.  
 Deep Cove Lumber  
 Delco Forest Products/Delco Forest  
 Products Ltd.  
 Delta Cedar Products  
 Devlin Timber Company (1992) Limited  
 Devon Lumber Co. Ltd.  
 Doman Forest Products Limited  
 Doman Industries Limited  
 Doman Western Lumber Ltd.  
 Domexport Inc.  
 Domtar Inc.  
 Downie Timber Ltd.  
 Dunkley Lumber Ltd.  
 E. Tremblay Et. Fils Ltee.  
 Eacan Timber Canada Ltd.  
 Eacan Timber Limited/Eacan Timber  
 Ltd.  
 Eacan Timber USA Ltd.  
 East Fraser Fiber Co. Ltd.  
 Eastwood Forest Products Inc.  
 Ed Bobocel Lumber 1993 Ltd.  
 Edwin Blaikie Lumber Ltd.  
 Elmira Wood Products Limited  
 Elmsdale Lumber Company Ltd./  
 Elmsdale Lumber Co., Ltd.  
 ER Probyn Export Ltd.  
 Errington Cedar Products  
 Evergreen Empire Mills Incorporated  
 EW Marketing  
 F.L. Bodogh Lumber Co. Ltd.  
 Falcon Lumber Limited  
 Faulkner Wood Specialties Limited  
 Federated Co-operatives Limited  
 Fenclo Ltee.  
 Finmac Lumber Limited  
 Fontaine Inc. (dba J.A. Fontaine et fils  
 Incorporee), Bois Fontaine Inc.,  
 Gestion Natanis Inc., and Les  
 Placements Jean-Paul Fontaine Ltee.<sup>12</sup>  
 Forex Log & Lumber  
 Forstex Industries Inc.  
 Forwest Wood Specialties Inc.  
 Fraser Pacific Forest Products Inc.  
 Fraser Pacific Lumber Company  
 Fraser Papers Inc.  
 Fraser Pulp Chips Ltd.  
 Frasierview Cedar Products Ltd.  
 Frontier Mills Inc.  
 G.D.S. Valoribois Inc.  
 Galloway Lumber Co. Ltd.  
 Gerard Crete & Fils Inc.  
 Gestofor Inc.  
 Gogama Forest Products  
 Goldwood Industries Ltd.  
 Gorman Bros. Lumber Ltd.  
 Great Lakes MSR Lumber Ltd.  
 Greenwood Forest Products  
 Groupe Lebel  
 H.A. Fawcett & Son Limited  
 H.J. Crabbe & Sons Ltd.  
 Haida Forest Products Ltd.  
 Hainesville Sawmill Ltd.  
 Harrison's Home Building Centers  
 Harry Freeman & Son Ltd./Harry  
 Freeman & Son Limited  
 Heffler Forest Products Ltd.  
 Hi-Knoll Cedar Inc.  
 Hilmoe Forest Products Ltd.  
 Hoeg Brothers Lumber Ltd.  
 Holdright Lumber Products Ltd.  
 Hudson Mitchell & Sons Lumber Inc.  
 Hughes Lumber Specialties Inc.  
 Hyak Specialty Wood Products Ltd.  
 Industrial Wood Specialties  
 Industries G.D.S. Inc.  
 Industries Perron Inc.  
 Interior Joinery Ltd.  
 International Forest Products Ltd.  
 Isidore Roy Limited  
 Ivor Forest Products Ltd.  
 J&G Logworks  
 J.A. Turner & Sons (1987) Limited  
 J.D. Irving, Ltd.  
 J.S. Jones Timber Ltd.  
 Jackpine Engineered Wood Products  
 Jackpine Forest Products Ltd.  
 Jackpine Group of Companies  
 Jamestown Lumber Company Limited/  
 Jamestown Lumber Company Ltd.  
 Jasco Forest Products Ltd.  
 Jeffery Hanson  
 Julimar Lumber Co. Limited  
 Kenora Forest Products Ltd.  
 Kent Trusses Ltd.  
 Kenwood Lumber Ltd.  
 Kispiox Forest Products  
 Kitwanga Lumber Co. Ltd.  
 Kruger, Inc.  
 La Crete Sawmills Ltd.  
 Lakeburn Lumber Limited  
 Lamco Forest Products  
 Landmark Structural Lumber  
 Landmark Truss & Lumber Inc.  
 Langely Timber Company Ltd.  
 Langevin Forest Products, Inc.  
 Lattes Waska Laths Inc.  
 Lawsons Lumber Company Ltd.  
 Lecours Lumber Co. Limited  
 Ledwidge Lumber Co., Ltd.

<sup>12</sup>In the Preliminary Results, we incorrectly listed Les Placements Jean-Paul Fontaine Ltee. as Paul Fontaine Ltee. and also as Les Placements Jean-Paul Fontaine Ltee. To correct this error we have removed Paul Fontaine Ltee. from the review-specific average rate list.

Leggett & Platt (B.C.) Ltd.  
 Leggett & Platt Inc.  
 Leggett & Platt Ltd.  
 Les Bois d'Oeuvre Beaudoin & Gauthier Inc.  
 Les Bois S&P Grondin Inc.  
 Les Chantiers Chibougamau Ltee  
 Les Produits Forestiers D. G. Ltee.  
 Les Produits Forestiers Dube Inc.  
 Les Produits Forestiers F.B.M. Inc.  
 Les Produits Forestiers Maxibois Inc.  
 Les Produits Forestiers Miradas Inc. (Miradas Forest Products Inc.)  
 Les Scieries Du Lac St-Jean Inc.  
 Les Scieries Jocelyn Lavoie Inc.  
 Leslie Forest Products Ltd.  
 Lignum Ltd.  
 Lindsay Lumber Ltd.  
 Liskeard Lumber Limited  
 Littles Lumber Ltd.  
 Lonestar Lumber Inc.  
 Louisiana Pacific Corporation  
 Louisiana Malakwa  
 LP Canada Ltd.  
 LP Engineered Wood Products Ltd.  
 Lulumco Inc.  
 Lyle Forest Products Ltd.  
 M&G Higgins Lumber Ltd.  
 M.L. Wilkins & Son Ltd.  
 MacTara Limited  
 Maibec Industries Inc. (Industries Maibec Inc.)  
 Manitou Forest Products Ltd.  
 Maple Creek Saw Mills Inc.  
 Marcel Lauzon Inc.  
 Marine Way  
 Marwood Inc.  
 Marwood Ltd.  
 Materiaux Blanchet Inc.  
 Max Meilleur et Fils Ltee.  
 McCorquindale Holdings Ltd.  
 McNutt Lumber Company Ltd.  
 Mercury Manufacturing Inc.  
 Meunier Lumber Company Ltd.  
 MF Bernard Inc.  
 Mid America Lumber  
 Mid Valley Lumber Specialties Ltd.  
 Midway Lumber Mills Ltd.  
 Mill & Timber Products Ltd.  
 Millar Western Forest Products Ltd.  
 Millco Wood Products Ltd.  
 Miramichi Lumber Products  
 Mobilier Rustique (Beauce) Inc.  
 Monterra Lumber Mills Limited  
 Mountain View Specialty Reload Inc.  
 Murray A Reeves Forestry Limited  
 Murray Bros. Lumber Company Limited  
 N.F. Douglas Lumber Limited/N.F. Douglas Lumber Ltd.  
 Nechako Lumber Co., Ltd.  
 Newcastle Lumber Co. Inc.  
 Nexfor Inc.  
 Nexfor Norbord  
 Nicholson and Cates Limited  
 Nickel Lake Lumber  
 Norbord Industries Inc.  
 Norbord Juniper and Norbord's sawmills at La Sarre Senneterre Quebec

NorSask Forest Products Inc.  
 North American Forest Products/North American Forest Products Ltd.  
 North American Forest Products Ltd. (Division Belanger)  
 North Atlantic Lumber Inc.  
 North Enderby Distribution Ltd. (N.E. Distribution)  
 North Enderby Timber Ltd.  
 North Mitchell Lumber Co. Ltd., Saran Cedar  
 North Shore Timber Ltd.  
 North Star Wholesale Lumber Ltd.  
 Northchip Ltd.  
 Northland Forest Products Ltd.  
 Olav Haavaldsrud Timber Company Limited  
 Olympic Industries Inc.  
 Optibois Inc.  
 P.A. Lumber & Planning Limited  
 Pacific Lumber Company  
 Pacific Lumber Remanufacturing Inc.  
 Pacific Northern Rail Contractors Corp.  
 Pacific Specialty Wood Products Ltd. (formerly Clearwood Industries Ltd.)  
 Pacific Wood Specialties  
 Pallan Timber Products Ltd.  
 Palliser Lumber Sales Ltd.  
 Pan West Wood Products Ltd.  
 Paragon Ventures Ltd. (Vernon Kiln and Millwork, Ltd. and 582912 BC, Ltd.)  
 Parallel Wood Products Ltd.  
 Pastway Planing Limited  
 Pat Power Forest Products Corporation  
 Patrick Lumber Company  
 Paul Vallee Inc.  
 Peak Forest Products Ltd.  
 Pharlap Forest Products Inc.  
 Phoenix Forest Products Inc.  
 Pleasant Valley Remanufacturing Ltd.  
 Pope & Talbot Inc./Pope & Talbot Ltd.  
 Porcupine Wood Products Ltd.  
 Portbec Forest Products Ltd. (Les Produits Forestiers Portbec Ltee.)  
 Portulance Lumber Capreol Ltd.  
 Power Wood Corp.  
 Precibois Inc.  
 Preparabois (2003) Inc.  
 Prime Lumber Limited  
 Pro Lumber Inc.  
 P. Proulx Forest Products Inc. (aka Proulx, Proulx Forest Products Inc. and Produits Forestiers P. Proulx Inc.)  
 Produits Forestiers Arbec Inc.<sup>13</sup>  
 Promobois G.D.S. Inc.  
 R. Fryer Forest Products Limited  
 Raintree Forest Products Inc.  
 Raintree Lumber Specialties Ltd.  
 Ramco Lumber Ltd.  
 Redtree Cedar Products Ltd.  
 Redwood Value Added Products Inc.

Rembos Inc.  
 Rene Bernard Inc.  
 Ridgewood Forest Products Ltd./Ridgewood Forest Products Limited  
 Rielly Industrial Lumber Inc.  
 Riverside Forest Products Limited  
 Rocam Lumber Inc. (Bois Rocam Inc.)  
 Rojac Cedar Products Inc.  
 Rojac Enterprises Inc.  
 Roland Boulanger & Cie Ltee.  
 Russell White Lumber Limited  
 Sauder Moldings, Inc. (Ferndale)  
 Sauder Industries Limited  
 Scierie A&M St-Pierre Inc.  
 Scierie Adrien Arseneault Ltee.  
 Scierie Alexandre Lemay & Fils Inc.  
 Scierie Chaleur/Scierie Chaleur Associes  
 Scierie Dion et Fils Inc.  
 Scierie Gallichan Inc.  
 Scierie Gauthier Ltee.  
 Scierie La Patrie, Inc.  
 Scierie Landrienne Inc.  
 Scierie Lapointe & Roy Ltee.  
 Scierie Leduc, Division of Stadacona Inc.  
 Scierie Nord-Sud Inc. (North-South Sawmill Inc.)  
 Scierie P.S.E. Inc.  
 Scierie St. Elzear Inc.  
 Scierie Tech Inc.  
 Scieries du Lac St. Jean Inc.  
 Selkirk Specialty Wood Ltd.  
 Sexton Lumber/Sexton Lumber Co. Limited  
 Seycove Forest Products Limited  
 Seymour Creek Cedar Products Ltd.  
 Shawood Lumber Inc.  
 Sigurdson Bros. Logging Company Ltd./Sigurdson Brothers Logging Company Ltd.  
 Silvermere Forest Products Inc.  
 Sinclair Enterprises Ltd.\*  
 South Beach Trading Inc.  
 South River Planing Mills Inc.  
 South-East Forest Products Ltd.  
 Spray Lake Sawmills (1980) Ltd.  
 Spruce Forest Products Ltd.  
 Spruce Products Ltd.  
 St. Anthony Lathing Ltd.  
 Stag Timber  
 Stuart Lake Lumber Co. Ltd.  
 Stuart Lake Marketing Inc./Stuart Lake Marketing Corporation  
 Sunbury Cedar Sales Ltd.  
 Suncoast Lumber & Milling  
 Sundance Forest Industries  
 SWP Industries Inc.  
 Sylvanex Lumber Products Inc.  
 Tall Tree Lumber Company  
 Tarpin Lumber Incorporated  
 Taylor Lumber Company Ltd.  
 Teal Cedar Products Ltd.  
 Teal-Jones Group  
 Teeda Corp.  
 Terminal Forest Products Ltd.  
 T.F. Specialty Sawmill  
 TFL Forest Ltd./TimberWest Forest Corp./Timber West Forest Company

<sup>13</sup> On October 13, 2005, we found that Produits Forestiers Arbec Inc. was the successor-in-interest to Unforet Inc. See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada, 70 FR 59721 (October 13, 2005). We inadvertently omitted the new name in the final results and are including it here.

Timber Ridge Forest Products  
 TimberWorld Forest Products Inc.  
 T'loh Forest Products Limited  
 Top Quality Lumber Ltd.  
 T. P. Downey & Sons Ltd.  
 Treeline Wood Products Ltd.  
 Triad Forest Products  
 Twin Rivers Cedar Products Ltd.  
 Tyee Timber Products Ltd.  
 Uneeda Wood Products  
 Uniforet Inc.  
 Uniforet Scierie-Pate  
 Vancouver Specialty Cedar Products/  
 Vancouver Specialty Cedar Products  
 Ltd.  
 Vanderhoof Specialty Wood Products  
 Vandermeer Forest Products (Canada)  
 Ltd.  
 Vanderwell Contractors (1971) Ltd.  
 Vanport Canada, Co.  
 Vernon Kiln and Millwork, Ltd.  
 Visscher Lumber Inc.  
 W. C. Edwards Lumber  
 W. I. Woodtone Industries Inc.  
 Welco Lumber Corporation  
 Wentworth Lumber Ltd.  
 Werenham Forest Products  
 West Bay Forest Products &  
 Manufacturing Ltd./West Bay Forest  
 Products and Manufacturing Ltd./  
 West Bay Forest Products & Mfg. Ltd.  
 West Can Rail Ltd.  
 West Chilcotin Forest Products Ltd.  
 West Hastings Lumber Products  
 Western Forest Products Inc.<sup>14</sup>  
 WFP Forest Products Limited  
 WFP Lumber Sales Limited  
 WFP Western Lumber Ltd.  
 Weston Forest Corp.  
 West-Wood Industries/West-Wood  
 Industries Ltd.  
 White Spruce Forst Products Ltd.  
 Wilfrid Paquet & Fils Ltee.  
 Wilkerson Forest Products Ltd.  
 Williams Brothers Limited/Williams  
 Brothers Ltd.  
 Winnipeg Forest Products, Inc.  
 Woodko Enterprises, Ltd.  
 Woodland Forest Products Ltd.  
 Woodline Forest Products Ltd.  
 Woodtone Industries Inc.  
 Woodwise Lumber Ltd.  
 Wynndel Box & Lumber Co. Ltd.  
 Zelensky Bros. Forest Products: 2.11,  
 2.10.

#### Cash Deposit Rates

Furthermore, the following deposit requirements will be effective upon

<sup>14</sup> On August 19, 2005, we found that Western Forest Products Inc. and its subsidiaries, WFP Products Limited, WFP Western Lumber Ltd., and WFP Lumber Sales Limited, were the successors-in-interest to Doman Industries Limited, Doman Forest Products Limited, and Doman Western Lumber Ltd. See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada, 70 FR 48673 (August 19, 2005). We inadvertently omitted the new names in the final results and are including them here.

publication of the amended final results of this administrative review for all shipments of certain softwood lumber products from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Act: (1) For companies covered by this review, the cash deposit rate will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will be 11.54 percent, the "All Others" rate calculated in the Department's recent determination under section 129 of the Uruguay Round Agreement Act. See 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). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

#### Assessment Rates

In accordance with 19 CFR 356.8(a), the Department will issue appropriate assessment instructions directly to CBP on or after 41 days following the publication of these amended final results of review to effect the *Final Results* and these amended final results.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1), 751(h) and 771(i)(1) of the Act.

Dated: January 12, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6-653 Filed 1-20-06; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

A-427-820

#### Stainless Steel Bar from France: Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a timely request by the petitioners,<sup>1</sup> the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel bar (SSB) from France with respect to Ugitech S.A. (Ugitech). The period of review (POR) is March 1, 2004, through February 28, 2005.

We preliminarily determine that sales have been made below normal value (NV). Interested parties are invited to comment on the preliminary results. If the preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

**EFFECTIVE DATE:** January 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** David Goldberger or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration—Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4136 or (202) 482-4007, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 7, 2002, the Department published in the **Federal Register** an antidumping duty order on SSB from France. See *Notice of Antidumping Duty Order: Stainless Steel Bar from France*, 67 FR 10385 (*SSB Order*). On March 31, 2005, both the petitioners and Ugitech submitted letters timely requesting that the Department conduct an administrative review of the sales of SSB made by Ugitech, pursuant to section 751 of the Tariff Act of 1930, as amended (the Act). The Department published a notice of initiation of an administrative review with respect to Ugitech. See *Initiation of Antidumping and Countervailing Duty Reviews*, 70 FR

<sup>1</sup> The petitioners include the following companies: Carpenter Technology Corporation; Crucible Specialty Metals Division, Crucible Materials Corporation; and Electroalloy Corporation, a Division of G.O. Carlson, Inc.

20862, (April 22, 2005). On April 27, 2005, we issued an antidumping duty questionnaire to Ugitech. Responses to the questionnaire were received in June 2005. We issued a supplemental questionnaire in August 2005, and received responses in September and October 2005. Ugitech provided additional information in response to Department requests during November 2005.

On November 7, 2005, we extended the time limit for the preliminary results in this review until January 13, 2006. See *Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review: Stainless Steel Bar From France*, 70 FR 69319 (November 15, 2005). The petitioners submitted comments for the preliminary results in late December 2005, but they were submitted too late for consideration in the preliminary results.

### Scope of the Order

For purposes of this order, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the*

*United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

### Fair Value Comparisons

To determine whether sales of SSB by Ugitech to the United States were made at less than NV, we compared constructed export price (CEP) to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Ugitech covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. As section 771(16)(A) and (B) define "foreign like product" to be merchandise that is produced in the same country and by the same person as the merchandise which is the subject of the investigation, we have excluded from our comparisons SSB sold by Ugitech in France but produced by an unaffiliated party. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the month of the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Ugitech in the following order: general type of finish; grade; remelting process; type of final finishing operation; shape; and size range.

### Constructed Export Price

We calculated CEP in accordance with section 772(b) of the Act because the subject merchandise was sold for the account of Ugitech by its subsidiary, Ugine Stainless & Alloy, Inc. (US&A), in the United States to unaffiliated purchasers. In addition, Ugitech

reported sales of SSB which were further processed by US&A in the United States. For the subject merchandise further processed in the United States, we used the starting price of the subject merchandise and deducted the costs of further processing to determine CEP for such merchandise, in accordance with section 772(d)(2) of the Act. To calculate the cost of further manufacturing, we relied on Ugitech's reported cost of further manufacturing materials, labor, and overhead, plus amounts for further manufacturing general and administrative expenses (G&A) and financial expenses.

We based CEP on the packed prices to unaffiliated purchasers in the United States. We identified the correct starting price by adjusting for alloy surcharges, freight revenue, other revenue and billing adjustments associated with the sale, and by making deductions for discounts, where applicable, as required by section 772 of the Act. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These expenses included, where appropriate, foreign inland freight (including freight from the plant/warehouse to the port of exportation), brokerage and handling, ocean freight, marine insurance, U.S. inland freight expenses (including freight from the U.S. port to the warehouse, freight between warehouses, and freight from the warehouse to the unaffiliated customer), and U.S. customs duties and fees (including harbor maintenance fees and merchandise processing fees). In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (commissions, credit expenses, warranty expenses, other direct selling expenses and repacking expenses) and indirect selling expenses (indirect selling expenses and inventory carrying costs) incurred in the country of exportation and the United States. For the sales where the payment date was not reported because the customer had not yet paid, we set the payment date equal to October 5, 2005, the date of Ugitech's last submitted sales data base, and recalculated the imputed credit expense accordingly. We also deducted an amount for further-manufacturing costs, where applicable, in accordance with section 772(d)(2) of the Act, and made an adjustment for profit in accordance with section 772(d)(3) of the Act.

## Normal Value

### A. Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

Because Ugitech's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that its home market was viable.

### B. Affiliated-Party Transactions and Arm's-Length Test

During the POR, Ugitech sold the foreign like product to affiliated customers. To test whether these sales were made at arm's-length prices, we compared, on a product-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all discounts and rebates, movement charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 percent and 102 percent in order for sales to be considered in the ordinary course of trade and used in the normal value calculation). Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade. See 19 CFR 351.102(b).

### Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the export price (EP) or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing (*id.*); see also *Notice of Final*

*Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices)<sup>2</sup>, we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F. 3d 1301, 1314 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See *Plate from South Africa*, 62 FR at 61731. We obtained information from Ugitech regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed for each channel of distribution.

Ugitech sold SSB to end-users and distributors in both the U.S. and home markets. Ugitech reported that it made CEP sales in the U.S. market (through its U.S. affiliate, US&A) through the following two channels of distribution: (1) sales of Ugitech-produced SSB purchased from Ugitech, and (2) sales of Ugitech-produced SSB purchased from Ugitech's Italian affiliate, Trafilerie

<sup>2</sup> Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A expenses, and profit for CV, where possible.

Bedini, S.r.l (Bedini). We compared the selling activities performed in each channel, and found that the same selling functions (*e.g.*, production planning, warranty, technical service, and freight & delivery) were performed at the same relative level of intensity in both channels of distribution. Accordingly, we find that all CEP sales constitute one LOT.

With respect to the home market, Ugitech reported five channels of distribution (channels 3 through 7) described as follows: (3) factory direct sales; (4) ex-inventory sales of standard SSB; (5) ex-inventory sales of SSB for special applications; (6) sales of ex-inventory French-origin standard SSB purchased from Bedini; and (7) sales of ex-inventory French-origin SSB for special applications purchased from Bedini. According to Ugitech, the direct sales (channel 3), the ex-inventory standard SSB sales (channels 4 and 6), and the ex-inventory SSB with special application sales (channels 5 and 7) constitute three distinct LOTs in the home market.<sup>3</sup>

In determining whether separate LOTs exist in the home market, we compared the selling functions performed across all channels of distribution. After our analysis of the information submitted for the record of this review, we find that all home market sales were made at the same LOT, consistent with our analysis and findings in the previous administrative review. See *Stainless Steel Bar from France: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 17411, 17414 (April 6, 2005), and *Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review*, 70 FR 46482 (August 10, 2005) (*SSB from France 2003-2004*), Issues and Decision Memorandum at Comment 4.

Specifically with respect to this review, we found that, except for inventory maintenance, all selling functions were performed across all channels of distribution with only slight variances in the levels of intensity for a few sales activities listed within certain selling functions. We note that the selling functions (*e.g.*, strategy planning and marketing, customer sales contact, production/planning/order evaluation, advertising, warranty, technical service,

<sup>3</sup> Ugitech reported the selling functions performed in the home market according to the Ugitech entity responsible for the activity. As we find no basis to differentiate sales functions in this manner for purposes of our LOT analysis, we have "collapsed" this reporting in our analysis and considered the level of intensity performed for each selling function on the basis of the highest intensity performed by any Ugitech entity.



computer systems and freight and delivery) were all generally performed at the same or similar levels of intensity for the direct ex-works sales and both channels of inventory sales (standard and special application). As we noted in the previous review, although the level of intensity varies within a few of the selling activities performed for Ugitech's direct ex-works and inventory sales, these variances are not so significant to constitute distinct LOTs.

With respect to inventory maintenance, the Department has determined that sales from an inventory warehouse are not at a separate LOT from sales shipped directly from a mill simply by virtue of the inventory maintenance function (see, e.g., *SSB from France 2003-2004 and Stainless Steel Bar From Germany: Final Results of Antidumping Duty Administrative Review*, 70 FR 19419 (April 13, 2005), Issues and Decision Memorandum at Comment 2). Instead, we have looked at the variety and intensity of selling functions between these channels of distribution in order to determine whether there are distinguishable LOTs. We have maintained since the less-than-fair-value (LTFV) investigation in this proceeding that we do not consider the activities of light general warehousing services and further manufacturing/special services associated with special application sales that Ugitech has identified under inventory maintenance to be selling functions. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Bar From France*, 66 FR 40201 (August 2, 2001); continued in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From France*, 67 FR 3143 (January 23, 2002) (*SSB from France LTFV Final*). Thus, these items are not relevant to the LOT analysis. However, we are accounting for some of these activities and the expenses associated with these activities in our calculations by deducting from the home market price the reported warehousing expenses, which include Ugitech's expenses for technical personnel working with the special application sales (see "Price-to-Price Comparisons" below).

Ugitech has also reported the size of its sales quantities and the availability of just-in-time delivery to be distinct selling functions for purposes of the LOT analysis. However, the Department does not consider sales quantities (i.e., lot sizes) to be a selling function for purposes of distinguishing LOT (see, e.g., *Stainless Steel Bar From Germany: Final Results of Antidumping Duty Administrative Review*, 69 FR 32982

(June 14, 2004), Issues and Decision Memorandum at Comment 1). We also do not consider the just-in-time delivery ability to be a selling function. Rather, we find it to be an element of warehousing activity. We agree that there is a difference in the selling function of pre-sale warehousing, which is offered for ex-inventory sales and not for ex-mill sales. However, as noted above, this selling activity alone is not a sufficient basis to distinguish separate LOTs between factory direct and inventory sales. Accordingly, based on the record evidence of this review and the above analysis, we find few differences in the selling functions offered or in their intensity among Ugitech's three sales channels (factory direct, standard ex-inventory, and special application ex-inventory). Therefore, we have made our preliminary results treating all home market sales at the same LOT.

Finally, we compared the CEP LOT to the home market LOT and found that the selling functions performed for home market customers are either performed at a higher degree of intensity or are greater in number than the selling functions performed for the U.S. customer. For example, in comparing the selling activities noted under the various selling functions reported (e.g., strategy planning/marketing and customer sales contact), Ugitech performed each of these selling activities at a higher level of intensity in the home market than in the U.S. market. Similarly, we noted that the advertising selling function was performed at the highest level of intensity in the home market, whereas, in the U.S. market it was not performed at all. Therefore, we conclude that Ugitech's home market sales are at a more advanced LOT than its U.S. sales.

As home market and U.S. sales were made at different LOTs, we could not match CEP sales to home market sales at the same LOT. Moreover, as we found only one LOT in the home market, it was not possible to make an LOT adjustment to home market sales because such an adjustment is dependent upon our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the LOT of the export transaction. Because the data available do not form an appropriate basis for making an LOT adjustment, but the home market LOT is at a more advanced stage of distribution than the CEP LOT, we have made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act. The CEP offset is calculated as the lesser of: (1) the indirect selling

expenses on home market sales, or (2) the indirect selling expenses deducted from the starting price in calculating CEP.

### Cost of Production Analysis

In the LTFV investigation, the most recently completed segment of this proceeding as of April 27, 2005, the date the questionnaire was issued in this review, we found that Ugitech (then known as Ugine-Savoie Imphy S.A) had made sales below the cost of production. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar From France*, 66 FR 40201, 40205 (August 2, 2001); affirmed in *SSB from France LTFV Final*. Subsequently, the Department also disregarded certain sales made by Ugitech in the 2003-2004 administrative review that were determined to be below the cost of production. See *Stainless Steel Bar from France: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 17411, 17416 (April 6, 2005); affirmed in *SSB from France 2003-2004*. Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Ugitech made sales in the home market at prices below the cost of producing the merchandise in the current review period. Accordingly, we instructed Ugitech to respond to the section D (Cost of Production) questionnaire.

#### A. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated Ugitech's cost of production (COP) and constructed value (CV) based on the sum of Ugitech's costs of materials and conversion for the foreign like product, plus amounts for G&A expenses and interest expenses (see "Test of Home Market Sales Prices" section below for treatment of home market selling expenses). The Department relied on the COP data submitted by Ugitech in its most recent supplemental section D questionnaire response, dated October 5, 2005, for the COP calculation, except in the following instances:

1. In fiscal years 2003 and 2004, Ugitech accrued restructuring costs related to a multi-year restructuring plan which is expected to be completed in 2010. Although Ugitech's home-country generally accepted accounting principles (GAAP) require the company to accrue the total estimated costs during the year in which the costs are probable and reasonably estimable, Ugitech reported that the

accrued costs relate to activities which occurred or are expected to occur over multiple fiscal years. In the previous review period, we included the current portion of the accrued restructuring charges in Ugitech's G&A expenses for fiscal year 2003 by amortizing the total accrued charges over the period of restructuring (*see SSB from France 2003–2004*, Issues and Decision Memorandum at Comment 3). For the current review period, we continued to amortize the remaining accrued restructuring charges over the remaining period of restructuring.

2. In accordance with its home-country GAAP, Ugitech incurred and recognized a loss for the impairment of fixed assets during fiscal year 2004. Ugitech reported its depreciation expenses based on the impaired asset values. However, Ugitech excluded the loss from the company's reported G&A expenses for purposes of this administrative review. Consistent with our treatment of Ugitech's fiscal year 2003 impairment losses in the prior review period (*see SSB from France 2003–2004*, Issues and Decision Memorandum at Comment 1) and because the impairment loss relates to the general operations of the company, we included Ugitech's fiscal year 2004 impairment in the company-wide G&A expenses for the current review period.
3. Ugitech excluded certain miscellaneous financial expenses from the reported calculation of the financial expense ratio of Ugitech's parent company, Arcelor S.A. (Arcelor). The expenses were recognized in Arcelor's audited financial statement as financial expenses, but were excluded from the calculations in Ugitech's responses. We revised Ugitech's calculations to include Arcelor's miscellaneous financial expenses in the financial expense ratio.

Our revisions to Ugitech's COP data are discussed in the Memorandum from Joseph Welton, Accountant, to Neal Halper, Director, entitled *Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Ugitech, S.A.*, dated January 12, 2006.

#### B. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices

were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of alloy surcharges, freight revenue, service charge revenue, processing charge revenue and billing adjustments, where appropriate) were exclusive of any applicable movement charges, rebates, discounts, and direct and indirect selling expenses and packing expenses, revised where appropriate, as discussed below under the "Price-to-Price Comparisons" section. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made: (1) within an extended period of time, (2) in substantial quantities, and (3) at prices which did not permit the recovery of all costs within a reasonable period of time.

#### C. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) or the Act: (1) whether, within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's home market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales because: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain specific products, more than 20 percent of Ugitech's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in

accordance with section 773(b)(1) of the Act.

#### Price-to-Price Comparisons

As discussed in the "Normal Value" section above, we calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that were determined to be at arm's length. We made adjustments, where appropriate, to the starting price for alloy surcharges, freight revenue, service charge revenue, processing charge revenue, billing adjustments, early payment discounts and rebates. We made deductions, where appropriate, from the starting price for inland freight (from the plant to the warehouse or plant to the customer), warehousing expenses, and inland insurance, under section 773(a)(6)(B)(ii) of the Act.

For the sales where the payment date was not reported because the customer had not yet paid, we set the payment date equal to October 5, 2005, the date of Ugitech's last submitted sales data base, and recalculated the imputed credit expense accordingly.

We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses, receivables insurance expenses, and warranty expenses. At the Department's request, Ugitech reported per-unit warranty expenses based on two methodologies: one allocating warranty expenses according to its reported sales channels and LOTs, and another allocating warranty expenses over all home market sales. We applied the reported per-unit amount calculated based on the second allocation methodology described above (*i.e.*, the AVWARRH variable) as Ugitech reported no difference in warranty terms or expenses according to sales channel, and we determined that all home market sales were made at the same LOT.

We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act. Finally, as discussed above under the "Level of Trade" section, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the comparison-market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

Pursuant to the Department's request, Ugitech reported per-unit home market indirect selling expenses based on multiple expense allocation methodologies in accordance with its reported sales channels and its claimed LOTs. Consistent with our LOT determination explained above, we applied the reported indirect selling expense variables which represented the expense amounts allocated over all home market sales, rather than by reported sales channel and claimed LOT.

#### Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

#### Preliminary Results of Review

As a result of this review, we preliminarily determine that the weighted-average dumping margin for the period March 1, 2004, through February 28, 2005, is as follows:

Manufacturer/Exporter	Percent Margin
Ugitech S.A. ....	9.70

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. See 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. See 19 CFR 351.310(c). If requested, a hearing will be scheduled after determination of the briefing schedule.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B-099, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. See 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the respective case briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted in accordance with a schedule to be determined. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed

five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisal instructions for the companies subject to this review directly to CBP within 15 days of publication of the final results of this review.

For assessment purposes, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (i.e., at or above 0.50 percent). See 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash

deposit rate for all other manufacturers or exporters will continue to be 3.90 percent, the "All Others" rate made effective by the LTFV investigation. See *SSB Order*. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: January 12, 2006.

**David M. Spooner,**

Assistant Secretary for Import Administration.

[FR Doc. E6-658 Filed 1-20-06; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-489-807]

#### Certain Steel Concrete Reinforcing Bars From Turkey; Notice of Partial Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** January 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Irina Itkin or Alice Gibbons at (202) 482-0656 or (202) 482-0498, respectively, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

#### SUPPLEMENTARY INFORMATION:

##### Background

On April 1, 2005, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Review" of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey for the period of review April 1, 2004, through March 31, 2005. See

*Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request a Review*, 70 FR 16799 (April 1, 2005). The Department received timely requests for review from Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret (collectively "Colakoglu"); Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Ticaret A.S., and Diler Dis Ticaret A.S. (collectively "Diler"); Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas); and ICDAS Celik Enerji Tersane ve Ulasim Sanayi A.S. (ICDAS), foreign producers/exporters in this proceeding. The Department also received a timely request for review from Nucor Corporation and Gerdau Ameristeel Corporation, domestic producers of rebar and interested parties in this proceeding, covering 34 producers/exporters of rebar from Turkey, including the producers/exporters referenced above. On May 27, 2005, the Department published a notice of initiation of administrative review of the antidumping duty order on rebar from Turkey. See *Initiation of Antidumping Duty and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 30694 (May 27, 2005). The Department released the antidumping questionnaire in May and August 2005 to the 34 producers/exporters for which an administrative review was requested. Colakoglu, Diler, Ekinciler Demir ve Celik Sanayi A.S. and Ekinciler Dis Ticaret A.S., and Habas responded to the Department's questionnaire in August 2005 and ICDAS responded to the Department's questionnaire in October 2005. The preliminary results for this proceeding are due no later than May 1, 2006.

#### Scope of the Order

The product covered by this order is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed rebar rolled from billet steel, rail steel, axle steel, or low-alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTSUS) under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

#### Determination To Rescind, in Part

On November 8, 2005, the Department published its final results for the April

1, 2003, though March 31, 2004, administrative review and found that ICDAS met the requirements of revocation as described in 19 CFR 351.222. See *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 70 FR 67665 (Nov. 8, 2005). Due to ICDAS' revocation in that review, we are rescinding the April 1, 2004, through March 31, 2005, administrative review with respect to ICDAS because there is no statutory or regulatory basis to conduct an administrative review for a producer/exporter that has met the requirements of revocation.

Dated: January 12, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6-652 Filed 1-20-06; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration, North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of decision of panel.

**SUMMARY:** On January 17, 2006 the binational panel issued its decision in the review of the determination on remand made by the International Trade Commission, respecting Magnesium from Canada Full Sunset Review of AD and CVD Orders, Secretariat File No. USA-CDA-2000-1904-09. The binational panel affirmed in part and remanded in part to the International Trade Commission. Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

**FOR FURTHER INFORMATION CONTACT:** Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final

determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules. *Panel Decision:* The panel affirmed in part and remanded in part the International Trade Commission's determination on remand respecting Magnesium from Canada. The panel remand in part to the Commission and instructed the Commission as follows: Analyze the price, volume and impact of revocation of the countervailing duty order on alloy magnesium to show how the record supports the Commission's conclusions, providing a reasoned explanation based on all of the evidence on the record to support a decision that revocation of the countervailing duty order on imports of alloy magnesium from Canada would be likely to lead to continuation or recurrence of material injury to the domestic alloy magnesium industry within the reasonably foreseeable future due to underselling by Magnola. The Commission must provide further reasoned analysis supported by substantial evidence on the record, including any factual evidence not referred to in its Views on Remand, as to the conclusion that Magnola would enter the market by underselling in order to establish export volumes that would be significant in relation to anticipated demand increases. The Commission is directed to respond to this Order within sixty (60) days of receipt.

Dated: January 17, 2006.

**Caratina L. Alston,**

*U.S. Secretary, NAFTA Secretariat.*

[FR Doc. E6-655 Filed 1-20-06; 8:45 am]

BILLING CODE 3510-GT-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Application for Commission in the NOAA Officer Corps

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before March 24, 2006.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to LTJG Nicole Manning, 301-713-3453, ext. 119 or [Nicole.Manning@noaa.gov](mailto:Nicole.Manning@noaa.gov).

**SUPPLEMENTARY INFORMATION:****I. Abstract**

The NOAA Corps is the smallest of the seven uniformed services of the United States and is an integral part of NOAA. The NOAA Corps provides a cadre of professionals trained in engineering, earth sciences, oceanography, meteorology, fisheries science, and other related disciplines who serve in assignments within the five major Line Offices of NOAA. Persons wishing to obtain a NOAA Corps Commission must submit an application package, including an eye test and five references.

**II. Method of Collection**

Paper forms are submitted via mail in postage-paid envelopes.

**III. Data**

*OMB Number:* 0648-0047.

*Form Number:* NOAA Forms 56-42, 56-42A, 56-42C, 56-42D.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 130.

*Estimated Time per Response:* 2 hours.

*Estimated Total Annual Burden Hours:* 260.

*Estimated Total Annual Cost to Public:* \$5,850.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 17, 2006.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E6-669 Filed 1-20-06; 8:45 am]

**BILLING CODE 3510-12-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****Proposed Information Collection; Comment Request; American Fisheries Act: Recordkeeping and Reporting**

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before March 24, 2006.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [Hynek@doc.gov](mailto:Hynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, 907-586-7008 or [patsy.bearden@noaa.gov](mailto:patsy.bearden@noaa.gov).

**SUPPLEMENTARY INFORMATION:****I. Abstract**

The American Fisheries Act (AFA) was signed into law in October of 1998. The AFA established an allocation program for the pollock fishery of the Bering Sea and Aleutian Islands Management Area (BSAI). The purposes of the AFA were to tighten U.S. ownership standards that had been exploited under the Anti-reflagging Act, to provide Alaska's BSAI pollock fleet the opportunity to conduct their fishery in a more rational manner, and to protect non-AFA participants in other fisheries.

Reduced bycatch, higher utilization rates, increased economic returns, and improved safety are among the direct benefits of the AFA. The flexibility provided by cooperatives and by individual vessel allocations of pollock and other species has allowed the BSAI pollock fleet to spread their fishing effort in time and space, thus somewhat mitigating the negative impacts of the Steller sea lion (SSL) conservation and protection measures. The BSAI pollock quota is suballocated to groups of vessel owners who form fishing vessel cooperatives. The cooperative management structure has shifted more of the monitoring and enforcement burden to the cooperatives and their members, allowing NMFS to manage the fishery more precisely.

In order to make timely management decisions on closures, NMFS requires shoreside processors and stationary floating processors to use shoreside processor electronic logbook report (SPELR) to provide catcher vessel delivery information describing daily harvests of pollock and sideboard species on a vessel-by-vessel basis. The SPELR software provided by NMFS has automatic features that allow the users to effect file transfer by computer modem to the NMFS communication server, or file transfer can occur as an attachment to an e-mail message.

**II. Method of Collection**

Electronic files, paper reports, and paper applications are required from participants. Methods of submittal include transfer by computer modem, transfer by e-mail attachment, and facsimile transmission.

**III. Data**

*OMB Number:* 0648-0401.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or household; business or other for-profits organizations.

*Estimated Number of Respondents:* 26.

*Estimated Time per Response:* 20 hours for Annual preliminary report; 8 hours for Annual final report; 30 minutes for Non-member vessel contract fishing application; 30 minutes to complete and print shoreside processor electronic logbook report (SPELR); 5 minutes to electronically submit SPELR report; 5 minutes for Inshore catcher vessel cooperative pollock catch report; and 5 minutes for Agent for service of process.

*Estimated Total Annual Burden Hours:* 1,024.

*Estimated Total Annual Cost to Public:* \$635.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 17, 2006.

#### Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-670 Filed 1-20-06; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; American Fisheries Act: Vessel and Processor Permit Applications

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on

proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before March 24, 2006.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, 907-586-7008 or [patsy.bearden@noaa.gov](mailto:patsy.bearden@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The American Fisheries Act (AFA) was signed into law in October of 1998. The AFA established an allocation program for the pollock fishery of the Bering Sea and Aleutian Islands Management Area (BSAI). The purposes of the AFA were to tighten U.S. ownership standards that had been exploited under the Anti-reflagging Act, to provide Alaska's BSAI pollock fleet the opportunity to conduct their fishery in a more rational manner, and to protect non-AFA participants in other fisheries.

Reduced bycatch, higher utilization rates, increased economic returns, and improved safety are among the direct benefits of the AFA. The flexibility provided by cooperatives and by individual vessel allocations of pollock and other species has allowed the BSAI pollock fleet to spread their fishing effort in time and space, thus somewhat mitigating the negative impacts of the Steller sea lion (SSL) conservation and protection measures. Finally, the cooperative management structure has shifted more of the monitoring and enforcement burden to the cooperatives and their members, allowing NMFS to manage the fishery more precisely.

Under the AFA, only vessels and processors that meet specific qualifying criteria are eligible to fish for and process pollock in the BSAI. The BSAI pollock quota is suballocated to groups of vessel owners who form fishing vessel cooperatives under the AFA.

All pollock vessels and processors are required to have a valid AFA permit on board the vessel or at the processing plant. The AFA vessel and processor permits have no expiration date and will remain valid indefinitely unless revoked by NMFS. With the exceptions of applications for inshore vessel cooperatives and for replacement

vessels, the AFA permit program had a one-time application deadline of December 1, 2000. Inshore catcher vessel cooperatives must apply for an AFA permit annually, by December 1 for the following fishing year. The information is collected once a year, because NMFS must identify the universe of participating vessels and processors prior to the start of each fishing year in order to assign allocations of pollock to eligible cooperatives. The applications to replace lost or destroyed AFA vessels may be submitted to NMFS at any time.

##### II. Method of Collection

Paper applications are required from participants. Methods of submittal include facsimile transmission of paper forms, except where a notary seal is required.

##### III. Data

*OMB Number:* 0648-0393.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or households; business or other for-profits organizations.

*Estimated Number of Respondents:* 20.

*Estimated Time per Response:* 2 hours for Application for AFA catcher vessel permit; 30 minutes for Application for AFA permit for replacement vessel; 2½ hours for Application for AFA inshore catcher vessel cooperative permit; 2 hours for Application for AFA mothership permit; and 2 hours for Application for AFA inshore processor permit.

*Estimated Total Annual Burden Hours:* 42.

*Estimated Total Annual Cost to Public:* \$59.

##### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection;

they also will become a matter of public record.

Dated: January 17, 2006.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E6-671 Filed 1-20-06; 8:45 am]

BILLING CODE 3510-22-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**Proposed Information Collection; Comment Request; Limits on Applications of Take Prohibitions**

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before March 24, 2006.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Steve Stone, at (503) 231-2317, National Marine Fisheries Service, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232-1274 or [steve.stone@noaa.gov](mailto:steve.stone@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

Section 4(d) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires the National Marine Fisheries Service (NMFS) to adopt such regulations as it "deems necessary and advisable to provide for the conservation of" threatened species. Those regulations may include any or all of the prohibitions provided in section 9(a)(1) of the ESA, which specifically prohibits "take" of any endangered species ("take" includes actions that harass, harm, pursue, kill, or capture). The first salmonid species listed by NMFS as threatened were

protected by virtually blanket application of the section 9 take prohibitions. There are now 21 separate Evolutionarily Significant Units (ESUs) of west coast salmonids listed as threatened, covering a large percentage of the land base in California, Oregon, Washington and Idaho. NMFS is obligated to enact necessary and advisable protective regulations. NMFS makes section 9 prohibitions generally applicable to many of those threatened ESUs, but also seeks to respond to requests from states and others to both provide more guidance on how to protect threatened salmonids and avoid take, and to limit the application of take prohibitions wherever warranted (see 70 FR 37160, June 28, 2005, and 71 FR 834, January 5, 2006). The regulations describe programs or circumstances that contribute to the conservation of, or are being conducted in a way that adequately limits impacts on, listed salmonids. The regulations do not apply the take prohibitions to those programs and circumstances. Some of these limits on the take prohibitions entail voluntary submission of a plan to NMFS and/or annual or occasional reports by entities wishing to take advantage of these limits, or continue within them.

**II. Method of Collection**

Submissions may be in paper or electronic format.

**III. Data**

*OMB Number:* 0648-0399.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* State, local, or tribal government; business or other for-profit organizations.

*Estimated Number of Respondents:* 201.

*Estimated Time per Response:* 20 hours for a road maintenance agreement; 5 hours for a diversion screening limit project; 30 hours for an urban development package; 10 hours for an urban development report; 20 hours for a tribal plan; and 5 hours for a report of aided, salvaged, or disposed of salmonids.

*Estimated Total Annual Burden Hours:* 500.

*Estimated Total Annual Cost to Public:* \$843.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 17, 2006.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E6-672 Filed 1-20-06; 8:45 am]

BILLING CODE 3510-22-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[I.D. 011806A]

**Fisheries of the Exclusive Economic Zone off Alaska; Application for an Exempted Fishing Permit**

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

**ACTION:** Notice of receipt of an application for an exempted fishing permit.

**SUMMARY:** This notice announces receipt of an application for an exempted fishing permit (EFP) from the Aleut Enterprise Corporation (AEC). If granted, this permit would be used to support a project to investigate the feasibility of using commercial fishing vessels for acoustic surveys of pollock in the Aleutian Islands subarea. The project is intended to promote the objectives of the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI) by improving use of pollock in the Aleutian Islands subarea.

**ADDRESSES:** Copies of the EFP application and the environmental assessment (EA) are available by writing to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P. O. Box 21668, Juneau, AK 99802, Attn: Lori Durall. The EA also is available from the Alaska Region, NMFS website at <http://www.fakr.noaa.gov/index/analyses/analyses.asp>.

**FOR FURTHER INFORMATION CONTACT:**

Melanie Brown, 907-586-7228 or [melanie.brown@noaa.gov](mailto:melanie.brown@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the domestic groundfish fisheries in the BSAI under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679. The FMP and the implementing regulations at §§ 679.6 and 600.745(b) authorize issuance of EFPs to allow fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations.

NMFS received an application for an EFP from the AEC. The purpose of the EFP is to support a project to determine the feasibility of using commercial fishing vessels for acoustic surveys of pollock in the Aleutian Islands subarea. The goal of the project is to improve the use of Aleutian Islands pollock. NMFS currently does not have resources to conduct acoustic surveys of Aleutian Islands pollock. This project has been developed in cooperation with stock assessment scientists at the NMFS Alaska Fisheries Science Center. The acoustic and biological information from the project will be used to determine: (1) if it is feasible to conduct acoustic surveys in the Aleutian Islands subarea using commercial fishing vessels, (2) if the data collected in such a manner are of sufficient quality for management purposes, and (3) if the local aggregations of pollock are stable enough during spawning season to allow for fine scale spatial and temporal management. Additionally, genetic samples will be collected during this study that will be used for stock structure analysis. Improved information may lead to improved conservation and potentially finer spatial and temporal harvest management of Aleutian Islands pollock. More information on the Aleutian Islands pollock stock is needed because of the uncertainty of the stock's structure and the potential effects of the fishery on Steller sea lions.

The western distinct population segment (DPS) of Steller sea lions occurs in the Aleutian Islands subarea and is listed as endangered under the Endangered Species Act (ESA). Critical habitat has been designated for this DPS, including waters within 20 nautical miles (nm) of haulouts and rookeries (50 CFR 226.202). Pollock is a principal prey species of Steller sea lions.

The U.S. Congress, in section 803 of the Consolidated Appropriations Act of 2004 (Public Law 108-199), required that the directed fishing allowance of pollock in the Aleutian Islands subarea be allocated to the Aleut Corporation. Only fishing vessels approved by the Aleut Corporation or its agents are allowed to harvest this allowance. To harvest the fish, the Aleut Corporation is allowed to contract only with vessels under 60 feet (18.3 m) length overall (LOA), or vessels listed under the American Fisheries Act. The allocation was made to the Aleut Corporation for the purpose of furthering the economic development of Adak, Alaska. Public Law 108-199 requires half of the Aleutian Islands pollock allocation to be harvested by small boats (less than 60 feet (18.3 m) LOA) in 2013 and beyond. For safety reasons, fishing in waters closer than 20 nm from shore is preferred for the small boat fleet.

Aleutian Islands pollock has been harvested primarily in Steller sea lion critical habitat in the past until the Aleutian Islands subarea was closed to pollock fishing in 1999 (64 FR 3437, January 22, 1999). In 2003, the Aleutian Islands subarea was opened to pollock fishing outside of critical habitat under regulations implementing the current Steller sea lion protection measures (68 FR 204, January 2, 2003). In 2005, pollock was allocated to the Aleut Corporation for a directed pollock fishery in the Aleutian Islands subarea outside of Steller sea lion critical habitat. The Aleut Corporation harvested only about 1.2 percent of its initial 2005 pollock allocation due, in part, to difficulty in finding pollock. Based on historical harvests, pollock aggregations necessary to support an acoustic survey likely occur inside Steller sea lion critical habitat.

The EFP is necessary to allow the applicants to harvest groundfish to verify the acoustic data collected and to compensate the participants. The acoustic survey must be conducted in an area that is likely to contain concentrations of pollock. The EFP would provide exemptions to Steller sea lion closures to pollock fishing in two areas: Atka Island and Kanaga Sound. Two areas are provided for the project in the event that no aggregations of fish can be found in one of the areas. Only one area may be used for the acoustic survey and verification fishing. No more than 1000 metric tons (mt) of groundfish may be harvested from a single site in this project. Fishing may occur within 3 nm of Steller sea lion haulouts in the study area to verify acoustic survey data. No more than 10 mt of groundfish

may be harvested in a tow within 3 nm of a haulout.

All groundfish harvested will be counted towards the TAC amounts specified for the BSAI in § 679.20 and the 2006 harvest specifications (70 FR 8679, February 24, 2005) which are scheduled for revision by the end of February 2006. Nearly all groundfish harvested under the EFP is expected to be pollock with minor amounts of Pacific ocean perch. Any groundfish fishing in the Aleutian Islands subarea closed to directed fishing due to overfishing concerns would include the directed fishing under the EFP.

Overall, no more than 1,000 mt of groundfish would be harvested under the EFP by one vessel. The EFP applicant would retain all groundfish species to accurately document the catch amounts by species and compare this information to the acoustic data. The EFP would provide an exemption from maximum retainable amounts specified in Table 11 of 50 CFR part 679 so that the applicant may retain and sell all groundfish harvested.

The EFP may be modified to extend the effective date for an additional 12 months if the applicant is unable to complete the project in 2006. Fishing under the EFP is expected to occur during March 2006 for approximately three weeks. Because the activities are limited to one vessel for approximately three weeks in a discrete area with a 1,000 mt limit, significant impacts on the marine environment are not expected. Because the activity is in Steller sea lion critical habitat and includes the harvest of a principal prey species for Steller sea lions, a Section 7 consultation under the ESA has been initiated for this action and must be completed before the issuance of the EFP.

In accordance with § 679.6, NMFS has determined that the proposal warrants further consideration and has initiated consultation with the Council by forwarding the application to the Council. The Council will consider the EFP application during its February 6-13, 2006 meeting. The applicant has been invited to appear in support of the application, if the applicant desires. Interested persons may comment on the application at the Council meeting during public testimony. Information regarding the February 2006 Council meeting is available at the Council's website at <http://www.fakr.noaa.gov/npfmc/default.htm>.

Copies of the application and EA are available for review from NMFS (see **ADDRESSES**).

**Authority:** 16 U.S.C. 1801 *et seq.*



Dated: January 18, 2006.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E6-733 Filed 1-20-06; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 031704B]

#### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Conducting Air-to-Surface Gunnery Missions in the Gulf of Mexico

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

**ACTION:** Notice of receipt of application for an incidental take authorization; request for comments and information.

**SUMMARY:** NMFS has received a request from Eglin Air Force Base (Eglin AFB), for authorization to harass marine mammals, incidental to conducting air-to-surface (A-S) gunnery missions in the Gulf of Mexico (GOM). As a result of this request, NMFS is proposing to issue a 1-year authorization to take marine mammals by Level B harassment incidental to this activity and will propose regulations at a later time that would govern these incidental takes under a Letter of Authorization (LOA) issued to Eglin for a period of up to 5 years after the 1-year IHA expires. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to Eglin AFB to incidentally take, by harassment, several species of cetaceans for a period of 1 year.

**DATES:** Comments and information must be postmarked no later than February 22, 2006.

**ADDRESSES:** Comments should be addressed to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226. The mailbox address for providing email comments on this action is [PR2.031704B@noaa.gov](mailto:PR2.031704B@noaa.gov). Comments sent via email, including all attachments, must not exceed a 10-megabyte file size. A copy of the application and a list of references used in this document may be obtained by writing to this address, by telephoning

the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) and is also available at: [http://www.nmfs.noaa.gov/prot\\_res/PR2/Small\\_Take/smalltake\\_info.htm#applications](http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications). A copy of the Final Programmatic Environmental Assessment (Final PEA) is available by writing to the Department of the Air Force, AAC/EMSN, Natural Resources Branch, 501 DeLeon St., Suite 101, Eglin AFB, FL 32542-5133.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead, NMFS, 301-713-2289, ext 128.

#### SUPPLEMENTARY INFORMATION:

##### Background

Sections 101(a)(5)(A) and 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as " \* \* \* an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The National Defense Authorization Act of 2004 (NDAA) (Pub. L. 108-136) amended the definition of "harassment" in section 18(A) of the MMPA as it applies to a "military readiness activity" to read as follows:

(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to,

migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].

#### Summary of Request

On February 13, 2003, Eglin AFB petitioned NMFS, as a precautionary measure, for an authorization under section 101(a)(5) of the MMPA for the taking, by harassment, marine mammals incidental to programmatic mission activities within the Eglin Gulf Test and Training Range (EGTTR) for the next five years. The EGTTR is described as the airspace over the Gulf of Mexico that is controlled by Eglin AFB; this area is also sometimes referred to as the "Eglin Water Range."

The A-S gunnery test and training activities currently comprise the majority of Eglin's missions that deploy ordnance into the GOM and have been determined through a review under the National Environmental Policy Act (NEPA) to be the only activity to impact marine mammals (Eglin AFB, 2002). The effects of other components of the mission activities, including supersonic and subsonic noise from aircraft, occasional fuel releases, debris, the release of chemicals into the water from chaff, flares, drones, and missiles, and direct physical impacts (discussed later in this document) were determined not to impact marine mammals (Eglin AFB, 2002).

#### Description of Activities

A-S gunnery missions involve surface impacts of projectiles and small underwater detonations with the potential to affect cetaceans that may potentially occur within the EGTTR. These missions typically involve the use of 25-mm (0.98 in), 40-mm (1.57 in), and 105-mm (4.13 in) gunnery rounds containing, 0.0662 lb (1.1 oz 30 g), 0.865 (13.8 oz, 392 g), and 4.7 lbs (2.1 kg) of explosive, respectively. Live rounds must be used to produce a visible surface splash that must be used to "score" the round; the impact of inert rounds on the sea surface would not be detected. The Air Force has developed a 105-mm training round (TR) that contains less than 10 percent of the amount of explosive material (0.35 lb; 0.16 kg) as compared to the "Full-Up" (FU) 105-mm (4.13 in) round. The TR was developed as one method to mitigate effects on marine life during night-time A/S gunnery exercises when visibility at the water surface would be poor. However, the TR cannot be used in daytime since the amount of explosive material is insufficient to be detected from the aircraft.

Water ranges with the EGTR that are typically used for the gunnery operations are located in the Gulf of Mexico offshore from the Florida Panhandle (areas W-151A, W-151B, W-151C, and W-151D as shown in Figure 1 in Eglin's application). Data indicates that W-151A was the most frequently used water range due to its proximity to Hurlburt Field, but activities may occur anywhere within the EGTR.

The AC-130 gunship aircraft normally transit from Hurlburt Field, FL to the water range at a minimum of 4,000 ft (1.2 km) above surface level. The AC-130 conducts at least two complete orbits at a minimum safe airspeed around a prospective target area at a maximum altitude of 1,500 ft (457 m), with a recommended altitude of 1,000 ft (305 m), spiraling in an upward formation to an operational altitude of approximately 4,500 to 10,000 ft (1372-3048 m). Ascent occurs over a 10-15 minute period. Eglin notes that the search area for these orbits ensures that no vessels or protected species are within an area of 5-nm (9.3 km) of the target. The AC-130 continues orbiting the selected target point as it climbs to the mission-testing altitude. During the low altitude orbits and the climb to testing altitude, aircraft crew visually scan the sea surface within the aircraft's orbit circle for the presence of marine vessels and protected species. Primary responsibility for the surface scan is on the flight crew in the cockpit and personnel stationed in the tail observer bubble and starboard viewing window. The AC-130's optical and electronic sensors will also be employed for target clearance. If any marine mammals are detected within the AC-130's orbit circle, either during initial clearance or after commencement of live firing, the aircraft will relocate to another target area and repeat the clearance procedures. A typical distance from the coast for this activity is at least 15 mi (24 km).

When offshore, the crews can scan a 5-mi (9.3-km) radius around the potential impact area to ensure it is clear of surface craft, marine mammals, and sea turtles. Scanning is accomplished using radar, all-light television (TV), infrared sensors (IR), and visual means. An alternative area would be selected if any cetaceans or vessels were detected within a 5-mi (9.3 km) search area. Once the scan is completed, Mk-25 flares are dropped and the firing sequence is initiated.

A typical gunship mission lasts approximately 5 hours without refueling and 6 hours when air-to-air refueling is accomplished. A typical mission includes: (1) 30 minutes for take off and to perform airborne sensor alignment, align electro-optical sensors (IR and TV) to heads-up display; (2) 1.5 to 2 hours of dry fire (no ordnance expended), and includes transition time; (3) 1.5 to 2 hours of live fire, and includes clearing the area and transiting to and from the range (actual firing activities typically do not exceed 30 minutes); (4) 1 hour air-to-air refueling, if and when performed; and (5) 30 minutes of transition work (take-offs, approaches, and landings-pattern work).

The guns are fired during the live-fire phase of the mission. The actual firing can last from 30 minutes to 1.5 hours but is typically completed in 30 minutes. The number and type of A-S gunnery munitions deployed during a mission varies with each type of mission flown. In addition to the 25-, 40-, and 105-mm rounds, marking flares are also deployed as targets. All guns are fired at a specific target in the water, usually an Mk-25 flare, starting with the lowest caliber ordnance or action with the least impact and proceeding to greater caliber sizes. To establish the test target area, two Mk-25 flares are deployed into the center of the 5-nm (9.3-km) radius cleared area (visually clear of aircraft, ships, and surface marine species) on the water's surface. The flare's burn time normally lasts 10 to 20 minutes but could be much less if actually hit with one of the ordnance projectiles; however, some flares have burned as long as 40 minutes. Live fires are a continuous event with pauses during the firing usually well under a minute and rarely from 2 to 5 minutes. Firing pauses would only exceed 10 minutes if surface boat traffic or marine protected species caused the mission to relocate; if aircraft, gun, or targeting system problems existed; or if more flares needed to be deployed. The Eglin Safety Office has described the gunnery missions as having 95-percent containment with a 99-percent confidence level within a 5-m (16.4-ft) area around the established flare target test area.

#### *Live-Fire Event: Phase I: 10 Minutes*

The 25-mm (0.98-in) round is fired first. The 25-mm firing event in a typical mission includes approximately 500 to 1000 rounds. These rounds are first in

short bursts. These bursts last approximately 2-3 seconds with approximately 100 rounds per burst. Based on the very tight target area and extremely small miss distance, these bursts of rounds all enter the water within a 5-m (16.4-ft) area. Therefore, when calculations of the marine mammal Zone of Impact (ZOI) and take estimates are made later in this document for the 25-mm rounds, calculations will be based on the total number of rounds fired per year divided by 100.

#### *Live-Fire Event: Phase II: 10 Minutes*

The 40-mm (1.57 in) round is fired second. The 40-mm firing event of a typical mission includes approximately 10 seconds with approximately 20 rounds per burst. Based on the very tight target area and extremely small miss distance, these bursts of rounds all enter the water within a 5-m (16.4 ft) area. Therefore, when calculations of the marine mammal ZOI and take estimates are made later in this document for the 40-mm rounds, calculations will be based on the total number of rounds fired per year divided by 20.

#### *Live-Fire Event: Phase III: 10 Minutes*

The 105-mm round is fired last. The 105-mm firing event of a typical mission includes approximately 20 rounds. These rounds are not fired in bursts, but as single shots. The 105-mm firing event lasts approximately 5 minutes with approximately two rounds per minute. Due to the single firing event of the 105-mm round, the peak pressure of each single 105-mm round is measured at a given distance (90 m (295 ft)) for the 105mm TR and 216 m (709 ft) for the 105mm FU).

As described in Eglin's application, gunnery testing in this request includes historical baseline yearly amounts in addition to proposed nighttime gunnery missions. Daytime gunnery testing uses the 105-mm FU round and nighttime gunnery training is proposed using the 105-mm TR. The number of 105-mm rounds including nighttime operations would amount to 1,742. As shown in detail in Tables 1 and 2, Eglin proposes to conduct a total of 28 daytime missions and 263 nighttime missions annually, expending 3,832 rounds in daytime and 30,802 rounds nighttime (242 105-mm FU and 1,500 rounds would be the 105-mm TR).

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**Table 1. Summary of Daytime Gunnery Testing Operations in the EGTR**

Test Area	Category	Expendable	Condition	Baseline Quantity of Expendables	Number of Missions	Number of Events
W-151A	GUN	105 mm HE	LIVE	128	6	18
		25 mm HEI	LIVE	1,275	1	1
		40 mm HEI	LIVE	536	6	18
W-151B	GUN	105 mm HE	LIVE	46	2	6
		25 mm HEI	LIVE	294	1	1
		40 mm HEI	LIVE	146	1	3
W-151C	GUN	105 mm HE	LIVE	10	1	3
		25 mm HEI	LIVE	142	1	1
		40 mm HEI	LIVE	50	1	3
W-151D	GUN	105 mm HE	LIVE	39	2	6
		25 mm HEI	LIVE	567	1	1
		40 mm HEI	LIVE	198	2	6
W-151S	GUN	105 mm HE	LIVE	19	1	3
		25 mm HEI	LIVE	283	1	1
		40 mm HEI	LIVE	99	1	3
				3,832	28	74

**Table 2. Summary of Nighttime Gunnery Training Operations in the EGTR**

Test Area	Category	Expendable	Condition	Alt. 3 Quantity	Number of Missions	Number of Events
W-151A	GUN	105 mm TR	LIVE	902	45	135
		25 mm HEI	LIVE	7,864	8	8
		40 mm HEI	LIVE	9,811	102	306
W-151B	GUN	105 mm TR	LIVE	255	13	39
		25 mm HEI	LIVE	1,452	2	2
		40 mm HEI	LIVE	3,023	31	93
W-151C	GUN	105 mm TR	LIVE	197	9	36
		25 mm HEI	LIVE	2,301	2	2
		40 mm HEI	LIVE	2,302	24	72
W-151D	GUN	105 mm TR	LIVE	133	7	21
		25 mm HEI	LIVE	830	1	1
		40 mm HEI	LIVE	1,583	16	48
W-151S	GUN	105 mm TR	LIVE	13	1	3
		25 mm HEI	LIVE	54	1	1
		40 mm HEI	LIVE	82	1	3
		TOTAL		30,802	263	770

### Description of Marine Mammals Affected by the Activity

There are 29 species of marine mammals documented as occurring in Federal waters of the GOM. General information on these species can be found in Wursig *et al.* (2000) and in the NMFS Stock Assessment Reports (Waring *et al.*, 2004). This latter document is available at: <http://www.nefsc.noaa.gov/nefsc/publications/tm/tm182/>

Of these 29 species of marine mammals, approximately 21 may be found within the EGTTR. These species are the Bryde's whale, sperm whale, dwarf sperm whale, pygmy sperm whale, Atlantic bottlenose dolphin, Atlantic spotted dolphin, pan-tropical spotted dolphin, Blainville's beaked whale, Cuvier's beaked whale, Gervais' beaked whale, Clymene dolphin, spinner dolphin, striped dolphin, killer whale, false killer whale, pygmy killer whale, Risso's dolphin, Fraser's dolphin, melon-headed whale, rough-toothed dolphin, and pilot whale. Supplementary information on those species that may be impacted by the A-S gunnery exercises are discussed in the Eglin application (Eglin AFB, 2003) and the Eglin's Final PEA.

### Potential Impacts to Marine Mammals

A/S gunnery operations may potentially impact marine mammals at the water surface. Marine mammals could potentially be harassed, injured or killed by exploding and non-exploding

projectiles, and falling debris (Eglin, 2002 (Final PEA)). However, based on an analysis provided in the Eglin Final PEA) Eglin believes that gunnery exercises are not likely to result in any injury or mortality to marine mammals (Eglin, 2003 (Supplemental Information Request)).

Explosive criteria and thresholds for assessing impacts of explosions on marine mammals were discussed by NMFS in detail in its issuance of an IHA for Eglin's Precision Strike Weapon testing activity (70 FR 48675, August 19, 2005) and are not repeated here. Please refer to that document for this background information.

### Estimation of Take and Impact

#### Direct Physical Impacts (DPI)

Potential impacts resulting from air-to-surface test operations include DPI resulting from ordnance. DPI could result from inert bombs, gunnery ammunition, and shrapnel from live missiles falling into the water. Marine mammals and sea turtles swimming at the surface could potentially be injured or killed by projectiles and falling debris if not sighted and firing discontinued. Small arms gunnery operations may offer a worst case scenario for evaluating DPI of EGGTR operations, mainly due to the comparatively large number of rounds expended. Some contain small amounts of explosives, but the majority do not. The assumptions made by Eglin for DPI calculations can be found in Eglin's Final PEA under Alternative 1

for this action. Approximately 606 small-arms gunnery firing events comprise the estimated level of potential DPI events, as shown in Table 3.

DPI impacts are anticipated to affect only marine species at or very near the ocean surface. As a result, in order to calculate impacts, Eglin used corrected species densities (Table 4–23 in Eglin's Final PEA) to reflect the surface interval population, which is approximately 10 percent of densities calculated for distribution in the total water column. As shown here in Table 4 (correcting PEA Table 4–23), the impacts to marine mammals and sea turtles swimming at the surface that could potentially be injured or killed by projectiles and falling debris was determined to be an average of 0.2059 marine mammals and 0.0414 sea turtles per year. However, mitigation measures that Eglin proposes under this action would reduce even these low levels significantly.

In addition to small arms, Eglin calculated the potential for other non-explosive items (bombs, missiles, and drones) to impact marine mammals and sea turtles. The number of annual events expected are 551 bombs, 1183 missiles, and 99 drones (Table 5). As shown in Eglin's Final PEA and Table 6 in this document, the potential for any DPI to marine mammals and sea turtles is extremely remote and can, therefore, be discounted.

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**Table 3. Air-to-Surface Gunnery/Small Arms Operations as Events**

Activity Description of EGTR Events	Percentage	Number
Small Arms .50 Cal Ball Events	16.3%	99
Small Arms 5.56 Linked Events	0.8%	5
Small Arms 7.62 mm Ball Events	82.8%	502
Total Baseline EGTR Air-to-Surface Gunnery/Small Caliber Events	100.0%	606

**Table 4. Potential Small Arms DPI Impacts (Annual) to Marine Mammal Species.**

Species	Density (#/km <sup>2</sup> )	Adjusted Density (#/km <sup>2</sup> )	Impact Zone Area <sup>1</sup> (km <sup>2</sup> )	Animals in Impact Zone (#)	Years To Impact 1 Animal <sup>2</sup> (#)
Cetaceans	4.381	0.4381	0.047874	2.10E-02	48
T&E Cetaceans	0.011	0.0011	0.047874	5.27E-05	18,989
Sea Turtles	0.869	0.0869	0.047874	4.16E-03	240

**Table 5. Non-Small Arms Operations as Events**

Activity Description of EGTR Events	Percentage	Number
Bombs	30.1%	551
Missiles	64.5%	1183
Drones	5.4%	99
Total Baseline EGTR Non-Small Arms Events	100.0%	1833

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**TABLE 6.—POTENTIAL NON-SMALL ARMS/NON-GUNNERY DPI IMPACTS (ANNUAL) TO MARINE SPECIES**

Species	Density (#/km <sup>2</sup> )	Adjusted density (#/km <sup>2</sup> )	Impact zone area <sup>1</sup> (km <sup>2</sup> )	Animals in impact zone (#)	Years to impact 1 animals <sup>2</sup> (#)
Cetaceans .....	4.381	0.4381	0.00688	0.003014128	332
T&E Cetaceans .....	0.011	0.0011	0.00688	0.000007568	132,135
Sea Turtles .....	0.869	0.0869	0.00688	0.000597872	1,673

Similar to non-gunnery/non-small arms DPI impacts, DPI impacts from gunnery activities may also affect marine mammals and sea turtles in the

surface zone. Again, DPI impacts are anticipated to affect only marine species at or near the ocean surface. Accordingly, the density estimates have

been adjusted to indicate surface animals only being potentially affected. Using the firing methodology explained earlier in this document, Tables 7 and

8 demonstrate that the potential for any extremely remote and can be  
DPI from gunnery activities are discounted.

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**Table 7. Potential Daytime Gunnery DPI Impacts (annual) to Marine Cetaceans.**

Species/ shell size	Density (#/km)	Adjusted Density (#/km <sup>2</sup> )	Impact Zone Area (km <sup>2</sup> )	Number of Events (#)	Animals in Impact Zone (#)	Years To Impact 1 Animal (#)
Cetacea (25 mm)	4.381	0.4381	.00007854	26	.000881198	1,135
Cetacea (40 mm)	4.381	0.4381	.00007854	51	.001770311	565
Cetacea (105mm)	4.381	0.4381	.00007854	242	.008326827	120

**Table 8. Potential Nighttime Gunnery DPI Impacts (annual) to Marine Cetaceans.**

Species/ shell size	Density (#/km)	Adjusted Density (#/km <sup>2</sup> )	Impact Zone Area (km <sup>2</sup> )	Number of Events (#)	Animals in Impact Zone (#)	Years To Impact 1 Animal (#)
Cetacea (25 mm)	4.381	0.4381	.00007854	125	.004287972	233
Cetacea (40 mm)	4.381	0.4381	.00007854	723	.024873814	40
Cetacea (105mm)	4.381	0.4381	.00007854	1061	.036507285	27

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*Marine Mammal Take Estimates From  
Gunnery Activities*

Estimating the impacts to marine mammals from underwater detonations is difficult due to complexities of the physics of explosive sound under water and the lack of understanding with respect to hearing in marine mammals.

Therefore, the assessments made in this document use, and improve upon, the criteria and thresholds for marine mammal impacts that were developed for the shock trials of the *USS SEAWOLF* submarine and the destroyer *USS Winston S. Churchill* (DDG-81) (Navy, 1998; 2001). The criteria and thresholds used in these documents have been adopted by NMFS for use in

calculating incidental takes from explosives. Criteria for assessing impacts include: (1) Mortality, as determined by exposure to a certain level of positive impulse pressure (expressed as pounds per square inch per millisecond or psi-msec); (2) injury, both hearing related and non-hearing related; and (3) harassment, as determined by temporary loss of hearing

ability and behavioral reactions. Due to the small amounts of net explosive weight (NEW) for each of the rounds fired in the EGTRR and the mitigation measures proposed here, mortality resulting from sounds generated in the water column was determined to be highly unlikely, and not considered further.

Permanent hearing loss is considered an injury and is defined as a permanent threshold shift (PTS). NMFS categorizes PTS as Level A harassment. "Temporary loss of hearing ability is termed a temporary threshold shift (TTS), meaning a temporary reduction of hearing sensitivity which abates following noise exposure". TTS is categorized as a Level B type of harassment and is considered here as non-injurious. NMFS recognizes dual criteria for TTS, one based on peak pressure and one based on the greatest 1/3 octave sound exposure level (SEL) or energy flux density level (EFDL), with the more conservative (i.e., larger) of the two criteria being selected for impacts analysis (note: SEL and EFDL are used interchangeably, but with increasing scientific preference for SEL). The peak pressure metric used in the shock trials to represent TTS was 12 pounds per square inch (psi) which, for the NEW used, resulted in a zone of possible Level B harassment approximately equal to that obtained by using a 182 decibel (dB) re 1 micro Pa<sup>2</sup>-s, total EFDL/SEL metric. The 12-psi metric is largely based on anatomical studies and extrapolations from terrestrial mammal data (see Ketten, 1995; Navy, 1999 (Appendix E, *Churchill* FEIS; and 70 FR 48675 (August 19, 2005)) for background information). However, the results of a more recent investigation involving marine mammals suggest that, for charges considerably smaller than those used in the Navy shock trials, the

12 psi metric is not an adequate predictor of the onset of TTS.

Finneran *et al.* (2002) measured TTS in a bottlenose dolphin and a beluga whale exposed to single underwater impulses produced by a seismic water gun in San Diego Bay. The water gun was chosen over other seismic sources, such as air guns, because the impulses contain more energy at high frequencies where odontocete hearing thresholds are relatively low (i.e., more sensitive). Hearing thresholds were measured at 0.4, 4, and 30 kilohertz (kHz). A relatively small and short-term level of masked TTS (MTTS) (7 dB at 0.4 kHz and 6 dB at 30 kHz) occurred in the beluga whale at a peak pressure of 160 kilopascals (kPa), which is equivalent to 23 psi, 226 dB re 1 micro Pa peak-peak pressure, and 186 dB re 1 microPa<sup>2</sup>-s. The maximum experimental peak pressure exposure of 207 kPa (30 psi, 228 dB re 1 microPa peak-peak pressure, 188 dB re 1 microPa<sup>2</sup>-s) did not cause any measurable masked TTS in the bottlenose dolphin. The results of these field experiments represent the most current science available for the relationship between peak pressure and TTS in marine mammals. It is also considered precautionary for this project since the bottlenose dolphin did not receive an MTTS at the higher level of 30 psi. Therefore, until additional information becomes available, 23 psi is considered an appropriate and conservative metric for predicting the onset of pressure-related TTS from small explosive charges.

Documented behavioral reactions occur at noise levels below those considered to cause TTS in marine mammals (Finneran *et al.*, 2002; Schlundt *et al.*, 2000; Finneran and Schlundt, 2004). In controlled experimental situations, behavioral effects are typically defined as alterations of trained behaviors.

Behavioral effects in wild animals are more difficult to define but may include decreased ability to feed, communicate, migrate, or reproduce. Abandonment of an area due to repeated noise exposure is also considered a behavioral effect. Analyses in subsequent sections of this document refer to such behavioral effects as sub-TTS Level B harassment. Schlundt *et al.* (2000) exposed bottlenose dolphins and beluga whales to various pure-tone sound frequencies and intensities in order to measure underwater hearing thresholds. Masking is considered to have occurred because of ambient noise environment in which the experiments took place. Sound levels were progressively increased until behavioral alterations were noted (at which point the onset of TTS was presumed). It was found that decreasing the sound intensity by 4 to 6 dB greatly decreased the occurrence of anomalous behaviors. The lowest sound pressure levels, over all frequencies, at which altered behaviors were observed, ranged from 178 to 193 dB re 1 micro Pa for the bottlenose dolphins and from 180 to 196 dB re 1 micro Pa for the beluga whales. Thus, it is reasonable to consider that sub-TTS (behavioral) effects occur at approximately 6 dB below the TTS-inducing sound level, or at approximately 176 dB in the greatest 1/3 octave band EFDL/SEL.

Table 9 summarizes the relevant thresholds (summarized from information in 70 FR 48675 (August 19, 2005) and in this document), which are specified levels of noise that may result in injury, TTS or harassment to marine mammals. Mortality and injury thresholds are designed to be conservative by considering the impacts that would occur to the most sensitive life stage (e.g., a dolphin calf). Table 10 provides the estimated ZOI radii for the EGTRR ordnance.

TABLE 9.—EGTRR CRITERIA AND THRESHOLDS FOR IMPACT OF EXPLOSIVE NOISE ON MARINE MAMMALS

Criterion	Criterion definition	Threshold
Level A Harassment-Auditory Injury .....	50% of Animals Exposed Would Experience Ear-Drum Rupture, Resulting in Approximately 30% PTS.	205 dB Total EFDL/SEL.
Level B Harassment .....	Temporary Threshold Shift (NMFS Dual Criterion).	23 PSI Peak Pressure.
Level B Harassment .....	Temporary Threshold Shift (NMFS Dual Criterion).	182 dB 1/3 Octave Band EFDL/SEL.
Level B Harassment .....	Sub-TTS Behavioral Disruption .....	176 dB 1/3 Octave Band EFDL/SEL.

TABLE 10.—ESTIMATED RANGE FOR A ZONE OF IMPACT (ZOI) DISTANCE FOR THE EGTRR ORDNANCE

Ordnance	Level A harassment injurious (205 dB) EFD (m)	Level B harassment non-injurious (182 dB) EFD for TTS (m)	Level B harassment non-injurious (23 psi) for TTS (m)	Level B harassment non-injurious (176 dB) EFD for behavior (m)
105-mm FU .....	0.79	11.1	216	22.1
105-mm TR .....	0.22	3.0	90	6.0
40-mm HE .....	0.33	4.7	122	9.4
25-mm HE .....	0.11	1.3	49	2.6

FU=Full-up; TR=Training Round; HE=High Explosive

As mentioned previously, the EGTRR live fire events are continuous events with pauses during the firing usually well under a minute and rarely from 2 to 5 minutes. Live fire typically occurs within a 30 minute time frame, including all ordnance fired: 25-mm (Phase I), 40-mm (Phase II), and 105-mm (Phase III), and where the 105-mm are fired as separate rounds with up to 30-second intervals, the 25-mm and the 40-mm are often fired in multiple bursts. These bursts include multiple rounds (25 to 100) within a 10-to 20-second time frame. Eglin notes that even if the avoidance concept of animals evading the area once firing commences is not considered, an average swim speed (1.5 m/s) of animals would not allow sufficient time for new animals to re-enter the Level B harassment ZOI (23 psi) within the time frame of a single burst. As such, only the peak pressure of a single round is measured per burst and experienced at a given distance (49 m (Phase I), 122 m (Phase II)).

For daytime firing it is assumed that the average swim speed per cetacean is approximately 3 knots or 1.5 m/sec. As a conservative scenario, Eglin assumes that there is one animal present within or near the 216-m ZOI (FU 105-mm round ZOI) which may be potentially ensnared within the 23-psi TTS exposure at the time that the 105-mm live firing begins. Density distributions have assumed an even distribution (or approximately 500 m (1640 ft) apart) of approximately 4.38 animals/km<sup>2</sup> (all species) for the approach of impact analyses for a take estimation. At this density distribution and typical swim speed, the next available cetacean would approach the perimeter of the 216-m ZOI (23-psi TTS ZOI) in approximately 5.5 minutes assuming a straight line path. With live fire events of the 105-mm occurring at a rate of

approximately 2 rounds per minute, nearly one half (or 10 rounds) of the total 105-mm rounds (20 rounds) would potentially be expended within this 5.5 minute time frame. If the concept that marine mammals will evade an area once firing commences is not considered, an average swim speed (1.5 m/s) of animals would allow sufficient time for new animals to re-enter the 23-psi TTS impact area. Allowing for a potential 2 minute break in firing after 10 rounds are expended, it is, therefore, conservative and reasonable to assume that nearly 3 to 4 individual animals may be potentially exposed to the 23-psi TTS sound level during a typical 20 round firing event. Therefore, the ZOI and Level B harassment take estimate calculations are based on the total number of rounds fired per year divided by 5, or approximately 20 percent. This approach assumes that although single animals may be ensnared more than once due to the time required to exit the 23 psi TTS ZOI, animals are not considered to be "taken" more than once for the purposes of estimating take levels.

Similarly, as a conservative approach for nighttime firing, Eglin assumes that there is one animal present within or near the 90-m ZOI (105-mm TR ZOI) which may be potentially ensnared within the 23-psi TTS exposure zone at the time that the 105-mm round live firing phase begins. Density distributions have assumed an even distribution of approximately 4.38 animals/km<sup>2</sup> (all species) for the approach of impact analyses for estimation of take. At this density distribution and typical swim speed, the next available cetacean would approach the perimeter of the 90-m ZOI (23-psi TTS ZOI) in approximately 5.5 minutes or the same time as with the 216-m ZOI (used for the 105-mm FU). The

difference is the amount of time it takes the animal to exit the ZOI or in other words, how long the animal resides within the ZOI on a straight line path. With live fire events of the 105-mm round occurring at a rate of approximately 2 rounds per minute, nearly one half (or 10 rounds) of the total 105-mm rounds (20 rounds) would potentially be expended within this 5.5-minute time frame. If the concept that marine mammals will evade an area once firing commences is not considered, an average swim speed (1.5 m/s) of animals would allow sufficient time for new animals to re-enter the 23-psi TTS impact area. Allowing for a potential 2-min break in firing after 10 rounds are expended, it is conservative and reasonable to assume that nearly 3 to 4 individual animals may be potentially exposed to the 23-psi TTS sound level during a typical 20 round firing event. Therefore, the ZOI and take estimate calculations are based on the total number of rounds fired per year divided by 5, or approximately 20 percent. This approach assumes that, although single animals may be ensnared more than once due to the time required to exit the 23-psi TTS ZOI, individual animals are not considered to be "taken" more than once for the purposes of estimating take levels.

Based on this discussion, Table 11 provides Eglin's estimates of the annual number of marine mammals, by species, potentially affected by the gunnery mission noise. It should be noted that these estimates are derived without consideration of the effectiveness of Eglin's proposed mitigation measures (except use of the TR), which are discussed next.

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Table 11. Yearly Estimated Number of Marine Mammals Affected by the Gunnery Mission Noise

Species	Adjusted Density (#/km <sup>2</sup> )	Level A		Level B		Level B	
		Harassment Injurious 205 dB* EFD For Ear Rupture	Harassment Non-Injurious 182 dB* EFD For TTS	Harassment Non-Injurious 23 psi For TTS	Harassment Non-Injurious 176 dB* EFD For Behavior		
Bryde's whale	0.007	<0.001	0.010	0.4	0.041		
Sperm whale	0.011	<0.001	0.016	0.0	0.064		
Dwarf/pygmy sperm whale	0.024	<0.001	0.035	1.5	0.139		
Cuvier's beaked whale	0.10	<0.001	0.015	0.6	0.058		
Mesoplodon spp.	0.019	<0.001	0.028	1.2	0.110		
Pygmy killer whale	0.030	<0.001	0.044	1.9	0.174		
False killer whale	0.026	<0.001	0.038	1.6	0.151		
Short-finned pilot whale	0.027	<0.001	0.039	1.7	0.157		
Rough-toothed dolphin	0.028	<0.001	0.041	1.7	0.163		
Bottlenose dolphin	0.810	0.006	1.177	50.1	4.706		
Risso's dolphin	0.113	0.001	0.164	7.0	0.657		
Atlantic spotted dolphin	0.677	0.005	0.984	41.9	3.934		
Pantropical spotted dolphin	1.077	0.008	1.565	66.7	6.258		
Striped dolphin	0.237	0.002	0.344	14.7	1.377		
Spinner dolphin	0.915	0.007	1.330	56.6	5.316		
Clymene dolphin	0.253	0.002	0.368	15.7	1.470		
Unidentified dolphin**	0.053	<0.001	0.077	3.3	0.308		
Unidentified whale	0.008	<0.001	0.012	0.5	0.046		
All marine mammals	4.325	0.032	6.29	271.1	25.13		

km<sup>2</sup> = square kilometers; NA = not applicable\*dB= dB re 1  $\mu$ Pa<sup>2</sup>-s

\*\*Bottlenose dolphin/Atlantic spotted dolphin

## Mitigation

Eglin AFB will employ a number of mitigation measures in an effort to substantially decrease the number of animals potentially affected. Eglin AFB is committed to assessing the mission activity for opportunities to provide operational mitigations (i.e., ramping up and using nighttime training rounds), while potentially sacrificing some mission flexibility. Even though the forfeit of some mission aspects may improve overall mitigation effectiveness, Eglin AFB believes that the gunnery mission itself does not accommodate typical mitigation, such as independent aerial or vessel surveys. As such, the use of conservative analyses serves in this application as a functional mitigation technique.

### Visual Mitigation

Areas to be used in gunnery missions will be visually monitored for marine mammal presence from the AC-130 aircraft prior to commencement of the mission. If the presence of one or more marine mammals is detected, the target area will be avoided. In addition, monitoring will continue during the mission. If marine mammals are detected at any time, the mission will be either immediately halted and/or relocated as necessary or suspended until the marine mammal has left the area. While visual monitoring at a height of 1000–1500 ft (305–457 m), is expected to be effective, standard visual monitoring is not very effective at 20,000 ft (6.1 km) unless there is a large pod of marine mammals. Daytime and nighttime visual monitoring will be supplemented with IR and TV monitoring and nighttime visual monitoring, which is generally considered to be ineffective at any height, has been altered to incorporate the TR.

### Development of the TR

The largest type of ammunition used during typical gunnery missions is the 105-mm (4.13-in) round containing 4.7 lbs (2.1 kg) of HE. This is several times more HE than that found in the next largest round (40 mm/1.57 in). As a mitigation technique, the Air Force developed a 105-mm TR that contains only 0.35 lb (0.16 kg) of HE. The TR was developed to significantly reduce the effects of nighttime operations, when visual surveying for marine mammals is of limited effectiveness. Use of the TR at night dramatically reduces the risk of harassment, and Eglin anticipates a 96 percent reduction in impact by using the 105-mm TR.

### Ramp-Up

Eglin proposes to ramp-up activities by beginning with the smallest, or the round having least impact and proceeding to subsequently larger size rounds (in this case the lowest caliber of munition up to the 105-mm round). Theoretically, this allows animals to perceive steadily increasing sounds and to react, if necessary. Alerting animals in advance of injurious sound waves by transmitting low-power “warning” signals a short time before the action provides a safeguard where there is a potential for the risk of injury.

### Other Mitigation

NMFS has recommended additional measures to protect marine life as part of its section 7 consultations under the Endangered Species Act (ESA) with Eglin. NMFS proposes to continue the following requirements under an IHA:

(1) Test firing will be conducted only when sea surface conditions are sea state 3 or less on the Beaufort scale.

(2) Prior to each firing event, the aircraft crew will conduct a visual survey of the 5-nm (9.3-km) wide prospective target area to attempt to sight any protected species that may be present (e.g., marine mammals, sea turtles, and Sargassum rafts). The AC-130 gunship will conduct at least two complete orbits at a minimum safe airspeed around a prospective target area at a maximum altitude of 1,500 ft (457 m), with a recommended altitude of 1,000 ft (305 m). The AC-130 will then continue orbiting the selected target point as it climbs to the mission testing altitude. During the low altitude orbits and the climb to testing altitude, aircraft crew will visually scan the sea surface within the aircraft's orbit circle for the presence of listed and non-listed marine mammals and sea turtles. Primary emphasis for the surface scan will be upon the flight crew in the cockpit and personnel stationed in the tail observer bubble and starboard viewing window. The AC-130's optical and electronic sensors will also be employed for target clearance. If any marine mammals are detected within the AC-130's orbit circle, either during initial clearance or after commencement of live firing, the aircraft will relocate to another target and repeat the clearance procedures. If multiple firing events occur within the same flight, these clearance procedures will precede each event.

(3) The aircrews of the air-to-ground gunnery missions will initiate location and surveillance of a suitable firing site immediately after exiting U.S. territorial waters (> 12 nm). This would

potentially restrict most gunnery activities to the shallower continental shelf waters of the GOM where marine mammal densities are typically lower, and thus potentially avoid the slope waters where the more sensitive species (e.g., endangered sperm whales) typically reside.

(4) Observations will be accomplished using all-light TV, IR sensors, and visual means for at least 60 minutes prior to each exercise.

(5) Aircrews will utilize visual, night vision goggles (NVGs), and other onboard sensors to search for marine mammals and sea turtles while performing area clearance procedures during night-time pre-mission activities.

(6) If any marine mammals, sea turtles, or Sargassum rafts are sighted during pre-mission surveys or during the mission, activities will be immediately halted until the area is clear of all protected marine species for 60 minutes or the mission location relocated and resurveyed.

### Monitoring and Reporting

NMFS proposes to require Eglin to monitor the target area for impacts to marine mammals and to report on its activities on an annual basis. Accordingly, NMFS' Biological Opinion on this action has recommended certain monitoring measures to protect marine life. NMFS proposes to require the same requirements under an IHA:

(1) Eglin will develop and implement a marine species observer-training program in coordination with NMFS. This program will primarily provide expertise to Eglin's testing and training community in the identification of protected marine species during surface and aerial mission activities in the GOM. Additionally, the A-S gunnery mission aircrews will participate in the proposed species observation training. As a result, designated crew members will be selected to receive training as protected species observers. Observers will receive training in protected species survey and identification techniques through a NMFS-approved training program.

(2) Aircrews will initiate the post-mission clearance procedures beginning at the operational altitude of approximately 15,000 to 20,000 ft (4572 to 6096 m) AGL, and initiating a spiraling descent down to an observation altitude of approximately 1,500 ft. (457 m) AGL. Rates of descent will occur over a 3 to 5 minute time frame.

(3) Eglin will track their use of the EGTR for test firing missions and protected resources (marine mammal/

sea turtle) observations, through the use of mission reporting forms.

(4) A–S gunnery missions will coordinate with next-day flight activities to provide supplemental post-mission observations for marine mammals and sea turtles in the operations area of the previous day.

(5) A summary annual report of marine mammal/sea turtle observations and A–S activities will be submitted to the NMFS Southeast Regional Office (SERO) and the Office of Protected Resources by January 31 of each year.

(6) If any marine mammal or sea turtle is observed or detected to be deceased prior to testing, or injured or killed during live fire, a report must be made to the NMFS by the following business day.

(7) Any unauthorized takes of marine mammals (i.e., serious injury or mortality) must be immediately reported to the NMFS representative and to the respective stranding network representative.

#### ESA

Consultation under section 7 of the ESA on Eglin was completed on December 18, 1998. Consultation was reinitiated by Eglin AFB with NMFS on February 13, 2003 and concluded on October 20, 2004. A NMFS Biological Opinion issued on October 20, 2004, concluded that the A–S gunnery exercises in the EGTTR are unlikely to jeopardize the continued existence of species listed under the ESA that are within the jurisdiction of NMFS or destroy or adversely modify critical habitat. The proposed IHA to Eglin is a federal action; accordingly, prior to issuance of an IHA, NMFS will determine whether additional consultation is necessary.

#### NEPA

In November, 2002, the U.S. Air Force prepared a Final Programmatic EA for the activities on the EGTTR. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA and rulemaking. A copy of Eglin's Final PEA for this activity is available upon written request (see **ADDRESSES**).

#### Preliminary Conclusions

NMFS has preliminarily determined that the A–S gunnery exercises that are conducted by Eglin AFB in the EGTTR in the northern GOM, is unlikely to result in the mortality or serious injury of marine mammals (see Table 11) and, would result in, at worst, a temporary elevation in hearing sensitivity (known as TTS). NMFS estimates that up to 271

marine mammals may incur this form of Level B harassment annually. Also, these gunnery exercises have the potential to result in a temporary modification in behavior by marine mammals. NMFS estimates that up to 25 marine mammals may experience a behavioral response to these exercises during the time-frame of an IHA. While behavioral modifications may be made by these species as a result of these air-to-surface gunnery activities, any behavioral change is expected to result in no more than a negligible impact on the affected species. In addition, the potential for temporary hearing impairment is very low and will be mitigated to the lowest level practicable through the incorporation of the mitigation measures mentioned in this document.

#### Proposed Authorization

NMFS proposes to issue an IHA to Eglin AFB for conducting A–S gunnery exercises within the EGTTR in the northern GOM provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity is unlikely to result in serious injury or mortality to marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of stocks for subsistence uses.

#### Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed IHA and Eglin's IHA/LOA application for incidental take regulations (see **ADDRESSES**). As this document is being published in conformance with NMFS regulations implementing the incidental take program (50 CFR 104(b)(1)(ii)), NMFS requests interested persons to submit comments, information, and suggestions concerning both the request and the structure and content of future regulations to allow this taking. As requested by 50 CFR 216.105, NMFS will consider this information in developing proposed regulations to authorize the taking. If NMFS proposes regulations to allow this take, interested parties will be provided with a 45-day comment period within which to submit comments on the proposed rule.

Dated: January 17, 2006.

**James H. Lecky,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 06–595 Filed 1–20–06; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 011806F]

#### North Pacific Fishery Management Council; Notice of Public Meetings

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

**ACTION:** Meetings of the North Pacific Fishery Management Council and its advisory committees.

**SUMMARY:** The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings February 6–14, 2006 at the Doubletree Hotel, 18740 Pacific Highway South, Seattle, WA 98188.

**DATES:** The Council's Advisory Panel (AP) will begin at 8 a.m., Monday, February 6 and continue through Saturday February 11, 2006. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday February 6 and continue through Wednesday, February 8, 2006.

The Council will begin its plenary session at 8 a.m. on Wednesday, February 8, continuing through February 14, 2006. All meetings are open to the public except executive sessions. The Ecosystem Committee will meet Tuesday, February 7, from 8 am to 12 pm. The Enforcement Committee will meet Tuesday, February 7, from 1 pm to 5 pm.

**ADDRESSES:** Doubletree Hotel, 18740 Pacific Highway South, Seattle, WA 98188.

*Council address:* North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Council staff, Phone: 907–271–2809.

**SUPPLEMENTARY INFORMATION:** Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports  
Executive Director's Report  
NMFS Management Report  
U.S. Coast Guard Report  
Alaska Department of Fish & Game (ADF&G) Report (includes Board of Fisheries (BOF) proposals and creel survey report).

- U.S. Fish & Wildlife Service Report  
Protected Species Report (update on Consultation process)

2. Improved Retention/Improved Utilization (IR/IU): Final action on Amendment 80 (T).

3. Bering Sea Aleutian Island (BSAI) Pacific Cod Allocations: Initial review of Environmental Assessment/Regulatory Impact (EA/RIR) review.

4. Gulf of Alaska (GOA) Groundfish Rationalization: Review other data and information and revise alternatives/options as appropriate.

5. Observer Program: Committee report and Initial review of EA/RIR.

6. Halibut Guideline Harvest Levels (GHLs): Committee report and Initial review of EA/RIR.

7. American Fisheries Act (AFA): Review 2005 cooperative (co-op) reports and 2006 co-op agreements.

8. Groundfish Management: Chiniak Gully experiment final review of EA; Review Exempted Fishery Permit (EFP); Review Other Species stock assessments (SSC only); Review Species of Concern assessments (SSC only); Lower Trophic Level Modeling Workshop (SSC only); Lower Trophic Level Modeling Workshop (SSC only).

9. Research Priorities: Review and approve.

10. Staff Tasking: Committees and tasking, discuss alternatives to change Maximum Retainable Amount (MRA) for the non-target AFA catcher processor fleet.

#### 11. Other Business

The SSC agenda will include the following issues:

1. BSAI Pacific cod Allocation.
2. Observer Program.
3. Groundfish Management.
4. Research Priorities.

The Advisory Panel will address the same agenda issues as the Council.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907-271-2809 at least 7 working days prior to the meeting date.

Dated: January 18, 2006.

#### Emily Menashes,

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc.E6-732 Filed 1-20-06; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 011806B]

#### Pacific Fishery Management Council; Public Meeting/Workshop

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Groundfish Stock Assessment Review (STAR) Panel for yelloweye rockfish will hold a work session which is open to the public.

**DATES:** The yelloweye rockfish STAR Panel meeting will be held beginning at 1 p.m., February 13, 2006. The meeting will continue on February 14, 2006 beginning at 8:30 a.m. through February 15, 2006. The meetings will end at 5 p.m. each day, or as necessary to complete business.

**ADDRESSES:** The yelloweye rockfish STAR Panel meeting will be held at the Human Resources Division Conference Room, Building 1, at the National Oceanic and Atmospheric Administration (NOAA) Western Regional Center's Sand Point Facility, 7600 Sand Point Way NE., Seattle, WA 98115-6349.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1384.

**FOR FURTHER INFORMATION CONTACT:** Ms. Stacey Miller, Northwest Fisheries Science Center (NWFS); telephone: 206-860-3480; or Mr. John DeVore, Pacific Fishery Management Council; telephone: 503-820-2280.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to review draft yelloweye rockfish stock assessment documents and any other pertinent stock information, work with the Stock Assessment Team to make necessary revisions to the draft yelloweye rockfish stock assessment, and produce a STAR Panel report for use by the Council family and other interested persons. No management actions will be decided by the STAR Panel. The STAR Panel's role will be development of recommendations and reports for consideration by the Council at its March meeting in Seattle, Washington.

Entry to the NOAA Western Regional Center's Sand Point Facility requires visitors to show a valid picture ID and register with security. A visitor's badge, which must be worn while at the NOAA

Western Regional Center's Facility, will be issued to non-Federal employees participating in the meeting.

Although nonemergency issues not contained in the meeting agenda may come before the STAR Panel meeting participants for discussion, those issues may not be the subject of formal STAR panel meeting action during this meeting. STAR Panel meeting action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STAR panel meeting participants' intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503-820-2280 at least five days prior to the meeting date.

Dated: January 18, 2006.

#### Emily Menashes,

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E6-727 Filed 1-20-06; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 011806C]

#### Pacific Fishery Management Council; Public Meeting/Workshop

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Groundfish Stock Assessment Review (STAR) Panel for Pacific hake (whiting) will hold a work session which is open to the public.

**DATES:** The Pacific hake (whiting) STAR Panel meeting will be held beginning 1 p.m., February 6, 2006. The meeting will continue on February 7, 2006 beginning at 8:30 a.m. through February 10, 2006. The meetings will end at 5 p.m. each day, or as necessary to complete business.

**ADDRESSES:** The Pacific hake (whiting) STAR Panel meeting will be held at the National Marine Fisheries Service, Northwest Fisheries Science Center, The Auditorium, 2725 Montlake Boulevard

East, Seattle, WA 98112; telephone: 206-860-3200.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1384.

**FOR FURTHER INFORMATION CONTACT:** Ms. Stacey Miller, Northwest Fisheries Science Center (NWFSC); telephone: 206-860-3480; or Mr. John DeVore, Pacific Fishery Management Council; telephone: 503-820-2280.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to review draft whiting stock assessment documents and any other pertinent stock information, work with the Stock Assessment Team to make necessary revisions to the draft whiting stock assessment, and produce a STAR Panel report for use by the Council family and other interested persons. No management actions will be decided by the STAR Panel. The STAR Panel's role will be development of recommendations and reports for consideration by the Council at its March meeting in Seattle, Washington.

Entry to the NWFSC requires visitors to show a valid picture ID and register with security. A visitor's badge, which must be worn while at the NWFSC facility, will be issued to non-federal employees participating in the meeting.

Although nonemergency issues not contained in the meeting agenda may come before the STAR Panel meeting participants for discussion, those issues may not be the subject of formal STAR Panel meeting action during this meeting. STAR Panel meeting action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STAR Panel meeting participants' intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503-820-2280 at least five days prior to the meeting date.

Dated: January 18, 2006.

**Emily Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E6-728 Filed 1-20-06; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 011806E]

#### Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) and Groundfish Allocation Committee (Committee) will hold working meetings, which are open to the public.

**DATES:** The GMT meeting will be held Monday, February 6, 2006, from 8:30 a.m. until business for the day is completed. The GMT will reconvene Tuesday, February 7, 2006 at 8:30 a.m. until 1 p.m., when both the GMT and Committee will meet until business for the day is completed. The GMT and Committee meeting will reconvene on Wednesday, February 8 and Thursday, February 9 at 8:30 a.m. each day until business for each day is completed. The GMT will reconvene on Friday, February 10, 2006 at 8:30 a.m. and continue until their business is completed.

**ADDRESSES:** The GMT and Committee meetings will be held at the Red Lion Hotel—Convention Center, St. Johns Room, 1021 NE Grand Avenue, Portland, OR 97232. Telephone: 503-235-2100.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon 97220-1384.

**FOR FURTHER INFORMATION CONTACT:** Mr. John DeVore, Groundfish Management Coordinator; telephone: 503-820-2280.

**SUPPLEMENTARY INFORMATION:** The purpose of the GMT and Committee meetings are to develop 2007-2008 Pacific Coast groundfish fishery allocation options and other management measure alternatives for analysis. The GMT and Committee will discuss the types of provisions that may be necessary to prevent further overfishing, to reduce bycatch of depleted species in the various groundfish fisheries, and to reduce bycatch in non-groundfish fisheries, while considering the needs of West Coast fishing communities. No management actions will be decided by the GMT or Committee. The GMT's role and that of the Committee will be

development of recommendations and alternatives for analysis for consideration by the Council at its April 2006 meeting in Sacramento, California.

Although nonemergency issues not contained in the meeting agenda may come before the GMT or the Committee for discussion, those issues may not be the subject of formal GMT or Committee action during this meeting. GMT or Committee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Committee's intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503-820-2280 at least five days prior to the meeting date.

Dated: January 18, 2006.

**Emily Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E6-730 Filed 1-20-06; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 011806D]

#### Western Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Western Pacific Fishery Management Council (Council) will hold a meeting of the Hawaii-based members of the Council Bottomfish Plan Team (BPT) to consider alternatives to end bottomfish overfishing in the Main Hawaiian Islands.

**DATES:** The meeting of the BPT will be held on February 8, 2006, from 9 a.m. to 4 p.m. For specific times, and the agenda, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The meeting of the BPT will be held at the Western Pacific Fishery Management Council conference room, 1164 Bishop Street, Suite 1400, Honolulu, HI.

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, Executive Director; telephone: (808)522-8220.

**SUPPLEMENTARY INFORMATION:** The BPT will meet on February 8, 2006 to discuss the following agenda items.

**February 8, 2006, 9 a.m. to 4 p.m.**

1. Introductions.
2. Approval of draft agenda and assignment of rapporteurs.
3. Review of last plan team meeting and actions from the 129th Council Meeting.
4. Review the alternatives developed to address overfishing of bottomfish in the Main Hawaiian Islands.
5. Review Hawaii Division of Aquatic Resources proposed redefinition of bottomfish Restricted Fishing Areas in the Main Hawaiian Islands.
6. Review the Pacific Island Fisheries Science Center(PIFSC) report on Hawaii Bottomfish.
7. Status of PIFSC Bottomfish stock assessment.
8. Other business.

The order in which the agenda items are addressed may change. Public comment periods will be provided throughout the agenda.

**The Agenda Background Information**

On May 27, 2005, the Secretary of Commerce notified the Council of this overfishing determination and gave the Council until May 2006 to develop a plan to reduce fishing mortality for bottomfish in the MHI. Scientists at NMFS' Pacific Islands Fishery Science Center (PIFSC) report that the target level of effort reduction, based on 2003 fishery statistics, is 15 percent.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522-8220 (voice) or (808) 522-8226 (fax), at least 5 days prior to the meeting date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: January 18, 2006.

**Emily Menashes,**  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E6-729 Filed 1-20-06; 8:45 am]  
**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**National Telecommunications and Information Administration**

**Notice: Request for Nominations, Spectrum Management Advisory Committee**

**AGENCY:** National Telecommunications and Information Administration.

**ACTION:** Reopening of nomination period.

**SUMMARY:** On October 28, 2005, the Department of Commerce's National Telecommunications and Information Administration published a notice in the **Federal Register** (70 FR 62,099) announcing the formation of the Spectrum Management Advisory Committee (Committee) and soliciting nominations for persons to serve on the Committee. The October 28, 2005 notice provided that all nominations of potential members must be received by the Department no later than November 28, 2005. The October 28, 2005 notice also provided additional information concerning the Committee and membership on the Committee. This notice reopens the nomination period in order to provide the public with an additional opportunity to submit nominations. The evaluation criteria for selecting members contained in the October 28, 2005 notice shall continue to apply.

**DATES:** The Department will accept nominations postmarked or electronically transmitted on or before January 31, 2006. Please note that nominations previously submitted at any time prior to the date of this notice (including those submitted after the November 28, 2005 deadline) will be considered and should not be resubmitted.

**ADDRESSES:** Persons wishing to submit nominations should send the nominee's resume to the attention of Joe Gattuso, Office of the Assistant Secretary, National Telecommunications and Information Administration, 1401 Constitution Avenue, NW., Room 4898, Washington DC 20230; by facsimile transmission to (202) 501-0536; or by electronic mail to [spectrumadvisory@ntia.doc.gov](mailto:spectrumadvisory@ntia.doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Joe Gattuso at (202) 482-0977 or [jgattuso@ntia.doc.gov](mailto:jgattuso@ntia.doc.gov).

**SUPPLEMENTARY INFORMATION:** On November 29, 2004, the President issued a Memorandum for the Heads of Executive Departments and Agencies on the subject of "Spectrum Management for the 21st Century."<sup>1</sup> Among other things, the Executive Memorandum directed the heads of the executive departments and agencies to implement the recommendations contained in two Commerce Department reports to the President identifying improvements in U.S. spectrum management.<sup>2</sup> The first recommendation in *Report 2* called for the establishment of a federal advisory committee within the National Telecommunications and Information Administration (NTIA).<sup>3</sup>

Pursuant to the Executive Memorandum, the Secretary of Commerce established the Spectrum Management Advisory Committee under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Committee will report to the Assistant Secretary for Communications and Information. It will advise the Assistant Secretary on a broad range of issues regarding spectrum policy and on needed reforms to domestic spectrum policies and management to enable timely implementation of evolving spectrum-dependent technologies and services to benefit the public. The Committee will function solely as an advisory body in compliance with the FACA. The Committee's Charter appears on NTIA's Web site at <http://www.ntia.doc.gov>.

The criteria for selecting members contained in the October 28, 2005 notice shall continue to apply. The Secretary of Commerce intends to appoint representatives from a balanced cross-

<sup>1</sup> *President's Memorandum on Improving Spectrum Management for the 21st Century*, 49 Weekly Comp. Pres. Doc. 2875 (Nov. 29, 2004)(Executive Memorandum).

<sup>2</sup> See Department of Commerce, *Spectrum Policy for the 21st Century-The President's Spectrum Policy Initiative: Report 1, Recommendations of the Federal Government Spectrum Task Force* (June 2004); Department of Commerce, *Spectrum Policy for the 21st Century-The President's Spectrum Policy Initiative: Report 2, Recommendations from State and Local Governments and Private Sector Responders* (June 2004)(*Report 2*), available at [http://www.ntia.doc.gov/reports/specpolini/pressspecpolini\\_report2\\_06242004.pdf](http://www.ntia.doc.gov/reports/specpolini/pressspecpolini_report2_06242004.pdf).

<sup>3</sup> "The National Telecommunications and Information Administration (NTIA) should establish the Department of Commerce Spectrum Management Advisory Committee, consistent with the Federal Advisory Committee Act [5 U.S.C. App.2] and the NTIA Organization Act [47 U.S.C. §904(b)]." *Report 2* at ii, 14-15.

section of stakeholder interests in spectrum management and policy reform, including non-federal government users, state, regional and local sectors, technology developers, and manufacturers, academia, consumer groups, and service providers with customers in both domestic and international markets. The Department of Commerce seeks high level individuals with broad expertise in and capable of representing those sectors and interests on policy issues relevant to the Committee. Members will be appointed for a two-year term and may be reappointed for additional terms. Members of the Committee will be appointed as Special Government Employees and will serve without compensation. Nominations should include a resume or *curriculum vita*, and should also include a statement summarizing the qualifications of the nominee and identifying the sector or interest (if individual) for which the nominee has expertise.

Dated: January 18, 2006.

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

[FR Doc. E6-697 Filed 1-20-06; 8:45 am]

**BILLING CODE 3510-60-S**

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## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Wednesday, February 1, 2006; 10 a.m.

**PLACE:** Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** Final Rule for the Flammability (Open Flame) of Mattress Sets.

The Commission will be briefed by the Commission staff and consider the Commission staff recommendations regarding the final draft standard for mattress flammability (open flame), additional research, updated supporting materials, and responses to major public comments on the CPSC's January 13, 2005, Notice of Proposed Rulemaking.

For a recorded message containing the latest agenda information, call (301) 504-7948.

**FOR FURTHER INFORMATION CONTACT:**

Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504-7923.

Dated: January 18, 2006.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. 06-672 Filed 1-19-06; 2:28 pm]

**BILLING CODE 6355-01-M**

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## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Information Collection Currently Approved Through Emergency Clearance; Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of its Disaster Response Database (DRD).

The DRD is a data collection tool that allows the Corporation to collect information from its programs and grantees on disaster response activities across the country. This tool serves as a central repository of information on Corporation disaster response activities for reporting to the public.

Copies of the information collection requests can be obtained by contacting the office listed in the address section of this notice.

**DATES:** Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by March 24, 2006.

**ADDRESSES:** You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Learn and Serve America; Attention Phil Shaw, Program Assistant; 1201 New York Avenue, NW., 10th Floor, Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606-3462, Attention Phil Shaw, Program Assistant.

(4) Electronically through the Corporation's email address system: [pshaw@cns.gov](mailto:pshaw@cns.gov).

**FOR FURTHER INFORMATION CONTACT:** Phil Shaw, (202) 606-6697 or by e-mail at [pshaw@cns.gov](mailto:pshaw@cns.gov).

**SUPPLEMENTARY INFORMATION:** The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

### Background

The Corporation for National and Community service regularly engages its national service programs and grantees to respond to disasters as a part of its mandate to promote community service and meet community needs. The great number of national service participants and variety of support offered necessitates a centralized reporting tool to track and measure resources dedicated to supporting communities recovering from disaster.

### Current Action

The Corporation seeks to renew the data collection, which was originally approved through emergency clearance. The database is a web-based system that permits programs and grantees to report contributions to disaster responses. No changes are being made to the currently approved database.

The Corporation also seeks to continue using the current application until the revised application is approved by OMB. The current

application is due to expire on April 30, 2006.

*Type of Review:* Renewal with revisions of an information collection currently approved through emergency clearance.

*Agency:* Corporation for National and Community Service.

*Title:* Disaster Relief Information Collection.

*OMB Number:* 3045-0114.

*Agency Number:* None.

*Affected Public:* Corporation for National and Community Service programs/grantees involved in disaster activities.

*Total Respondents:* 600.

*Frequency:* Every two weeks.

*Average Time Per Response:* 20 minutes.

*Estimated Total Burden Hours:* 200 hours.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 17, 2006.

**Elizabeth D. Seale,**

*Chief Operations Officer, Corporation for National and Community Service.*

[FR Doc. E6-712 Filed 1-20-06; 8:45 am]

BILLING CODE 6050-SS-P

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## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before February 22, 2006.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of

1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 17, 2006.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer.*

### Office of Planning, Evaluation and Policy Development

*Type of Review:* Revision.

*Title:* Longitudinal Analysis of Comprehensive School Reform Implementation and Outcomes (LACIO).

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 15,455. Burden Hours: 10,774.

*Abstract:* This evaluation assesses the accomplishments of the CSR program in implementing school reform and thereby improving student achievement. The evaluation also makes a preliminary assessment of the conditions influencing the sustainability of reforms once federal CSR funding ends. The evaluation uses a variety of data sources to understand the complex interplay of state policies, school districts, educational support, and CSR school conditions affecting CSR implementation and outcomes. The major evaluation questions are: (1) To what extent have CSR-supported schools made gains on state assessments in comparison to gains for schools in the

same state with similar characteristics; (2) How effective is CSR support for reform; (3) How have district policies and state policies affected CSR implementation and comprehensive school reform; (4) What implications can be drawn from CSR implementation and outcomes for reform in Title I schoolwides; and (5) How effective are various school reform activities in secondary schools, and to what extent can school progress be linked to comprehensive school reform. A mixed method approach will be used to collect appropriate data for addressing each evaluation question. The methods include mail surveys of 500 CSR program and non-CSR program schools, online surveys of 50 states and 65 school districts, and case studies of 40 "sites" to produce an understanding of the dynamic of the actual relationships among school, district, and state actions, policies, and practices (each "site" consists of a CSR school and matched comparison school as well as the district, state, and support infrastructure in which the schools operate). Evaluators will be able to link information from these various sources in order to provide policymakers and other stakeholders with coherent findings.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2938. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to IC [DocketMgr@ed.gov](mailto:DocketMgr@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to the e-mail address IC [DocketMgr@ed.gov](mailto:DocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-685 Filed 1-20-06; 8:45 am]

BILLING CODE 4000-01-P



**DEPARTMENT OF EDUCATION****Submission for OMB Review;  
Comment Request**

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before February 22, 2006.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 13, 2006.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer.*

**Office of Planning, Evaluation and  
Policy Development**

*Type of Review:* New.

*Title:* 21st Century Community Learning Centers Program Quality Study.

*Frequency:* On Occasion.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 624.

*Burden Hours:* 1,055.

*Abstract:* SRI International and Policy Studies Associates have been contracted by the U.S. Department of Education's Policy and Program Studies Service to conduct an evaluation to examine quality programming considering the current research base, program structure and the academic content. SRI and PSA will collect survey and qualitative data to assess the quality of practice in a variety of 21st CCLC centers. The findings from this evaluation will provide a comprehensive picture of how 21st CCLC programs are being implemented under NCLB for students who attend underperforming schools in low-income communities.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2921. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-686 Filed 1-20-06; 8:45 am]

**BILLING CODE 4000-01-P**

**DEPARTMENT OF EDUCATION****Office of Elementary and Secondary  
Education; Overview Information;  
Native Hawaiian Education Program;  
Notice Inviting Applications for New  
Awards for Fiscal Year (FY) 2006**

*Catalog of Federal Domestic Assistance (CFDA) Number: 84.362A.*

*Dates: Applications Available:* January 23, 2006.

*Deadline for Transmittal of Applications:* March 24, 2006.

*Eligible Applicants:* Native Hawaiian educational organizations; Native Hawaiian community-based organizations; public and private nonprofit organizations, agencies, and institutions with experience in developing or operating Native Hawaiian programs or programs of instruction in the Native Hawaiian language, and consortia of the previously mentioned organizations, agencies, and institutions.

*Estimated Available Funds:* \$9,500,000. Contingent upon the availability of funds and quality of applications, the Secretary may make additional awards for FY 2007 from the list of unfunded applicants from this competition.

*Estimated Range of Awards:* \$375,000—\$1,100,000.

*Estimated Average Size of Awards:* \$450,000 (The size of the awards will be commensurate with the nature and scope of the work proposed).

*Estimated Number of Awards:* 21.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

**Full Text of Announcement****I. Funding Opportunity Description**

*Purpose of Program:* The purpose of the Native Hawaiian Education program is to support innovative projects that enhance the educational services provided to Native Hawaiian children and adults. These projects may include those activities authorized under section 7205(a)(3) of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

*Priorities:* In accordance with 34 CFR 75.105(b)(2)(iv), the following competitive preference priorities are from section 7205(a)(2) of the ESEA.

*Competitive Preference Priorities:* For FY 2006, and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award a maximum of 5 points (total) to an application, depending on the extent to which the application meets one or more of these priorities.

The Secretary will give a competitive preference to applicants proposing projects that are designed to address one or more of the following:

(a) Beginning reading and literacy among students in kindergarten through third grade;

(b) The needs of at-risk children and youth;

(c) The needs in fields or disciplines in which Native Hawaiians are underemployed; and

(d) The use of the Hawaiian language in instruction.

**Note:** In order to receive additional points under a competitive preference priority, an application should provide adequate and sufficient information that clearly substantiates its claim that it meets each priority addressed.

**Program Authority:** 20 U.S.C. 7515–7517; Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006 (Public Law 109–149).

**Applicable Regulations:** The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

## II. Award Information

**Type of Award:** Discretionary grant.  
**Estimated Available Funds:** \$9,500,000. Contingent upon the availability of funds and quality of applications, the Secretary may make additional awards for FY 2007 from the list of unfunded applicants from this competition.

**Estimated Range of Awards:** \$375,000 – \$1,100,000.

**Estimated Average Size of Awards:** \$450,000 (The size of the awards will be commensurate with the nature and scope of the work proposed).

**Estimated Number of Awards:** 21.

**Note:** The Department is not bound by any estimates in this notice.

**Project Period:** Up to 36 months.

## III. Eligibility Information

1. **Eligible Applicants:** Native Hawaiian educational organizations; Native Hawaiian community-based organizations; public and private nonprofit organizations, agencies, and institutions with experience in developing or operating Native Hawaiian programs or programs of instruction in the Native Hawaiian language; and consortia of the previously mentioned organizations, agencies, and institutions.

2. **Cost Sharing or Matching:** This competition does not involve cost sharing or matching requirements, but the program does have a supplement-not-supplant funding requirement. Funds made available under this program may be used only to

supplement and expand programs and authorities in the area of education to further the purposes of the Native Hawaiian Education program (section 7203(3) of the ESEA).

## IV. Application and Submission Information

1. **Address to Request Application Package:** To obtain a copy of the application package via the Internet use the following address: <http://www.ed.gov/programs/nathawaiian/applicant.html>

Individuals may also obtain a copy of the application package by contacting the program contact persons listed in this section.

Address and mail your request for information to: Beth Fine, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W223, Washington, DC 20202–6200. Telephone: (202) 260–1091 or by e-mail: [beth.fine@ed.gov](mailto:beth.fine@ed.gov) or Francisco Ramirez, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W225, Washington, DC 20202–6200. Telephone: (202) 260–1541 or by e-mail: [francisco.ramirez@ed.gov](mailto:francisco.ramirez@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 a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact persons listed in this section.

2. **Content and Form of Application Submission:** Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

**Page Limit:** The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants are strongly encouraged to limit the application narrative (text plus all figures, charts, tables, and diagrams) to the equivalent of no more than 25 pages, using the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, captions, and all text in charts, tables, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.
- Use size 12-point font.

- Begin numbering at the right bottom of the first page in Arabic numerals (“1”) and number the pages consecutively throughout the document.

- Include all critical information in the program narrative.

The recommended page limit does not apply to the cover sheet; the budget section, including the budget narrative justification; the assurances and certifications; the project abstract; the resumes; and the appendices.

3. **Submission Dates and Times:**  
**Applications Available:** January 23, 2006.

**Deadline for Transmittal of Applications:** March 24, 2006.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. **Other Submission Requirements** in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. **Intergovernmental Review:** This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. **Funding Restrictions:** This program has a statutory requirement prohibiting the use of Federal funds to supplant non-Federal funds. Under 34 CFR 75.563, if a grantee decides to charge indirect costs to a program with this type of statutory requirement, the grantee shall use a restricted indirect cost rate computed under 34 CFR 76.564 through 76.569. Also, under section 7205(b) of the ESEA, not more than five percent of funds provided to a grantee under this competition for any fiscal year may be used for administrative purposes. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. **Other Submission Requirements:** Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. **Electronic Submission of Applications.**

Applications for grants under the Native Hawaiian Education Program—CFDA Number 84.362A must be submitted electronically using the Grants.gov Apply site at: <http://www.grants.gov>. Through this site, you

will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the Native Hawaiian Education Program at: <http://www.grants.gov>. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition

to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at <http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf>

- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see <http://www.Grants.gov/GetStarted>). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the new Grants.gov 3-Step Registration Guide (see <http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf>).

You must also provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page limit requirements described in this notice.

- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an

exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Beth Fine, U.S. Department of Education, 400 Maryland Ave., SW., Room 3W223, Washington, DC 20202-6200 or Francisco Ramirez, U.S. Department of Education, 400 Maryland Ave., SW., Room 3W225, Washington, DC 20202-6200. FAX: (202) 260-8969.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

**b. Submission of Paper Applications by Mail.**

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

*By mail through the U.S. Postal Service:* U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.362A), 400 Maryland Avenue, SW., Washington, DC 20202-4260.

or

*By mail through a commercial carrier:* U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.362A), 7100 Old Landover Road, Landover, MD 20785-1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark,
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,
- (3) A dated shipping label, invoice, or receipt from a commercial carrier, or
- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark, or
- (2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

**c. Submission of Paper Applications by Hand Delivery.**

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.362A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260. The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

**V. Application Review Information**

**1. Selection Criteria:** The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package. The maximum possible score for this competition is 105 points (100 points under the selection criteria and 5 points under the competitive preference) The maximum possible points for each criterion are as follows:

- a. Significance and Need for Project (15 points)
- b. Quality of the Project Design (30 points)
- c. Quality of Project Personnel (10 points)
- d. Adequacy of Resources (15 points)

- e. Quality of the Management Plan (15 points)
- f. Quality of the Project Evaluation (15 points)

**VI. Award Administration Information**

**1. Award Notices:** If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

**2. Administrative and National Policy Requirements:** We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

**3. Reporting:** At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

**4. Performance Measures:** Under the Government Performance and Results Act (GPRA), the Department has developed three measures for evaluating the overall effectiveness of the Native Hawaiian Education Program—(1) Increasing the percentage of teachers who participate in professional development activities under the program that address the unique educational needs of program participants; (2) Increasing the percentage of Native Hawaiian children who participate in early education programs and improve on measures of school readiness and literacy; and (3) Increasing the percentage of students participating in the program who will meet or exceed proficiency standards in mathematics, science, or reading.

All grantees will be expected to submit an annual performance report addressing these performance measures, to the extent that they apply to the grantee's project.

**VII. Agency Contacts**

*For Further Information Contact:* Beth Fine, U.S. Department of Education, 400 Maryland Ave., SW., room 3W223,

Washington, DC 20202-6200.  
Telephone: (202) 260-1091 or by e-mail:  
[beth.fine@ed.gov](mailto:beth.fine@ed.gov) or Francisco Ramirez,  
U.S. Department of Education, 400  
Maryland Ave., SW., room 3W225,  
Washington, DC 20202-6200.  
Telephone: (202) 260-1541 or by e-mail:  
[francisco.ramirez@ed.gov](mailto:francisco.ramirez@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 program contact persons  
listed in this section.

### VIII. Other Information

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

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

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

Dated: January 17, 2006.

**Henry L. Johnson,**

*Assistant Secretary for Elementary and  
Secondary Education.*

[FR Doc. E6-750 Filed 1-20-06; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### Office of Innovation and Improvement; Overview Information; Charter School Program (CSP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance  
(CFDA) Number: 84.282A.

**DATES:** *Applications Available:* January  
23, 2006.

*Deadline for Transmittal of  
Applications:* March 10, 2006.

*Deadline for Intergovernmental  
Review:* May 9, 2006.

*Eligible Applicants:* State educational  
agencies (SEAs) in States with a State

statute specifically authorizing the  
establishment of charter schools.

**Note:** Non-SEA eligible applicants in states  
in which the SEA elects not to participate in  
or does not have an application approved  
under the CSP may apply for funding directly  
from the Department. The Department plans  
to hold a separate competition for non-SEA  
eligible applicants under CFDA Nos. 84.282B  
and 84.282C.

*Estimated Available Funds:*  
\$36,000,000.

*Estimated Range of Awards:*  
\$500,000-\$20,000,000 per year.

*Estimated Average Size of Awards:*  
\$3,000,000 per year.

*Estimated Number of Awards:* 10-12.

**Note:** The Department is not bound by any  
estimates in this notice.

*Project Period:* Up to three years.

**Note:** Planning and implementation  
subgrants awarded by an SEA to non-SEA  
eligible applicants will be awarded for a  
period of up to three years, no more than 18  
months of which may be used for planning  
and program design and no more than two  
years of which may be used for the initial  
implementation of a charter school.  
Dissemination subgrants are awarded for a  
period of up to two years.

### Full Text of Announcement

#### I. Funding Opportunity Description

*Purpose of Program:* The purpose of  
the CSP is to increase national  
understanding of the charter school  
model and to expand the number of  
high-quality charter schools available to  
students across the Nation by providing  
financial assistance for the planning,  
program design, and initial  
implementation of charter schools, and  
to evaluate the effects of charter schools,  
including their effects on students,  
student academic achievement, staff,  
and parents. The Secretary awards  
grants to SEAs to enable them to  
conduct charter school programs in  
their States. SEAs use their CSP funds  
to award subgrants to non-SEA eligible  
applicants for planning, program design,  
and initial implementation of a charter  
school and to support the dissemination  
of information about, including  
successful practices in, charter schools.

*Priorities:* In accordance with 34 CFR  
75.105(b)(2)(iv), these priorities are from  
section 5202(e) of the Elementary and  
Secondary Education Act of 1965  
(ESEA), as amended by the No Child  
Left Behind Act of 2001 (NCLB), 20  
U.S.C. 7221a(e).

*Competitive Preference Priorities:* For  
FY 2006 these priorities are competitive  
preference priorities. Under 34 CFR  
75.105(c)(2)(i) we award up to an  
additional 40 points to an application,

depending on how well the application  
meets these priorities.

In awarding grants to SEAs under this  
competition, the Secretary gives priority  
to States to the extent that the State  
meets the statutory criterion described  
in paragraph (a) of this section and one  
or more of the statutory criteria  
described in paragraphs (b) through (d)  
of this section. In order to receive  
preference, an applicant must identify  
the priorities that it believes it meets  
and provide documentation supporting  
its claims.

An SEA that meets priority (a) but  
does not meet one or more of the other  
priorities will not receive any priority  
points.

An SEA that does not meet priority (a)  
but meets one or more of the other  
priorities will not receive any priority  
points.

These priorities are:

(a) *Periodic Review and Evaluation*  
(10 points). 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 achievement requirements  
and goals for charter schools as  
provided under State law or the school's  
charter.

(b) *Number of High-Quality Charter  
Schools* (10 points). 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 an SEA  
applies for a grant under this  
competition.

(c) *One Authorized Public Chartering  
Agency Other than a Local Educational  
Agency (LEA), or an Appeals Process*  
(10 points). The State:

(1) Provides for one authorized public  
chartering agency that is not an 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* (10  
points). The State ensures that each  
charter school has a high degree of  
autonomy over the charter school's  
budgets and expenditures.

**Note:** The Secretary encourages applicants to provide citations and examples from their State charter law in responding to each of the competitive preference priorities.

**Invitational Priority:** Under this competition we are particularly interested in applications that address the following priority. For FY 2006 this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

The priority is:

The applicant proposes to plan, design, and implement one or more high-quality charter high schools in geographic areas, including urban and rural areas, in which a large proportion or number of public schools has been identified for improvement, corrective action, or restructuring under Title I, Part A of the ESEA.

**Program Authority:** 20 U.S.C. 7221–7221j.

**Applicable Regulations:** The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

## II. Award Information

**Type of Award:** Discretionary grants.

**Estimated Available Funds:**

\$36,000,000.

**Estimated Range of Awards:**

\$500,000–\$20,000,000 per year.

**Estimated Average Size of Awards:**

\$3,000,000 per year.

**Estimated Number of Awards:** 10–12.

**Note:** The Department is not bound by any estimates in this notice.

**Project Period:** Up to three years.

**Note:** Planning and implementation subgrants awarded by an SEA to non-SEA eligible applicants will be awarded for a period of up to three years, no more than 18 months of which may be used for planning and program design, and no more than two years of which may be used for the initial implementation of a charter school. Dissemination subgrants are awarded for a period of up to two years.

## III. Eligibility Information

1. **Eligible Applicants:** SEAs in States with a State statute specifically authorizing the establishment of charter schools.

**Note:** Non-SEA eligible applicants in states in which the SEA elects not to participate in or does not have an application approved under the CSP may apply for funding directly from the Department. The Department plans to hold a separate competition for non-SEA eligible applicants under CFDA Nos. 84.282B and 84.282C.

2. **Cost Sharing or Matching:** This competition does not involve cost sharing or matching.

## IV. Application and Submission Information

1. **Address to Request Application Package:** Dean Kern, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W227, FB6, Washington, DC 20202–5970. Telephone: (202) 260–1882 or by e-mail: [dean.kern@ed.gov](mailto:dean.kern@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 a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. **Content and Form of Application Submission:** Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. The Secretary strongly encourages applicants to limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A “page” is 8.5” x 11” on one side only, with 1” margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

3. **Submission Dates and Times:** Applications Available: January 23, 2006.

**Deadline for Transmittal of Applications:** March 10, 2006.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site ([Grants.gov](http://Grants.gov)). For information (including dates and times) about how to submit your application

electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. **Other Submission Requirements** in this notice.

We do not consider an application that does not comply with the deadline requirements. We do not consider an application that does not address the application requirements, selection criteria, and other required information outlined in the application package.

**Deadline for Intergovernmental Review:** May 9, 2006

4. **Intergovernmental Review:** This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. **Funding Restrictions:**

**Use of Funds for Post-Award Planning and Design of the Educational Program and Initial Implementation of the Charter School.** A non-SEA eligible applicant receiving a subgrant under this program may use the subgrant funds only for:

(a) Post-award planning and design of the educational program, which may include (i) refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and (ii) professional development of teachers and other staff who will work in the charter school; and

(b) Initial implementation of the charter school, which may include (i) informing the community about the school; (ii) acquiring necessary equipment and educational materials and supplies; (iii) acquiring or developing curriculum materials; and (iv) other initial operational costs that cannot be met from State or local sources.

**Use of Funds for Dissemination Activities.** An SEA may reserve not more than 10 percent of its grant funds to support dissemination activities. A charter school may use those funds to assist other schools in adapting the charter school’s program (or certain aspects of the charter school’s program) or to disseminate information about the charter school through such activities as:

(a) Assisting other individuals with the planning and start-up of one or more new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school’s developers and that agree to be held to at least as high a level

of accountability as the assisting charter school;

(b) Developing partnerships with other public schools, including charter schools, designed to improve student academic achievement in each of the schools participating in the partnership;

(c) Developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and

(d) Conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student achievement.

#### *Award Basis*

In determining whether to approve a grant award and the amount of such award, the Department will consider, among other things, the amount of any carryover funds the applicant has under an existing grant under the program.

We reference regulations outlining additional funding restrictions in the *Applicable Regulations* section of this notice.

#### *6. Other Submission Requirements.*

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

##### *a. Electronic Submission of Applications.*

Applications for grants under the Charter School Program, CFDA Number 84.282A must be submitted electronically using the Grants.gov Apply site at: <http://www.grants.gov>. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the Charter School program at: <http://www.grants.gov>. You must search for the downloadable application package for this program by

the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow with Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at <http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf>.
- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see <http://www.Grants.gov/GetStarted>). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see <http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf>). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business dates to complete,

and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are prevented from electronically submitting your application on the application deadline date because of technical programs with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a

technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

**Exception to Electronic Submission Requirement:** You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because:

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Dean Kern, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W227, FB6, Washington, DC 20202-5970. FAX: (202) 205-5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

**b. Submission of Paper Applications by Mail.**

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the

Department at the applicable following address:

*By mail through the U.S. Postal Service:* U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.282A, 400 Maryland Avenue, SW., Washington, DC 20202-4260, or

*By mail through a commercial carrier:* U.S. Department of Education, Application Control Center—Stop 4260, Attention: CFDA Number 84.282A, 7100 Old Landover Road, Landover, MD 20785-1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark,
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,
- (3) A dated shipping label, invoice, or receipt from a commercial carrier, or
- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark, or
- (2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

**c. Submission of Paper Applications by Hand Delivery.**

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.282A, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department:

- (1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424) the CFDA

number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

**V. Application Review Information**

**Selection Criteria:** Applicants applying for CSP grant funds must address both the statutory application requirements and the selection criteria described in the following paragraphs. Each applicant applying for CSP grant funds may choose to respond to the application requirements in the context of its responses to the selection criteria.

(a) **Application Requirements.** (i) Describe the objectives of the SEA's charter school grant program and describe how these objectives will be fulfilled, including steps taken by the SEA to inform teachers, parents, and communities of the SEA's charter school grant program;

(ii) Describe how the SEA will inform each charter school in the State about Federal funds the charter school is eligible to receive and Federal programs in which the charter school may participate;

(iii) Describe how the SEA will ensure that each charter school in the State receives the school's commensurate share of Federal education funds that are allocated by formula each year, including during the first year of operation of the school and a year in which the school's enrollment expands significantly;

(iv) Describe how the SEA will disseminate best or promising practices of charter schools to each local educational agency (LEA) in the State;

(v) If an SEA elects to reserve part of its grant funds (no more than 10 percent) for the establishment of a revolving loan fund, describe how the revolving loan fund would operate;

(vi) If an SEA desires the Secretary to consider waivers under the authority of the CSP, include a request and justification for any waiver of statutory or regulatory provisions that the SEA believes is necessary for the successful operation of charter schools in the State; and

(vii) Describe how charter schools that are considered to be LEAs under State law and LEAs in which charter schools are located will comply with sections 613(a)(5) and 613(e)(1)(B) of the Individuals with Disabilities Education Act.



(b) *Selection Criteria.* The following selection criteria are from the authorizing statute for this program and 34 CFR 75.210 of EDGAR.

SEAs that propose to use a portion of their grant funds for dissemination activities must address each selection criterion (i) through (v) individually and title each accordingly. SEAs that do not propose to use a portion of their grant funds for dissemination activities must address selection criteria (i) through (iv) only, and need not address selection criterion (v). SEAs that do not address criterion (v) because they are not proposing to use a portion of their grant funds for dissemination activities will not be penalized.

The maximum possible score is 120 points for SEAs that do not propose to use grant funds to support dissemination activities and 150 points for SEAs that propose to use grant funds to support dissemination activities.

The maximum possible score for each criterion is indicated in parentheses following the criterion.

In evaluating an application, the Secretary considers the following criteria:

(i) The contribution the charter schools grant program will make in assisting educationally disadvantaged and other students to achieve State academic content standards and State student academic achievement standards (30 points).

**Note:** The Secretary encourages applicants to provide a description of the objectives for the SEA's charter school grant program and how these objectives will be fulfilled, including steps taken by the SEA to inform teachers, parents, and communities of the SEA's charter school grant program and how the SEA will disseminate best or promising practices of charter schools to each LEA in the State.

(ii) The degree of flexibility afforded by the SEA to charter schools under the State's charter school law (30 points).

**Note:** The Secretary encourages the applicant to include a description of how the State's law establishes an administrative relationship between the charter school and the authorized public chartering agency and exempts charter schools from significant State or local rules that inhibit the flexible operation and management of public schools.

The Secretary also encourages the applicant to include a description of the degree of autonomy charter schools have achieved over such matters as the charter school's budget, expenditures, daily operation, and personnel in accordance with their State's law.

(iii) The number of high-quality charter schools to be created in the State (30 points).

**Note:** The Secretary considers the SEA's reasonable estimate of the number of new charter schools to be authorized and opened in the State during the three year period of this grant.

The Secretary also considers how the SEA will inform each charter school in the State about Federal funds the charter school is eligible to receive and ensure that each charter school in the State receives the school's commensurate share of Federal education funds that are allocated by formula each year, including during the first year of operation of the school and during a year in which the school's enrollment expands significantly.

(iv) The quality of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (30 points).

**Note:** In addition to describing the proposed objectives of the SEA charter school grant program and how these objectives will be fulfilled, the Secretary encourages applicants to provide descriptions of the steps to be taken by the SEA to award subgrant funds to eligible applicants desiring to receive these funds, including descriptions of the peer review process the SEA will use to review applications for assistance, the timelines for awarding such funds, and how the SEA will assess the quality of the applications.

(v) In the case of SEAs that propose to use grant funds to support dissemination activities under section 5204(f)(6) of the ESEA, the quality of the dissemination activities (15 points) and the likelihood that those activities will improve student academic achievement (15 points).

**Note:** The Secretary encourages applicants to describe the steps to be taken by the SEA to award these funds to eligible applicants, including descriptions of the peer review process the SEA will use to review applications for dissemination, the timelines for awarding such funds, and how the SEA will assess the quality of the applications.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we will notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other

requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. For specific requirements on grantee reporting, please go to the ED Performance Report Form 524B at <http://www.ed.gov/fund/grant/apply/appforms/appforms.html>.

4. *Performance Measures:* The goal of the CSP is to support the creation and development of a large number of high-quality charter schools that are free from State or local rules that inhibit flexible operation, are held accountable for enabling students to reach challenging State performance standards, and are open to all students. The Secretary has set three performance indicators to measure this goal: (1) The number of States, including the District of Columbia and Puerto Rico, with charter school laws, (2) the number of charter schools in operation around the Nation, and (3) the percentage of charter school students who are achieving at or above the proficient level on State examinations in mathematics and reading. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: Federal cost per student in implementing a successful school (defined as a school in operation for three or more years).

All grantees will be expected to submit an annual performance report documenting their contribution in assisting the Department in meeting these performance measures.

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Dean Kern, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W227, FB6, Washington, DC 20202-5961. Telephone: (202) 260-1882 or by e-mail: [dean.kern@ed.gov](mailto:dean.kern@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 program contact person listed in this section.

### VIII. Other Information

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

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

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

Dated: January 18, 2006.

**Christopher J. Doherty,**

*Acting Assistant Deputy Secretary, Office of Innovation and Improvement.*

[FR Doc. E6-755 Filed 1-20-06; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### Office of Postsecondary Education; Overview Information; Gaining Early Awareness and Readiness for Undergraduate Programs; Notice Inviting Applications for New Awards for Fiscal year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.334S (State grants) and 84.334A (Partnership grants).

**DATES:** Applications Available: January 23, 2006. Deadline for Transmittal of Applications: March 9, 2006. Deadline for Intergovernmental Review: May 2, 2006.

*Eligible Applicants:* (1) A State; or (2) a partnership consisting of (A) one or more local educational agencies acting on behalf of (i) one or more elementary schools or secondary schools, and (ii) the secondary schools that students from the schools described in (i) would normally attend; (B) one or more degree granting institutions of higher education; and (C) at least two community organizations or entities, such as businesses, professional associations, community-based

organizations, philanthropic organizations, State agencies, institutions or agencies sponsoring programs authorized under subpart 4 of part A of Title IV of the Higher Education Act of 1965, as amended, or other public or private agencies or organizations.

**Note:** For State grants, the fiscal agent/applicant must be a single State agency as designated by the State's governor. For partnership grants, the fiscal agent/applicant must be either an institution of higher education that is not pervasively sectarian or a local educational agency.

*Estimated Available Funds:* \$24,500,000 for partnership grants and \$12,000,000 for State grants.

*Estimated Range of Awards:* \$100,000-\$7,000,000 for partnership grants and \$500,000-\$3,000,000 for State grants.

*Estimated Average Size of Awards:* \$1,200,000 for partnership grants and \$3,000,000 for State grants.

*Maximum Award:* We will reject any application for a State grant that proposes a budget exceeding \$3,000,000 for a single budget period of 12 months. We will reject any application for a partnership grant that proposes a budget exceeding \$800 per student for a single budget period of 12 months. We also will reject any State or partnership grant application that proposes an increase in its budget after the first 12-month budget period. The Assistant Secretary for Postsecondary Education may change any of these maximum amounts through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 4 State grants and 20 partnership grants.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 72 months.

### Full Text of Announcement

#### I. Funding Opportunity Description

*Purpose of Program:* The purpose of the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) is to support early college preparation and awareness activities for low-income students.

*Priority:* Under this competition we are particularly interested in applications that address one or both of the following priorities.

*Invitational Priority:* For FY 2006 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

#### Invitational Priority 1

Applicants are encouraged to include plans to develop and administer an assessment in the tenth and/or eleventh grade to determine whether GEAR UP students are adequately prepared for postsecondary education. Assessments would include math and language skills, and other content areas or skills the applicant believes are sound indicators of preparedness for college-level work. The results of such an assessment would then be used as a substitute for placement tests that members of the cohort who are admitted to a partner institution of higher education would otherwise be required to take, and to guide intervention strategies that focus on the needs of individual GEAR UP students to help ensure that, by the time they graduate from high school, they are prepared for college.

The Secretary will review the results of this invitational priority (including the number of applicants who include information responsive to this priority and whether any grantees develop and administer an assessment), and may propose to modify the regulations for the GEAR UP program (34 CFR part 694) to require that grantees conduct this type of an assessment of the students receiving services through GEAR UP partnership or State grants.

#### Invitational Priority 2

Partnership applicants are encouraged to include plans to establish and maintain a financial assistance program that awards college scholarships to GEAR UP students consistent with the requirements governing GEAR UP scholarships that State grantees must meet in section 404E of the Higher Education Act of 1965, as amended. That provision includes requirements regarding the amounts of the scholarships and student eligibility. Applicants proposing plans that include this priority should be sure to consider how the financial assistance program will be administered after Federal funding for the grant has ended. Since any Federal funds or non-Federal matching contributions to be used for scholarships in future years must be obligated during the appropriate budget period, the requirement of an obligation requires that these funds be placed in a trust or other irrevocable instrument for the benefit of the GEAR UP students until such time as the funds are awarded to individual students.

**Program Authority:** 20 U.S.C. 1070a-21.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82,

84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 694.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

## II. Award Information

*Type of Award:* Discretionary grants.  
Estimated Available Funds: \$24,500,000 for partnership grants and \$12,000,000 for State grants.

*Estimated Range of Awards:*  
\$100,000—\$7,000,000 for partnership grants and \$500,000—\$3,000,000 for State grants.

*Estimated Average Size of Awards:*  
\$1,200,000 for partnership grants and \$3,000,000 for State grants.

*Maximum Award:* We will reject any application for a State grant that proposes a budget exceeding \$3,000,000 for a single budget period of 12 months. We will reject any application for a partnership grant that proposes a budget exceeding \$800 per student for a single budget period of 12 months. We also will reject any State or partnership grant application that proposes an increase in its budget after the first 12-month budget period. The Assistant Secretary for Postsecondary Education may change any of these maximum amounts through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 4 State grants and 20 partnership grants.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 72 months.

## III. Eligibility Information

1. *Eligible Applicants:* (1) A State; or (2) a partnership consisting of (A) one or more local educational agencies acting on behalf of (i) one or more elementary schools or secondary schools, and (ii) the secondary schools that students from the schools described in (i) would normally attend; (B) one or more degree granting institutions of higher education; and (C) at least two community organizations or entities, such as businesses, professional associations, community-based organizations, philanthropic organizations, State agencies, institutions or agencies sponsoring programs authorized under subpart 4 of part A of Title IV of the Higher Education Act of 1965, as amended, or other public or private agencies or organizations.

**Note:** For State grants, the fiscal agent/applicant must be a single State agency as designated by the State's Governor. For partnership grants, the fiscal agent/applicant

must be either an institution of higher education that is not pervasively sectarian or a local educational agency.

2. *Cost Sharing or Matching:* Section 404C of the Higher Education Act of 1965, as amended, requires grantees under this program to provide not less than 50 percent of the total cost of the project over six years. By regulation, a partnership may propose a non-Federal contribution of less than 50 percent, but not less than 30 percent of the total cost of the project, if the partnership includes three or fewer institutions of higher education as members and meets the high-need criteria in 34 CFR 694.7(b)(2). The non-Federal share of project costs may be in cash or in-kind. Applicants will be held to the matching commitment proposed in the application for funding, even if the proposed match is higher than the percent required by statute.

3. *Other:* For State grants, at least 25 percent, and not more than 50 percent of grant funds must be spent on early college preparation and awareness, and at least 50 percent of grant funds must be spent on postsecondary scholarships to eligible GEAR UP students. The Secretary may waive the scholarship percentage requirement if the applicant demonstrates that it has another means of providing the students with financial assistance.

## IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via the Internet by downloading the package from the program Web site at: <http://www.ed.gov/programs/gearup/index.html>.

You also may obtain a copy of the application package at the following address: Angela Oliphant, Gaining Early Awareness and Readiness for Undergraduate Programs, U.S. Department of Education, 1990 K Street, NW., suite 6101, Washington, DC 20006-8524. Telephone: (202) 502-7676.

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

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

**Page Limit:** The application narrative addresses the selection criteria that reviewers use to evaluate your application. You must limit the application narrative found in Part 4 of the application to the equivalent of no more than 40 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.

- Double space all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. Applications submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

- Use a font that is either 12-point or larger.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract.

*We will reject your application if:*

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:* Applications Available: January 23, 2006.

Deadline for Transmittal of Applications: March 9, 2006. Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: May 2, 2006.

4. *Intergovernmental Review:* These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application packages for these programs.

5. *Funding Restrictions:* We reference regulations outlining funding

restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically, unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the GEAR UP State and Partnership Competitions—CFDA Numbers 84.334S and CFDA 84.334A must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: <http://e-grants.ed.gov>.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this program after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic

submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including the GEAR UP Title Page Form, Project Budget Summary Forms and all necessary assurances and certifications.

- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

- Your electronic application must comply with any page limit requirements described in this notice.

- Prior to submitting your electronic application, you may wish to print a copy of it for your records.

- After you electronically submit your application, you will receive an automatic acknowledgment, that will include a PR/Award number (an identifying number unique to your application).

- Within three working days after submitting your electronic application, fax a signed copy of the GEAR UP Title Page Form to the Application Control Center after following these steps:

- Print the GEAR UP Title Page Form from e-Application.

- The applicant's Authorizing Representative must sign the GEAR UP Title Page Form.

- Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the GEAR UP Title Page Form.

- Fax the signed GEAR UP Title Page Form to the Application Control Center at (202) 245-6272.

- We may request that you provide us original signatures on other forms at a later date.

*Application Deadline Date Extension in Case of e-Application System Unavailability:*

If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if:

- You are a registered user of e-Application and you have initiated an electronic application for this competition; and

- (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

- (b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1-888-336-8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the e-Application system because:

- You do not have access to the Internet; or

- You do not have the capacity to upload large documents to the Department's e-Application system; and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Angela Oliphant, U.S. Department of Education, 1990 K Street, NW., suite 6101, Washington, DC 20006-8524. Fax: (202) 502-7675.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your

application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address: *By mail through the U.S. Postal Service:* U.S. Department of Education, Application Control Center, Attention: 84.334S or 84.334A (as appropriate), 400 Maryland Avenue, SW., Washington, DC 20202-4260, or *By mail through a commercial carrier:* U.S. Department of Education, Application Control Center, Attention: 84.334S or 84.334A (as appropriate), 7100 Old Landover Road, Landover, MD 20785-1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

#### *a. Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: 84.334A or 84.334S (as appropriate), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

*Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—on the GEAR UP Title Page Form the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

#### **V. Application Review Information**

*Selection Criteria:* The selection criteria for this program are from the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.210 and are listed in the application package.

#### **VI. Award Administration Information**

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The objectives of the GEAR UP program are:

(1) To increase the academic performance and preparation for postsecondary education of participating students; (2) to increase the rate of high school graduation and participation in postsecondary education of participating students; and (3) to increase educational expectations

for participating students and student and family knowledge of postsecondary education options, preparation, and financing.

To assess the performance of the program in achieving these objectives, the Department has developed a number of performance measures that are included in the application package. All grantees will be expected to submit an annual performance report documenting their success in addressing these performance measures.

#### **VII. Agency Contact**

##### **FOR FURTHER INFORMATION CONTACT:**

Angela Oliphant, Gaining Early Awareness and Readiness for Undergraduate Programs, U.S. Department of Education, 1990 K Street, NW., suite 6101, Washington, DC 20006-8524. Telephone: (202) 502-7676.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-3339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

#### **VIII. Other Information**

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

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

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

Dated: January 18, 2006.

**Sally L. Stroup,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. E6-749 Filed 1-20-06; 8:45 am]

**BILLING CODE 4000-01-P**

**DEPARTMENT OF EDUCATION****Privacy Act of 1974; System of Records—Common Services for Borrowers**

**AGENCY:** Federal Student Aid, Department of Education.

**ACTION:** Notice of a new system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, (Privacy Act), the Chief Operating Officer for Federal Student Aid of the U.S. Department of Education (Department) publishes this notice of a new system of records entitled the Common Services for Borrowers (CSB) system (18–11–16). Over the next three to four years, the Department will consolidate the activities it carries out with regard to making and servicing loans, and collecting or otherwise resolving obligations owed by an individual with respect to a loan, grant, or scholarship program authorized by the Higher Education Act of 1965, as amended (HEA). The CSB system will contain records of an individual's loan, grant, or scholarship and of transactions performed by the Department to carry out these activities. Because many of these records are currently maintained in the systems of records entitled Title IV Program Files (18–11–05) and Student Financial Assistance Collection Files (18–11–07), the Department will delete these other systems of records after it has fully phased into the new CSB system of records all of the records that are currently maintained in these systems of records. The Department seeks comment on the proposed system of records described in this notice, in accordance with the requirements of the Privacy Act.

**DATES:** We must receive your comments on the proposed routine uses for the system of records described in this notice on or before February 22, 2006.

The Department has filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on January 18, 2006. This new system of records will become effective on the later date of: (1) the expiration of the 40-day period for OMB review on February 27, 2006; or (2) February 22, 2006, unless the system of records needs to be changed as a result of public comment or OMB review.

**ADDRESSES:** Address all comments about the proposed routine uses to Patricia Dorn, Chief of Staff, Borrower Services, Federal Student Aid, U.S. Department of Education, 830 First Street, NE., Union Center Plaza, room 42G4, Washington, DC 20202–5345. If you prefer to send comments through the Internet, use the following address:

*CSBSystemofRecords@ed.gov.*

You must include the term “Common Services for Borrowers” in the subject line of your electronic message.

During and after the comment period, you may inspect all public comments about this notice in room 42H1, 4th Floor, 830 First Street, NE., Washington, DC, between the hours of 8 a.m. and 4:30 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 this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:**

Patricia Dorn, Chief of Staff, Borrower Services, Federal Student Aid, U.S. Department of Education, Union Center Plaza, 4th Floor, 830 First Street, NE., Washington, DC 20202–5345. Telephone number: (202) 377–4359. 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 in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:****Introduction**

The Privacy Act (5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in part 5b of title 34 of the Code of Federal Regulations (CFR).

The Privacy Act applies to information about individuals that is maintained in a system of records from

which individually identifiable information is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a “record,” and the system, whether manual or computer-based, is called a “system of records.” The Privacy Act requires each agency to publish notices of new or altered systems of records in the **Federal Register** and to submit reports to the Administrator of the Office of Information and Regulatory Affairs, OMB, the Chair of the House Committee on Government Reform, and the Chair of the Senate Committee on Homeland Security and Governmental Affairs, whenever the agency publishes a new or altered system of records.

**Electronic Access to This Document**

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

To use PDF you must have the 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.

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Dated: January 18, 2006.

**Theresa S. Shaw,**

*Chief Operating Officer, Federal Student Aid.*

For the reasons discussed in the preamble, the Chief Operating Officer, Federal Student Aid, U.S. Department of Education publishes a notice of the Common Services for Borrowers system of records to read as follows:

**System Number: 18–11–16**

**SYSTEM NAME:**

Common Services for Borrowers (CSB).

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Computer Sciences Corporation, 17 Deerfield Lane, Meriden, CT 06450.

See the Appendix to this notice for additional system locations.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

This system contains records on those individuals who received a loan, or who are otherwise obligated to repay a loan, grant, or scholarship held and collected by the Department of Education (Department), which was made under (1) the Federal Family Education Loan (FFEL) Program (formerly the Guaranteed Student Loan Program (GSL), including Stafford Loans, Federal Insured Student Loans (FISL), Supplemental Loans for Students (SLS), PLUS Loans (formerly Parental Loans for Undergraduate Students), and Consolidation Loans); (2) the William D. Ford Federal Direct Loan (Direct Loan) Program (formerly known as the Federal Direct Student Loan Program (FDSLPL), Federal Direct Unsubsidized and Subsidized Stafford/Ford Loans, Federal Direct Consolidation Loans, and Federal Direct PLUS Loans); (3) the Federal Perkins Loan Program (formerly known as National Direct/Defense Student Loans (NDSL)); (4) the Federal Pell Grant Program; (5) the Federal Supplemental Educational Opportunity Grant Program (FSEOG); (6) the Leveraging Educational Assistance Partnership (LEAP) Program; (7) the Special Leveraging Educational Assistance Partnership (SLEAP) Program; (8) the Paul Douglas Teacher Scholarship Program; and (9) the Teacher Quality Recruitment Scholarship Program. This system also contains records on individuals who apply for, but do not receive a Direct Loan, as well as individuals identified by the borrower or recipient of the loan, grant, or scholarship as references or as household members whose income and expenses are considered in connection with the making or enforcement of the grant, scholarship or loan.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system of records will consolidate the system of records for all activities the Department carries out with regard to making and servicing loans, including collecting or otherwise resolving obligations owed by an individual under the Higher Education Act of 1965, as amended (HEA). The system contains records including such information as the employment information, educational status, family income, social security number, address, e-mail address, and telephone numbers of those individuals obligated on the debt or whose income and expenses are included in a financial statement submitted by the individual. This system also contains records regarding the application for, agreement to repay, and disbursements on the loan,

and loan guaranty, if any; the repayment history, including deferments and forbearances; claims by lenders on the loan guaranty; cancellation or discharges on grounds of qualifying service, bankruptcy discharge, disability (including medical records submitted to support application for discharge by reason of disability), death, or other statutory or regulatory grounds for relief.

Additionally, this system contains records regarding the amount, terms, and period of scholarships, the entity that awarded the scholarship, the amount and percentage of time the recipient spends teaching, and information about the employing school and the school district. For grant overpayments, the system contains records about the amount disbursed, the school that disbursed the grant, and the basis for overpayment; for all debts, the system contains demographic, employment, and other data on the individuals obligated on the debt or provided as references by the obligor, and the collection actions taken by any holder, including write-off and compromise.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Titles II, IV-A, IV-B, IV-D, IV-E and V-C of the HEA (20 U.S.C. 1024, 1070a, 1070b-1070b-4, 1070c-1070c-4, 1070c-3a, 1071-1087-4, 1087a-1087j, and 1087aa-1087ii, and 1104 (1998); 31 U.S.C. Chapter 37).

**PURPOSE(S):**

The information contained in the records maintained in this system is used for the following reasons:

- To verify the identity of an individual.
- To determine program eligibility and benefits.
- To facilitate default reduction efforts by program participants.
- To enforce the conditions or terms of a loan, grant, or scholarship.
- To make, service, collect, assign, adjust, or discharge a loan or collect a grant or scholarship obligation.
- To counsel a debtor in repayment efforts.
- To investigate possible fraud and verify compliance with program regulations.
- To locate a delinquent or defaulted borrower, or an individual obligated to repay a loan, grant, or scholarship.
- To prepare a debt for litigation, provide support services for litigation on a debt, litigate a debt, and audit the results of litigation on a debt.
- To prepare for, conduct, or enforce a limitation, suspension, termination, or debarment action.

- To ensure that program requirements are met by educational and financial institutions and guaranty agencies.

- To verify whether a debt qualifies for discharge or cancellation.
- To conduct credit checks and respond to inquiries or disputes arising from information on the debt already furnished to a credit-reporting agency.
- To investigate complaints, update information, and correct errors contained in Department records.
- To refund credit balances back to the individual or loan holder.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the information in the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under computer matching agreements.

(1) *Program Disclosures.* The Department may disclose records for the following program purposes:

(a) To verify the identity of the individual whom the records indicate has applied for or received the loan, grant, or scholarship, disclosures may be made to guaranty agencies, educational and financial institutions, and to their authorized representatives; to Federal, State, or local agencies; to private parties such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; to adjudicative bodies; and to the individual whom the records identify as the party obligated to repay the debt.

(b) To determine program eligibility and benefits, disclosures may be made to guaranty agencies, educational and financial institutions, and to their authorized representatives; to Federal, State, or local agencies; to private parties such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; and to adjudicative bodies.

(c) To facilitate default reduction efforts by program participants, disclosures may be made to guaranty agencies, educational and financial institutions, and to their authorized representatives; to Federal, State, or local agencies; to consumer reporting agencies; and to adjudicative bodies.

(d) To enforce the conditions or terms of the loan, grant or scholarship, disclosures may be made to guaranty agencies, educational and financial institutions, and to their authorized representatives; to Federal, State, or local agencies; to private parties such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; and to adjudicative bodies.

(e) To permit making, servicing, collecting, assigning, adjusting, or discharging a loan, or collecting a grant or scholarship obligation, disclosures may be made to guaranty agencies, educational institutions, or financial institutions that made, held, serviced, or have been assigned the debt, and to their authorized representatives; to a party identified by the debtor as willing to advance funds to repay the debt; to Federal, State, or local agencies; to private parties such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; and to adjudicative bodies.

(f) To counsel a debtor in repayment efforts, disclosures may be made to guaranty agencies, educational and financial institutions, and to their authorized representatives; and to Federal, State, or local agencies.

(g) To investigate possible fraud and verify compliance with program regulations, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies; to private parties such as relatives, present and former employers and creditors, and business and personal associates; to consumer reporting agencies; and to adjudicative bodies.

(h) To locate a delinquent or defaulted borrower, or an individual obligated to repay a loan, grant or scholarship, disclosures may be made to guaranty agencies, educational and financial institutions, and to their authorized representatives; to Federal, State, or local agencies; to private parties such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; and to adjudicative bodies.

(i) To prepare a debt for litigation, to provide support services for litigation on a debt, to litigate a debt, and to audit the results of litigation on a debt, disclosures may be made to guaranty agencies and their authorized representatives; to Federal, State, or local agencies; and to adjudicative bodies.

(j) To prepare for, conduct, or enforce a limitation, suspension, and termination (LS&T) or a debarment action, disclosures may be made to guaranty agencies, educational or financial institutions, and to their authorized representatives; to Federal, State, or local agencies; and to adjudicative bodies.

(k) To ensure that HEA program requirements are met by educational institutions, financial institutions, and guaranty agencies, disclosures may be made to guaranty agencies, educational or financial institutions, to their authorized representatives, and to auditors engaged to conduct an audit of a guaranty agency or an educational or financial institution; to Federal, State, or local agencies or accrediting agencies; and to adjudicative bodies.

(l) To verify whether a debt qualifies for discharge or cancellation, disclosures may be made to guaranty agencies, educational and financial institutions, and to their authorized representatives; to Federal, State, or local agencies; to private parties such as relatives, present and former employers and creditors, and business and personal associates; to consumer reporting agencies; and to adjudicative bodies.

(m) To conduct credit checks and to respond to inquiries or disputes arising from information on the debt already furnished to a credit reporting agency, disclosures may be made to credit reporting agencies; to guaranty agencies, educational and financial institutions, and to their authorized representatives; to Federal, State, or local agencies; to private parties such as relatives, present and former employers and creditors, and business and personal associates; and to adjudicative bodies.

(n) To investigate complaints, to update information and correct errors contained in Department records, disclosures may be made to guaranty agencies, educational and financial institutions, and to their authorized representatives; to Federal, State, or local agencies; to private parties such as relatives, present and former employers and creditors, and business and personal associates; to credit reporting agencies; and to adjudicative bodies.

(o) To refund credit balances that are processed through the Department's systems, as well as the Department of Treasury's payment applications, back to the individual or loan holder, disclosures may be made to guaranty agencies, educational and financial institutions, and to their authorized representatives; to Federal, State, or local agencies; and to private parties such as relatives, present and former

employers and creditors, and business and personal associates.

(2) *Feasibility Study Disclosure.* The Department may disclose information from this system of records to other Federal agencies and to guaranty agencies, and to their authorized representatives, to determine whether computer matching programs should be conducted by the Department regarding an individual's application for student financial assistance or compliance with the terms of such assistance, under a program administered by the Department. These computer matching programs may be used to determine program eligibility and benefits, facilitate default reduction efforts, enforce the conditions and terms of a loan or grant, permit the servicing and collecting of the loan or grant, enforce debarment, suspension, and exclusionary actions, counsel the individual in repayment efforts, investigate possible fraud and verify compliance with program regulations, locate a delinquent or defaulted debtor, and initiate legal action against an individual involved in program fraud or abuse.

(3) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the receiving entity's jurisdiction.

(4) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(5) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:



(i) The Department or any of its components; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has been requested to or has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the Department has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual, or an entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, Counsels, Representatives, or Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness is relevant and necessary to the litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(6) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other

personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(7) *Employee Grievance, Complaint or Conduct Disclosure.* If a record is relevant and necessary to an employee grievance, complaint, or disciplinary action, the Department may disclose the record in the course of investigation, fact-finding, or adjudication to any witness, designated fact-finder, mediator, or other person designated to resolve issues or decide the matter.

(8) *Labor Organization Disclosure.* The Department may disclose a record from this system of records to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of a labor organization recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation.

(9) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the DOJ and the OMB if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(10) *Disclosure to the DOJ.* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(11) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(12) *Research Disclosure.* The Department may disclose records to a researcher if the Chief of Staff of Borrower Services of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain

Privacy Act safeguards with respect to the disclosed records.

(13) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a member of Congress and his/her staff in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested the inquiry.

(14) *Disclosure to OMB for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements.

#### **DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Pursuant to 5 U.S.C. 552a(b)(12), the Department may disclose to a consumer reporting agency information regarding a claim by the Department that is determined to be valid and overdue; such information is limited to: (1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined in 31 U.S.C. 3701(a)(3).

#### **POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

##### **STORAGE:**

The records are maintained in hardcopy, microfilm, magnetic storage and optical storage media, such as tape, disk, etc.

##### **RETRIEVABILITY:**

Records in this system are retrievable by social security number or name of the borrower.

##### **SAFEGUARDS:**

All physical access to the Department's site, and the sites of the Department's contractors where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

In accordance with the Department's Administrative Communications System Directive OM: 5-101 entitled "Contractor Employee Personnel Security Screenings," all contract and

Department personnel who have facility access and system access are required to undergo a security clearance investigation. Individuals requiring access to Privacy Act data are required to hold, at a minimum, a moderate-risk security clearance level. These individuals are required to undergo periodic screening at five-year intervals.

In addition to conducting security clearances, contract and Department employees are required to complete security awareness training on an annual basis. Annual security awareness training is required to ensure that contract and Department users are appropriately trained in safeguarding Privacy Act data in accordance with OMB Circular No. A-130, Appendix III.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a "need-to-know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user identification. The Department's Federal Student Aid Information Security and Privacy Policy requires the enforcement of a complex password policy. In addition to the enforcement of the complex password policy, users are required to change their password at least every 60 to 90 days in accordance with the Department's information technology standards.

At the principal site of the Department's contractor in Meriden, Connecticut, additional physical security measures are in place and access is monitored 24 hours per day, 7 days a week.

#### RETENTION AND DISPOSAL:

Records are retained for five years after the debt is paid in full or otherwise closed out, and thereafter disposed of.

#### SYSTEM MANAGER AND ADDRESS:

General Manager, Borrower Services, Federal Student Aid, U.S. Department of Education, 830 First Street, NE., Union Center Plaza, 4th Floor, Washington, DC 20202-5345.

#### NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, provide the system manager with your name, date of birth and social security number. Requests must meet the requirements of the regulations in 34 CFR 5b.5, including proof of identity.

#### RECORD ACCESS PROCEDURE:

If you wish to gain access to a record in this system, provide the system manager with your name, date of birth, and social security number. Requests by an individual for access to a record must meet the requirements of the regulations in 34 CFR 5b.5, including proof of identity.

#### CONTESTING RECORD PROCEDURE:

If you wish to change the content of a record regarding you in the system of records, contact the system manager with your name, date of birth, and social security number, identify the specific items to be changed; and provide a written justification for the change. Requests to amend a record must meet the requirements of the regulations in 34 CFR 5b.7.

#### RECORD SOURCE CATEGORIES:

The system includes information that the Department obtains from applicants and those individuals and their families who received a loan, or who are otherwise obligated to repay, a loan, grant, or scholarship held and collected by the Department. The Department also obtains information from references, guaranty agencies, educational and financial institutions, and their authorized representatives, Federal, State, or local agencies, private parties such as relatives, business and personal associates, and present and former employers; creditors, consumer reporting agencies, and adjudicative bodies.

#### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

#### Appendix to 18-11-16 Additional System Locations

##### Additional System Locations

U.S. Department of Education, 830 First Street, NE., UCP, Washington, DC 20202-5345.  
 U.S. Department of Education, 50 United Nations Plaza, San Francisco, CA 94102.  
 U.S. Department of Education, 111 North Canal Street, Chicago, IL 60606.  
 U.S. Department of Education, 61 Forsyth Street, Atlanta, GA 30303.  
 Pearson Government Solutions, 3833 Greenway Drive, Lawrence, KS 66046-5441.  
 Pearson Government Solutions, 2400 Oakdale Boulevard, Coralville, IA 52241.  
 ACS Education Services, Inc., 501 Bleecker Street, Utica, NY 13501.  
 ACS Education Services, Inc., 401 34th Street, Bakersfield, CA 93301.  
 ACS Education Services, Inc., 2277 East 220th Street, Long Beach, CA 90810.  
 ACS Education Services, Inc., 2505 S. Finley Road, Suite 100, Lombard, IL 60148-4866.  
 ACS Education Solutions, LLC, 12410 Milestone Center Drive, Germantown, MD 20876.

ACS Education Solutions, LLC, 1 Curie Court, Rockville, MD 20850.  
 Electronic Data Systems Corporation, 5th Floor, 10100 Linn Station Road, Louisville, KY 40223.  
 Electronic Data Systems Corporation, 5th Floor, 474 South Court Street, Montgomery, AL 36104.  
 Raytheon Company, 6201 I-30, Greenville, TX 75403.  
 Affiliated Computer Services, Inc., 2828 N. Haskell Avenue, Building 5, 2nd Floor, Dallas, TX 75204.  
 ABR Services, Inc., 14847 Persistence Drive, Woodbridge, VA 22191.  
 ACS Print and Mail Services (Data Direct), 11475 Reeck Road, Southgate, MI 48195.  
 EU Services, 649 North Horners Lane, Rockville, MD 20850.  
 ACS State Healthcare Solutions, 9040 Roswell Road, Suite 700, Atlanta, GA 30350.

[FR Doc. E6-746 Filed 1-20-06; 8:45 am]

BILLING CODE 4000-01-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 (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, February 8, 2006, at 6 p.m.

**ADDRESSES:** DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

**FOR FURTHER INFORMATION CONTACT:** Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM-90, Oak Ridge, TN 37831. Phone (865) 576-4025; Fax (865) 576-5333 or e-mail: [halseypj@oro.doe.gov](mailto: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:* Strategic Planning for East Tennessee Technology Park Following Cleanup.

*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, P.O. Box 2001, EM-90, Oak Ridge, TN 37831, or by calling her at (865) 576-4025.

Issued at Washington, DC on January 17, 2006.

**James N. Solit,**

*Advisory Committee Management Officer.*

[FR Doc. E6-721 Filed 1-20-06; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. EC06-45-000, *et al.*]

#### **Berkshire Hathaway, Inc. *et al.*; Electric Rate and Corporate Filings**

January 13, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

#### **1. Berkshire Hathaway Inc. and MidAmerican Energy Holdings Company**

[Docket No. EC06-45-000]

Take notice that on December 27, 2005, Berkshire Hathaway Inc. and MidAmerican Energy Holdings Company (collectively, Applicants) tender for filing a notice of their withdrawal of their application under section 203 of the Federal Power Act submitted on December 21, 2005.

*Comment Date:* 5 p.m. Eastern Time on January 23, 2006.

#### **2. PJM Interconnection, LLC**

[Docket No. EL02-23-010]

Take notice that on December 30, 2005, PJM Interconnection, LLC tendered for filing in compliance with Commission's Order of May 18, 2005, an information filing concerning operating of the "Protocols" adopted by the Commission in this proceeding.

*Comment Date:* 5 p.m. Eastern Time on January 20, 2006.

#### **3. Consolidated Edison Company of New York, Inc.**

[Docket No. EL02-23-01]

Take notice that on December 30, 2005, Consolidated Edison Company of New York, Inc. tendered for filing in compliance with Commission's Order of May 18, 2005, an information filing concerning operating of the "Protocols" adopted by the Commission in this proceeding.

*Comment Date:* 5 p.m. Eastern Time on January 20, 2006.

#### **4. United Illuminating Company**

[Docket no. ER03-31-009]

Take notice that on January 4, 2006, the United Illuminating Company tendered for filing an Interconnection Agreement By and Between the United Illuminating Company and Cross-Sound Cable Company, LLC in compliance with Commission Order issued December 5, 2005.

*Comment Date:* 5 p.m. Eastern Time on January 25, 2006.

#### **5. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER06-435-001]

Take notice that on January 6, 2006, the Midwest Independent Transmission System Operator, Inc. tendered for filing a supplement to its December 30, 2005 filing of Large Generator Interconnection Agreement.

*Comment Date:* 5 p.m. Eastern Time on January 27, 2006.

#### **6. Xcel Energy Operating Companies**

[Docket No. ER06-468-000]

Take notice that on January 6, 2006, Xcel Energy Services Inc. (XSE) tendered for filing Joint Open Access Transmission Tariff, First Revised Volume No. 1, Second Revised Sheet No. 154; Second Revised Sheet No. 297 thru 300; and Second Revised Sheet No. 309. XSE states that these tariff sheets are being submitted on behalf of its utility operating companies.

*Comment Date:* 5 p.m. Eastern Time on January 27, 2006.

## Standard Paragraph

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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-689 Filed 1-20-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. EC06-4-001, *et al.*]

#### **LG&E Energy LLC *et al.*; Electric Rate and Corporate Filings**

January 17, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. LG&E Energy LLC, Louisville Gas and Electric Company, et al.**

[Docket Nos. EC06-4-001 and ER06-20-001]

Take notice that on January 10, 2006, LG&E Energy LLC, together with and on behalf of its public utility operating company subsidiaries Louisville Gas and Electric Company (collectively, Applicants), filed amendments to its application with the Commission seeking acceptance of certain rates, terms, and conditions necessary for them to: (1) Withdraw from the Midwest Independent Transmission System Operator, Inc., and regain operational control of their respective transmission system, (2) install a third party to act as reliability coordinator for their transmission facilities; and (3) install an independent third party to act as tariff administrator for their transmission system. Applicants state the amendments include finalized versions of their Independent Transmission System Organization and Reliability Coordinator Agreements, as well as a final version of Applicants' Withdrawal Agreement with the Midwest ISO.

*Comment Date:* 5 p.m. Eastern Time on January 25, 2006.

**2. Duke Energy Marketing America, LLC, DTE Energy Trading, Inc.**

[Docket No. EC06-62-000]

Take notice that on January 11, 2006, Duke Energy Marketing America, LLC (DEMA) and DTE Energy Trading, Inc. (DTE Energy) (collectively, Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities in which DEMA proposes to transfer to DTE Energy three wholesale electric power sales contracts. Applicants have requested privileged treatment for commercially-sensitive information contained in the Application.

*Comment Date:* 5 p.m. Eastern Time on February 2, 2006.

**3. Duke Energy Trading and Marketing, L.L.C.**

[Docket No. EC06-63-000]

Take notice that on January 12, 2006, Duke Energy Trading and Marketing, L.L.C. (DETM) submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities in which DETM proposes to transfer to Morgan Stanley Capital Group Inc. two wholesale electric power sales contracts. DETM has requested privileged treatment for commercially-sensitive information contained in the Application.

*Comment Date:* 5 p.m. Eastern Time on February 3, 2006.

**4. City of Azusa, California**

[Docket No. EL06-23-000]

Take notice that on January 3, 2006, the City of Azusa, California submitted correction to its December 2, 2005 filing of third annual revision to its Transmission Revenue Balancing Account Adjustment.

*Comment Date:* 5 p.m. Eastern Time on January 27, 2006.

**Standard Paragraph**

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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-692 Filed 1-20-06; 8:45 am]

BILLING CODE 6717-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-ORD-2006-0031; FRL-8023-6]

**Board of Scientific Counselors, Executive Committee Meeting—February 2006**

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

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92-463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting of the Board of Scientific Counselors (BOSC) Executive Committee.

**DATES:** The meeting will be held on Monday, February 13, 2006 from 8:30 a.m. to 5:30 p.m. The meeting will continue on Tuesday, February 14, 2006 from 8:30 a.m. to 1 p.m. All times noted are eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to 1 business day before the meeting.

**ADDRESSES:** The meeting will be held at the Grand Hyatt Washington hotel, 1000 H Street, NW., Washington, DC 20001. Submit your comments, identified by Docket ID No. EPA-HQ-ORD-2006-0031, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: [ORD.Docket@epa.gov](mailto:ORD.Docket@epa.gov), Attention Docket ID No. EPA-HQ-ORD-2006-0031.
- *Fax:* Fax comments to: (202) 566-0224, Attention Docket ID No. EPA-HQ-ORD-2006-0031.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Executive Committee Meeting—February 2006 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA-HQ-ORD-2006-0031.

- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA-HQ-ORD-2006-0031.

**Note:** This is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-ORD-2006-

0031. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Board of Scientific Counselors, Executive Committee—February 2006 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the ORD Docket is (202) 566-1752.

**FOR FURTHER INFORMATION CONTACT:** The Designated Federal Officer via mail at:

Lorelei Kowalski, Mail Code 8104-R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564-3408; via fax at: (202) 565-2911; or via e-mail at: [kowalski.lorelei@epa.gov](mailto:kowalski.lorelei@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Lorelei Kowalski, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the meeting include, but are not limited to: discussion of draft reports from the Global Change and Land Subcommittees, and draft letter report from the Management Multi-Year Plan Workgroup; update on subcommittees for the Water Quality, Science to Achieve Results (STAR)/Greater Research Opportunities (GRO) Fellowship, and Technology for Sustainability program reviews; update on the Computational Toxicology Subcommittee; update on the BOSC risk assessment workshop held in February 2005; briefing on ORD's technology for sustainability research program; presentation of ORD responses to four recent BOSC reports; update on EPA's Science Advisory Board activities; discussion of emerging science issues; and future issues and plans. The meeting is open to the public.

**Information on Services for Individuals with Disabilities:** For information on access or services for individuals with disabilities, please contact Lorelei Kowalski at (202) 564-3408 or [kowalski.lorelei@epa.gov](mailto:kowalski.lorelei@epa.gov). To request accommodation of a disability, please contact Lorelei Kowalski, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 13, 2006.

**Mary Ellen Radzikowski,**  
*Acting Director, Office of Science Policy.*  
[FR Doc. E6-726 Filed 1-20-06; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2005-0302; FRL-7751-9]

### Notice of Filing of a Pesticide Petition for the Establishment of Regulations for the Residues of the Insecticide Metaflumizone in or on Food and Feed Commodities

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of the insecticide metaflumizone (mixture comprising 4-(2E)-2-([4-(trifluoromethoxy)anilino] carbonylhydrazono)-2-[3-(trifluoromethyl)phenyl] ethylbenzotrile and 4-(2Z)-2-([4-(trifluoromethoxy)anilino] carbonyl hydrazono)-2-[3-(trifluoromethyl) phenyl] ethylbenzotrile) in or on cotton (seed and gin trash), cattle and hen (fat and meat), liver and kidney (meat byproducts), milk and egg.

**DATES:** Comments must be received on or before February 22, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2005-0302 and pesticide petition (PP) number PP 5F6944, by one of the following methods:

- <http://www.regulations.gov/>. Follow the on-line instructions for submitting comments.
- *E-mail:* [opp.docket@epa.gov](mailto:opp.docket@epa.gov).
- *Mail:* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Hand Delivery:* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA-HQ-OPP-2005-0302. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305-5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to docket ID number EPA-HQ-OPP-2005-0302. EPA's policy is that all comments received will be included in the public

docket without change and may be made available on-line at <http://www.regulations.gov/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/docket.htm/>.

*Docket:* All documents in the docket are listed in the [www.regulation.gov](http://www.regulation.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Ann Hanger, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number:

(703) 306-0395; e-mail address: [hanger.ann@epa.gov](mailto:hanger.ann@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 112).
- Animal production (NAICS code 311).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

- Describe any assumptions and provide any technical information and/or data that you used.

- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- Make sure to submit your comments by the comment period deadline identified.

##### II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the amendment of regulations in 40 CFR part 180.473(d) for the residues of the insecticide metaflumizone (mixture comprising 4-(2E)-2-([4-(trifluoromethoxy) anilino] carbonylhydrazono)-2-[3-(trifluoromethyl) phenyl] ethylbenzotrile and 4-(2Z)-2-([4-(trifluoromethoxy)anilino] carbonylhydrazono)-2-[3-(trifluoromethyl) phenyl]ethylbenzotrile) in or on cotton (seed and gin trash); cow and hen (meat and fat); kidney and liver (meat byproducts); milk, and egg food and feed commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at <http://www.regulations.gov/>. To locate this information on the home page of EPA's Electronic Docket, select "Quick Search" and type the OPP docket ID number EPA-HQ-OPP-2005-0302 for the pesticide petition (as specified in Unit I.B.1.) in the search field. Once the search has located the docket, clicking on the "Docket ID" will bring up a list of all documents in the

docket for the pesticide including the petition summary.

### New Tolerance

PP 5F6944. BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709, proposes to establish tolerances for residues of the insecticide metaflumizone in or on the commodities cotton, seed at 0.05 parts per million (ppm); cotton, gin trash at 35.0 ppm; cattle and poultry, meat at 0.05 ppm; cattle and poultry, fat at 0.5 ppm; kidney and liver, meat byproducts at 0.05 ppm; milk at 0.05 ppm; and eggs at 0.1 ppm. BASF Analytical Method No. 531/0 was developed to determine residues of metaflumizone (E- and Z-Isomer) and its metabolites (M320I04 and M320I23), the residues of concern in plants and in crop matrices. In this method, residues of metaflumizone are extracted from plant matrices with methanol/water (70:30; v/v) and then partitioned into dichloromethane. For oily matrices, the residues are extracted with a mixture of isohexane/acetonitrile (1:1; v/v). For animal matrices, a method was developed to determine the residues of metaflumizone (E- and Z-Isomer), the residues of concern. For clean-up, a liquid/liquid partition against dichloromethane is used. The final determination of metaflumizone is performed by using HPLC-MS-MS.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 12, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 06-578 Filed 1-20-06; 8:45 am]

BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2005-0319; FRL-7750-3]

### Notice of Filing of a Pesticide Petition for the Establishment of an Exemption from the Requirement of a Tolerance for Residues of C10-C11 Rich Aromatic Hydrocarbon Fluid in or on Food Commodities

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of an exemption from the requirement of a

tolerance for residues of C10-11 rich aromatic hydrocarbon fluid (Aromatic 150 Fluid) in or on food commodities when used as an inert ingredient in pesticide products.

**DATES:** Comments must be received on or before February 22, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2005-0319 and pesticide petition (PP) number 4E6934, by one of the following methods:

- <http://www.regulations.gov/>. Follow the on-line instructions for submitting comments.

- *E-mail:* [opp.ncic@epa.gov](mailto:opp.ncic@epa.gov).

- *Mail:* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery:* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA-HQ-OPP-2005-0319. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305-5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to docket ID number EPA-HQ-OPP-2005-0319. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact

information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/docket.htm/>.

**Docket:** All documents in the docket are listed in the [www.regulation.gov](http://www.regulation.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305-5805.

### FOR FURTHER INFORMATION CONTACT:

Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8380; e-mail address: [gandhi.bipin@epa.gov](mailto:gandhi.bipin@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to

assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify this document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
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- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

## II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment of an exemption from the requirement of

regulations in 40 CFR part 180 for residues of C10–11 rich aromatic hydrocarbon fluid (Aromatic 150 Fluid) in or on food commodities when used as an inert ingredient in pesticide products. EPA has determined that the pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on the pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at <http://www.regulations.gov/>. To locate this information on the home page of EPA's Electronic Docket, select "Quick Search" and type the OPP docket ID number "EPA-HQ-OPP-2005-0319" in the search field. Once the search has located the docket, clicking on the "Docket ID" will bring up a list of all documents in the docket for the pesticide including the petition summary.

### New Exemption from the Requirement of a Tolerance

*PP 5E6934.* ExxonMobil Chemical Company (ExxonMobil), Division of Exxon Mobil Corporation, 13501 Katy Freeway, Houston, TX 77079, proposes to establish an exemption from the requirement of a tolerance for residues of C10–11 rich aromatic hydrocarbon fluid (Aromatic 150 Fluid) in or on food commodities when used as an inert ingredient in pesticide products. Because this petition is a request for a tolerance exemption without numerical limitations, no analytical method is required.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 12, 2006.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 06–571 Filed 1–20–06; 8:45 am]

**BILLING CODE 6560–50–S**

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–06–65–A (Auction No. 65); DA 06–3]

### Auction of 800 MHz Air-Ground Radiotelephone Service Licenses

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the auction of new nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65), scheduled to commence on May 10, 2006. This document also seeks comments on reserve prices or minimum opening bids and other procedures for Auction No. 65.

**DATES:** Comments are due on or before January 31, 2006 and reply comments are due on or before February 7, 2006.

**ADDRESSES:** Comments and reply comments must be sent by electronic mail to the following address: [auctions65@fcc.gov](mailto:auctions65@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** *For legal questions:* Brian Carter at (202) 418–0660. *For general auction questions:* Jeff Crooks at (202) 418–0660. *For service rules questions:* Erin McGrath or Richard Arsenault (legal); or Jay Jackson or Moslem Sawez (technical) at (202) 418–0620.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 65 Comment Public Notice* released on January 10, 2006. The complete text of the *Auction No. 65 Comment Public Notice*, including attachments and related Commission documents is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 p.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 65 Comment Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI please provide the appropriate FCC document number for example, DA 06–3. The *Auction No. 65 Comment Public Notice* and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/65/>.



## I. Licenses To Be Offered in Auction No. 65

1. *Alternative Band Configurations.* The Commission will auction licenses in three alternative band configurations: (1) Band Plan 1, comprised of two overlapping, shared, cross-polarized 3 MHz licenses (Licenses A and B, respectively), (2) Band Plan 2, comprised of an exclusive 3 MHz license and an exclusive 1 MHz license (Licenses C and D, respectively), and (3) Band Plan 3, comprised of an exclusive 1 MHz license and an exclusive 3 MHz license (Licenses E and F, respectively), with the blocks at opposite ends of the band from Band Plan 2. Licenses in only one of these mutually incompatible band configurations will be awarded. The band plan that receives the highest aggregate bids in the auction will be implemented, and licenses composing that configuration will be awarded to winning bidders subject to review of the long-form license applications. Because the three band configurations are mutually incompatible, applications for licenses in different band plans will be mutually exclusive. The descriptions and licenses available in Auction No. 65 are listed in Attachment A of the *Auction No. 65 Comment Public Notice*.

2. *Permissible Services.* A new licensee may provide any type of air-ground service (*i.e.*, voice telephony, broadband Internet, data, etc.) to aircraft of any type, and serve any or all aviation markets (commercial, government, and general). A licensee must provide service to aircraft. A new licensee may not provide ancillary land mobile or fixed services in the 800 MHz air-ground spectrum.

3. *Eligibility Restriction.* In order to promote competition in the 800 MHz air-ground band, the Commission has prohibited any party from obtaining a controlling interest, either at auction or by a post-auction transaction, in new licenses for more than three megahertz of spectrum (either shared or exclusive) in the band. No single party, therefore, may hold more than one license in any of the available band configurations.

4. *International Coordination.* To promote interoperable communications and to manage interference, some of the ground station locations in North America and channel block assignments of the 800 MHz air-ground band have been predetermined consistent with bilateral agreements with Mexico and with Canada. These agreements, which provide for coordinated use of the 800 MHz air-ground frequencies over North American airspace, are based on a narrow bandwidth channel scheme, and therefore may need to be renegotiated to

provide for more flexible use of this spectrum based on the band plan configuration that is implemented as a result of the auction.

5. *Spectrum Sharing Plan.* If Band Plan 1, which is comprised of two overlapping 3 MHz licenses, is implemented, the new licensees will be required to jointly file a spectrum sharing and site selection plan with the Wireless Telecommunications Bureau (Bureau) within six months of the initial grant of their spectrum licenses, and they will be required to notify the Bureau of any changes to the plan. The Bureau will issue a public notice prior to the commencement of Auction No. 65 in which it will specify the filing requirements for such a plan. This approach will provide parties with overlapping spectrum licenses flexibility to configure their systems without having to adhere to minimum spacing requirements or site locations predetermined by the Commission.

6. *Incumbent Licensee.* In the Air-Ground Order, the Commission granted Verizon Airfone—the only incumbent service provider in the 800 MHz air-ground band—a nonrenewable license to operate in the band for five years. This license will expire in May 2010. Verizon Airfone must transition its incumbent narrowband operations from four to one megahertz of spectrum in the band within two years of the initial grant date of a new license in the band. The Commission has directed the Bureau to adopt reporting requirements so that Airfone's transition of its base stations and its subscribers' aircraft to operations in one megahertz of the 800 MHz air-ground band may be monitored. The Bureau will issue a public notice enumerating such requirements by February 6, 2006. Airfone must file its initial transition status report with the Commission six months from the date of the grant of any new license in the band and at each of the three six-month intervals thereafter.

7. In addition, if Airfone, or an affiliate of Airfone, wins an exclusive 3 MHz license at auction, the Bureau will issue a public notice within 60 days of the grant of such a license, which requires the company to include in each status report information regarding the transition of its existing subscribers from its narrowband system to a broadband system and to file additional status reports at six-month intervals from the conclusion of the two-year transition period until the expiration of its five-year nonrenewable license.

## II. Auction Procedures

8. Section 309(j)(3) of the Communications Act of 1934, as

amended, requires the Commission to “ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed \* \* \* before issuance of bidding rules, to permit notice and comment on proposed auction procedures \* \* \*.” Consistent with the provisions of section 309(j)(3) and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the following issues relating to Auction No. 65.

### A. Auction Structure

#### i. Simultaneous Multiple-Round Auction Design

9. The Bureau proposes to conduct Auction No. 65 as a simultaneous multiple-round auction. As indicated above, licenses will be offered in three mutually incompatible band configurations, and the band plan that receives the highest aggregate bids in the auction will be implemented. The Bureau believes the simultaneous multiple-round auction design is an appropriate auction design given these circumstances. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. Bidding remains open on all licenses until bidding stops on every license. The Bureau seeks comment on this proposal.

#### ii. Round Structure

10. The Commission will conduct Auction No. 65 over the Internet. Alternatively, telephonic bidding will also be available. The toll-free telephone number for telephonic bidding will be provided to qualified bidders.

11. The simultaneous multiple-round format will consist of sequential bidding rounds, each followed by the release of round results. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction. Details on viewing round results, including the location and format of downloadable round results files, will be included in the same public notice.

12. The Bureau retains the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their

bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

### iii. Stopping Rule

13. The Bureau has discretion to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time. For Auction No. 65, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses.

14. Bidding will close simultaneously on all licenses after the first round in which no bidder submits any new bids or applies a proactive waiver. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

15. However, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 65: (a) Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder applies a waiver or submits any new bids on any license for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (b) keep the auction open even if no bidder submits any new bids or applies a waiver. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver; (c) declare that the auction will end after a specified number of additional rounds (special stopping rule). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) after which the auction will close.

16. The Bureau proposes to exercise these options only in certain circumstances, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day and/or changing the

minimum acceptable bid percentage. The Bureau seeks comment on these proposals.

### iv. Information Relating to Auction Delay, Suspension, or Cancellation

17. For Auction No. 65, the Bureau proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

### B. Bidding Procedures

#### i. Upfront Payments and Bidding Eligibility

18. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned. A bidder's upfront payment is a refundable deposit to establish eligibility to bid on licenses. Upfront payments related to licenses for the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these factors in mind for Auction No. 65, we propose upfront payments of \$100,000 per license.

19. Consistent with the Bureau's usual practice, we further propose that the amount of the upfront payment submitted by a bidder will determine the bidder's bidding eligibility in bidding units. For Auction No. 65, the Bureau proposes to assign 100,000 bidding units per license. The number of bidding units for a given license is fixed and does not change during the auction as prices change.

20. However, because the mutually incompatible band configurations and the three megahertz eligibility restriction limit a bidder to winning only a single license, the Bureau proposes to permit a bidder with

100,000 bidding units of eligibility to bid or be active simultaneously on any or all of the licenses it selected on its FCC Form 175, rather than being limited to activity on a single license with 100,000 bidding units as our usual activity and eligibility rules would require. That is, under the Bureau's proposal, an upfront payment of \$100,000 would give a bidder 100,000 bidding units of eligibility, which in turn would permit the bidder to be active on any or all of the licenses it selected on its FCC Form 175, making it unnecessary to acquire more than 100,000 bidding units of bidding eligibility in order to bid or be active simultaneously on more than one license.

21. The proposed upfront payment and number of bidding units for each license available in Auction No. 65 is also set forth in Attachment A of the *Auction No. 65 Comment Public Notice*. The Bureau seeks comment on this proposal.

#### ii. Activity Rule

22. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active during each round of the auction. If a bidder fails to maintain the required activity level in a round, it must use one of the limited number of activity rule waivers allotted to it in order to maintain its current level of eligibility. In a typical FCC auction, if the bidder has no activity rule waivers remaining, its eligibility will be reduced.

23. For Auction No. 65, the Bureau proposes the following activity requirement: in each round of the auction, a bidder desiring to maintain its eligibility to participate in the auction is required to be active (place a bid or hold the provisionally winning bid) on at least one license. Under the Bureau's proposal for upfront payments and bidding eligibility, a bidder must have 100,000 bidding units of eligibility to participate in the auction—*i.e.*, to bid on at least one license—and may hold a maximum of 100,000 bidding units of eligibility. Therefore, under the Bureau's proposal for this auction, any reduction in a bidder's eligibility will effectively preclude the bidder from further bidding in the auction. In other words, failure to maintain the required activity level will have the effect of eliminating the bidder from further bidding in the auction unless an activity rule waiver is used.

24. The Bureau seeks comment on these proposals. Commenters that believe this activity rule should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

### iii. Activity Rule Waivers

25. Use of an activity rule waiver preserves the bidder's eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

26. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility, which in this auction would have the effect of precluding the bidder from further bidding in the auction. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder fails to be active (place a bid or hold the provisionally winning bid) on at least one license unless the bidder has no activity rule waivers available. If a bidder has no waivers remaining and does not satisfy the required activity requirement, it will no longer be permitted to place bids in the auction.

27. A bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the "apply waiver" function in the FCC Auction System) during a bidding round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted, that waiver cannot be unsubmitted, even if the round has not yet closed.

28. The Bureau proposes that each bidder in Auction No. 65 be provided with three activity rule waivers that may

be used at the bidder's discretion during the course of the auction as set forth above. The Bureau seeks comment on this proposal.

### iv. Reserve Price or Minimum Opening Bid

29. Section 309(j) calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid amount when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid amount is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid amount and/or reserve price prior to the start of each auction.

30. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid amount, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. The auctioneer, however, often has the discretion to lower the minimum opening bid amount during the course of the auction. It is also possible for the minimum opening bid amount and the reserve price to be the same amount.

31. In light of the distinctive features of the Air-Ground Radiotelephone Service and Section 309(j)'s requirements for competitive bidding, the Bureau proposes to set minimum opening bids for each license and to establish a published aggregate reserve price for the entire band. The Bureau believes a minimum opening bid amount, which has been used in other auctions, is an effective tool for accelerating the competitive bidding process. At the same time, given uncertainty regarding the relative values of the 800 MHz Air-Ground Radiotelephone Service licenses, the Bureau believes that it can best comply with the Commission's statutory mandate to recover for the public a portion of the value of the public spectrum resource by establishing a published reserve price for the entire band. Under this proposal, if the sum of the provisionally winning bids at the close of bidding does not meet or exceed the aggregate reserve price, the Commission will cancel the auction and no licenses will be awarded on the basis of the bidding.

32. More specifically, for Auction No. 65, the Bureau proposed to set

minimum opening bids on a license-by-license basis as follows:

Licenses	Bandwidth	Minimum opening bid
A and B .....	3 MHz (2 MHz shared).	\$1,500,000
C and F .....	3 MHz .....	2,800,000
D and E .....	1 MHz .....	200,000

33. The Bureau also proposes to establish a published reserve price of \$5,000,000 for the entire band. Attachment A of the *Auction No. 65 Comment Public Notice* also sets forth the proposed minimum opening bids and reserve price. The Bureau seeks comment on this proposal.

34. If commenters believe that these minimum opening bid amounts will result in unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid amount levels or formulas. In establishing the minimum opening bid amounts and the reserve price, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the 800 MHz Air-Ground Radiotelephone Service licenses. Commenters proposing to reduce or eliminate the reserve price should address the extent to which minimum opening bids should be changed as a result. The Bureau also seeks comment on whether, consistent with section 309(j), the public interest would be served by having no minimum opening bid amounts or reserve price.

### v. Bid Amounts

35. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. The FCC Auction System interface will list the nine acceptable bid amounts for each license.

36. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until the bids placed enable the FCC Auction System to calculate a higher price for the license. If such a price can be calculated, the minimum acceptable bid amount for the license will be determined in a two-step process: (a) The FCC Auction System designates a

price for each license. For licenses with provisionally winning bids, this price will be equal to the amount of the provisionally winning bid. For all other licenses, the price will be equal to the amount of the highest bid placed on the license by any non-provisionally winning bidder; (b) the price is increased by the minimum acceptable bid percentage.

37. The minimum acceptable bid amount will be calculated by multiplying the license price times the sum of one plus the minimum acceptable bid percentage—*e.g.*, if the minimum acceptable bid percentage is five percent, the minimum acceptable bid amount will equal (license price) \* (1.05), rounded. The Bureau will round the result using our standard rounding procedures.

38. The nine acceptable bid amounts for each license consist of the minimum acceptable bid amount and additional amounts calculated using the minimum acceptable bid amount and the bid increment percentage. The Bureau will round the results using our standard rounding procedures. The first additional acceptable bid amount equals the minimum acceptable bid amount times the sum of one plus the bid increment percentage, rounded—*e.g.*, if the bid increment percentage is five percent, the calculation is (minimum acceptable bid amount) \* (1 + 0.05), rounded, or (minimum acceptable bid amount) \* 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times the sum of one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.10, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times the sum of one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.15, rounded; etc. Note that the bid increment percentage need not be the same as the minimum acceptable bid percentage.

39. For Auction No. 65, the Bureau proposes to use a minimum acceptable bid percentage of five percent. This means that the minimum acceptable bid amount for a license will be approximately five percent greater than the provisionally winning bid amount for the license. The Bureau proposes to use a bid increment percentage of five percent.

40. The Bureau retains the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if it determines

that circumstances so dictate. The Bureau will do so by announcement in the FCC Auction System during the auction. The Bureau seeks comment on these proposals.

#### vi. Provisionally Winning Bids

41. At the end of each bidding round, the FCC Auction System will determine the provisionally winning bids by considering all of the bids that have been placed in the auction and determining which band plan option has the highest aggregate bid while not allowing a bidder to have more than one provisionally winning bid. The only licenses that can have provisionally winning bids are those of the band plan option with the highest aggregate bid; the licenses of the other band plan options will not have provisionally winning bids.

42. If a provisionally winning bid must be selected from among identical bid amounts submitted on a license (*i.e.*, tied bids), we will use a random number generator to select a single bid from among the tied bids. (Each bid is assigned a random number, and the tied bid with the highest random number wins the tiebreaker.) The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the selected provisionally winning bid.

43. Similarly, in the event of identical aggregate high bid amounts on more than one band plan (*i.e.*, tied band plans), the tie between band plans will be broken based on the random numbers of the corresponding bids. The tied band plan with the highest sum of the random numbers will become the band plan for which there are provisionally winning bids.

44. A consequence of the mutually incompatible band configurations and the three megahertz eligibility restriction is that a bid that does not become a provisionally winning bid at the conclusion of the round in which it was placed may become a provisionally winning bid at the conclusion of a subsequent round.

45. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

#### vii. Bid Removal and Bid Withdrawal

46. For Auction No. 65, the Bureau proposes the following bid removal and bid withdrawal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids

in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

47. The Bureau proposes for Auction No. 65 that bidders not be permitted, in any round, to withdraw bids made in previous rounds. The Commission has recognized that bid withdrawals may be an important tool to help bidders avoid incomplete aggregations of licenses and pursue efficient backup strategies as information becomes available during the course of an auction. In Auction No. 65, however, bidders may win only one license and therefore will not face risks of being unable to secure desired aggregations of licenses. In addition, the Bureau believes that given the small number of licenses in the auction and the nature of the licenses being offered, bidders will not need to use bid withdrawals to pursue backup strategies in the same way bidders may need to do so in some auctions. Moreover, in previous auctions, the Bureau has observed instances in which bid withdrawals arguably may have been used for strategic, anticompetitive purposes. While the Bureau continues to recognize that bid withdrawals may play an important role in an auction, the Bureau notes that bid withdrawals have not been available in several previous auctions. The Bureau seeks comment on these proposed bid removal and bid withdrawal procedures.

### III. Conclusion

48. Comments are due on or before January 31, 2006, and reply comments are due on or before February 7, 2006. All filings must be addressed to the Commission's Secretary Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission. Parties who file comments by paper must file an original and four copies of each filing. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Bureau also requires that all comments and reply comments be filed electronically to the following address: [auction65@fcc.gov](mailto:auction65@fcc.gov). The electronic mail containing the comments or reply comments must include a subject or caption referring to "Auction No. 65 Comments" and the name of the commenting party. The Bureau requests that parties format any attachments to electronic mail as

Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection between 8 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554, and will also be posted on the Web page for Auction No. 65 at <http://wireless.fcc.gov/auctions/65/>.

49. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b) of the Commission's rules.

Federal Communications Commission.

**Gary D. Michaels,**

*Deputy Chief, Auctions and Spectrum Access Division, WTB.*

[FR Doc. 06-664 Filed 1-19-06; 1:22 pm]

BILLING CODE 6712-01-P

## FEDERAL HOUSING FINANCE BOARD

### Sunshine Act Meeting Notice; Announcing an Open Meeting of the Board of Directors

**TIME AND DATE:** An open meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, January 25, 2006.

**PLACE:** Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

**STATUS:** The meeting will be open to the public.

**MATTERS TO BE CONSIDERED AT THE MEETING:** Reappointment to the Board of Directors of the Office of Finance.

Amendment to the Capital Structure Plan of the Federal Home Loan Bank of Atlanta.

**CONTACT PERSON FOR MORE INFORMATION:** Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202-408-2876 or [williss@fhfb.gov](mailto:williss@fhfb.gov).

By the Federal Housing Finance Board.

Dated: January 18, 2006.

**John P. Kennedy,**

*General Counsel.*

[FR Doc. 06-614 Filed 1-19-06; 9:27 am]

BILLING CODE 6725-01-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 Web site at <http://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 February 17, 2006.

**A. Federal Reserve Bank of Chicago** (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Wintrust Financial Corporation*, Lake Forest, Illinois, to merge with Hinsbrook Bancshares, Inc., Willowbrook, Illinois, and thereby indirectly acquire Hinsbrook Bank and Trust, Willowbrook, Illinois.

Board of Governors of the Federal Reserve System, January 18, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E6-735 Filed 1-20-06; 8:45 am]

BILLING CODE 6210-01-S

## GENERAL SERVICES ADMINISTRATION

### Federal Travel Regulation (FTR)

#### Maximum Per Diem Rates for the District of Columbia and the states of Arizona, California, Colorado, Florida, Illinois, Maine, Maryland, Michigan, Minnesota, Montana, Nevada, New Mexico, Tennessee, and Texas

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Notice of Per Diem Bulletin 06-04, revised continental United States (CONUS) per diem rates.

**SUMMARY:** The General Services Administration (GSA) has reviewed the lodging rates for the District of Columbia, as well as certain non-standard locations in the States of Arizona, California, Colorado, Florida, Illinois, Maine, Maryland, Michigan, Minnesota, Montana, Nevada, New Mexico, Tennessee, and Texas using more current lodging industry data, as well as data on where Federal travelers actually stay when visiting these locations. Also, GSA has reviewed the meals and incidental expenses (M&IE) rate of certain non-standard locations in the States of Illinois, Michigan, Montana, and New Mexico. Finally, GSA is combining Stateline, Nevada with Carson City, Nevada (currently a standard continental United States (CONUS) location), so Carson City's per diem rate will be the same rate that Stateline currently has. The per diems prescribed in Bulletin 06-04 may be found at <http://www.gsa.gov/perdiem>.

**DATES:** This notice is effective February 1, 2006 and applies to travel performed on or after February 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Patrick McConnell, Office of Governmentwide Policy, Travel Management Policy, at (202) 501-2362. Please cite FTR Per Diem Bulletin 06-04.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

After an analysis of the per diem rates established for FY 2006 (see the **Federal Register** notices at 70 FR 52100, September 1, 2005, 70 FR 59349, October 12, 2005, and 70 FR 68457,

November 10, 2005), the per diem rates are being changed in the following locations:

*District of Columbia*

- Washington, District of Columbia; Arlington, Fairfax and Loudoun counties in the State of Virginia; Montgomery and Prince Georges counties in the State of Maryland.

*State of Arizona*

- Coconino County (except the city of Sedona)

- Pima County

*State of California*

- Los Angeles, Orange, and Ventura Counties, Edwards Air Force Base

- Santa Barbara County

*State of Colorado*

- Denver, Adams, Arapahoe, Jefferson and Douglas Counties

*State of Florida*

- Escambia County

*State of Illinois*

- Will County

*State of Maine*

- York County

*State of Maryland*

- Frederick County

*State of Michigan*

- Wayne County

*State of Minnesota*

- Dakota County

*State of Montana*

- Lewis and Clark County

*State of Nevada*

- Douglas and Carson City Counties

*State of New Mexico*

- Taos County

*State of Tennessee*

- Anderson County

*State of Texas*

- El Paso County

## B. Procedures

Per diem rates are published on the Internet at [www.gsa.gov/perdiemas](http://www.gsa.gov/perdiemas) FTR Per Diem Bulletins, notice of which is published in the **Federal Register** on a periodic basis. This process ensures timely increases or decreases in per diem rates established by GSA for Federal employees on official travel within CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: January 17, 2006.

**Becky Rhodes,**

*Deputy Associate Administrator, Office of Transportation and Personal Property.*

[FR Doc. 06-613 Filed 1-20-06; 8:45 am]

BILLING CODE 6820-14-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Advisory Council for the Elimination of Tuberculosis

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

*Name:* Advisory Council for the Elimination of Tuberculosis (ACET).

*Times and Dates:* 8:30 a.m.–5 p.m., February 15, 2006. 8:30 a.m.–12 p.m., February 16, 2006.

*Place:* Corporate Square, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333, telephone (404) 639-8008.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

*Purpose:* This council advises and makes recommendations to the Secretary, Department of Health and Human Services; the Assistant Secretary for Health; and the Director, Centers for Disease Control and Prevention (CDC) regarding the elimination of tuberculosis (TB). Specifically, the council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating TB.

*Matters to be Discussed:* Agenda items include issues pertaining to TB Health Disparities among African Americans, TB prevention in correctional facilities, and other related TB issues.

Agenda items are subject to change as priorities dictate.

*For Further Information Contact:* Paulette Ford-Knights, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE., M/S E-07, Atlanta, Georgia 30333, telephone (404)639-8008.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 13, 2006.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E6-695 Filed 1-20-06; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Disease, Disability, and Injury Prevention and Control Special Emphasis Panels (SEP): Pregnancy Risk Assessment Monitoring System, Request for Applications DP-06-002

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

*Name:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Pregnancy Risk Assessment Monitoring System, Request for Applications DP-06-002.

*Times and Dates:* 3 p.m.–7:30 p.m., February 15, 2006 (Closed). 8 a.m.–5 p.m., February 16, 2006 (Closed). 8 a.m.–3 p.m., February 17, 2006 (Closed).

*Place:* Sheraton Colony Square Hotel, 188 14th Street, NE., Atlanta, GA 30361, Telephone Number (404) 892-6000.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

*Matters to be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to: Pregnancy Risk Assessment Monitoring System, Request for Applications DP-06-002.

*For Further Information Contact:* J. Felix Rogers, PhD, MPH, Scientific Review Administrator, CDC, 4770 Buford Highway, NE., Mailstop K-92, Atlanta, GA 30341, Telephone Number (770) 488-6521.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: January 13, 2006.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E6-693 Filed 1-20-06; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration; Organ Procurement and Transplantation Network Status of Living Donor Guidelines

**AGENCY:** Health Resources and Services Administration (HRSA), HHS.

**ACTION:** Request for public comment.

**SUMMARY:** The purpose of this solicitation of comments is to assist HRSA in determining whether criteria developed by the Organ Procurement and Transplantation Network (OPTN) concerning organs procured from living donors, including those concerning the allocation of organs from living donors, should be given the same status, and be subject to the same enforcement actions, as other OPTN policies.

**DATES:** Written comments must be submitted to the office in the address section below by mail or e-mail on or before February 22, 2006.

**ADDRESSES:** Please send all written comments to James F. Burdick, M.D., Director, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, Room 12C-06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443-7577; fax (301) 594-6095; or e-mail: [jburdick@hrsa.gov](mailto:jburdick@hrsa.gov).

**FOR FURTHER INFORMATION CONTACT:** James F. Burdick, M.D., Director, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, Parklawn Building, Room 12C-06, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443-7577; fax (301) 594-6095; or e-mail: [jburdick@hrsa.gov](mailto:jburdick@hrsa.gov).

**SUPPLEMENTARY INFORMATION:** Congress has provided specific authority under Sections 372 of the Public Health Service (PHS) Act, as amended, 42 U.S.C. 274 for the creation of a national OPTN, which is, among other things, to facilitate a donor and recipient matching system; establish membership criteria and medical criteria for allocating donated organs; and provide opportunities to members of the public to comment with respect to proposed criteria.

The OPTN Final Rule (42 CFR part 121) governs the operations of the OPTN and is intended to help achieve the most equitable and medically effective use of human organs that are donated in trust for transplantation. Under the final rule, the OPTN is to develop policies on a variety of issues, including “[p]olicies for the equitable allocation of cadaveric organs [now referred to as deceased donor organs].” 42 CFR 121.4(a)(1). Under the final rule, allocation policies developed by the OPTN under section 121.8 of the final rule will be considered enforceable when and if the Secretary approves the policies as such. Enforceable OPTN policies are subject to the sanctions described in section 121.10(c)(1) of the final rule. Non-

enforceable OPTN policies may still be subject to lesser sanctions by the OPTN (e.g., an OPTN member being designated a member not in good standing).

Although the authorizing statute does not distinguish between transplants using organs from living donors from those using organs from deceased donors, the final rule does not include a requirement that the OPTN develop policies concerning the equitable allocation of living donor organs. Until recently, OPTN policies have predominantly focused on issues related to organ donation and transplantation of deceased donor organs.

However, several widely publicized living donor deaths have caused the OPTN to implement new practices of reviewing and approving, on an advisory basis, the qualifications of living donor transplant programs. Additionally, the increased incidence of altruistic living donations has prompted the OPTN to consider policies that are patient-focused yet address the unique circumstances pertaining to the recovery and transplantation of living donor organs. Section 121.4(a)(6) of the final rule provides that the OPTN shall be responsible for developing policies on a variety of topics, including “[p]olicies on such matters as the Secretary directs.” In accordance with that authority, the Healthcare Systems Bureau directed the OPTN to develop allocation guidelines for organs from living donors and other policies necessary and appropriate to promote the safety and efficacy of living donor transplantation for the donor and recipient. It further advised the OPTN that all living donation policies (other than data reporting policies) should be considered as best practices or voluntary guidelines and not subject to regular OPTN sanctions (even those available with respect to violation of non-enforceable policies) until the public has had an opportunity to comment on the matter.

The purpose of this solicitation of comments is to assist HRSA in determining whether OPTN living donor guidelines should be given the same status of other OPTN policies, i.e., be treated as policies developed in accordance with 42 CFR 121.8, and be subject to the same enforcement actions. If the Secretary decides these questions in the affirmative, OPTN policies relating to living donors would be treated the same as other OPTN policies developed in accordance with section 121.8 of the final rule. In other words, OPTN policies concerning living donors would not be considered enforceable policies under section 121.10 of the final rule, and violations of such

policies would not be subject to the sanctions described in section 121.10(c)(1), unless and until the Secretary approved such policies as enforceable.

Dated: January 13, 2006.

**Elizabeth M. Duke,**

*Administrator.*

[FR Doc. E6-661 Filed 1-20-06; 8:45 am]

**BILLING CODE 4165-15-P**

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[USCG-2006-23650]

#### Meeting of the Office of Boating Safety's Recreational Boating Safety Strategic Planning Panel

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of meeting.

**SUMMARY:** The Coast Guard's Office of Boating Safety is sponsoring a panel of representatives of the recreational boating community to discuss strategic planning goals, objectives and strategies that the Coast Guard may use to improve recreational boating safety. This meeting is open to the public.

**DATES:** The meeting will occur on Saturday, Sunday and Monday, February 4 through 6, 2006, from 8:30 a.m. to 5 p.m.

**ADDRESSES:** This meeting will occur at the Crowne Plaza Hotel, 1480 Crystal Drive, Arlington, VA. This notice is available on the Internet at <http://dms.dot.gov> and at <http://uscgboating.org>.

**FOR FURTHER INFORMATION CONTACT:** Dionca Williams, Administrative Assistant, Office of Boating Safety, U.S. Coast Guard, telephone 202-267-1077, fax 202-267-4285. If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, Department of Transportation, telephone 202-493-0402.

**SUPPLEMENTARY INFORMATION:**

At the October 2004 meeting of the National Boating Safety Advisory Council (NBSAC), the Office of Boating Safety proposed to assemble a Goal-Setting Recommendation Panel. NBSAC endorsed this proposal. To facilitate this, the Coast Guard invited representatives of the recreational boating community to participate on this panel.

The Coast Guard held the meeting on February 8 and 9, 2005, in Arlington, VA. The panel considered, analyzed,

and proposed recreational boating safety (RBS) performance goals that can be supported by the government, industry, and the boating public. A representative of the panel presented its conclusions at the April 2005 NBSAC meeting. Minutes of the panel's February 2005 meeting may be obtained from the person listed above under **FOR FURTHER INFORMATION CONTACT**.

The Coast Guard held a second meeting of the panel on October 8 and 9, 2005. The panel considered, analyzed, and proposed recreational boating safety program objectives related to the new RBS Program goals. A representative of the panel presented its conclusions at the November 2005 NBSAC meeting. Minutes of the panel's October 2005 meeting may be obtained from the person listed above under **FOR FURTHER INFORMATION CONTACT**.

A professional facilitator will moderate the third meeting. The panel will consider, analyze, and propose strategies to support the RBS Program goals and objectives previously developed. A representative of the panel will present its conclusions at the April 2006 NBSAC meeting. We will also prepare minutes of the third meeting. You may obtain them from the person listed above under **FOR FURTHER INFORMATION CONTACT**.

#### Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished.

#### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: January 13, 2006.

**C.E. Bone,**

*Rear Admiral, U.S. Coast Guard, Director of Inspection and Compliance.*

[FR Doc. E6-659 Filed 1-20-06; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Customs and Border Protection

#### Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC)

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces the date, time, and location for the fifth meeting of the ninth term of the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC), and the expected agenda for its consideration.

**DATES:** The next meeting of the COAC will be held on Thursday, February 9, 2006, 9 a.m. to 1 p.m.

**ADDRESSES:** The meeting will be held in the Pavilion Room of the Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Monica Frazier, Office of the Assistant Secretary for Policy, Department of Homeland Security, Washington, DC 20528, telephone 202-282-8431; facsimile 202-282-8504. Members of the public may submit written comments at any time before or after the meeting to the contact person for consideration by this Advisory Committee.

**SUPPLEMENTARY INFORMATION:** The fifth meeting of the ninth term of the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC) will be held at the date, time and location specified above. This notice also announces the expected agenda for that meeting below. This meeting is open to the public; however, participation in COAC deliberations is limited to COAC members, Homeland Security and Treasury Department officials, and persons invited to attend the meeting for special presentations. Since seating is limited, all persons attending this meeting should provide notice preferably by close of business Monday, February 6, 2006, to Ms. Monica Frazier, Office of the Assistant Secretary for Policy, Department of Homeland Security, Washington, DC 20528, telephone 202-282-8431; facsimile 202-282-8504.

*Information on Services for Individuals with Disabilities:* For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Monica Frazier, Office of the Assistant Secretary for Policy, Department of Homeland Security, Washington, DC 20528, telephone 202-282-8431; facsimile 202-282-8504, as soon as possible.

#### Draft Agenda

1. Introductory Remarks
2. WCO (World Customs Organization) "Security Framework" Implementation

3. Update on HSPD-13 (Homeland Security Presidential Directive-13) & National Maritime Security Advisory Committee
4. Security Subcommittee: C-TPAT (Customs-Trade Partnership Against Terrorism) Carrier Criteria (Ocean and Truck)
5. Green Lane Task Force—Benefits Review
6. Textiles & Apparel Entry Processing
7. ACE (Automated Commercial Environment)/ITDS (International Trade Data System)
8. New Action Items
9. Adjourn

Dated: January 18, 2006.

**Stewart A. Baker,**

*Assistant Secretary, Office of Policy, United States Department of Homeland Security.*

[FR Doc. 06-557 Filed 1-20-06; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

#### Address Change for Filing Annual Election to Average for Motor Vehicles

**AGENCY:** Customs and Border Protection, Department of Homeland Security.

**ACTION:** General notice.

**SUMMARY:** This document announces an address change for the Regulatory Audit Division, Office of Strategic Trade, Customs and Border protection for filing annual election to average for motor vehicles.

The new address for the Regulatory Audit Division, Office Strategic Trade, Customs and Border Protection is as follows: Regulatory Audit Division, Office of Strategic Trade, Customs and Border Protection, 1300 Pennsylvania Avenue, NW., c/o 1400 L Street, NW., Washington, DC 20229. Telephone number: 202-863-6010. Fax number: 202-863-6050.

**DATES:** Effective January 23, 2006.

**SUPPLEMENTARY INFORMATION:** Under Section 11—Motor Vehicle Averaging, Appendix To Part 181—Rules of Origin Regulations, North American Free Trade Agreement. All filings for the annual election to average for motor vehicles under Section 11 of Appendix to Part 181, Rules of Origin Regulations of North American Free Trade Agreement, must be submitted to the above address.

Dated: January 9, 2006.

**Cynthia A. Covell,**

*Director, Regulatory Audit Division, Office of Strategic Trade, Bureau of Customs and Border Protection.*

[FR Doc. 06-556 Filed 1-20-06; 8:45 am]

**BILLING CODE 9111-14-M**



## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

[Docket No. TSA-2002-11602]

#### Extension Agency Information Collection Activity Under OMB Review: Security Programs for Foreign Air Carriers

**AGENCY:** Transportation Security Administration (TSA), DHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces that TSA has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on October 21, 2005, 70 FR 61294.

**DATES:** Send your comments by February 22, 2006. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**ADDRESSES:** Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS-TSA Desk Officer, at (202) 395-5806.

**FOR FURTHER INFORMATION CONTACT:** Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA-9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202-4220.

#### 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

*Title:* Security Programs for Foreign Air Carriers.

*Type of Request:* Extension of a currently approved collection.

*OMB Control Number:* 1652-0005.

*Form(s):* NA.

*Affected Public:* Foreign air carriers regulated under 49 CFR part 1546.

*Abstract:* Title 49 U.S.C. 44906, implemented by 49 CFR part 1546, establishes requirements for foreign air carriers flying into and out of the United States to adopt and use a security program. The information collected is used to determine compliance with part 1546 and to ensure passenger safety by monitoring foreign air carrier security procedures. These security programs establish procedures that foreign air carriers must carry out to protect persons and property against acts of criminal violence, aircraft piracy, and terrorist activities.

*Number of Respondents:* 133.

*Estimated Annual Burden Hours:* An estimated 460,615 hours annually.

Issued in Arlington, Virginia, on January 13, 2006.

**Lisa S. Dean,**

*Privacy Officer.*

[FR Doc. E6-665 Filed 1-20-06; 8:45 am]

**BILLING CODE 4910-62-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

#### Agency Information Collection Activities: Extension of a Currently Approved Information Collection, Comment Request

**ACTION:** 60-Day Notice of Information Collection Under Review; Refugee/Asylee Relative Petition, Form I-730. OMB Control No. 1615-0037.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until March 24, 2006.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202-272-8352 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please make sure to add OMB Control Number 1615-0037 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Refugee/Asylee Relative Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-730. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form will be used by an asylee or refugee to file on behalf of his or her spouse and/or children provided that the relationship to the refugee/asylee existed prior to their admission to the United States. The information collected on this form will be used by USCIS to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond: 86,400 responses at 25 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50,371 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: <http://uscis.gov/graphics/formsfee/forms/pr/index.htm>.

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272-8377.

Dated: January 17, 2006.

**Richard A. Sloan,**

Director, Regulatory Management Division,  
U.S. Citizenship and Immigration Services.  
[FR Doc. 06-540 Filed 1-20-06; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

#### Agency Information Collection Activities; Comment Request

**ACTION:** 60-Day Notice of Information Collection Under Review: Application to Register Permanent Residence or Adjust Status and Supplement A to Form I-485, 1615-0023.

The Department of Homeland Security, U.S. Citizenship and Immigration Services will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until March 24, 2006.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202-272-8352 or via e-mail at [rfs.regs@dhs.gov](mailto:rfs.regs@dhs.gov). When submitted comments by e-mail please make sure to add OMB Control Number 1615-0023 in the subject box. Written comments and suggestions from the public and affected

agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the 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 agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-485. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form allows an applicant to determine whether he or she must file under section 245 of the Immigration and Nationality Act, and it allows the USCIS to collect information needed for reports to be made to different government committees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* I-485 respondents are 583,921 at 6.25 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Form I-485 annual burden hours are 3,649,506.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: <http://uscis.gov/graphics/formsfee/forms/pr/index.htm>.

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue,

3rd Floor, Washington, DC 20529, (202) 272-8377.

Dated: January 17, 2006.

**Richard A. Sloan,**

Director, Regulatory Management Division,  
U.S. Citizenship and Immigration Services.  
[FR Doc. 06-541 Filed 1-20-06; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

#### Agency Information Collection Activities; Comment Request

**ACTION:** 60-Day Notice of Information Collection Under Review: Biographic Information, Form G-325, 1615-0008.

The Department of Homeland Security, U.S. Citizenship and Immigration Services will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until March 24, 2006.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202-272-8352 or via e-mail at [rfs.regs@dhs.gov](mailto:rfs.regs@dhs.gov). When submitting comments by e-mail please make sure to add OMB Control Number 1615-0008 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the 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 agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Biographic Information.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G-325, 1615-0008, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. This form is used to check other agency records on application or petitions submitted for benefits under the Immigration and Nationality Act. Additionally, this form is required for applicants for adjustment to permanent resident status and specific applicants for naturalization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,144,994 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 286,249 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: <http://uscis.gov/graphics/formsfee/forms/pr/index.htm>.

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272-8377.

Dated: January 17, 2006.

**Richard A. Sloan,**

Director, Regulatory Management Division,  
U.S. Citizenship and Immigration Services.  
[FR Doc. 06-542 Filed 1-20-06; 8:45 am]

**BILLING CODE 4410-10-M**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

#### Agency Information Collection Activities; Comment Request

**ACTION:** 60-Day Notice of Information Collection Under Review: Petition to Remove Conditions on Residence; Form I-751, 1615-0038.

The Department of Homeland Security, U.S. Citizenship and Immigration Services will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until March 24, 2006.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202-272-8352 or via e-mail at [rfs.regs@dhs.gov](mailto:rfs.regs@dhs.gov). When submitting comments by e-mail please make sure to add OMB Control Number 1615-0038 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the 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 agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of information on those who are to respond; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition to Remove Conditions on Residence.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* The agency number is 1615-0038; the form number is I-751. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Persons granted conditional residence through marriage to a United States citizen or permanent resident use this form to petition for the removal of those conditions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 118,008 responses at 80 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 156,951 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: <http://uscis.gov/graphics/formsfee/forms/pr/index.htm>.

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272-8377.

Dated: January 18, 2006.

**Richard A. Sloan,**

Director, Regulatory Management Division,  
U.S. Citizenship and Immigration Services.  
[FR Doc. 06-569 Filed 1-29-06; 8:45 am]

**BILLING CODE 4410-10-M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Recovery Plan for the Tidewater Goby (*Eucyclogobius newberryi*)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** We (the U.S. Fish and Wildlife Service) announce the availability of the Recovery Plan for the Tidewater Goby (*Eucyclogobius newberryi*). The tidewater goby is a small fish that inhabits coastal brackish water habitats entirely within California, ranging from Tillas Slough

(mouth of the Smith River, Del Norte County) near the Oregon border south to Agua Hedionda Lagoon (northern San Diego County).

**ADDRESSES:** Printed copies of this recovery plan will be available in 4 to 6 weeks by request from the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003 (telephone: 805-644-1766). An electronic copy of the recovery plan is now available on the World Wide Web at <http://pacific.fws.gov/ecoservices/angered/recovery/plans.html> and <http://endangered.fws.gov/recovery/index.html#plans>.

**FOR FURTHER INFORMATION CONTACT:** Chris Dellith, Fish and Wildlife Biologist, at the above Ventura address.

**SUPPLEMENTARY INFORMATION:**

**Background**

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Endangered Species Act (ESA) and our endangered species program. The ESA (16 U.S.C. 1533(f)) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Recovery plans help guide the recovery effort by describing actions considered necessary for the conservation of the species, establishing criteria for downlisting or delisting listed species, and estimating time and cost for implementing the measures needed for recovery (16 U.S.C. 1533(f)).

Section 4(f) of the ESA also requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. The Draft Recovery Plan for the Tidewater Goby was available for public comment from November 18, 2004, through January 18, 2005 (69 FR 67602). Information presented during the public comment period has been considered in the preparation of this final recovery plan, and is summarized in an appendix of the recovery plan. We will forward comments regarding recovery plan implementation to appropriate Federal or other entities so they can take these comments into account in the course of implementing recovery actions.

This recovery plan was developed by the Tidewater Goby Recovery Team. We coordinated with the California Department of Fish and Game and a team of stakeholders, which included landowners and managers, agency

representatives, and non-government organizations.

The tidewater goby was listed as an endangered species on March 7, 1994 (59 FR 5494). The tidewater goby is threatened primarily by modification and loss of habitat as a result of coastal development, channelization of habitat, diversions of water flows, groundwater overdrafting, and alteration of water flows.

This recovery plan describes the status, current management, recovery objectives and criteria, and specific actions needed to provide a framework for the recovery of the tidewater goby so that protection by the ESA is no longer necessary. Actions needed to recover the tidewater goby include: (1) Monitor, protect, and enhance currently occupied tidewater goby habitat; (2) conduct biological research to enhance the ability to integrate land use practices with tidewater goby recovery and revise recovery tasks as pertinent new information becomes available; (3) evaluate and implement translocation where appropriate; and (4) increase public awareness about tidewater gobies.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 8, 2005.

**Ken McDermond,**

*Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.*

[FR Doc. E6-696 Filed 1-20-06; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[OR 120 5882 CC99; HAG #06-0049 ]

**Notice of Public Meeting, Coos Bay Resource Advisory Committee Meeting**

**AGENCY:** Bureau of Land Management, U.S. Department of the Interior.

**ACTION:** Notice of Bureau of Land Management Coos Bay District Resource Advisory Committee meeting as identified in Section 205(f)(2) of the Secure Rural Schools and Community Self-Determination Act of 2000, Public Law 106-393.

**SUMMARY:** The Bureau of Land Management Coos Bay District Resource Advisory Committee is scheduled to meet on February 16, 2006, from 9 a.m. until 4 p.m. at the Ellen Warring Learning Center at the Bureau of Land Management's New River Area of Critical Environmental Concern. The Ellen Warring Learning Center is located

at 86342 Croft Lake Lane, Bandon, OR 97411. The purpose of this meeting will be for the election of a Chair person, provide updates on budget and project status, and a field tour. There will be an opportunity for the public to address the Coos Bay District Resource Advisory Committee at approximately 10:30 a.m.

**FOR FURTHER INFORMATION CONTACT:**

Mark Johnson, Bureau of Land Management Coos Bay District Manager, at (541) 756-0100 or Glenn Harkleroad, District Restoration Coordinator, at (541) 751-4361, or [glenn\\_harkleroad@or.blm.gov](mailto:glenn_harkleroad@or.blm.gov). The mailing address for the Bureau of Land Management Coos Bay District Office is 1300 Airport Lane, North Bend, Oregon 97459.

Dated: January 13, 2006.

**Mark Johnson,**

*Coos Bay District Manager.*

[FR Doc. E6-713 Filed 1-20-06; 8:45 am]

**BILLING CODE 4310-33-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[WY-957-05-1420-BJ]

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Filing of Plats of Survey, Wyoming.

**SUMMARY:** The Bureau of Land Management (BLM) is scheduled to file the plats of surveys of the lands described below thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming.

**FOR FURTHER INFORMATION CONTACT:**

Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

**SUPPLEMENTARY INFORMATION:** These surveys were executed at the request of the Bureau of Indian Affairs and are necessary for the managements of lands. The lands surveyed are:

The plat and field notes representing the dependent resurvey of a portion of the south boundary, subdivisional lines and the adjusted meanders of the right bank of the Wind River, and the subdivision of certain sections, Township 2 North, Range 5 East, Wind River Meridian, Wyoming, was accepted January 17, 2006.

Copies of the preceding described plats and field notes are available to the public at \$1.10 each.

Dated: January 17, 2006.

**John P. Lee,**

*Chief Cadastral Surveyor, Division of Support Services.*

[FR Doc. E6-694 Filed 1-20-06; 8:45 am]

BILLING CODE 4310-22-P

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of an information collection (1010-0072).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 280, "Prospecting for Minerals other than Oil, Gas, and Sulphur on the Outer Continental Shelf," and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

**DATES:** Submit written comments by February 22, 2006.

**ADDRESSES:** You may submit comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior via OMB e-mail: (*OIRA\_DOCKET@omb.eop.gov*); or by fax (202) 395-6566; identify with (1010-0072).

Submit a copy of your comments to the Department of the Interior, MMS, via:

- MMS's Public Connect on-line commenting system, <https://occonnect.mms.gov>. Follow the instructions on the Web site for submitting comments.
- E-mail MMS at [rules.comments@mms.gov](mailto:rules.comments@mms.gov). Use Information Collection Number 1010-0072 in the subject line.
- Fax: 703-787-1093. Identify with Information Collection Number 1010-0072.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS-4024; Herndon, Virginia

20170-4817. Please reference "Information Collection 1010-0072" in your comments.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Blundon, Rules Processing Team, (703) 787-1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation and forms that require the subject collection of information.

#### SUPPLEMENTARY INFORMATION:

*Title:* 30 CFR part 280, Prospecting for Minerals other than Oil, Gas, and Sulphur on the Outer Continental Shelf. *OMB Control Number:* 1010-0072.

*Forms:* MMS-134, MMS-135, and MMS-136.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Section 1337(k) of the OCS Lands Act authorizes the Secretary " \* \* \* to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the Outer Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease." An amendment to the OCS Lands Act (Pub. L. 103-426) authorizes the Secretary to negotiate agreements (in lieu of the previously required competitive bidding process) for the use of OCS sand, gravel, and shell resources for certain specified types of public uses. The specified uses will support construction of governmental projects for beach nourishment, shore protection, and wetlands enhancement; or any project authorized by the Federal Government.

Section 1340 states that " \* \* \* any person authorized by the Secretary may conduct geological and geophysical [G&G] explorations in the [O]uter Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this Act, and which are not unduly harmful to aquatic life in such area." The section further requires that permits to conduct such activities may only be issued if it is determined that: The applicant is qualified; the activities are not polluting, hazardous, or unsafe; they do not interfere with other users of the area; and do not disturb a site, structure, or object of historical or archaeological significance.

Section 1352 further requires that certain costs be reimbursed to the

parties submitting required G&G information and data. Under the Act, permittees are to be reimbursed for the costs of reproducing any G&G data required to be submitted. Permittees are to be reimbursed also for the reasonable cost of processing geophysical information required to be submitted when processing is in a form or manner required by the Director and is not used in the normal conduct of the business of the permittee.

Regulations implementing these responsibilities are under 30 CFR part 280. Responses are mandatory or required to obtain or retain a benefit. No questions of a "sensitive" nature are asked. The MMS protects information considered proprietary according to 30 CFR 280.70 and applicable sections of 30 CFR parts 250 and 252, and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2).

MMS OCS Regions collect information required under part 280 to ensure there is no environmental degradation, personal harm or unsafe operations and conditions, damage to historical or archaeological sites, or interference with other uses; to analyze and evaluate preliminary or planned drilling activities; to monitor progress and activities in the OCS; to acquire G&G data and information collected under a Federal permit offshore; and to determine eligibility for reimbursement from the Government for certain costs. Respondents are required to submit form MMS-134 to provide the information necessary to evaluate their qualifications. The information is necessary for MMS to determine if the applicants for permits or filers of notices meet the qualifications specified by the Act. The MMS uses the information collected to understand the G&G characteristics of hard mineral-bearing physiographic regions of the OCS. It aids MMS in obtaining a proper balance among the potentials for environmental damage, the discovery of hard minerals, and adverse impacts on affected coastal States. Information from permittees is necessary to determine the propriety and amount of reimbursement.

*Frequency:* On occasion, annual; and as required in the permit.

*Estimated Number and Description of Respondents:* Approximately 1 permittee, 1 notice filer, and 1 adjacent State.

*Estimated Reporting and Recordkeeping "Hour" Burden:* The estimated annual "hour" burden for this information collection is a total of 108 hours. The following chart details the individual components and estimated hour burdens. In calculating the

burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 280	Reporting and recordkeeping requirement	Hour burden	Average No. annual responses	Annual burden hours
10; 11(a); 12; 13; Permit Forms ..	Apply for permit (form MMS-134) to conduct prospecting or G&G scientific research activities, including prospecting/ scientific research plan and environmental assessment or required drilling plan.	8	1 permit .....	8
11(b); 12(c) .....	File notice to conduct scientific research activities related to hard minerals, including notice to MMS prior to beginning and after concluding activities.	8	1 notice .....	8
21(a) .....	Report to MMS if hydrocarbon/other mineral occurrences or environmental hazards are detected or adverse effects occur.	1	1 report .....	1
22 .....	Request approval to modify operations .....	1	1 request .....	1
23(b) .....	Request reimbursement for expenses for MMS inspection .....	1	1 request .....	1
24 .....	Submit status and final reports quarterly or on specified schedule and final report.	8	4 reports .....	32
28 .....	Request relinquishment of permit .....	1	1 relinquish .....	1
31(b); 73(a), (b) .....	Governor(s) of adjacent State(s) submissions to MMS; comments on activities involving an environmental assessment; request for proprietary data, information, and samples; and disclosure agreement.	1	1 submission ...	1
33, 34 .....	Appeal penalty, order, or decision—burden covered under 5 CFR 1320.4.			0
40; 41; 50; 51; Permit Forms .....	Notify MMS and submit G&G data/information collected under a permit and/or processed by permittees or 3rd parties, including reports, logs or charts, results, analyses, descriptions, etc.	4	2 submissions	8
42(b); 52(b) .....	Advise 3rd party recipient of obligations. Part of licensing agreement between parties; no submission to MMS.			0
42(c), 42(d); 52(c), 52(d) .....	Notify MMS of 3rd party transactions .....	1	1 notice .....	1
60; 61(a) .....	Request reimbursement for costs of reproducing data/information & certain processing costs.	20	2 requests .....	40
72(b) .....	Submit in not less than 5 days comments on MMS intent to disclose data/information.	1	1 response .....	1
72(d) .....	Contractor submits written commitment not to sell, trade, license, or disclose data/information.	1	1 submission ...	1
Part 280 .....	General departure and alternative compliance requests not specifically covered elsewhere in part 280 regulations.	2	1 request .....	2
Permit Forms .....	Request extension of permit time period .....	1	1 extension .....	1
Permit Forms .....	Retain G&G data/information for 10 years and make available to MMS upon request.	1	1 recordkeeper	1
<b>Total Hour Burden</b> .....		<b>21</b>		<b>108</b>

**Estimated Reporting and Recordkeeping “Non-Hour Cost” Burden:** We have identified no paperwork “non-hour cost” burdens associated with the collection of information.

**Public Disclosure Statement:** The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

**Comments:** Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency “\* \* \* to provide notice \* \* \* and otherwise consult with members of the public and affected agencies concerning each proposed collection of information \* \* \*”. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its

duties, including whether the information is useful; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on May 25, 2005, we published a **Federal Register** notice (70 FR 30138) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 280.80 provides the OMB control number for the information collection requirements imposed by the 30 CFR part 280 regulations and forms. The regulation also informs the public that they may comment at any time on the collections of information and

provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by February 22, 2006.

**Public Comment Procedures:** MMS’s practice is to make comments, including names and home addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor the request to the extent allowable by the law; however, anonymous comments will not be considered. All submissions

from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

*MMS Information Collection Clearance Officer:* Arlene Bajusz (202) 208-7744.

Dated: August 4, 2005.

**E.P. Danenberger,**  
Chief, Office of Offshore Regulatory Programs.

**Note:** This document was received at the Office of the Federal Register on January 18, 2006.

[FR Doc. E6-687 Filed 1-20-06; 8:45 am]

BILLING CODE 4310-MR-P

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of revision of an information collection (1010-0059).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 250, "Oil and Gas Production Safety Systems," and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

**DATES:** Submit written comments by February 22, 2006.

**ADDRESSES:** You may submit comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior via OMB email: [OIRA\\_DOCKET@omb.eop.gov](mailto:OIRA_DOCKET@omb.eop.gov); or by fax (202) 395-6566; identify with (1010-0059).

Submit a copy of your comments to the Department of the Interior, MMS, via:

- Email MMS at [rules.comments@mms.gov](mailto:rules.comments@mms.gov). Use

Information Collection Number 1010-0059 in the subject line.

- Fax: 703-787-1093. Identify with Information Collection Number 1010-0059.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS-4024; Herndon, Virginia 20170-4817. Please reference "Information Collection 1010-0059" in your comments.

#### FOR FURTHER INFORMATION CONTACT:

Cheryl Blundon, Rules Processing Team, (703) 787-1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

#### SUPPLEMENTARY INFORMATION:

*Title:* 30 CFR 250, Oil and Gas Production Safety Systems.

*OMB Control Number:* 1010-0058.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 1332(6) states that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health."

This notice concerns the reporting and recordkeeping elements of 30 CFR 250, subpart H, Oil and Gas Production Safety Systems, and related Notices to Lessees and Operators (NTLs) that clarify and provide additional guidance on some aspects of the regulations.

Responses are mandatory. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to 30 CFR 250.196, "Data and information to be made available to the public," 30 CFR part 252, "OCS Oil and Gas Information Program," and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2).

MMS OCS Regions use the information submitted under subpart H to evaluate equipment and/or procedures that lessees propose to use during production operations, including evaluation of requests for departures or use of alternative procedures. Information submitted is also used to verify the no-flow condition of wells to continue the waiver of requirements to install valves capable of preventing backflow. MMS inspectors review the records maintained to verify compliance with testing and minimum safety requirements.

The Gulf of Mexico OCS Region (GOMR) has a policy regarding approval of "new" requests to use a chemical-only fire prevention and control system in lieu of a water system. With respect to "currently-approved" departures, MMS may require additional information be submitted to maintain approval of the departure. The information is used to determine if the chemical-only system provides the equivalent protection of a water system for the egress of personnel should a fire occur.

In the Pacific OCS Region, MMS reviews copies of the Emergency Action Plans (EAP) that lessees and operators submit to their local air quality agencies to ensure that abatement procedures do not jeopardize safe platform operations.

*Frequency:* The frequency of reporting is on occasion or annual.

*Estimated Number and Description of Respondents:* Approximately 117 Federal OCS oil and gas or sulphur lessees.

*Estimated Reporting and Recordkeeping "Hour" Burden:* The estimated annual "hour" burden for this information collection is a total of 14,445 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart H and NTL(s)	Reporting and recordkeeping requirement	Hour burden	Average No. annual responses	Annual burden hours
800; 801; 802; 803; related NTLs.	Submit application and request approval for design, installation, and operation of subsurface safety devices and surface production-safety systems; including related requests for departures or use of alternative procedures (supervisory control and data acquisition systems, valve closure times, time delay circuitry, etc.).	8	650 submissions	5,200
801(g) .....	Submit annual verification of no-flow condition of well .....	2	50 verifications	100
801(h)(1) .....	Form MMS-124, Sundry Notices and Reports on Wells (renamed Application for Permit to Modify).	Burden covered under 1010-0141		0
801(h)(2); 803(c) .....	Identify well with sign on wellhead that subsurface safety device is removed; flag safety devices that are out of service.	Usual/customary safety procedure for removing or identifying out-of-service safety devices		0
802(e)(5) .....	Submit statement/application/modification certifying final surface production safety system installed conforms to approved design.	4	175 submissions	700
803(b)(2) .....	Submit required documentation under API RP 17J .....	50	6 submissions ...	300
803(b)(8); related NTLs.	Submit information (risk assessment) to request new firefighting system departure approval (GOMR).	8	150 submissions	1,200
803(b)(8); related NTLs.	Submit information (risk assessment) to retain current firefighting system departure approval (GOMR).	8	100 submissions	800
803(b)(8)(iv) .....	Post diagram of firefighting system .....	2	95 postings .....	190
804(a)(12); 800 .....	Notify MMS prior to production when ready to conduct pre-production test and upon commencement for a complete inspection.	1/2	175 notices .....	88 (rounded)
804; related NTLs .....	Request departure from testing schedule requirements .....	1	105 requests .....	105
804; related NTL .....	Submit copy of state-required EAP containing test abatement plans (applies to Pacific OCS Region only).	0	0 plans .....	0
806(c) .....	Request evaluation and approval of other quality assurance programs covering manufacture of safety and pollution prevention equipment (SPPE).	2	1 request .....	2
800-807 .....	General departure and alternative compliance requests not specifically covered elsewhere in subpart H regulations.	4	230 requests .....	920
<b>Subtotal Reporting</b>			<b>1,737</b> .....	<b>9,605</b>
801(h)(2); 802(e); 804(b).	Maintain records on subsurface and surface safety devices to include approved design & installation features, testing, repair, removal, etc.	20	110 lessees .....	2,200
803(b)(1)(iii), (2)(i) .....	Maintain pressure-recorder charts .....	12	110 lessees .....	1,320
803(b)(4)(iii) .....	Maintain schematic of the emergency shutdown (ESD) which indicates the control functions of all safety devices.	6	110 lessees .....	660
803(b)(11) .....	Maintain records of wells that have erosion-control programs and results.	6	110 lessees .....	660
<b>Subtotal Recordkeeping</b>			<b>440</b> .....	<b>4,840</b>
<b>Total Hour Burden</b>	.....	<b>2,177</b>	.....	<b>14,445</b>

#### *Estimated Reporting and Recordkeeping "Non-Hour Cost"*

*Burden:* We have identified no paperwork "non-hour cost" burdens associated with the collection of information.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency " \* \* \* to provide notice \* \* \* and otherwise consult with members of the public and affected agencies concerning each proposed collection of information \* \* \*" Agencies must specifically solicit comments to: (a) Evaluate whether the

proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on June 1, 2005, we published a **Federal Register** notice (70 FR 31506) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the

30 CFR 250 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by February 22, 2006.

*Public Comment Procedures:* MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this



prominently at the beginning of your comment. MMS will honor the request to the extent allowable by the law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

*MMS Information Collection Clearance Officer:* Arlene Bajusz (202) 208-7744.

Dated: August 23, 2005.

**E.P. Danenberger,**

*Chief, Office of Offshore Regulatory Programs.*  
[FR Doc. E6-688 Filed 1-20-06; 8:45 am]

**BILLING CODE 4310-MR-P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of revision of an information collection (1010-0050).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 250, "Pipelines and Pipeline Rights-of-Way," and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

**DATES:** Submit written comments by February 22, 2006.

**ADDRESSES:** You may submit comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior via OMB email: (*OIRA\_DOCKET@omb.eop.gov*); or by fax (202) 395-6566; identify with (1010-0050).

Submit a copy of your comments to the Department of the Interior, MMS, via:

- Email MMS at *rules.comments@mms.gov*. Use Information Collection Number 1010-0050 in the subject line.

- Fax: 703-787-1093. Identify with Information Collection Number 1010-0050.

- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS-4024; Herndon, Virginia 20170-4817. Please reference "Information Collection 1010-0050" in your comments.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Blundon, Rules Processing Team, (703) 787-1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations and forms that require the subject collection of information.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR 250, Pipelines and Pipeline Rights-of-Way.

*Form:* MMS-2030, Outer Continental Shelf (OCS) Right-of-Way Grant Bond.

*OMB Control Number:* 1010-0050.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 1334(e) authorizes the Secretary to grant rights-of-way through the submerged lands of the OCS for pipelines " \* \* \* for the transportation of oil, natural gas, sulphur, or other minerals, or under such regulations and upon such conditions as may be prescribed by the Secretary, \* \* \* including (as provided in section 1347(b) of this title) assuring maximum environmental protection by utilization of the best available and safest technologies, including the safest practices for pipeline burial. \* \* \* "

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104-133, 110 Stat. 1321, April 26, 1996), and Office of Management and Budget (OMB) Circular A-25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's (DOI) implementing policy, the

Minerals Management Service (MMS) is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. Pipeline rights-of-way and assignments are subject to cost recovery, and MMS regulations specify filing fees for applications.

This notice concerns the reporting and recordkeeping elements of 30 CFR 250, subpart J, Pipelines and Pipeline Rights-of-Way, and related Notices to Lessees and Operators (NLTs) that clarify and provide additional guidance on some aspects of the regulations. Included with this submission is form MMS-2030, Outer Continental Shelf Right-of-Way Grant Bond. Section 250.1011(a) requires applicants for, and holders of, a right-of-way to provide and maintain a \$300,000 bond (in addition to the bond coverage required under 30 part CFR 256), as well as additional security MMS determines is necessary. Respondents submit form MMS-2030 for these right-of-way grant bonds. Responses are mandatory. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to 30 CFR 250.196, "Data and information to be made available to the public," 30 CFR part 252, "OCS Oil and Gas Information Program," and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2).

The lessees and transmission companies design the pipelines that they install, maintain, and operate. To ensure those activities are performed in a safe manner, MMS needs information concerning the proposed pipeline and safety equipment, inspections and tests, and natural and manmade hazards near the proposed pipeline route. MMS field offices use the information collected under subpart J to review pipeline designs prior to approving an application for a right-of-way or a pipeline permitted under a lease to ensure that the pipeline, as constructed, will provide for safe transportation of minerals through the submerged lands of the OCS. They review proposed routes of a right-of-way to ensure that the right-of-way, if granted, would not conflict with any State requirements or unduly interfere with other OCS activities. MMS field offices review plans for taking pipeline safety equipment out of service to ensure alternate measures are used that will properly provide for the safety of the pipeline and associated facilities (platform, etc.). They review notification of relinquishment of a right-of-way grant and requests to abandon pipelines to

ensure that all legal obligations are met and pipelines are properly abandoned. MMS inspectors monitor the records concerning pipeline inspections and tests to ensure safety of operations and protection of the environment and to schedule their workload to permit witnessing and inspecting operations. Information is also necessary to determine the point at which DOI or DOT has regulatory responsibility for a

pipeline and to be informed of the responsible operator if not the same as the right-of-way holder.

*Frequency:* On occasion and annually.  
*Estimated Number and Description of Respondents:* Approximately 117 lessees and 210 holders of pipeline rights-of-way.

*Estimated Reporting and Recordkeeping "Hour" Burden:* The estimated annual "hour" burden for this

information collection is a total of 107,774 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart J and related NTL(s)	Reporting & recordkeeping requirement	Hour burden	Average No. annual responses	Annual burden hours
1000(b), 1007(a) .....	Submit application to install new lease-term pipeline (P/L), including exceptions/departures, consents and notices, required reports, and attachments.	140 .....	280 new lease-term P/Ls.	39,200
1000(b), (d); 1007(a); 1009(a); 1011(a); 1015; 1016.	Apply for P/L right-of-way (ROW) grant and installation of new ROW P/L, including exceptions/departures, consents and notices, required reports, and attachments.	140 .....	225 new ROW P/Ls.	31,500
1000(b); 1007(b); 1015; 1017.	Submit application to modify lease-term or ROW P/L or ROW grant, including exceptions/departures; notify operators of deviation.	30 .....	320 modifications	9,600
1000(b); 1010(h); 1014.	Apply to relinquish P/L ROW grant, including exceptions/departures.	8 .....	160 P/L ROW relinquishments.	1,280
1000(c)(2) .....	Identify in writing P/L operator on ROW if different from ROW grant holder.	1/4 .....	4 submissions .....	1
1000(c)(3) .....	Mark specific point on P/L where operating responsibility transfers to transporting operator or depict transfer point on a schematic located on the facility. One-time requirement after final rule published; now part of application or construction process involving no additional burdens.			0
1000(c)(4) .....	Petition to MMS for exceptions to general operations transfer point description.	5 .....	1 petition .....	5
1000(c)(8) .....	Request MMS recognize valves landward of last production facility but still located on OCS as point where MMS regulatory authority begins.	1 .....	(None received to date) 1 request .....	1
1000(c)(12) .....	Petition to MMS to continue to operate under DOT regulations upstream of last valve on last production facility.	40 .....	1 petition .....	40
1000(c)(13) .....	Transporting P/L operator petition to DOT and MMS to continue to operate under MMS regulations.	40 .....	(None received to date) 1 petition .....	40
1004(c) .....	Place sign on safety equipment identified as ineffective and removed from service.		(None received to date) See footnote <sup>1</sup>	0
1007(a)(4) .....	Submit required documentation under API RP 17J .....	150 hours .....	12 submissions ...	1,800
1008(a), (c), (d), (e), (f), (h).	Notify MMS; and as requested submit procedures before performing work; and submit post-report on P/L or P/L safety equipment repair, removal from service, analysis results, or potential measurements.	16 .....	838 notices/reports.	13,408
1008(b) .....	Submit P/L construction report .....	16 .....	173 reports .....	2,768
1008(g) .....	Submit plan of corrective action and report of remedial action .....	16 .....	4 plans/reports ....	64
1010(c) .....	Notify MMS of any archaeological resource discovery .....	4 .....	2 discovery notices.	8
1010(d) .....	Inform MMS of P/L ROW holder's name and address changes ...		Exempt under 5 CFR 1320.3(h)	0
1011(a) .....	Submit surety bond on form MMS-2030 .....	GOM 0.25 .....	50 forms .....	13 (rounded)
1015 .....	Apply to convert lease-term P/L to ROW grant P/L; notify operators of deviation, including various exceptions/departures.	POCS 3 .....	3 forms .....	9
1016 .....	Request opportunity to eliminate conflict when application has been rejected.	25 .....	26 conversions ...	650
1018 .....	Apply for assignment of a ROW grant .....	2 .....	1 request .....	2
1000-1019 .....	General departure and alternative compliance requests not specifically covered elsewhere in subpart J regulations.	16 .....	135 assignments	2,160
		2 .....	175 requests .....	350
<b>Subtotal Reporting</b>			<b>2,412 .....</b>	<b>102,899</b>
1000-1008 .....	Make available to MMS design, construction, operation, maintenance, testing, and repair records on lease-term P/Ls <sup>2</sup> .	2 .....	110 lease-term ... P/L operators .....	220
1005(a) .....	Inspect P/L routes for indication of leakage <sup>1</sup> , record results, maintain records 2 years <sup>2</sup> .	2 per month = 24	170 lease-term or ROW P/L ops.	4,080

Citation 30 CFR 250 subpart J and related NTL(s)	Reporting & recordkeeping requirement	Hour burden	Average No. annual responses	Annual burden hours
1010(g) .....	Make available to MMS design, construction, operation, maintenance, testing, and repair records on P/L ROW area and improvements <sup>2</sup> .	5 .....	115 P/L ROW holders.	575
<b>Subtotal Recordkeeping</b>			395 .....	4,875
<b>Total Hour Burden</b>	.....	.....	<b>2,807</b> .....	<b>107,774</b>

*Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden:* The estimated "non-hour cost" burden for this information collection is a total of \$329,700 rounded to \$330,000. These cost burdens are for filing fees associated with new applications (\$2,350 per application) and filing conversion applications (\$200 per filing fee) according to § 250.1015(a), or to file assignment applications (\$170 per filing) according to § 250.1018(b).

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency " \* \* \* to provide notice \* \* \* and otherwise consult with members of the public and affected agencies concerning each proposed collection of information \* \* \*". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on June 1, 2005, we published a **Federal Register** notice (70 FR 31502) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR part 250 regulations and forms. The regulation also informs the public that they may comment at any time on the collections of information and

provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by February 22, 2006.

*Public Comment Procedures:* MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor the request to the extent allowable by the law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

*MMS Information Collection Clearance Officer:* Arlene Bajusz (202) 208-7744.

Dated: August 29, 2005.  
**E.P. Danenberger,**  
*Chief, Office of Offshore Regulatory Programs.*  
 [FR Doc. E6-690 Filed 1-20-06; 8:45 am]  
**BILLING CODE 4310-MR-P**

**DEPARTMENT OF THE INTERIOR**

**Minerals Management Service**

**Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request**

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of an information collection (1010-0164).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995

(PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 250, subpart I, Platforms and Structures, Notice to Lessees and Operators (NTL)—Damage Caused by Hurricane(s). This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

**DATES:** Submit written comments by February 22, 2006.

**ADDRESSES:** You may submit comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior via OMB e-mail: (*OIRA\_DOCKET@omb.eop.gov*); or by fax (202) 395-6566; identify with (1010-0164).

Submit a copy of your comments to the Department of the Interior, MMS, via:

- MMS's Public Connect on-line commenting system, <https://ocscconnect.mms.gov>. Follow the instructions on the website for submitting comments.
- E-mail MMS at [rules.comments@mms.gov](mailto:rules.comments@mms.gov). Use Information Collection Number 1010-0164 in the subject line.
- Fax: 703-787-1093. Identify with Information Collection Number 1010-0164.

- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS-4024; Herndon, Virginia 20170-4817. Please reference "Information Collection 1010-0164" in your comments.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Blundon, Rules Processing Team, (703) 787-1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR Part 250, Subpart I, Platforms and Structures—NTL—Damage Caused by Hurricane(s).

*OMB Control Number:* 1010–0164.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; preserve and maintain free enterprise competition; and ensure that the extent of oil and natural gas resources of the OCS is assessed at the earliest practicable time. Section 43 U.S.C. 1332(6) states that "operations in the outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health."

To carry out these responsibilities, the Minerals Management Service (MMS) issues regulations to ensure that operations in the OCS will meet statutory requirements; provide for safety and protect the environment; and result in diligent exploration, development, and production of OCS leases. In addition, we also issue Notices to Lessees and Operators (NTLs) that provide clarification, explanation, and interpretation of our regulations. These NTLs are used to convey purely informational material and to cover situations that might not be adequately addressed in our regulations. The latter is the case for the information collection required in hurricane related NTLs. Because of the unusual nature of this information collection, issuing a temporary NTL is the appropriate means to collect the information at the time of the event.

The subject of this information collection request (ICR) is an NTL on "Damage Caused by Hurricane(s)" to be issued to lessees and operators in the MMS Gulf of Mexico OCS (GOM)

Region after a hurricane occurs. With this submission, MMS is consolidating the two ICRs on hurricanes approved under emergency submissions to OMB (1010–0163 and 1010–0164) into this package. We are also renewing the collection for 3 years because information needs to be collected for a longer period than allowed by the emergency OMB requests. When a hurricane occurs, lessees need to keep reporting, where applicable, and submitting new information to MMS until all facilities are back to normal operations. We are also expanding the ICR to now include any future hurricanes that may occur in the GOM, in addition to the hurricanes that occurred in the 2005 season. Once this ICR is approved by OMB, MMS will reissue the currently approved NTL to extend the deadline for submitting information relating to both Hurricanes Katrina and Rita (Rita was approved under the "Generic" NTL, 1010–0164). MMS will then submit an 83–D for 1010–0163, NTL, Damaged Caused by Hurricane Katrina.

In the future, MMS will reissue an NTL for each new hurricane that impacts operations in the GOM. We will insert the appropriate hurricane name, longitudes, and dates of submittal, into the NTL.

Currently, there are over 4,000 facilities/structures in the GOM OCS. We anticipate that potential major hurricanes may impact 40 percent or more of the platforms in the GOM during any one event. For example, in 2005, Hurricanes Katrina and Rita affected approximately 3,400 combined OCS facilities—1,000 facilities were affected by both storms; they each followed different paths and had specific meteorological anomalies (phenomena of the normal departure of the atmosphere). It needs to be stressed that the information we propose to collect under this NTL is information that a prudent lessee/operator would prepare in the event of a major hurricane. The primary information collection for this regulation is 30 CFR part 250, subpart I, approved under the Office of Management and Budget (OMB) Control Number 1010–0149. However, in connection with this subpart, MMS thinks that the burden hour requirements in the NTL are in addition to the currently approved paperwork burden under those requirements.

With regard to the "OCS Pipelines" section of this NTL, MMS has the authority to collect the information requested under 30 CFR part 250, subpart J, Pipelines and Pipeline Rights-

of-Way. The OMB has already approved the collection of pipeline information under OMB Control Number 1010–0050 (108,786 burden hours).

Emergency NTLs were issued relating to this same subject—structural damage caused by hurricanes—in 2003 after Hurricane Lili, in 2004 after Hurricane Ivan, and in 2005 after Hurricanes Katrina and Rita. MMS is now proposing rulemaking that will increase the burden hours and require more specific information that lessees need to submit about structure damage on the OCS due to natural phenomena, e.g., hurricanes, earthquakes. This increase in burden hours, once approved, will allow MMS to react to natural disasters more quickly and provide the public with needed information about the offshore energy infrastructure. It is currently in the surnaming process and OMB has issued Regulation Identifier Number 1010–AD18.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.196, "Data and information to be made available to the public." No items of a sensitive nature are collected. Responses are mandatory.

The information collected is necessary for MMS to assess the structural integrity of the platforms that may have been damaged by a hurricane to determine if the damage poses a threat to continued safe and environmentally sound operations. The MMS will use the information collected to determine whether to require corrective action, including repairs and maintenance, on any damaged structures. The offshore oil and gas industry will use the information for financial purposes when dealing with partners, insurance companies, and company personnel.

*Frequency:* On occasion and monthly.

*Estimated Number and Description of Respondents:* Approximately 110 lessees and operators.

*Estimated Reporting and Recordkeeping "Hour" Burden:* The estimated annual "hour" burden for this information collection is a total of 26,880 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

Reporting requirement	Hour burden	Annual number of responses	Annual burden hours
Prepare and submit to MMS (1) list of impacted OCS structures, (2) timetable for inspections, and (3) inspection plan for each listed platform describing work to determine condition of structure. ....	12	150	1,800
Submit subsequent updates to list and inspection plans .....	12	90	1,080
Submit report to MMS describing detected damage that may adversely affect structural integrity, including assessment of ability to withstand anticipated environmental storm conditions, and any remediation plans .....	120	200	24,000
<b>Total Burden</b> .....		440	26,880

*Estimated Reporting and Recordkeeping "Non-Hour Cost"*

**Burden:** We have identified no paperwork "non-hour cost" burdens associated with the collection of information.

**Public Disclosure Statement:** The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

**Comments:** Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency " \* \* \* to provide notice \* \* \* and otherwise consult with members of the public and affected agencies concerning each proposed collection of information \* \* \*." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on October 12, 2005, we published a **Federal Register** notice (70 FR 59368) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR 250 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by February 22, 2006.

**Public Comment Procedures:** MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor the request to the extent allowable by the law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

**MMS Information Collection Clearance Officer:** Arlene Bajusz (202) 208-7744.

Dated: December 29, 2005.  
**E.P. Danenberger,**  
 Chief, Office of Offshore Regulatory Programs.  
 [FR Doc. E6-691 Filed 1-20-06; 8:45 am]  
**BILLING CODE 4310-MR-P**

**DEPARTMENT OF THE INTERIOR**

**Minerals Management Service**

**Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request**

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of a revision of a currently approved information collection (OMB Control Number 1010-0119).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 208—Sale of Federal Royalty Oil.

This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The title of this information collection request (ICR) is "30 CFR Part 208—Sale of Federal Royalty Oil; Sale of Federal Royalty Gas; and Commercial Contracts (Forms MMS-4070, Application for the Purchase of Royalty Oil; MMS-4071, Letter of Credit; and MMS-4072, Royalty-in-Kind Contract Surety Bond)." We changed the title of this ICR to clarify the regulatory language we are covering under 30 CFR part 208 and to include relevant portions of the Royalty-In-Kind (RIK) 5-Year Business Plan. The title change also reflects OMB's approval of consolidation of five RIK-related ICRs. Those ICRs were titled:

- 1010-0042: 30 CFR part 208—Sale of Federal Royalty Oil; Royalty-in-Kind (RIK) Program (Form MMS-4070, Application for the Purchase of Royalty Oil);
- 1010-0119: 30 CFR part 208—Sale of Federal Royalty Oil, Royalty Oil Sales to Eligible Refiners (30 CFR 208.4(a) and (d));
- 1010-0126: Royalty-In-Kind (RIK) Pilot Program Directed Communications by Operators of Federal Oil and Gas Leases;
- 1010-0129: Royalty-in-Kind Pilot Program—Offers, Financial Statements, and Surety Instruments for Sales of Royalty Oil and Gas; and
- 1010-0135: 30 CFR 208.11(a), (b), (d), and (e)—Surety Requirements (Forms MMS-4071 and MMS-4072).

In the five ICRs, much of the general information was repeated and cross referenced. This consolidated ICR 1010-0119 eliminates that duplication of effort and redundancy of data and

provides for review of all RIK information collection requirements on a program-wide basis.

**DATES:** Submit written comments on or before February 22, 2006.

**ADDRESSES:** Submit written comments by either FAX (202) 395-6566 or e-mail (*OIRA\_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010-0119). Mail your comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service or wish to hand-carry your comments, our courier address is Building 85, Room A-614, Denver Federal Center, West 6th Avenue and Kipling Blvd., Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231-3211.

**FOR FURTHER INFORMATION CONTACT:** Sharron L. Gebhardt, telephone (303) 231-3211, FAX (303) 231-3781, e-mail *Sharron.Gebhardt@mms.gov*. You may also contact Sharron Gebhardt to obtain a copy at no cost of the forms and regulations that require the subject collection of information.

**SUPPLEMENTARY INFORMATION:** *Title:* 30 CFR part 208—Sale of Federal Royalty Oil; Sale of Federal Royalty Gas; and Commercial Contracts (Forms MMS-4070, Application for the Purchase of Royalty Oil; MMS-4071, Letter of Credit; and MMS-4072, Royalty-in-Kind Contract Surety Bond).

*OMB Control Number:* 1010-0119.

*Bureau Form Number:* Forms MMS-4070, MMS-4071, and MMS-4072.

*Abstract:* The Secretary of the U.S. Department of the Interior is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary, under the Mineral Leasing Act of 1920, Section 36, as amended (30 U.S.C. 192) (Mineral Leasing Act); and the Outer Continental Shelf Lands Act of 1953, Section 27, as amended (43 U.S.C. 1353) (OCS Lands Act), is responsible for managing the production of minerals from Federal and Indian lands and the OCS,

collecting royalties from lessees who produce minerals, and distributing funds collected in accordance with applicable laws. The MMS performs the royalty management functions for the Secretary.

The MMS is responsible for ensuring that all revenues from Federal and Indian mineral leases are accurately collected, accounted for, and disbursed to recipients. Historically, most of these revenues have been received in the form of cash royalty payments, *i.e.*, royalty in-value payments. These payments are paid by mineral development interests. In recent years, MMS conducted pilots to test the approach of taking royalties in kind.

The Federal Government's MMS RIK pilot program became a permanent operational program after several years of pilot project testing. The MMS RIK operational program takes payment from mineral lessees "in kind" in the form of produced crude oil and natural gas volumes, rather than in cash payments. The lessee transfers the title of the crude oil or natural gas to the Federal Government, and MMS sells the received product (crude oil or natural gas) to agents in the marketplace and disburses revenues as prescribed by law. The MMS sells some product competitively in the unrestricted marketplace, and other RIK product is sold competitively to eligible refiners (a small and independent refiner, as defined in 30 CFR 208.2). Additionally, when directed, MMS delivers the RIK product to other Federal agencies, as has been the case during the fill of the Strategic Petroleum Reserve (SPR), directed by the President in 2001, with scheduled completion in 2005. Specifically, within the MMS RIK operational program, MMS conducts the eligible refiner program and the SPR program, in addition to the Wyoming crude oil, offshore unrestricted crude oil, and offshore natural gas programs.

Recently, MMS consolidated and revised existing procedures and policies guiding the sale of onshore and offshore royalty crude oil and natural gas (1) to establish uniformity within the regulatory and operational framework; (2) to provide industry with a more efficient and responsive MMS RIK operational program; and (3) to improve the Federal Government's administration of this program. For example, several of the reporting requirements for eligible refiners under 30 CFR part 208 have been combined with reporting requirements for other RIK purchasers. However, due to the unique nature of the sale of crude oil to eligible refiners, certain requirements

pertain only to that eligible refiner program.

Applicable citations of the laws pertaining to the taking and selling of the Federal Government's royalty share of mineral leases in the form of production (royalties "in kind") include 30 CFR part 208; Mineral Leasing Act; OCS Lands Act; 30 U.S.C. 189 pertaining to Public Lands; 30 U.S.C. 359 pertaining to Acquired Lands; and 43 U.S.C. 1334 pertaining to OCS Lands. These citations, as well as specific language in the actual lease documents, authorize the Secretary to sell royalty oil and gas accruing to the United States. The standard lease terms state that royalties are due in amount or in value. In addition, these citations authorize the Secretary to prescribe proper rules and regulations and to do any and all things necessary to accomplish the purpose of applicable laws. The MMS directs communications between MMS operators and RIK purchasers through commercial contracts, situation-specific "Dear Operator" letters, or in the case of eligible refiners, through regulations at 30 CFR part 208. Proprietary information submitted to MMS under this collection is protected, and no items of a sensitive nature are collected.

**Eligible Refiner Information—**This information was previously collected under ICRs 1010-0042 and 1010-0119.

#### **Determination of Need—Federal Register Notice**

As stated earlier, royalties may be paid "in value" or "in kind." The regulations at 30 CFR part 208, Sale of Federal Royalty Oil, govern the Federal oil RIK program for eligible refiners. Under 30 CFR 208.4(a) and (b), MMS, on behalf of the Secretary, performs a Determination of Need prior to issuing a Notice of Availability of Royalty Oil for sale. The MMS uses the feedback from the Determination of Need respondents (eligible refiners or other interested parties, such as lessees or operators) to assess current marketplace conditions, *i.e.*, whether small and independent eligible refiners have access to ongoing supplies of crude oil at equitable prices. When MMS determines that eligible refiners do not have access to adequate supplies of oil, MMS may dispose of any royalty oil taken in kind, by conducting a sale of such oil, through an allocation process, to eligible refiners. The most recent Determination of Need assessment, requesting specific information from eligible refiners, was published in the **Federal Register** on August 11, 2003 (68 FR 47605).

In order to qualify for RIK sales, eligible refiners must prequalify by

signing the MMS base contract, "RIK Crude Oil General Terms and Conditions," and providing detailed financial information. Upon prequalification, MMS will issue an amount of unsecured credit, based on the creditability of the offeror.

#### **Notice of Availability of Royalty Oil—Federal Register Notice**

Under § 208.5, if MMS determines from the Determination of Need that eligible refiners do not have access to adequate supplies of crude oil, MMS would then publish a Notice of Availability of Royalty Oil for sale, in the **Federal Register** and other printed media, when appropriate. This notice advises industry of a forthcoming RIK crude oil sale for eligible refiners and includes administrative details concerning the application, the allocation process, and the contract award process for the royalty oil. It also details specific information about the crude oil types offered for sale and the location of delivery points. The most recent Notice of Availability of Royalty Oil was published in the **Federal Register** on March 12, 2004 (69 FR 11881).

Under § 208.10(e), eligible refiners who purchase royalty oil cannot transfer, assign, or sell their rights or interest in a royalty oil contract without written approval of the Director, MMS. This provision is intended to ensure that only qualified eligible refiners benefit from these sales of royalty oil.

#### **Form MMS-4070—Application for the Purchase of Royalty Oil**

Under § 208.6, eligible refiners interested in purchasing royalty oil must submit Form MMS-4070 in accordance with instructions in the Notice of Availability of Royalty Oil and instructions issued by MMS for completion of the form. On Form MMS-4070, MMS requests specific information, such as: The location of their refinery; desirability of offshore versus onshore crude; type of crude desired (e.g., Wyoming Sweet); ability to obtain long-term supply of desired crude (with supporting documentation, such as "denial" by major supplier); ability to obtain desired crude at fair market prices (with supporting documentation that desired oil was not available or equitably priced for the area or region in question); percentage of total refining capacity attributable to Federal oil versus other sources; etc.

The Federal Government's administration of the eligible refiner program is aided significantly by the collection of information requested on Form MMS-4070. The MMS uses the

information collected to determine the eligibility of refiners wanting to enter into contracts to purchase royalty oil and to provide a basis for the allocation of available royalty oil among eligible refiners, when necessary; that is, they meet the small refiner eligibility requirements issued by the Small Business Administration, as explained under § 208.6.

**Directed Communications by Operators of Federal Oil and Gas Leases**—This information was previously collected under ICR 1010-0126.

Collection of RIK crude oil and natural gas for eligible refiners and other RIK purchasers requires communication between MMS and the operators of a lease to ensure accurate and timely delivery of MMS's royalty share of production volumes. In order to take MMS's crude oil or natural gas in kind, MMS, as the responsible steward of oil and gas royalties, must direct operators of affected MMS leases to provide three types of communication:

(1) Report information about the projected volumes and qualities of RIK crude oil or natural gas production the operator expects to make available for delivery in the following month, and report corrections to those projected volumes and qualities for previous months, submitting monthly no later than 10 days before the first day of following month;

(2) Report cost/invoicing information about transportation charges incurred for delivering the RIK product to the delivery point, when applicable; and

(3) Report month-end summary information (lease imbalance statement) regarding total RIK crude oil or natural gas volumes and qualities needed to carry over to the next month to resolve aggregated imbalances that have occurred in prior months of RIK deliveries.

In marketing the product, information received through MMS's directed communication is essential for MMS to ensure the delivery and acceptance of verifiable quantities and qualities of crude oil and natural gas. In cases when MMS is directed to deliver the product to other Federal agencies, these types of directed communication are necessary so that exchange contractors can arrange to timely accept accurate amounts and qualities of royalty oil that will be delivered by MMS's exchange partner and for MMS to verify timely fulfillment of operators' and lessees' royalty obligations to the Federal Government.

The types of directed communication and the supporting data, which MMS requires operators to use in setting up the monthly delivery of RIK to the

purchaser, are standard business practices in the oil and gas industry. Sample "Dear Operator" letters are posted on RIK's Web site at <http://www.mrm.mms.gov/rikweb/RIKOperLts.htm>.

**Third-Party Agreements**—This information was previously collected under ICR 1010-0042.

Title 30 CFR 208.9 requires that eligible refiners who purchase royalty oil must submit to MMS two copies of any written third-party agreements, or two copies of a complete written explanation of any oral third-party agreements, relating to the method and costs of delivery of royalty oil, or crude oil exchanged for the royalty oil, from the point of delivery under the contract to the purchaser's refinery. Also, this section requires that the purchaser must submit copies of agreements pertaining to quality differentials that may occur between the lease(s) and the delivery point(s). However, in practice MMS does not currently require eligible refiners to submit these agreements.

**Offers, Financial Statements, and Surety Instruments for Sales of Royalty Oil and Gas**—This information was previously collected under ICRs 1010-0129 and 1010-0135.

Offers. The Secretary is obligated to hold competition when selling to the public to protect actual RIK production before, during, and after any sale and to obtain a fair return on royalty production sold. The MMS must fulfill those obligations for the Secretary. The reporting requirements are (1) actual pricing offers that potential purchasers will submit when MMS offers production for competitive sale; (2) offerors' statements of financial qualification (audited financial statements or 10K report/statement); and (3) surety instruments, such as a Letter of Credit (LOC), bond, prepayment, or parent guaranty when financial qualification is not sufficient. All LOCs are irrevocable.

The MMS typically offers royalty oil and gas production for sale by Invitation for Offers (IFOs) to those offerors who have previously established their qualifications. The MMS evaluates all offers to determine which combination of price and other terms comprises the best return to the U.S. Department of the Treasury and to any affected state.

Financial Statements. The MMS may request that a bidder submit its public-available statements of its financial condition (brought briefly up to date, if needed) or other related qualification information. The MMS evaluates the qualification information to determine whether bidders are reliable to follow through on payment of the dollar

amount (or delivery of exchange production) offered, as they bid, and to determine their ability to timely perform activities attendant to the taking of crude oil and/or natural gas. The MMS performs this step to reduce the risk to the Federal Government in these transactions.

**Surety Instruments.** Under MMS's current practice, eligible refiners are subject to the same requirements as other RIK purchasers regarding MMS-acceptable surety instruments and qualification information. Reporting requirements in 30 CFR 208.11 discuss surety instruments for eligible refiners. Surety instruments include the broad field of financial instruments that may be collected, such as bonds, prepayments, and parent guaranties. When required, eligible refiners and other RIK purchasers must provide surety documents, i.e., Form MMS-4071, LOC; Form MMS-4072, Royalty-In-Kind Contract Surety Bond; other acceptable commercial surety, within 5 business days prior to the first delivery under the contract to protect the Federal Government's interest. For bonds, MMS

requires a specific MMS-approved format. All parent guaranties must specify a dollar amount of the guaranty and the effective term.

For awards exceeding the amount of unsecured credit issued by MMS, successful offerors will be required to provide secured financial assurance in the form of an LOC, bond, or other MMS-acceptable surety instrument within 5 business days prior to the first delivery under the contract.

In cases of high-risk counterparties, or large awards of RIK crude oil or natural gas, MMS will require a surety instrument to guarantee performance under RIK sales or exchange agreement. Surety instruments are commonly used in the commercial oil and gas industry as a standard course of business where risk is encountered from counterparties.

The surety instruments provide the Federal Government with a means to collect money if refiners do not report and pay for the Federal oil they have received. Annually, the MMS receives approximately 3 bonds, less than 5 LOCs, 1 or 2 prepayment(s), and 10 parent guaranties or, in some cases, semiannually.

The MMS is requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments.

*Frequency of Response:* On occasion, weekly, monthly, annually, frequency varies within monthly reporting cycle, or as necessary.

*Estimated Number and Description of Respondents:* 145 Federal lessees and/or operators; and 80 commercial oil and gas purchasers and/or refiners.

*Estimated Annual Reporting and Recordkeeping "Hour" Burden:* 2,284 hours.

The following chart shows the breakdown of the estimated burden hours by CFR section and paragraph. We are revising this ICR to include previously overlooked reporting requirements at § 208.10(d). We have adjusted the burden hours accordingly. We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary.

**SECTION A.12 BURDEN BREAKDOWN**

Citation 30 CFR Part 208 Subpart A	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
<b>208.4 Royalty oil sales to eligible refiners.</b>				
208.4(a) .....	(a) Determination to take royalty oil in kind. The Secretary may evaluate crude oil market conditions from time to time. * * * The Secretary will review these items and will determine whether eligible refiners have access to adequate supplies of crude oil and whether such oil is available to eligible refiners at equitable prices. * * *	4	8	32
208.4(b) .....	(b) Sale to eligible refiners. (1) * * * The Secretary may authorize MMS to offer royalty oil for sale to eligible refiners only for use in their refineries * * *	Hour burden covered under § 208.4(a).		
208.4(c) .....	(c) Upon a determination by the Secretary * * * that eligible refiners do have access to adequate supplies of crude oil at equitable prices, MMS will not take royalties in kind from oil and gas leases for exclusive sale to such refiners. * * *	Hour burden covered under § 208.4(a).		
208.4(d) .....	(d) Interim sales. * * * The potentially eligible refiners, individually or collectively, must submit documentation demonstrating that adequate supplies of crude oil at equitable prices are not available for purchase. * * *	Hour burden covered under § 208.4(a).		



SECTION A.12 BURDEN BREAKDOWN—Continued

Citation 30 CFR Part 208 Subpart A	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
<b>208.6 General application procedures.</b>				
208.6(a) and (b) .....	(a) To apply for the purchase of royalty oil, an applicant must file a Form MMS-4070 with MMS in accordance with instructions provided in the "Notice of Availability of Royalty Oil" and in accordance with any instructions issued by MMS for completion of Form MMS-4070. The applicant will be required to submit a letter of intent from a qualified financial institution stating that it would be granted surety coverage for the royalty oil for which it is applying, or other such proof of surety coverage, as deemed acceptable by MMS. The letter of intent must be submitted with a completed Form MMS-4070. (b) In addition to any other application requirements specified in the Notice, the following information is required on Form MMS-4070 at the time of application: * * *	1.25	8	10
<b>208.7 Determination of eligibility.</b>				
208.7(a) .....	(a) The MMS will examine each application and may request additional information if the information in the application is inadequate. * * *	0.25	1	1 (rounded up from 0.25)
<b>208.8 Transportation and delivery.</b>				
8.8(a)  208.8(b) .....	(a) * * * The purchaser must have physical access to the oil at the alternate delivery point and such point must be approved by MMS.  (b) * * * If the delivery point is on or immediately adjacent to the lease, the royalty oil will be delivered without cost to the Federal Government as an undivided portion of production in marketable condition at pipeline connections or other facilities provided by the lessee, unless other arrangements are approved by MMS. If the delivery point is not on or immediately adjacent to the lease, MMS will reimburse the lessee for the reasonable cost of transportation to such point in an amount not to exceed the transportation allowance determined pursuant to 30 CFR part 206. * * *	1	1	1  Hour burden covered by OMB Control Number 1010-0140 (Form MMS-2014, expires 10/31/2006). This provision is no different than the transportation allowances allowed in 30 CFR part 206 for royalties paid in value. The lessee enters allowance amount on Form MMS-2014.
<b>208.9 Agreements.</b>				
208.9(a) .....	(a) A purchaser must submit to MMS two copies of any written third-party agreements, or two copies of a full written explanation of any oral third-party agreements, relating to the method and costs of delivery of royalty oil, or crude oil exchanged for the royalty oil, from the point of delivery under the contract to the purchaser's refinery. In addition, the purchaser must submit copies of agreements pertaining to quality differentials which may occur between leases and delivery points.	1	8	8
<b>208.10 Notices.</b>				
208.10(d) .....	(d) After MMS notification that royalty oil will be taken in kind, the operator shall be responsible for notifying each working interest on the Federal lease. * * *	2	20	40
208.10(e) .....	(e) A purchaser cannot transfer, assign, or sell its rights or interest in a royalty oil contract without written approval of the Director, MMS. * * * Without express written consent from MMS for a change in ownership, the royalty oil contract shall be terminated. * * *	1	1	1

SECTION A.12 BURDEN BREAKDOWN—Continued

Citation 30 CFR Part 208 Subpart A	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
<b>208.11 Surety requirements [for eligible refiners].</b>				
208.11(a), (b) (d), and (e) ...	(a) The eligible purchaser, prior to execution of the contract, shall furnish an "MMS-specified surety instrument," in an amount equal to the estimated value of royalty oil that could be taken by the purchaser in a 99-day period, plus related administrative charges. * * *	Hour burden covered under "Offers, Financial Statements, and Surety Instruments for Sales of Royalty Oil and Gas" section. (Forms MMS-4071, Letter of Credit, and MMS-4072, Royalty-In-Kind Contract Surety Bond)		
<b>208.15 Audits.</b>				
208.15 .....	Audits of the accounts and books of lessees, operators, payors, and/or purchasers of royalty oil taken in kind may be made annually or at other such times as may be directed by MMS. * * *	PRODUCE RECORDS The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
<b>Directed Communications by Operators of Federal Oil and Gas Leases.</b>				
Contract-Directed .....	Wyoming Oil .....	3	47	141
	Natural Gas [Texas 8G and Gulf of Mexico (GOM)] .....	3	176	528
	GOM Oil .....	3	7	21
	SPR Fill Initiative (The SPR is expected to reach full capacity by the end of FY 2005. At that point, MMS will shift SPR oil volumes to the commercial GOM Oil RIK program. Thus, information collection responses will continue at the same level after SPR is filled to capacity.)	3	101	303
	Eligible Refiners .....	3	46	138
<b>Offers, Financial Statements, and Surety Instruments for Sales of Royalty Oil and Gas.</b>				
Contract-Directed .....	Offers .....	1	840	840
	Financial Statements .....	1	20	20
	Surety Instruments .....	10	20	200
Total Burden .....	.....	.....	1,304	2,284

*Estimated Annual Reporting and Recordkeeping "Non-hour" Cost Burden:* We have identified no "non-hour" cost burdens.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501 *et seq.*) provides that 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.

*Comments:* Section 3506(c)(2)(A) of the PRA requires each agency " \* \* \* to provide notice \* \* \* and otherwise consult with members of the public and affected agencies concerning each proposed collection of information \* \* \*." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d)

minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on March 7, 2005 (70 FR 11027), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by February 22, 2006.

*Public Comment Policy:* We will post all comments in response to this notice on our Web site at [http://www.mrm.mms.gov/Laws\\_R\\_D/InfoColl/InfoColCom.htm](http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm). We will also make

copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state your request prominently at the beginning of your comment. 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.

*MMS Information Collection Clearance Officer:* Arlene Bajusz (202) 208-7744.

Dated: September 9, 2005.

**Lucy Querques Denett,**

*Associate Director for Minerals Revenue Management.*

[FR Doc. E6-731 Filed 1-20-06; 8:45 am]

**BILLING CODE 4310-MR-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### Notice of Proposed Information Collection for 1029-0059

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collections of information for 30 CFR part 735—Grants for Program Development and Administration and Enforcement, and 30 CFR 886—State and Tribal Reclamation Grants. This collection request has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

**DATES:** OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by February 22, 2006, in order to be assured of consideration.

**ADDRESSES:** Please send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via e-mail at [OIRA\\_Docket@omb.eop.gov](mailto:OIRA_Docket@omb.eop.gov), or by facsimile to (202) 395-6566. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202—SIB, Washington, DC 20240, or electronically to [jtreleas@osmre.gov](mailto:jtreleas@osmre.gov). Please reference 1029-0059 in your correspondence.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of either information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208-2783, or electronically to [jtreleas@osmre.gov](mailto:jtreleas@osmre.gov).

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which

implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collections of information contained in 30 CFR part 735—Grants for Program Development and Administration and Enforcement, and 30 CFR part 886—State and Tribal Reclamation Grants. OSM is requesting a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for 30 CFR parts 735 and 886 that require grant submittals are currently approved under OMB control number 1029-0059.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on September 16, 2005 (70 FR 54770). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

**Title:** 30 CFR part 735—Grants for Program Development and Administration and Enforcement, and 30 CFR part 886—State and Tribal Reclamation Grants

**OMB Control Number:** 1029-0059.

**Summary:** State and Tribal reclamation and regulatory authorities are requested to provide specific budget and program information as part of the grant application and reporting processes authorized by the Surface Mining Control and Reclamation Act.

**Bureau Form Numbers:** OSM-47, OSM-49 and OSM-51.

**Frequency of Collection:** Semi-annually, annually and once.

**Description of Respondents:** State and Tribal regulatory and reclamation authorities.

**Total Annual Responses:** 132.

**Total Annual Burden Hours:** 680 hours.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses.

Please refer to OMB control number 1029-0059 in your correspondence.

Dated: November 17, 2005.

**John A. Trelease,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 06-558 Filed 1-20-06; 8:45 am]

**BILLING CODE 4310-05-M**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-554]

### In the Matter of Certain Axle Bearing Assemblies, Components Thereof, and Products Containing the Same; Notice of a Commission Determination Not To Review an Initial Determination Amending the Complaint and Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") of the presiding administrative law judge ("ALJ") granting the motion of complainant and respondents to amend the complaint and notice of investigation.

#### FOR FURTHER INFORMATION CONTACT:

Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3041. Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000.

General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on November 28, 2005, based on a complaint filed pursuant to section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 337, by NTN Corporation of

Osaka, Japan. 70 FR 71330 (Nov. 28, 2005). The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain axle bearing assemblies, components thereof, and products containing the same by reason of infringement of at least claim 1 of U.S. Patent No. 5,620,263. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainant requested that the Commission issue a limited exclusion order and a cease and desist order. The Commission named ILJIN Bearing of Gyeongju City, Kyungbuk, Korea and ILJIN USA of Novi, Michigan as respondents in the investigation. 70 FR at 71331. The ALJ set December 28, 2006, as the target date for completion of the investigation. Order No. 3 (Dec. 5, 2005).

The ALJ issued the subject ID on December 21, 2005. The ID granted the December 15, 2005, joint motion of complainant and respondents to replace respondent ILJIN Bearing with ILJIN Global. Respondent ILJIN Bearing informed complainant that ILJIN Global is the company that actually exports the accused products to the United States. The parties therefore agreed that ILJIN Global and not ILJIN Bearing is the proper respondent in this investigation. The ALJ found that "good cause" exists to permit this amendment to the complaint and notice of investigation because the information concerning ILJIN Global was obtained by complainant after the complaint was filed. The Commission investigative attorney supported the joint motion. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

By order of the Commission.

Issued: January 13, 2006.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6-682 Filed 1-20-06; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-663 (Second Review)]

### Paper Clips From China

#### Determination

On the basis of the record<sup>1</sup> developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on paper clips from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

#### Background

The Commission instituted this review on July 1, 2005 (70 FR 38202) and determined on October 4, 2005 that it would conduct an expedited review (70 FR 61157, October 20, 2005).

The Commission transmitted its determination in this review to the Secretary of Commerce on January 18, 2006. The views of the Commission are contained in USITC Publication 3834 (January 2006), entitled *Paper Clips from China: Investigation No. 731-TA-663 (Second Review)*.

By order of the Commission.

Issued: January 17, 2006.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6-722 Filed 1-20-06; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-636-638 (Second Review)]

### Stainless Steel Wire Rod From Brazil, France, and India

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of full five-year reviews concerning the antidumping duty orders on stainless steel wire rod from Brazil, France, and India.

**SUMMARY:** The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty

orders on stainless steel wire rod from Brazil, France, and India would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** January 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** Fred Ruggles (202-205-3187 or [fred.ruggles@usitc.gov](mailto:fred.ruggles@usitc.gov)), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—On July 1, 2005, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (70 FR 38207, July 1, 2005). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

**Participation in the reviews and public service list.**—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance.

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.*—The prehearing staff report in the reviews will be placed in the nonpublic record on April 28, 2006, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on May 18, 2006, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 12, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 15, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

*Written submissions.*—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is May 9, 2006. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's

rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 26, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before May 26, 2006. On June 20, 2006, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 22, 2006, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 17, 2006.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6-723 Filed 1-20-06; 8:45 am]

BILLING CODE 7020-02-P

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day Notice of Information Collection Under Review: Prescription Monitoring Program Questionnaire.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (Volume 70, Number 190, page 57622) on October 3, 2005, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 22, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Prescription Monitoring Program Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: None. Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State. Other: None.

This questionnaire permits the Drug Enforcement Administration to compile and evaluate information regarding the design, implementation and operation of state prescription monitoring programs. Such information allows DEA to assist states in the development of new programs designed to enhance the ability of both DEA and state authorities to prevent, detect, and investigate the diversion and abuse of controlled substances.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 26 persons complete the Prescription Monitoring Program Questionnaire on paper and 25 persons complete the form electronically, at 5 hours per form, for an annual burden of 255 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 255 annual burden hours associated with this collection.

*If additional information is required contact:* Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice

Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 17, 2006.

**Brenda E. Dyer,**  
*Department Clearance Officer, Department of Justice.*

[FR Doc. E6-681 Filed 1-20-06; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Application**

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 17, 2005, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78664, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed in Schedule I and II:

Drug	Schedule
Cathinone (1235) .....	I
Methcathinone (1237) .....	I
N-Ethylamphetamine (1475) .....	I
N,N-Dimethylamphetamine (1480) .....	I
Aminorex (1585) .....	I
4-Methylaminorex (cis isomer) (1590) .....	I
Gamma Hydroxybutyric acid (2010) .....	I
Methaqualone (2565) .....	I
Alpha-Ethyltryptamine (7249) .....	I
Lysergic acid diethylamide (7315) .....	I
Marihuana (7360) .....	I
Tetrahydrocannabinols (7370) .....	I
Mescaline (7381) .....	I
3,4,5-Trimethoxyamphetamine (7390) .....	I
4-Bromo-2,5-dimethoxyamphetamine (7391) .....	I
4-Bromo-2,5-dimethoxyphenethylamine (7392) .....	I
4-Methyl-2,5-dimethoxyamphetamine (7395) .....	I
2,5-Dimethoxyamphetamine (7396) .....	I
2,5-Dimethoxy-4-ethylamphetamine (7399) .....	I
3,4-Methylenedioxyamphetamine (7400) .....	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401) .....	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402) .....	I
3,4-Methylenedioxy-N-ethylamphetamine (7404) .....	I
3,4-Methylenedioxymethamphetamine (7405) .....	I
4-Methoxyamphetamine (7411) .....	I
Bufotenine (7433) .....	I
Diethyltryptamine (7434) .....	I
Dimethyltryptamine (7435) .....	I
Psilocybin (7437) .....	I
Psilocyn (7438) .....	I
Acetyldihydrocodeine (9051) .....	I
Benzylmorphine (9052) .....	I
Codeine-N-oxide (9053) .....	I
Dihydromorphine (9145) .....	I
Heroin (9200) .....	I
Hydromorphanol (9301) .....	I
Methyldihydromorphine (9304) .....	I
Morphine-N-oxide (9307) .....	I
Normorphine (9313) .....	I
Pholcodine (9314) .....	I

Drug	Schedule
Acetylmethadol (9601) .....	I
Allylprodine (9602) .....	I
Alphacetylmethadol except levo-alphacetylmethadol (9603) .....	I
Alphameprodine (9604) .....	I
Alphamethadol (9605) .....	I
Betacetylmethadol (9607) .....	I
Betameprodine (9608) .....	I
Betamethadol (9609) .....	I
Betaprodine (9611) .....	I
Hydroxypethidine (9627) .....	I
Noracymethadol (9633) .....	I
Norlevorphanol (9634) .....	I
Normethadone (9635) .....	I
Trimeperidine (9646) .....	I
Phenomorphane (9647) .....	I
Para-Fluorofentanyl (9812) .....	I
3-Methylfentanyl (9813) .....	I
Alpha-Methylfentanyl (9814) .....	I
Acetyl-alpha-methylfentanyl (9815) .....	I
Beta-hydroxyfentanyl (9830) .....	I
Beta-hydroxy-3-methylfentanyl (9831) .....	I
Alpha-Methylthiofentanyl (9832) .....	I
3-Methylthiofentanyl (9833) .....	I
Thiofentanyl (9835) .....	I
Amphetamine (1100) .....	II
Methamphetamine (1105) .....	II
Phenmetrazine (1631) .....	II
Methylphenidate (1724) .....	II
Ambobarbital (2125) .....	II
Pentobarbital (2270) .....	II
Secobarbital (2315) .....	II
Glutethimide (2550) .....	II
Nabilone (7379) .....	II
1-Phenylcyclohexylamine (7460) .....	II
Phencyclidine (7471) .....	II
1-Piperidinocyclohexanecarbonitrile (8603) .....	II
Alphaprodine (9010) .....	II
Cocaine (9041) .....	II
Codeine (9050) .....	II
Dihydrocodeine (9120) .....	II
Oxycodone (9143) .....	II
Hydromorphone (9150) .....	II
Diphenoxylate (9170) .....	II
Benzoyllecgonine (9180) .....	II
Ethylmorphine (9190) .....	II
Hydrocodone (9193) .....	II
Levomethorphan (9210) .....	II
Levorphanol (9220) .....	II
Isomethadone (9226) .....	II
Meperidine (9230) .....	II
Methadone (9250) .....	II
Methadone intermediate (9254) .....	II
Dextropropoxyphene, bulk (non-dosage forms) (9273) .....	II
Morphine (9300) .....	II
Thebaine (9333) .....	II
Levo-alphacetylmethadol (9648) .....	II
Oxymorphone (9652) .....	II
Noroxymorphone (9668) .....	II
Racemethorphan (9732) .....	II
Alfentanil (9737) .....	II
Sufentanil (9740) .....	II
Fentanyl (9801) .....	II

The company plans to manufacture small quantities of the listed controlled substances to make reference standards which will be distributed to their customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance

may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug

Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway,

Alexandria, Virginia 22301; and must be filed no later than (60 days from publication).

Dated: January 11, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6-720 Filed 1-20-06; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Application**

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 31, 2005, Clariant LSM (Missouri), Inc., 2460 W. Bennett Street (or P.O. Box 1246, Zip: 65801), Springfield, Missouri 65807-1229, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Phenylacetone (8501), and Methadone Intermediate (9254), a basic class of controlled substances listed in Schedule II.

The company plans to manufacture in bulk, for sale to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than March 24, 2006.

Dated: January 11, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6-719 Filed 1-20-06; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Importer of Controlled Substances; Notice of Application**

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on August 10, 2005, Clinical Trial Services (US), 2661 Audubon Road, Audubon, Pennsylvania 19403, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Fentanyl (9801) and Oxycodone (9143), basic classes of controlled substance listed in Schedule II.

The company plans to import small quantities of the listed controlled substance in dosage form to conduct clinical trials.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than February 22, 2006.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745-46), all applicants for registration to import a basic class of any controlled substance listed in Schedule I or II are, and will continue to be required to demonstrate to the

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: January 11, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6-717 Filed 1-20-06; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Importer of Controlled Substances; Notice of Application**

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on July 27, 2005, Cody Laboratories Inc., 601 Yellowstone Avenue, Cody, Wyoming 82414-9321, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in Schedule II:

Drug	Schedule
Raw Opium (9600) .....	II
Poppy Straw (9650) .....	II
Concentrate of Poppy Straw (9670).	II

The company plans to import narcotic raw materials for manufacturing and further distribution to its customers.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration,



Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than February 22, 2006.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745-46), all applicants for registration to import a basic class of any controlled substance listed in Schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: January 11, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6-718 Filed 1-20-06; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Application**

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 12, 2005, National Center for Natural Products Research—NIDA MProject, University of Mississippi, 135 Coy Waller Lab Complex, University, Mississippi 38577, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I:

Drug	Schedule
Marihuana (7360) .....	I
Tetrahydrocannabinols (7370) .....	I

The company plans to cultivate marihuana for the National Institute of Drug Abuse for research approved by the Department of Health and Human Services.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance

may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than March 24, 2006.

Dated: January 11, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6-716 Filed 1-20-06; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration**

By Notice dated October 18, 2005, and published in the **Federal Register** on August 19, 2005, (70 FR 48780), Sigma Aldrich Research Biochemicals, Inc., 1-3 Strathmore Road, Natick, Massachusetts 01760, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of N-Benzylpiperazine (7493), a basic class of controlled substance listed in Schedules I.

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. § 823(a) and determined that the registration of Sigma Aldrich Research, Biochemicals, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Sigma Aldrich Research, Biochemicals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33,

the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: January 11, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6-715 Filed 1-20-06; 8:45 am]

**BILLING CODE 4410-09-P**

**NATIONAL SCIENCE FOUNDATION**

**National Science Board; Workshop on Hurricane Science and Engineering; Toward A National Agenda for Hurricane Science and Engineering: Perspectives From Federal Agencies**

*Date and Time:* January 24, 2005, 8 a.m.-5:15 p.m. (ET).

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230.

*Public Meeting Attendance:* All visitors must report to the NSF's visitor's desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge.

*Contact Information:* Please refer to the National Science Board Web site (<http://www.nsf.gov/nsb>) for updated Agenda. NSB Office: (703) 292-7000.

*Status:* This Workshop will be open to the public.

**Provisional Workshop Agenda**

- 8-8:05 a.m. Welcoming Remarks.
- 8:05-8:20 a.m. Motivation, Purpose and Goals.
- 8:20-8:30 a.m. Process and Logistics for NSB Workshops.
- 8:30-9:30 a.m. Panel Session I: Physical, Biological and Ecological Sciences.
- 9:30-10 a.m. Roundtable Discussion.
- 10-10:15 a.m. Break.
- 10:15-11:15 a.m. Panel Session II: Social, Behavioral, and Economic Sciences.
- 11:15-11:45 a.m. Roundtable Discussion.
- 1-2 p.m. Panel Session III: Engineering and Infrastructure.
- 2-2:30 p.m. Roundtable Discussion.
- 2:30-4 p.m. Break-Out Groups (3 concurrent sessions).
- 4-5 p.m. Break-Out Group Reports and Discussion.
- 5-5:15 p.m. Summary and Next Steps.
- 5:15 p.m. Adjourn.

**Michael P. Crosby,**

*Executive Officer and NSB Office Director.*

[FR Doc. E6-711 Filed 1-20-06; 8:45 am]

**BILLING CODE 7555-01-P**

**NUCLEAR REGULATORY COMMISSION**

[Docket Nos. 50-498 and 50-499]  
[License Nos. NPF-76 and NPF-80]

**In the Matter of Texas Genco, LP, STP Nuclear Operating Company; South Texas Project, Units 1 and 2; Order Approving Application Regarding Proposed Indirect Acquisition of Texas Genco, LP By NRG Energy, Inc.**

STP Nuclear Operating Company (STPNOC), Texas Genco, LP (Texas Genco), the City Public Service Board of San Antonio (CPS), and the City of Austin, Texas (COA) are co-holders of Facility Operating Licenses (which are numbered NPF-76 and NPF-80), that authorize the possession, use, and operation of the South Texas Project, Units 1 and 2 (the facility or STP). STPNOC is licensed by the United States Nuclear Regulatory Commission (NRC or the Commission) to operate STP. Texas Genco, CPS, and COA are co-owners of the facility and licensed to possess STP. The facility is located in Matagorda County, Texas.

By application dated October 14, 2005, STPNOC, acting on behalf of Texas Genco and NRG Energy, Inc. (NRG Energy) (together, the applicants), requested that the NRC, pursuant to 10 CFR 50.80, consent to the indirect transfer of the STP licenses held by Texas Genco that would be effected by the indirect transfer of control of Texas Genco's 44 percent undivided ownership interest in STP to NRG Energy. This action is being sought as a result of the agreement between NRG Energy and Texas Genco LLC, which indirectly owns 100 percent of Texas Genco, for NRG Energy to acquire all of the outstanding equity of Texas Genco LLC from the current owners of Texas Genco LLC. The current owners are investment fund entities affiliated with the Blackstone Group, Hellman & Friedman LLC, Kohlberg Kravis Roberts & Co., L.P., and Texas Pacific Group (Investment Funds), and certain members of the Texas Genco LLC management.

In connection with the indirect transfer of control of Texas Genco's ownership interest in STP, indirect control over Texas Genco's corresponding interest in STPNOC will also be transferred. To the extent that the indirect transfer of control of Texas Genco's interest in STPNOC would constitute an indirect transfer of control of the licenses as held by STPNOC, NRC consent under 10 CFR 50.80 has also been requested.

Notice of the requests for approval and an opportunity for a hearing was

published in the **Federal Register** on November 29, 2005 (70 FR 71561). No comments or hearing requests were received.

Under 10 CFR 50.80(a), no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application and other information before the Commission, the NRC staff has determined that the proposed indirect transfer of control of Texas Genco to NRG Energy will not affect the qualifications of Texas Genco as holder of the STP licenses, and that the indirect transfer of the licenses as held by Texas Genco, to the extent effected by the indirect transfer of control of Texas Genco, is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. The NRC staff has further determined that, to the extent the proposed indirect transfer of control of Texas Genco would result in an indirect transfer of control of the STP licenses as held by STPNOC, the proposed indirect transfer of control of Texas Genco will not affect the qualifications of STPNOC to hold the STP licenses, and such indirect transfer of control of the licenses as held by STPNOC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The findings set forth above are supported by a safety evaluation dated January 12, 2006.

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the application regarding the indirect license transfers related to the proposed acquisition is approved, subject to the following condition:

Should the indirect transfer of control of Texas Genco to NRG Energy not be completed by January 31, 2007, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by order.

This Order is effective upon issuance. For further details with respect to this Order, see the application dated October 14, 2005, and the safety evaluation dated January 12, 2006, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically

from the Agencywide Documents Access and Management System (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](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland this 12th day of January, 2006.

For the Nuclear Regulatory Commission.

**Catherine Haney,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E6-710 Filed 1-20-06; 8:45 am]

**BILLING CODE 7590-01-P**

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**OFFICE OF PERSONNEL MANAGEMENT**

**January 2006 Pay Adjustments**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** The President adjusted the rates of basic pay and locality payments for certain categories of Federal employees effective in January 2006. This notice documents those pay adjustments for the public record.

**FOR FURTHER INFORMATION CONTACT:** Brenda Roberts, Center for Pay and Performance Policy, Division for Strategic Human Resources Policy, Office of Personnel Management; (202) 606-2858; FAX (202) 606-0824; or e-mail to [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov).

**SUPPLEMENTARY INFORMATION:** On December 22, 2005, the President signed Executive Order 13393 (70 FR 76655), which implemented the January 2006 pay adjustments. The President made these adjustments consistent with Public Law 109-115, November 30, 2005, which authorized an overall average pay increase of 3.1 percent for the "statutory pay systems," including the General Schedule (GS).

Schedule 1 of Executive Order 13393 provides the rates for the 2006 General Schedule and reflects a 2.1 percent across-the-board increase. Executive Order 13393 also includes the percentage amounts of the 2006 locality payments. (See section 5 and Schedule 9 of Executive Order 13393.)

The publication of this notice satisfies the requirement in section 5(b) of Executive Order 13393 that the Office of

Personnel Management (OPM) publish appropriate notice of the 2006 locality payments in the **Federal Register**.

GS employees receive locality payments under 5 U.S.C. 5304. Locality payments apply in the 48 contiguous States and the District of Columbia. In 2006, locality payments ranging from 12.52 percent to 28.68 percent apply to GS employees in 32 locality pay areas. (Changes in the 2006 locality pay areas definitions can be found at <http://www.opm.gov/oca/06tables/locdef.asp>.) These 2006 locality pay percentages, which replaced the locality pay percentages that were applicable in 2005, become effective on the first day of the first pay period beginning on or after January 1, 2006. An employee's locality-adjusted annual rate of pay is computed by increasing his or her scheduled annual rate of basic pay (as defined in 5 U.S.C. 5302(8) and 5 CFR 531.602) by the applicable locality pay percentage. (See 5 CFR 531.604 and 531.607.)

Executive Order 13393 establishes the new Executive Schedule, which incorporates a 1.9 percent increase required under 5 U.S.C. 5318 (rounded to the nearest \$100). By law, Executive Schedule officials are not authorized to receive locality payments.

Executive Order 13393 establishes the range of rates of basic pay for senior executives in the Senior Executive Service (SES), as established pursuant to 5 U.S.C. 5382. The minimum rate of basic pay for the SES may not be less than the minimum rate payable under 5 U.S.C. 5376 for senior-level positions (\$109,808 in 2006), and the maximum rate of basic pay may not exceed the rate for level III of the Executive Schedule (\$152,000 in 2006). The maximum rate of the SES rate range will increase to level II of the Executive Schedule (\$165,200 in 2006) for SES members covered by performance appraisal systems that are certified under 5 U.S.C. 5307(d) as making meaningful distinctions based on relative performance. By law, SES members are not authorized to receive locality payments. Agencies with certified performance appraisal systems in 2006 for senior executives and/or senior-level (SL) and scientific or professional (ST) positions also must apply a higher aggregate limitation on pay—up to the Vice President's salary (\$212,100 in 2006).

The Executive order adjusted the rates of basic pay for administrative law judges (ALJs) by 2.1 percent (rounded to the nearest \$100). The maximum rate of basic pay for ALJs is set by law at the rate for level IV of the Executive Schedule, which is now \$143,000. The

rate of basic pay for AL-2 is \$139,500. The rates of basic pay for AL-3/A through 3/F range from \$95,500 to \$132,000. (See 5 U.S.C. 5372.)

The rates of basic pay for members of Contract Appeals Boards are calculated as a percentage of the rate for level IV of the Executive Schedule. (See 5 U.S.C. 5372a.) Therefore, these rates of basic pay were increased by approximately 1.9 percent. Also, the maximum rate of basic pay for SL/ST positions was increased by approximately 1.9 percent (to \$143,000) because it is tied to the rate for level IV of the Executive Schedule. The minimum rate of basic pay for SL/ST positions is equal to 120 percent of the minimum rate of basic pay for GS-15 and thus was increased by 2.1 percent (to \$109,808). (See 5 U.S.C. 5376.)

On November 22, 2005, the President's Pay Agent extended the 2006 locality-based comparability payments to certain categories of non-GS employees. The Government-wide categories include employees in SL/ST positions, ALJs, and Contract Appeals Board members. The maximum locality rate of pay for these employees is the rate for level III of the Executive Schedule (\$152,000 in 2006).

On December 22, 2005, OPM issued a memorandum (CPM 2005-25) on the January 2006 pay adjustments. (See <http://www.opm.gov/oca/compmemo/2005/2005-25.asp>.) The memorandum transmitted Executive Order 13393 and provided the 2006 salary tables, locality pay areas and percentages, and information on general pay administration matters and other related information. The "2006 Salary Tables" posted on OPM's Web site at <http://www.opm.gov/oca/06tables/index.asp> are the official rates of pay for affected employees and are hereby incorporated as part of this notice.

Office of Personnel Management.  
**Linda M. Springer**,  
 Director.  
 [FR Doc. E6-680 Filed 1-20-06; 8:45 am]  
**BILLING CODE 6325-39-P**

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Reports of Evidence of Material Violations, SEC File No. 270-514, OMB Control No. 3235-0572.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. sections 3501-3520, the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget ("OMB") for extension.

On February 6, 2003, the Commission published final rules, effective August 5, 2003, entitled "Standards of Professional Conduct for Attorneys Appearing and Practicing Before the Commission in the Representation of an Issuer" (17 CFR 205.1-205.7). The information collection embedded in the rules is necessary to implement the Standards of Professional Conduct for Attorneys prescribed by the rule and required by section 307 of the Sarbanes-Oxley Act of 2002. The rules impose an "up-the-ladder" reporting requirement when attorneys appearing and practicing before the Commission become aware of evidence of a material violation by the issuer or any officer, director, employee, or agent of the issuer. An issuer may choose to establish a qualified legal compliance committee ("QLCC") as an alternative procedure for reporting evidence of a material violation. In the rare cases in which a majority of a QLCC has concluded that an issuer did not act appropriately, the information may be communicated to the Commission. The collection of information is, therefore, an important component of the Commission's program to discourage violations of the federal securities laws and promote ethical behavior of attorneys appearing and practicing before the Commission.

The respondents to this collection of information are attorneys who appear and practice before the Commission and, in certain cases, the issuer, and/or officers, directors and committees of the issuer. We believe that, in providing quality representation to issuers, attorneys report evidence of violations to others within the issuer, including the Chief Legal Officer, the Chief Executive Officer, and, where necessary, the directors. In addition, officers and directors investigate evidence of violations and report within the issuer the results of the investigation and the remedial steps they have taken or sanctions they have imposed. Except as discussed below, we therefore believe that the reporting requirements imposed by the rule are "usual and customary"

activities that do not add to the burden that would be imposed by the collection of information.

Certain aspects of the collection of information, however, may impose a burden. For an issuer to establish a QLCC, the QLCC must adopt written procedures for the confidential receipt, retention, and consideration of any report of evidence of a material violation. We estimate for purposes of the PRA that there are approximately 17,710 issuers that are subject to the rules.<sup>1</sup> Of these, we estimate that approximately ten percent, or 1,771, will establish a QLCC.<sup>2</sup> Establishing the written procedures required by the rule should not impose a significant burden. We assume that an issuer would incur a greater burden in the year that it first establishes the procedures than in subsequent years, in which the burden would be incurred in updating, reviewing, or modifying the procedures. For purposes of the PRA, we assume that an issuer would spend 6 hours every three-year period on the procedures. This would result in an average burden of 2 hours per year. Thus, we estimate for purposes of the PRA that the total annual burden imposed by the collection of information would be 3,542 hours. Assuming half of the burden hours will be incurred by outside counsel at a rate of \$300 per hour would result in a cost of \$531,300.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. 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.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden[s] of the collection of

information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549.

Dated: January 12, 2006.

**Nancy M. Morris,**  
*Secretary.*

[FR Doc. E6-667 Filed 1-20-06; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[File No. 1-11535]

### Issuer Delisting; Notice of Application of Burlington Northern Santa Fe Corporation To Withdraw its Common Stock, \$.01 par value, From Listing and Registration on the Chicago Stock Exchange, Inc.

January 13, 2006.

On January 11, 2006, Burlington Northern Santa Fe Corporation, a Delaware corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw its common stock, \$.01 par value ("Security"), from listing and registration on the Chicago Stock Exchange, Inc. ("CHX").

The Board of Directors ("Board") of the Issuer approved resolutions on December 8, 2005 to withdraw the Security from CHX. The Issuer stated that the Board decided to withdraw the Security from CHX because the benefits of continued listing on CHX do not outweigh the incremental cost of the listing fees and the administrative burden associated with listing on CHX. The Issuer stated that the Security is listed on the New York Stock Exchange, Inc. ("NYSE") and will continue to list on NYSE.

The Issuer stated in its application that it has complied with applicable rules of CHX by complying with all

applicable laws in the State of Delaware, the state in which the Issuer is incorporated, and by providing CHX with the required documents governing the withdrawal of securities from listing and registration on CHX. The Issuer's application relates solely to the withdrawal of the Security from listing on CHX and shall not affect its continued listing on NYSE or its obligation to be registered under Section 12(b) of the Act.<sup>3</sup>

Any interested person may, on or before February 9, 2006, comment on the facts bearing upon whether the application has been made in accordance with the rules of CHX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods.

#### Electronic Comments

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include the File Number 1-11535 or;

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number 1-11535. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Nancy M. Morris,**  
*Secretary.*

[FR Doc. E6-677 Filed 1-20-06; 8:45 am]

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<sup>1</sup> This estimate is based, in part, on the total number of operating companies that filed annual reports on Form 10-K, Form 20-F, or Form 40-F, during the 2005 fiscal year and an estimate of the average number of issuers that may have a registration statement filed under the Securities Act pending with the Commission at any time (13,660). In addition, we estimate that approximately 4,050 investment companies currently file periodic reports on Form N-SAR.

<sup>2</sup> Indications are that the 2003 estimate of the percentage of issuers that would establish QLCC's (20%) was high. Our adjusted estimate in the percentage of QLCC's (10%) results in a reduced burden estimate as compared to the previously approved collection.

<sup>1</sup> 15 U.S.C. 78l(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

<sup>3</sup> 15 U.S.C. 78l(b).

<sup>4</sup> 17 CFR 200.30-3(a)(1).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53128; File No. 10-131]

### In the Matter of the Application of the Nasdaq Stock Market LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission

January 13, 2006.

#### I. Introduction

On March 15, 2001, The Nasdaq Stock Market, Inc. ("Nasdaq"), a subsidiary of the National Association of Securities Dealers, Inc. ("NASD"), submitted to the Securities and Exchange Commission ("Commission") a Form 1 application ("Form 1") under the Securities Exchange Act of 1934 ("Exchange Act"), seeking registration as a national securities exchange pursuant to section 6 of the Exchange Act.<sup>1</sup> Notice of the application was published for comment in the **Federal Register** on June 13, 2001.<sup>2</sup> On November 13, 2001, December 5, 2001, and January 8, 2002, Nasdaq submitted Amendment Nos. 1,<sup>3</sup> 2,<sup>4</sup> and 3,<sup>5</sup> respectively, to its Form 1. The Commission received 82 comment letters in response to the Original Notice and Amendment Nos. 1, 2, and 3.

On August 15, 2005, and September 23, 2005, Nasdaq submitted Amendment Nos. 4<sup>6</sup> and 5<sup>7</sup> respectively, to its Form 1. In Amendment Nos. 4 and 5, Nasdaq proposed, among other things, a new corporate structure whereby Nasdaq would become a holding company with

two subsidiaries. Nasdaq requested that the Commission grant registration as a national securities exchange to one of its proposed subsidiaries—The Nasdaq Stock Market LLC ("Nasdaq Exchange" or "Exchange").<sup>8</sup> The Commission published notice of Amendment Nos. 4 and 5 on October 11, 2005.<sup>9</sup> In response to the October 2005 Notice, the Commission received 15 comment letters.<sup>10</sup> On December 13, 2005, Nasdaq submitted a response to comment letters received on Amendment Nos. 4 and 5.<sup>11</sup> On January 13, 2006, Nasdaq submitted Amendment No. 6 to its Form 1.<sup>12</sup>

<sup>8</sup> The other subsidiary of Nasdaq would be The Trade Reporting Facility LLC, which would operate the proposed NASD Trade Reporting Facility ("TRF"), which the NASD submitted to the Commission for approval. See Exchange Act Release No. 52049 (July 15, 2005), 70 FR 42398 (July 22, 2005) ("NASD Proposal"). As described in the NASD Proposal, the TRF would be available to NASD members for the reporting of trades executed in the internal systems of NASD members.

<sup>9</sup> See Exchange Act Release No. 52559 (October 4, 2005), 70 FR 59097 ("October 2005 Notice"). Complete copies of Nasdaq's Amendment Nos. 4 and 5 to its Form 1 are available in the Commission's Public Reference Room, File No. 10-131. Portions of Nasdaq's Form 1, as amended by Amendment Nos. 4 and 5, including the Nasdaq Exchange's proposed rules, are available on the Commission's Internet Web site (<http://www.sec.gov>).

<sup>10</sup> See letters from Steven I. Weissman, P.A., dated October 9, 2005 and December 18, 2005 ("Weissman Letters"); Brad Smith et al., International Association of Small Broker Dealers and Advisors, received October 12, 2005 ("SBDA Letter"); Representative Ginny Brown-Waite et al., House Financial Services Committee, Members of Congress, dated October 31, 2005 ("House Financial Services Committee Letter"); Michael J. Simon, International Securities Exchange, Inc., dated November 3, 2005 ("ISE Letter"); Carolyn McCarthy, Member of Congress, dated November 3, 2005 ("Carolyn McCarthy Letter"); James T. Brett, Managing Director, J.P. Morgan Securities, Inc., dated November 4, 2005 ("J.P. Morgan Letter"); Michael Santucci, President, Kimberly Unger, Executive Director, and Stephen J. Nelson, Co-Chair STANY Trading Issues Committee, The Security Traders Association of New York, Inc., dated November 8, 2005 ("STANY Letter"); Vito Fossella, Member of Congress, dated November 8, 2005 ("Vito Fossella Letter"); Jeffrey W. Rubin, Partner, Hogan & Hartson L.L.P., dated November 9, 2005 ("Nissan Letter"); Senator Chuck Hagel et al., United States Senate, dated November 9, 2005 ("Senator Chuck Hagel et al. Letter"); Kevin J.P. O'Hara, Chief Administrative Officer and General Counsel, Archipelago Holdings, Inc., dated November 10, 2005 ("Arca Letter"); Mary Yeager, Assistant Secretary, New York Stock Exchange, Inc., dated November 10, 2005 ("NYSE Letter"); Kim Bang, Bloomberg L.P., dated November 17, 2005 ("Bloomberg Letter"); and James A. Duncan, Chairman, and John C. Giesea, President/CEO, Security Traders Association, dated November 17, 2005 ("STA Letter").

<sup>11</sup> See letter to Jonathan G. Katz, Secretary, Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated December 13, 2005 ("Nasdaq Response Letter").

<sup>12</sup> See letter to Robert L.D. Colby, Deputy Director, Division, Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated January 13, 2006 ("Amendment No. 6"). Amendment No. 6, among other things, revises the proposed rules of the

Nasdaq's original proposal raised significant regulatory concerns. As originally proposed, Nasdaq's exchange would have expanded what has traditionally been recognized as an exchange. In particular, commenters noted that Nasdaq's original application proposed to operate an exchange without intra-market priority rules.<sup>13</sup> Intra-market priority rules require orders in the same securities directed to an exchange to interact with each other. By contrast, Nasdaq had proposed to permit members to report transactions on the Nasdaq exchange without providing price protection to orders displayed in Nasdaq. Commenters argued that if the Commission approved these rules, it would have to reverse its longstanding position that exchanges have a central limit order book with priority over dealer trades on the exchange, and permit other exchanges to adopt similar rules.<sup>14</sup> Commenters also took issue with Nasdaq's broad definition of what it proposed to be a

Nasdaq Exchange to reflect the NASD rule changes filed and approved by the Commission since Nasdaq filed Amendment No. 4, including, for example, the rules that govern executions on the INET system and Rule 2111, which would prohibit Nasdaq Exchange members and persons associated with Nasdaq Exchange members from trading ahead of a customer's market order. See Exchange Act Release No. 52226 (August 9, 2005), 70 FR 48219 (August 16, 2005). See Nasdaq Exchange Rule 4950 Series. See Exchange Act Release No. 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) ("INET Order"). In addition, in Amendment No. 6, Nasdaq proposes: (1) A new Rule 4305, which is a transitional listing rule for securities included on Nasdaq, as a facility of the NASD, the day prior to the Nasdaq Exchange commencing operations as a national securities exchange; (2) a new Rule 4720 that sets forth the timing on consolidating the Nasdaq Exchange's three trading systems; (3) a new Rule 4121, regarding trading halts; (4) amendments to Exchange By-Law Article III, section 5(e) to clarify the responsibilities of the Regulatory Oversight Committee; (5) a new Rule 0150 requiring the Nasdaq Exchange to contract out those regulatory functions subject to the Regulatory Contract, *supra* notes 107—112 and accompanying text, to the NASD, an affiliate of NASD, or an independent self-regulatory organization, unless Nasdaq Exchange obtains prior Commission approval to do otherwise; and (6) to amend Rules 1002(e) and 1014(a)(15) to require that members maintain membership in another registered securities association that is not registered solely under section 15A(k) of the Exchange Act or another registered exchange that is not registered solely under section 6(g) of the Exchange Act.

<sup>13</sup> See letters from Cameron Smith, General Counsel, The Island ECN, Inc., dated August 26, 2001 ("Island Letter"); Jeffrey T. Brown, Vice President, Regulation and General Counsel, Cincinnati Stock Exchange, dated August 28, 2001 ("CSE Letter"); James E. Buck, Senior Vice President, New York Stock Exchange, dated August 27, 2001 ("NYSE August 2001 Letter"); and Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, dated February 14, 2002 ("NYSE February 2002 Letter").

<sup>14</sup> See CSE Letter and Island Letter, *supra* note 13; and letter from Edward J. Joyce, President, Chief Operating Officer, Chicago Board Options Exchange, dated August 27, 2001 ("CBOE Letter").

<sup>1</sup> 15 U.S.C. 78f.

<sup>2</sup> See Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 ("Original Notice"). The Commission extended the comment period for the Original Notice for 30 days. See Exchange Act Release No. 44625 (July 31, 2001), 66 FR 41056 (August 6, 2001).

<sup>3</sup> See letter to Annette Nazareth, Director, Division of Market Regulation ("Division"), Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated November 13, 2001 ("Amendment No. 1").

<sup>4</sup> See letter to Jonathan G. Katz, Secretary, Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated December 5, 2001 ("Amendment No. 2").

<sup>5</sup> See letter to Annette Nazareth, Director, Division, Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated January 8, 2002 ("Amendment No. 3").

<sup>6</sup> See letter to Robert L.D. Colby, Deputy Director, Division, Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated August 15, 2005 ("Amendment No. 4"). Amendment No. 4 supersedes and replaces the Original Notice and Amendment Nos. 1, 2, and 3.

<sup>7</sup> See letter to Robert L.D. Colby, Deputy Director, Division, Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated September 23, 2005 ("Amendment No. 5").

“Nasdaq transaction.”<sup>15</sup> In particular, Nasdaq proposed to include as a “Nasdaq transaction” certain transactions reported to Nasdaq that were executed otherwise than by using the systems of the Nasdaq exchange. In addition, Nasdaq members not required to report such transactions to Nasdaq would be permitted to do so. A number of commenters expressed significant concern about Nasdaq’s proposal to permit Nasdaq members to report, to the Nasdaq exchange, trades that had always been considered over-the-counter (“OTC”) market trades.<sup>16</sup>

Nasdaq proposes in Amendment Nos. 4 and 5 to address these concerns by limiting Nasdaq Exchange transactions to only those trades that are executed in the Exchange’s systems and to amend its Exchange systems to require executions to occur pursuant to price priority rules. Trades that are executed otherwise than on the Nasdaq Exchange or any other national securities exchange would continue to be reported to the NASD either to its Alternative Display Facility (“ADF”) or its proposed TRF.<sup>17</sup>

In response to the October 2005 Notice, the Commission received several comments in support of Nasdaq’s amended application to register the Nasdaq Exchange as a national securities exchange.<sup>18</sup> Specific concerns raised by other commenters are discussed below.<sup>19</sup>

<sup>15</sup> See CSE Letter, Island Letter, NYSE August 2001 Letter, and NYSE February 2002 Letter, *supra* note 13; and letters from George W. Mann, Jr., Senior Vice President and General Counsel, Boston Stock Exchange, dated July 20, 2001; Sol Reicher, Co-Chairman, Amex Specialists Associations, John Hawkey, Chairman, Amex Floor Brokers Association, and Ross Moore, Chairman, Amex Options Market Maker Association, writing on behalf of the Member Associations of the American Stock Exchange, dated July 30, 2001 (“Member Associations of the American Stock Exchange Letter”); Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association, dated August 30, 2001 (representing the interests of some of its members) (“SIA Letter”); Douglas M. Atkin, President, Chief Executive Officer, Instinet, dated August 28, 2001 (“Instinet Letter”); Kevin M. Foley, Bloomberg L.P. and Bloomberg Tradebook LLC, dated August 28, 2001 (“Bloomberg 2001 Letter”); and Meyer S. Frucher, Chairman and Chief Executive Officer, Philadelphia Stock Exchange, dated September 4, 2001 and February 25, 2002 (“Phlx Letters”).

<sup>16</sup> See NYSE August 2001 Letter and NYSE February 2002 Letter, *supra* note 13; and Instinet Letter, Member Associations of the American Stock Exchange Letter, Phlx Letters, SIA Letter, *supra* note 15.

<sup>17</sup> See NASD Proposal, *supra* note 8.

<sup>18</sup> See Carolyn McCarthy Letter, House Financial Services Committee Letter, ISE Letter, J.P. Morgan Hagel, NYSE Letter (with proviso), Senator Chuck Hagel et al. Letter, STA Letter, STANY Letter, Vito Fossella Letter, *supra* note 10.

<sup>19</sup> The Commission received two comments not directly related to the Nasdaq Exchange’s registration. One commenter voiced concern about the NASD’s responsibility over the Over-the-

## II. Statutory Standards

Under sections 6(b) and 19(a) of the Exchange Act,<sup>20</sup> the Commission shall by order grant a registration as a national securities exchange if it finds that the exchange is so organized and has the capacity to carry out the purposes of the Exchange Act and can comply, and can enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the exchange. The rules of the exchange, among other things, must be adequate to insure fair dealing and to protect investors, and may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

As discussed in greater detail below, the Commission finds that Nasdaq’s application for exchange registration meets the requirements of the Exchange Act and the rules and regulations thereunder. Further, the Commission finds that the proposed rules of the Nasdaq Exchange as proposed in Amendment Nos. 4 and 5<sup>21</sup> and further amended by Amendment No. 6<sup>22</sup> are consistent with section 6 of the Exchange Act in that, among other things, they are designed to: (1) Assure fair representation of an exchange’s members in the selection of its directors and administration of its affairs and provide that, among other things, one or more directors shall be representative of investors and not be associated with the exchange, or with a broker or dealer; (2) prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and (3) protect investors and the public interest. The Commission also believes that the rules of the Nasdaq Exchange are consistent with 11A of the

Counter Bulletin Board. See SBDA Letter, *supra* note 10. In response, Nasdaq noted that the issue of the NASD’s regulatory responsibility over the Over-the-Counter Bulletin Board has already been addressed by the Commission. See Nasdaq Response Letter, *supra* note 11. Another commenter alleged that Nasdaq violated Section 17(b) of the Securities Act of 1933 by allegedly “touting” Nasdaq-listed companies. See Weissman Letters, *supra* note 10. Nasdaq responded by noting that this issue is currently in litigation. See Nasdaq Response Letter, *supra* note 11.

<sup>20</sup> 15 U.S.C. 78f(b) and 78s(a).

<sup>21</sup> See Amendment No. 4 and Amendment No. 5, *supra* notes 6 and 7.

<sup>22</sup> See Amendment No. 6, *supra* note 12.

Exchange Act. Finally, the Commission finds that the proposed rules of the Nasdaq Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>23</sup>

## III. Discussion

### A. Corporate Structure

Prior to 2000, Nasdaq was a wholly-owned subsidiary of the NASD. In 2000, the NASD began restructuring its relationship with Nasdaq. As the result of a two-phase private placement of Nasdaq shares, a public offering completed in January 2005, and other dispositions by the NASD of Nasdaq shares, the NASD’s ownership interest in Nasdaq has been reduced to about 26%.<sup>24</sup> Notwithstanding its minority ownership interest in Nasdaq, the NASD has retained control of Nasdaq through its ownership of one outstanding share of Series D preferred stock, which gives the NASD the right to cast one vote more than one-half of all votes entitled to be cast at an election by all holders of capital stock of Nasdaq. This share of Series D preferred stock allows the NASD to continue to retain control over Nasdaq.<sup>25</sup> The Series D preferred share will expire when Nasdaq ceases to operate pursuant to the NASD’s Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries (“Delegation Plan”).

As noted above, Nasdaq proposes to convert to a holding company (“Nasdaq Holding Company”),<sup>26</sup> which would have two subsidiaries: (1) The Nasdaq Exchange; and (2) The Trade Reporting Facility LLC, which would operate the proposed new NASD TRF. Nasdaq filed its corporate documents for the proposed Nasdaq Holding Company and proposed Exchange. According to Nasdaq, it plans to transfer all or

<sup>23</sup> 15 U.S.C. 78f(b)(8).

<sup>24</sup> As of December 6, 2005, the NASD had beneficial ownership of 22,138,996 shares of the common stock of Nasdaq. This includes 17,590,968 shares of common stock underlying warrants and 4,548,028 shares of common stock held by the NASD. Of the 17,590,968 shares underlying warrants, 6,849,849 of the shares of common stock underlying warrants have been exercised by the holders of such warrants. The NASD, however, retains the right to vote these shares pursuant to a voting trust agreement. Upon approval of the application to register the Nasdaq Exchange as a national securities exchange, the NASD’s beneficial ownership of shares underlying the exercised warrants will terminate. See Amendment No. 4, Exhibit K, *supra* note 6.

<sup>25</sup> See Exchange Act Release No. 53022 (December 23, 2005), 70 FR 77433 (December 30, 2005). In this filing, Nasdaq replaced a Preferred B share that had provided the NASD with control over Nasdaq with the Preferred D share.

<sup>26</sup> Current Nasdaq shareholders will receive shares in the holding company, making it the publicly-traded company.

substantially all of its assets and liabilities to the subsidiaries of the Nasdaq Holding Company.

#### 1. Self-Regulatory Function of the Exchange; Relationship between Nasdaq Holding Company and the Nasdaq Exchange; Jurisdiction Over Nasdaq Holding Company

Although Nasdaq Holding Company will not itself carry out regulatory functions, its activities with respect to the operation of the Exchange must be consistent with, and not interfere with, the Exchange's self-regulatory obligations. The proposed Nasdaq Holding Company corporate documents include certain provisions that are designed to maintain the independence of the Nasdaq Exchange's self-regulatory function from the Nasdaq Holding Company, enable the Exchange to operate in a manner that complies with the federal securities laws, including the objectives of sections 6(b) and 19(g) of the Exchange Act, and facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Exchange Act.<sup>27</sup> For example, the Nasdaq Holding Company submitted to the Commission's jurisdiction with respect to activities relating to the Nasdaq Exchange,<sup>28</sup> and agreed to provide the Commission with access to its books and records.<sup>29</sup> Nasdaq Holding Company also agreed to keep confidential non-public information relating to the self-regulatory function<sup>30</sup> of the Exchange and not to use such information for any non-regulatory purpose.<sup>31</sup> In addition, the board of directors of the Nasdaq Holding Company, as well as its officers, employees, and agents are required to give due regard to the preservation of the independence of the Exchange's self-regulatory function.<sup>32</sup> Finally, the Nasdaq Holding Company By-Laws require that any changes to the Nasdaq Holding Company Certificate of

Incorporation and By-Laws be submitted to the Board of Directors of the Nasdaq Exchange ("Exchange Board"), and, if the Exchange Board determines that such amendment is required to be filed with the Commission pursuant to section 19(b) of the Exchange Act, such change shall not be effective until filed with, or filed with and approved by, the Commission.<sup>33</sup> The Commission believes that these provisions are consistent with the Exchange Act.<sup>34</sup>

The Commission also believes that under section 20(a) of the Exchange Act<sup>35</sup> any person with a controlling interest in the Nasdaq Holding Company would be jointly and severally liable with and to the same extent that Nasdaq Holding Company is liable under any provision of the Exchange Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, section 20(e) of the Exchange Act<sup>36</sup> creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Exchange Act or rule thereunder. Further, section 21C of the Exchange Act<sup>37</sup> authorizes the Commission to enter a cease-and-desist order against any person who has been "a cause of" a violation of any provision of the Exchange Act through an act or omission that the person knew or should have known would contribute to the violation.

#### 2. Changes in Control of the Nasdaq Exchange; Ownership and Voting Limitations

The Nasdaq Holding Company's Restated Certificate of Incorporation imposes limits on direct and indirect changes in control, which are designed to prevent any shareholder from exercising undue control over the operation of the Exchange and to ensure that the Exchange and the Commission are able to carry out their regulatory obligations under the Exchange Act.

Specifically, no person who beneficially owns shares of common stock, preferred stock, or notes in excess of five percent of the securities generally entitled to vote may vote the shares in excess of five percent.<sup>38</sup> This five percent voting limitation does not apply, however, to the NASD or its affiliates until such time as the NASD beneficially owns five percent or less of Nasdaq's outstanding stock or notes. In addition, the Nasdaq Holding Company Board may approve exemptions from the five percent voting limitation for any person that is not a broker-dealer, an affiliate of a broker-dealer, or a person subject to a statutory disqualification under section 3(a)(39) of the Exchange Act.<sup>39</sup> Any such exemption from the five percent voting limitation would not be effective until approved by the Commission pursuant to section 19 of the Exchange Act.<sup>40</sup>

The Nasdaq Exchange's proposed rules also prohibit Exchange members and persons associated with Exchange members from beneficially owning more than 20 percent of the then-outstanding voting securities of the Nasdaq Holding Company.<sup>41</sup> Members that trade on an exchange traditionally have ownership interests in such exchange. As the Commission has noted in the past, however, a member's interest in an exchange could become so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member.<sup>42</sup> A member that is a controlling shareholder of an exchange might be tempted to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and surveil the member's conduct or diligently enforce its rules and the Federal securities laws with respect to conduct by the member that violates such provisions.

The Commission believes that these ownership and voting restrictions are consistent with the Exchange Act. These ownership limitations should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the

<sup>27</sup> See Nasdaq Holding Company By-Laws Article XI, section 11.3; Article XII, sections 12.1, 12.2, 12.3, 12.4, and 12.5.

<sup>28</sup> See Nasdaq Holding Company By-Laws Article XII, section 12.3.

<sup>29</sup> See Nasdaq Holding Company By-Laws Article XII, section 12.1(b).

<sup>30</sup> This requirement to keep confidential non-public information relating to the self-regulatory function shall not limit the Commission's ability to access and examine such information or limit the ability of directors, officers, or employees of the Nasdaq Holding Company from disclosing such information to the Commission. See Nasdaq Holding Company By-Laws Article XII, section 12.1(b).

<sup>31</sup> See Nasdaq Holding Company By-Laws Article XII, section 12.1(b).

<sup>32</sup> See Nasdaq Holding Company By-Laws Article XII, section 12.1(a).

<sup>33</sup> See Nasdaq Holding Company Restated Certificate of Incorporation Article Eighth.B. and Nasdaq Holding Company By-Laws Article XI, section 11.3.

<sup>34</sup> The Commission notes that it is in the process of reviewing issues related to new ownership structures of SROs and has proposed rules relating to the governance and ownership of SROs, including limiting the restrictions on ownership and voting to members of an SRO or a facility of an SRO. See Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 18, 2004).

<sup>35</sup> 15 U.S.C. 78t(a).

<sup>36</sup> 15 U.S.C. 78t(e).

<sup>37</sup> 15 U.S.C. 78u-3.

<sup>38</sup> See Nasdaq Holding Company Restated Certificate of Incorporation Article Fourth.C.

<sup>39</sup> 15 U.S.C. 78c(a)(39). See Nasdaq Holding Company Restated Certificate of Incorporation Article Fourth.C.6.

<sup>40</sup> See Nasdaq Holding Company By-Laws Article XII, Section 12.5.

<sup>41</sup> See Nasdaq Exchange Rule 2130.

<sup>42</sup> See Exchange Act Release Nos. 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (SR-CHX-2004-26); 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (SR-PCX-2004-08); 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR-Phlx-2003-73); and 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (SR-BSE-2003-19).

Exchange to effectively carry out their regulatory oversight responsibilities under the Exchange Act.

### 3. The Nasdaq Exchange

Nasdaq has applied to the Commission to register its wholly-owned subsidiary, the Nasdaq Exchange, as a national securities exchange. As part of its exchange application, Nasdaq has filed the proposed Nasdaq Exchange Limited Liability Company Agreement ("Exchange LLC Agreement") and Exchange By-Laws. In these documents, among other things, Nasdaq establishes the composition of the Exchange Board and the Exchange committees.

#### a. The Nasdaq Exchange Board of Directors

The Exchange Board will be the governing body of the Nasdaq Exchange and possess all of the powers necessary for the management of the business and affairs of the Nasdaq Exchange and the execution of its responsibilities as an SRO. Under the Exchange By-Laws:

- Twenty percent of the directors on the Exchange Board will be "Member Representative Directors;"<sup>43</sup>
- The number of "Non-Industry Directors"<sup>44</sup> will equal or exceed the sum of the number of "Industry Directors"<sup>45</sup> and "Member Representative Directors;"<sup>46</sup>
- The Exchange Board will include at least one "Public Director;"<sup>47</sup>

<sup>43</sup> See Exchange LLC Agreement, Section 9(a). "Member Representative Director" means a Director "who has been elected or appointed after having been nominated by the Member Nominating Committee or by a Nasdaq [Exchange] Member \* \* \*." See Exchange By-Laws Article I(q).

<sup>44</sup> "Non-Industry Director" means a "Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer or employee of an issuer of securities listed on the national securities exchange operated by the [Exchange]; or (iii) any other individual who would not be an Industry Director." See Exchange By-Laws Article I(v).

<sup>45</sup> Generally, an "Industry Director" is, among other things, a Director that is or has been an officer, director, employee, or owner of a broker-dealer. In addition, persons who have a consulting or employment relationship with the Exchange, its affiliates, or the NASD are considered "Industry." See Exchange By-Laws Article I(l).

<sup>46</sup> See Exchange By-Laws Article III, section 2(a).

<sup>47</sup> See *id.* Nasdaq proposes that the Audit Committee would include at least two Public Directors and the Regulatory Oversight Committee ("ROC") would include at least three Public Directors. Accordingly, the Exchange Board would also have to include at least three Public Directors. See Exchange By-Laws Article III, section 5(e) and (d). "Public Director" means a "Director who has no material business relationship with a broker or dealer, the [Exchange] or its affiliates, or the NASD." See Exchange By-Laws Article I(y). Public Directors that serve on the ROC must also satisfy independence requirements applicable to Nasdaq Exchange issuers set forth in Exchange Rule 4200. See Nasdaq Exchange By-Laws Article III, section 5(e).

• The Exchange Board will include at least one issuer representative (or at least two if the Exchange Board consists of ten or more members);<sup>48</sup> and

• Up to two officers of the Nasdaq Exchange ("Staff Directors") may be elected to the Exchange Board.<sup>49</sup>

On December 14, 2005, Nasdaq Holding Company elected the initial directors of the Exchange Board pursuant to the Exchange LLC Agreement.<sup>50</sup> The initial Exchange Board is the current Board of Directors of the Nasdaq Holding Company who were elected pursuant to the procedures set forth in the current Nasdaq By-Laws. The initial Exchange Board is balanced: the number of Non-Industry Directors exceeds the number of Industry Directors and there are four Public Directors and four issuer representatives. These Directors were selected by the Nasdaq Nominating Committee, and elected by a majority vote of the Board of Governors of the NASD, which includes representatives of NASD members. No Nasdaq Exchange members participated in the selection of directors for the initial board because the Exchange does not yet have members. In light of these circumstances, and Nasdaq's representation that it expects to elect a new Exchange Board at the same time the Nasdaq Holding Company holds its annual meeting in Spring 2006, the Commission believes that the initial Exchange Board is consistent with the Exchange Act.

For subsequent boards, the Exchange Board will appoint a Nominating Committee and a Member Nominating Committee. The Member Nominating Committee will nominate candidates for each Member Representative Director position on the Exchange Board, as well as nominate candidates for appointment by the Exchange Board for each vacant or new position on a committee that is to be filled with a Member Representative under the Exchange By-Laws. Additional candidates may be added to the list of candidates for the Member Representative Director positions if a Nasdaq Exchange Member submits a timely and duly executed written nomination to the Secretary of

<sup>48</sup> See Exchange By-Laws Article III, section 2(a).

<sup>49</sup> These Staff Directors will be considered "neutral" and not as either Industry or Non-Industry Directors. See Exchange By-Laws Article I(l). See also Exchange Act Release No. 44280 (May 8, 2001), 66 FR 26892 (May 15, 2001) (SR-NASD-2001-06) (approving amendment to NASD By-Laws to allow for the treatment of staff Governors as "neutral" for purposes of Industry/Non-Industry balancing on the NASD Board of Governors).

<sup>50</sup> See Exchange LLC Agreement, section 9 and Schedule C.

the Nasdaq Exchange.<sup>51</sup> These candidates, together with those nominated by the Member Nominating Committee, will then be presented to Exchange members for election.<sup>52</sup> The Nominating Committee will nominate candidates for all other vacant or new Director positions on the Exchange Board, the Nasdaq Listing and Hearing Review Council, and the Nasdaq Review Council.

The Commission believes that the requirement in the Exchange By-Laws that twenty percent of the directors be "Member Representative Directors" and the means by which they are elected by members provides for the fair representation of members in the selection of directors and the administration of the Exchange consistent with the requirement in section 6(b)(3) of the Exchange Act.<sup>53</sup> This requirement helps to ensure that members have a voice in the use of self-regulatory authority, and that an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.

The Commission has previously stated its belief that the inclusion of public, non-industry representatives on exchange oversight bodies is critical to an exchange's ability to protect the public interest.<sup>54</sup> Further, public representatives help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process. The Commission believes that public directors can provide unique, unbiased perspectives, which should enhance the ability of the Exchange Board to address issues in a non-discriminatory fashion and foster the integrity of the Nasdaq Exchange. The Commission believes that the Nasdaq Exchange Board satisfies the requirements in section 6(b)(3) of the Exchange Act,<sup>55</sup> which requires that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer.<sup>56</sup>

<sup>51</sup> See Exchange By-Laws Article II, section 1(c).

<sup>52</sup> See Exchange By-Laws Article II.

<sup>53</sup> 15 U.S.C. 78f(b)(3).

<sup>54</sup> See Regulation of Exchanges and Alternative Trading Systems, Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) ("Regulation ATS Release").

<sup>55</sup> 15 U.S.C. 78f(b)(3).

<sup>56</sup> See also *In the Matter of National Association of Securities Dealers, Inc.*, Order Instituting Public Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Exchange Act Release No. 37538 (August 8, 1996), Administrative Proceeding File No. 3-9056 ("1996 Settlement



## b. The Nasdaq Exchange Committees

In the Exchange By-Laws, the Nasdaq Exchange has proposed to establish several committees. Specifically, the Exchange has proposed to establish the following committees that would be composed solely of directors: An Executive Committee,<sup>57</sup> a Finance Committee,<sup>58</sup> a Management Compensation Committee,<sup>59</sup> an Audit Committee,<sup>60</sup> and a ROC.<sup>61</sup> In addition, the Exchange has proposed to establish these other committees that are not required to be composed solely of directors: a Nasdaq Listing and Hearing Review Committee,<sup>62</sup> a Nasdaq Review Council ("NRC"),<sup>63</sup> a Nominating Committee,<sup>64</sup> a Member Nominating Committee,<sup>65</sup> a Quality of Markets Committee,<sup>66</sup> a Market Operations Review Committee,<sup>67</sup> an Arbitration and Mediation Committee,<sup>68</sup> and a Market Regulation Committee.<sup>69</sup> The Commission believes that the Exchange's proposed committees should enable it to carry out its responsibilities under the Exchange Act.

The Exchange has proposed that the composition of certain committees be consistent with the 1996 Settlement Order. These committees include the Nominating Committee, the Quality of Markets Committee, the Arbitration and Mediation Committee,<sup>70</sup> the Market

Order"). Simultaneously with issuing this Order, the Commission also published a Report pursuant to section 21(a) of the Exchange Act regarding the NASD and the Nasdaq market. See Report and Appendix to Report Pursuant to section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market (August 8, 1996). As a subsidiary of the NASD, Nasdaq is currently bound by the 1996 Settlement Order settling an enforcement action against the NASD. In conjunction with the Nasdaq Exchange's application to register as an exchange, Nasdaq submitted a letter to the Commission affirming that the Nasdaq Exchange will comply with the 1996 Settlement Order except as specified. See letter to Robert L.D. Colby, Deputy Director, Division, Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated January 11, 2006. Consistent with the 1996 Settlement Order, the Exchange Board structure has at least fifty percent independent public and non-industry membership.

<sup>57</sup> See Exchange By-Laws Article III, section 5(a).

<sup>58</sup> See Exchange By-Laws Article III, section 5(b).

<sup>59</sup> See Exchange By-Laws Article III, section 5(c).

<sup>60</sup> See Exchange By-Laws Article III, section 5(d).

<sup>61</sup> See Exchange By-Laws Article III, section 5(e).

<sup>62</sup> See Exchange By-Laws Article V.

<sup>63</sup> See Exchange By-Laws Article VI.

<sup>64</sup> See Exchange By-Laws Article III, section 6(b).

<sup>65</sup> *Id.*

<sup>66</sup> See Exchange By-Laws Article III, section 6(c).

<sup>67</sup> See Exchange By-Laws Article III, section 6(d).

<sup>68</sup> See Exchange By-Laws Article III, section 6(e).

<sup>69</sup> See Exchange By-Laws Article III, section 6(f).

<sup>70</sup> The Exchange By-Laws provide that the Arbitration and Mediation Committee shall consist of no fewer than 10 and no more than 25 members, and shall have at least 50 percent Non-Industry members. See Exchange By-Laws Article III, section

Regulation Committee,<sup>71</sup> the NRC,<sup>72</sup> the Management Compensation Committee, and the Audit Committee.<sup>73</sup> Each of these committees is compositionally balanced as they each must be composed of at least 50 percent Non-Industry members. The Commission believes that these committees' compositional balance is consistent with the 1996 Settlement Order.

## B. Regulation of the Nasdaq Exchange

As a prerequisite for the Commission's approval of an exchange's application for registration, an exchange must be organized and have the capacity to carry out the purposes of the Exchange Act.<sup>74</sup> Specifically, an exchange must be able to enforce compliance by its members, and persons associated with its members, with the federal securities laws and the rules of the exchange.<sup>75</sup>

### 1. Membership

Nasdaq proposes that the criteria for membership in the Nasdaq Exchange be substantially the same as the criteria currently applicable to firms applying for membership in the NASD.<sup>76</sup> Unlike

5(e)(ii). The Arbitration and Mediation Committee may be maintained on the Exchange's behalf by a regulatory services provider (e.g., the NASD). See Exchange By-Laws Article III, section 5(e). ("The Board shall appoint an Arbitration and Mediation Committee, or shall cause the [Exchange] to enter into an agreement with a self-regulatory organization that provides regulatory services pursuant to which such self-regulatory organization shall appoint an Arbitration and Mediation Committee on the Company's behalf."). In the event that a regulatory services provider appoints an Arbitration and Mediation Committee on the Nasdaq Exchange's behalf, it must comply with the compositional and other requirements set forth in the Exchange By-Laws with respect to such committee.

<sup>71</sup> The Market Regulation Committee is the successor to the Market Surveillance Committee. See Exchange Act Release Nos. 38545 (April 24, 1997), 62 FR 25226 (May 8, 1997); and 38908 (August 7, 1997), 62 FR 43385 (August 13, 1997).

<sup>72</sup> The Nasdaq Exchange will not maintain a National Business Conduct Committee. Its appellate level disciplinary body, the NRC, however, is composed of a majority of Non-Industry Directors consistent with the 1996 Settlement Order. See Exchange By-Laws Article VI, section 2. The NRC will be appointed by the Exchange Board and will, among other things, preside over appeals or reviews of disciplinary proceedings, statutory disqualification proceedings, and membership proceedings. See Exchange By-Laws Article VI, section 1.

<sup>73</sup> Consistent with the 1996 Settlement Order, the Audit Committee is composed of a majority of Non-Industry Directors and is chaired by a Public Director. See Exchange By-Laws Article III, section 5(d).

<sup>74</sup> See section 6(b)(1) of the Exchange Act; 15 U.S.C. 78f(b)(1).

<sup>75</sup> *Id.* See also section 19(g) of the Exchange Act; 15 U.S.C. 78s(g).

<sup>76</sup> See Nasdaq Exchange Rule 1010 Series. The Nasdaq Exchange's proposed membership By-Laws and rules essentially mirror the NASD's By-Laws

the NASD rules, however, the Nasdaq Exchange's proposed rules require a broker-dealer to be a member of at least one other SRO before applying for membership in the Exchange and to remain a member of another SRO.<sup>77</sup>

Current NASD members will be able to apply through an expedited process to become a Nasdaq Exchange member, and to register with the Exchange all of their associated persons whose registrations were approved with the NASD, by submitting a Waive-in Membership Application Form and a Membership Agreement.<sup>78</sup> All of the firm's associated persons who are registered in categories recognized by Exchange rules would become registered persons of a Nasdaq Exchange member firm.

Broker-dealers that are not members of the NASD and new broker-dealers that are not yet members of another SRO may apply for membership in the Nasdaq Exchange and comply with the Exchange Rule 1010 Series. Firms that apply to become both NASD and Exchange members simultaneously may file one full membership application with the NASD in compliance with the NASD Rule 1010 Series.<sup>79</sup> New broker-dealers that wish to become members of the Nasdaq Exchange and an SRO other than the NASD must submit a complete application form with all of the information required of new applicants in Exchange Rule 1013(a)(2).<sup>80</sup> The Nasdaq Exchange will consider the application for membership in the Exchange after its membership in the other SRO has been approved.

The Exchange has contracted with NASD Regulation ("NASDR"), the NASD's wholly-owned subsidiary, to which the NASD has delegated the performance of certain of its regulatory obligations,<sup>81</sup> to perform certain

and Rule 1010 series. In Amendment No. 6, Nasdaq updated proposed Nasdaq Exchange Rule IM-1000-2 to reflect a proposed rule change, which clarified the scope of the relief provided to registered representatives called into active military duty. See Exchange Act Release No. 52980 (December 19, 2005), 70 FR 76477 (December 27, 2005).

<sup>77</sup> See Nasdaq Exchange Rules 1002(e) and 1014(a)(15). In Amendment No. 6, Nasdaq amended these rules to amend Rules 1002(e) and 1014(a)(15) to require that members maintain membership in another registered securities association that is not registered solely under section 15A(k) of the Exchange Act or another registered exchange that is not registered solely under section 6(g) of the Exchange Act. See *supra* note 12. NASD membership is required, in particular, for applicants that will transact business with the public. See also section 15(b)(8) of the Exchange Act and Rule 15b9-1 thereunder. 15 U.S.C. 78o(b)(8); 17 CFR 240.15b9-1.

<sup>78</sup> See Nasdaq Exchange Rule 1013(a)(6)(C).

<sup>79</sup> See Nasdaq Exchange Rule 1013(a)(6)(A).

<sup>80</sup> See Nasdaq Exchange Rule 1013(a)(6)(B).

<sup>81</sup> See Delegation Plan.

regulatory functions on its behalf (the "Regulatory Contract").<sup>82</sup> Under the Regulatory Contract, NASDR will perform certain membership functions for the Nasdaq Exchange. Specifically, NASDR will accept and review all applications for membership in the Exchange, and receive and process membership applications through the Central Registration Depository ("CRD") system pursuant to the Exchange's membership rules.<sup>83</sup> NASDR will evaluate the applications and make recommendations to the Exchange about whether they should be approved or denied. The Nasdaq Exchange will make the ultimate decision on whether to accept a broker-dealer as a member.<sup>84</sup>

Appeals of staff denials of membership will be heard by the NRC.<sup>85</sup> Decisions of this committee will be final, but may be called for review by the Exchange Board.<sup>86</sup> This process is consistent with the current process by which the NASD Board of Directors may call for review membership decisions made by the NASD's National Adjudicatory Council.

The Nasdaq Exchange also proposes to require that all broker-dealer applicants include an original Nasdaq Exchange-approved fingerprint card for each associated person of the applicant subject to section 17(f)(2) of the Exchange Act and Rule 17f-2 thereunder<sup>87</sup> for whom a fingerprint card has not been filed with another SRO.<sup>88</sup> The Nasdaq Exchange's rules also permit the Exchange to make the registration of a person effective pending receipt of a fingerprint card.<sup>89</sup> Section 17(f)(2) of the Exchange Act and Rule 17f-2(a) thereunder<sup>90</sup> states that every member of a national securities exchange shall require that each of its partners, directors, officers and employees be fingerprinted, and shall submit such fingerprints, or cause the

fingerprints, to be submitted to the Attorney General of the United States for identification and appropriate processing. Exchange Act Rule 17f-2(c)<sup>91</sup> permits a national securities exchange to file a fingerprint plan with the Commission that will facilitate the submission of fingerprints to the Attorney General. Because the Exchange's rules contemplate that the Exchange will facilitate the submission of fingerprints to the Attorney General on behalf of its members as permitted by Exchange Act Rule 17f-2(c), as a condition to the operation of the Nasdaq Exchange, a fingerprint plan must be filed by the Nasdaq Exchange under Exchange Act Rule 17f-2 and declared effective by the Commission.

The Commission finds that the Nasdaq Exchange's membership rules are consistent with section 6 of the Exchange Act,<sup>92</sup> specifically section 6(b)(2) of the Exchange Act,<sup>93</sup> which requires that a national securities exchange have rules that provide that any registered broker or dealer may become a member and any person may become associated with an exchange member. The Commission notes that pursuant to section 6(c) of the Exchange Act, an exchange must deny membership to non-registered broker-dealers and registered broker-dealers that do not satisfy certain standards, such as financial responsibility or operational capacity. As a registered exchange, the Nasdaq Exchange must independently determine if an applicant satisfies the standards set forth in the Exchange Act, regardless of whether an applicant is a member of another SRO.<sup>94</sup>

## 2. Regulatory Independence—the Chief Regulatory Officer and Regulatory Oversight Committee

Nasdaq proposes to create an Exchange Board committee, the ROC, that would be composed of independent directors. The ROC would consist of three members, each of whom must be a Public Director and "independent director" as defined by Nasdaq Exchange Rule 4200.<sup>95</sup> The ROC would be responsible for monitoring the

adequacy and effectiveness of the Exchange's regulatory program, assessing the Exchange's regulatory performance, assisting the Exchange Board in reviewing the Exchange's regulatory plan and the overall effectiveness of the Exchange's regulatory functions.<sup>96</sup>

The ROC would also meet with the Chief Regulatory Officer ("CRO") in executive session at regularly scheduled meetings and at any time upon request of the CRO or any member of the ROC.<sup>97</sup> The ROC would also be informed about the CRO's compensation, promotion, or termination (including reasons).<sup>98</sup> Finally, the regulatory budget would be presented to the ROC so that its members may inquire as to the adequacy of resources available for the Nasdaq Exchange's regulatory program.<sup>99</sup>

Nasdaq proposes that its CRO have general supervision of the regulatory operations of the Exchange, including overseeing surveillance, examination, and enforcement functions.<sup>100</sup> The CRO also would administer any regulatory services agreement with another SRO to which the Nasdaq Exchange is a party.<sup>101</sup> The CRO would be an Executive Vice President or Senior Vice President that reports directly to the Chief Executive Officer.<sup>102</sup> The CRO may also serve as the Nasdaq Exchange's General Counsel.<sup>103</sup>

In addition, the Nasdaq Exchange has created an independent regulatory department, Nasdaq Regulation, for the purpose of functionally separating its regulatory functions from its business lines. Nasdaq Regulation will carry out many of the Nasdaq Exchange's regulatory functions, including administering its membership and disciplinary rules.<sup>104</sup>

<sup>82</sup> The Nasdaq Exchange and NASDR have requested confidential treatment for their contractual agreement pursuant to section 24(b)(2) of the Exchange Act and Rule 24b-2 thereunder. 15 U.S.C. 78x(b)(2); and 17 CFR 240.24b-2. Nasdaq has represented to the Commission that it will assign the Regulatory Contract to the Nasdaq Exchange.

<sup>83</sup> See Nasdaq Exchange Rule 1013. See also Exchange By-Laws Article VI, Section 2.

<sup>84</sup> In Amendment No. 6, Nasdaq proposed to modify Nasdaq Exchange Rule 3230(h) to reflect an NASD proposed rule change relating to reporting requirements for members that are clearing firms. See Exchange Act Release No. 52352 (August 26, 2005), 70 FR 52460 (September 2, 2005).

<sup>85</sup> See Nasdaq Exchange Rule 1015. See also Exchange By-Laws Article VI, Section 2.

<sup>86</sup> See Nasdaq Exchange Rules 1015(j)(3) and 1016.

<sup>87</sup> 15 U.S.C. 78q(f)(2); and 17 CFR 240.17f-2.

<sup>88</sup> See Nasdaq Exchange Rule 1013(a)(2)(B).

<sup>89</sup> See Nasdaq Exchange Rule 1140(c)(2).

<sup>90</sup> 15 U.S.C. 78q(f)(2); and 17 CFR 240.17f-2(a).

<sup>91</sup> 17 CFR 240.17f-2(c).

<sup>92</sup> 15 U.S.C. 78f. The Commission notes that it is not approving the Nasdaq NTS Access Order Form and Nasdaq Services Agreement.

<sup>93</sup> 15 U.S.C. 78f(b)(2).

<sup>94</sup> In response to the Original Notice, the Securities Industry Association submitted a comment noting that the Nasdaq Exchange should be clear about its membership application process and the process for the registration of associated persons of Nasdaq Exchange members. See SIA Letter, *supra* note 15.

<sup>95</sup> Nasdaq Exchange Rule 4200(a)(15) sets forth the director independence listing standards applicable to Nasdaq-listed issuers. See also Amendment No. 6, *supra* note 12.

<sup>96</sup> See Exchange By-Laws Article III, section 5(e).

<sup>97</sup> See Exchange By-Laws Article IV, section 7.

<sup>98</sup> See Exchange By-Laws Article III, section 5(e).

<sup>99</sup> *Id.*

<sup>100</sup> See Exchange By-Laws Article IV, section 7.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> See Exchange Rules 1011(c) and 9120(w). See also Report of Investigation Pursuant to section 21(a) of the Securities Exchange Act of 1934 Regarding the Nasdaq Stock Market Inc., as Overseen By Its Parent, The National Association of Securities Dealers, Inc., Exchange Act Release No. 51163 (February 9, 2005). The Commission issued this report as a result of an investigation that uncovered a regulatory failure between the NASD and Nasdaq. In this report, the Commission stated that "[i]n carrying out their regulatory responsibilities, SROs must ensure that they effectively manage the inherent conflicts between their role as a market and their role as a regulator." *Id.* In response, the NASD and Nasdaq took several remedial steps, including the creation of the Nasdaq Regulation.

In the October 2005 Notice, the Commission requested comment on whether the Nasdaq Exchange's proposed regulatory structure, including the ROC and CRO, insulate its regulatory functions from its market and other commercial interests so that it could carry out its regulatory obligations. In response, the Commission received two comment letters.<sup>105</sup> Both commenters supported the Exchange's proposed regulatory structure.

The Commission believes that, in this context, the Exchange's proposal is consistent with the statutory requirements. In addition, the Commission believes that the Nasdaq Exchange's proposal is consistent with the 1996 Settlement Order.<sup>106</sup>

### 3. The Regulatory Contract

Although the Exchange will be an SRO with all of the attendant regulatory obligations under the Exchange Act, it has entered into the Regulatory Contract with NASDR, under which NASDR will perform certain regulatory functions on its behalf.<sup>107</sup> Notwithstanding the Regulatory Contract, the Exchange will retain ultimate legal responsibility for the regulation of its members and its market. This contract is intended to reflect the current relationship that Nasdaq and NASDR have and accordingly, NASDR will be performing for the Nasdaq Exchange the same regulatory functions it currently performs for Nasdaq as a facility of the NASD.

In addition to performing certain membership functions for the Nasdaq Exchange,<sup>108</sup> NASDR will perform certain disciplinary and enforcement functions for the Exchange. Generally, NASDR will investigate members, issue complaints, and conduct hearings pursuant to the Exchange's rules. Appeals of disciplinary hearings, however, will be handled by the NRC.<sup>109</sup>

The Commission has previously stated that it would consider whether it would be consistent with the public interest for an exchange to contract with another SRO to perform certain regulatory functions.<sup>110</sup> In this case, the

Commission believes that it is consistent with the Exchange Act and the public interest to allow the Exchange to contract with NASDR to perform membership, disciplinary, and enforcement functions. Membership, discipline, and enforcement are fundamental elements to a regulatory program, and constitute core self-regulatory functions. It is essential to the public interest and the protection of investors that these functions are carried out in an exemplary manner, and the Commission believes that NASDR has the expertise and experience to perform these functions on behalf of the Nasdaq Exchange.<sup>111</sup>

At the same time, the Commission believes that, unless relieved by the Commission of its responsibility,<sup>112</sup> the Nasdaq Exchange bears the responsibility for self-regulatory conduct and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on the

29, 2004), 69 FR 47962 (August 6, 2004) ("Amex Order").

<sup>111</sup> In response to the Original Notice, some commenters raised general concerns over the ability of NASDR to be a fair and impartial regulator of the Nasdaq Exchange given the historical relationship between Nasdaq and NASDR and the fact that the Nasdaq Exchange is a "customer" of the NASD's for regulatory services. See *Instinet Letter*; *Member Associations of the American Stock Exchange Letter*; and *SIA Letter*, *supra* note 15; and letters from William O'Brien, Senior Vice President & General Counsel, The Brut ECN, L.L.C., dated July 30, 2001; and W. Hardy Callcott, Senior Vice President and General Counsel, Charles Schwab, dated August 30, 2001. Other commenters, however, believed that exchange status for Nasdaq would permit the NASD to provide regulatory services without the perception or potential for a conflict of interest. See letters from Robert M. Funk, Executive Director, American Shareholders Association, dated July 17, 2001; Grover G. Norquist, President, Americans for Tax Reform, dated July 17, 2001; Congressman Patrick J. Tiberi, Ohio, dated July 20, 2001; Congressman Steven C. LaTourette, Ohio, dated July 25, 2001; Congressman E. Clay Shaw, Florida, dated July 25, 2001; Senator Richard J. Durbin, Illinois, dated July 27, 2001; Barry S. Porter, Chairman, The Nasdaq Stock Market Issuer Affairs Committee and 22 representatives of the Nasdaq Issuer Affairs Committee, dated August 8, 2001; Glenn R. Oxner, Executive Vice President, Scott & Stringfellow, Inc., dated August 14, 2001; Congressional Delegation from Maryland, including Constance A. Morella, Roscoe Bartlett, Wayne Gilchrest, and Robert L. Ehrlich, Jr., dated August 15, 2001; Congressman Charles A. Gonzalez, Texas, dated August 21, 2001; Congressman Chip Pickering, Mississippi, dated August 21, 2001; Congressman Jerry Weller, Illinois, letters dated August 23, 2001 and August 31, 2001; Mathew Ng, Assistant General Counsel & Assistant Secretary, Oracle Corporation, dated August 29, 2001; Congressional Delegation from Connecticut, including Nancy Johnson, James Maloney and Christopher Shays, dated September 18, 2001; and Congressman Mark Foley, Florida, dated September 21, 2001.

<sup>112</sup> See section 17(d)(1) of the Exchange Act and Rule 17d-2 thereunder. 15 U.S.C. 78q(d)(1); and 17 CFR 240.17d-2. See also *infra* notes 114-117 and accompanying text. The Commission is not approving the Regulatory Contract.

Exchange's behalf. In performing these functions, however, NASDR may nonetheless bear liability, in appropriate circumstances, for causing or aiding and abetting the failure of the Exchange to perform its regulatory functions.<sup>113</sup> Accordingly, although NASDR will not act on its own behalf under its SRO responsibilities in carrying out these regulatory services for the Nasdaq Exchange, NASDR also may have secondary liability if, for example, the Commission finds that the contracted functions are being performed so inadequately as to cause a violation of the Federal securities laws by the Nasdaq Exchange.

### 4. Rule 17d-2 Agreements

Section 19(g)(1) of the Exchange Act<sup>114</sup> requires every SRO to examine its members and persons associated with its members and to enforce compliance with the federal securities laws and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to section 17(d) of the Exchange Act.<sup>115</sup> Section 17(d) was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication with respect to members of more than one SRO ("common members"). Rule 17d-2 of the Exchange Act<sup>116</sup> permits SROs to propose joint plans allocating regulatory responsibilities concerning common members. These agreements, which must be filed with and approved by the Commission, generally cover such regulatory functions as personnel registration, branch office examinations, and sales practices. Commission approval of a 17d-2 plan relieves the specified SRO of those regulatory responsibilities allocated by the plan to another SRO. Many existing SROs have entered into such agreements.<sup>117</sup>

Nasdaq has represented to the Commission that the Nasdaq Exchange

<sup>113</sup> For example, if failings by NASDR have the effect of leaving the Exchange in violation of any aspect of the Exchange's self-regulatory obligations, the Exchange would bear direct liability for the violation, while NASDR may bear liability for causing or aiding and abetting the violation.

<sup>114</sup> 15 U.S.C. 78s(g)(1).

<sup>115</sup> 15 U.S.C. 78q(d).

<sup>116</sup> 17 CFR 240.17d-2.

<sup>117</sup> See, e.g., Exchange Act Release Nos. 13326 (Mar. 3, 1977), 42 FR 13878 (Mar. 14, 1977) (NYSE/Amex); 13536 (May 12, 1977), 42 FR 26264 (May 23, 1977) (NYSE/BSE); 14152 (Nov. 9, 1977), 42 FR 59339 (Nov. 16, 1977) (NYSE/CSE); 13535 (May 12, 1977), 42 FR 26269 (May 23, 1977) (NYSE/CHX); 13531 (May 12, 1977), 42 FR 26273 (May 23, 1977) (NYSE/PSE); 14093 (Oct. 25, 1977), 42 FR 57199 (Nov. 1, 1977) (NYSE/Phlx); 15191 (Sep. 26, 1978), 43 FR 46093 (Oct. 5, 1978) (NASD/BSE, CSE, CHX and PSE); 16858 (May 30, 1980), 45 FR 37927 (June 5, 1980) (NASD/BSE, CSE, CHX and PSE); and 42815 (May 23, 2000), 65 FR 34762 (May 31, 2000) (NASD/ISE).

<sup>105</sup> ISE Letter and STA Letter, *supra* note 10.

<sup>106</sup> See 1996 Settlement Order, *supra* note 56.

<sup>107</sup> In Amendment No. 6, Nasdaq proposed Rule 0150, which provides that the regulatory functions performed by NASD will continue to be performed by NASD, an affiliate of NASD, or an independent self-regulatory organization, unless Nasdaq Exchange obtains prior Commission approval to do otherwise.

<sup>108</sup> See *supra* text accompanying note 82.

<sup>109</sup> See Exchange By-Laws Article VI, section 1.

<sup>110</sup> See, e.g., Regulation ATS Release, *supra* note 54. See also Exchange Act Release No. 50122 (July

and the NASD intend to file a Rule 17d-2 agreement with the Commission covering common members of the Nasdaq Exchange and the NASD. The Nasdaq Exchange represented that this agreement would allocate to the NASD regulatory responsibility, with respect to common members, the following:

(1) The NASD will receive and process in the CRD applications, reports, information, filings, fingerprint cards, and notices generally relating to the status of an associated person of a common member, and registration as a principle or representative of any type, or any other type of employee of a common member required to register or pass a qualification examination under the Nasdaq Exchange rules.

(2) The NASD will receive and process notices, filings, or registrations for the branch offices of common members of the Nasdaq Exchange and the NASD, including notices, filings, or registrations to designate offices of supervisory jurisdiction.

(3) The NASD will examine common members of the Nasdaq Exchange and the NASD for compliance with Federal securities laws, rules and regulations, and rules of the Nasdaq Exchange that have been certified by the Nasdaq Exchange as identical or substantially similar to the NASD rules.

(4) The NASD will investigate common members of the Nasdaq Exchange and the NASD for apparent violations of Federal securities laws, rules or regulations, or Nasdaq Exchange rules that has been certified by the Nasdaq Exchange as identical or substantially identical to an NASD rule.

(5) The NASD will enforce compliance with Federal securities laws, rules and regulations, and rules of the Nasdaq Exchange that have been certified by Nasdaq as identical or substantially similar to the NASD rules.

Because the Nasdaq Exchange anticipates entering into this 17d-2 agreement, it has not made provisions to fulfill the regulatory obligations that would be undertaken by the NASD under this agreement with respect to common members of the Nasdaq Exchange and the NASD. Accordingly, the Commission is conditioning the operation of the Nasdaq Exchange on approval by the Commission of a 17d-2 agreement between the Nasdaq Exchange and the NASD that allocates the above specified matters to the NASD.<sup>118</sup>

<sup>118</sup> Alternatively, the Nasdaq Exchange could demonstrate that it has the ability to fulfill its regulatory obligations.

## 5. Discipline and Oversight of Members

As a prerequisite for the Commission approval of an exchange's application for registration, an exchange must be organized and have the capacity to carry out the purposes of the Exchange Act. Specifically, an exchange must be able to enforce compliance by its members and persons associated with its members with Federal securities laws and the rules of the exchange.<sup>119</sup> As noted above, pursuant to the Regulatory Contract, NASDR will perform many of the initial disciplinary processes on behalf of the Exchange.<sup>120</sup> For example, NASDR will investigate claims of securities laws violations, issue complaints, and conduct hearings pursuant to Nasdaq Exchange rules.<sup>121</sup> Appeals from disciplinary decisions will be heard by the NRC. Thereafter, the NRC may affirm, reverse, or otherwise modify the decision of the Hearing Panel, and must submit a proposed written decision to the Exchange Board, which will become final unless the matter is called for review by any Director.<sup>122</sup> After review, the Exchange Board may affirm, reverse, modify, and increase or reduce any sanction, or impose any other fitting sanction.<sup>123</sup>

The Nasdaq Exchange's By-Laws and rules provide that it has disciplinary jurisdiction over its members so that it can enforce its members' compliance with its rules and the Federal securities laws.<sup>124</sup> The Exchange's rules also permit it to sanction members for violations of its rules and violations of the Federal securities laws by, among other things, expelling or suspending members, limiting members' activities,

functions, or operations, fining or censuring members, or suspending or barring a person from being associated with a member.<sup>125</sup> The Nasdaq Exchange's rules also provide for the imposition of fines for minor rule violations in lieu of commencing disciplinary proceedings.<sup>126</sup> Accordingly, as a condition to the operation of the Nasdaq Exchange, a Minor Rule Violation Plan ("MRVP") filed by the Nasdaq Exchange under Exchange Act Rule 19d-1(c)(2) must be declared effective by the Commission.<sup>127</sup>

The Nasdaq Exchange will operate MarketWatch, a real-time surveillance department.<sup>128</sup> MarketWatch will perform this real-time intraday surveillance over all Nasdaq Exchange-listed companies and all Nasdaq Exchange market participants. More specifically, MarketWatch will oversee the complete and timely disclosure of Nasdaq Exchange issuers' material information to determine if a trading halt is necessary to maintain an orderly market for the release of material news. In addition, MarketWatch, through its automated detection system, will monitor the trading activity of each security and will generate a price and volume alert to aid in the assessment of unusual market activity. MarketWatch will also coordinate and execute the release of initial public offerings; administer market participants' excused withdrawals and passive market making requests; and handle the clearly

<sup>125</sup> See Nasdaq Exchange Rule 8300.

<sup>126</sup> See Nasdaq Exchange Rule 9216 and IM-9216. Minor Nasdaq Exchange rule violations include, for example, failing to file timely reports of short positions, failure to timely submit amendments to Forms BD or U-4, failing to submit trading data as requested, or failing to have a principal approve advertisements or sales literature prior to its use. See Nasdaq Exchange Rule IM-9216. In Amendment No. 6, Nasdaq updated proposed Nasdaq Exchange Rule IM-9216 to reflect a NASD proposed rule change, which expanded the list of violations appropriate for disposition as minor rule violations. See Exchange Act Release No. 52294 (August 18, 2005), 70 FR 49700 (August 24, 2005). The Commission finds that this proposed rule change is consistent with section 6(b)(5), (b)(6) and (b)(7) of the Exchange Act for the same reasons that the Commission approved these rule changes under section 15A(b)(6), (b)(7) and (b)(8).

<sup>127</sup> 17 CFR 240.19d-1(c)(2).

<sup>128</sup> See Amendment No. 5, Exhibit E, supra note 7. Nasdaq currently operates MarketWatch pursuant to the Delegation Plan, and MarketWatch will continue to operate in the same manner upon the Nasdaq Exchange's operation as an exchange. In Amendment No. 6, Nasdaq proposed to add Nasdaq Exchange Rule 4121, which provided that, in accordance with the standing request of the Commissions, the Nasdaq Exchange would halt domestic trading if other major securities markets initiated market-wide trading halts in response to extraordinary market conditions.

<sup>119</sup> 15 U.S.C. 78f(b)(1).

<sup>120</sup> In response to the Original Notice, the Securities Industry Association submitted a comment generally supporting this arrangement for the regulation of Nasdaq Exchange members. See SIA Letter, supra note 15.

<sup>121</sup> NASDR will appoint Hearing Panels pursuant to Nasdaq Exchange rules. In Amendment No. 6, Nasdaq proposed a new transitional rule, 9231(b)(1)(D), allowing persons who served on the NASD National Adjudicatory Council, or a disciplinary subcommittee thereof, prior to the date that Nasdaq commenced operating as a national securities exchange to sit on Hearing Panels. The Commission believes that proposed Nasdaq Exchange Rule 9231(b)(1)(D) is consistent with the Exchange Act. Allowing persons who previously served on the NASD National Adjudicatory Council, or a disciplinary subcommittee thereof, to act as Panelists in the Nasdaq Exchange disciplinary hearings will facilitate a seamless transition from the current NASD disciplinary process to the Nasdaq Exchange disciplinary process.

<sup>122</sup> Nasdaq Exchange Rules 9349 and 9351(a).

<sup>123</sup> Nasdaq Exchange Rule 9351.

<sup>124</sup> See generally Nasdaq Exchange By-Laws Article IX; Nasdaq Exchange Rule Series, 0100, 1000, 9000.

erroneous trade adjudication process.<sup>129</sup> If MarketWatch observes any activity that may involve a violation of Commission or Nasdaq Exchange rules, MarketWatch will immediately refer the activity to NASDR's Market Regulation Department for further investigation and potential disciplinary action.<sup>130</sup>

The Commission finds that the Nasdaq Exchange's By-Laws and rules concerning its disciplinary and oversight programs are consistent with the requirements of sections 6(b)(6) and 6(b)(7)<sup>131</sup> of the Exchange Act in that they provide fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the rules of the Exchange provide it with the ability to comply, and with the authority to enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Nasdaq Exchange.<sup>132</sup>

#### 6. Order Audit Trail System

Under the Nasdaq Exchange rules, Nasdaq Exchange members will be required to comply with the NASD's Order Audit Trail System ("OATS") requirements. Because Exchange members will report order information to OATS pursuant to the Nasdaq Exchange rules, the Exchange will have the right of access to OATS data for regulatory purposes. In the October 2005 Notice, the Commission specifically requested comment on the extent to which the Nasdaq Exchange should be able to use OATS data for non-regulatory purposes and whether it

should have access to OATS data regarding: (1) All orders its members receive, including those orders that are routed to markets other than the Exchange; and (2) reports of executions by its members that are reported to the new TRF.

The Commission received two comment letters addressing these issues.<sup>133</sup> One commenter stated that it was its understanding that the Nasdaq Exchange's sole use of OATS information would be for regulatory purposes and if that understanding were incorrect, it objects to the Exchange's access to such information for non-regulatory purposes.<sup>134</sup> A second commenter argued that the Nasdaq Exchange should not have access to OATS data regarding orders and executions by its members that are executed off the Exchange and that the Exchange should not be permitted to use OATS data for non-regulatory purposes.<sup>135</sup> This commenter, however, said that if the Exchange is permitted to use OATS data for non-regulatory purposes, access to such data for non-regulatory purposes should be granted to other markets or any other person who requests the data.<sup>136</sup>

The Commission shares commenters' concerns about the use by the Nasdaq Exchange of OATS information for non-regulatory purposes, particularly since it includes information about members' trading activities on competitors of the Exchange. The Nasdaq Exchange's OATS rules would require Exchange members to report, on a daily basis, extensive information with respect to the handling of orders for Nasdaq securities, including when all or portions of orders are executed on markets other than the Nasdaq Exchange. A member's failure to provide this information could give rise to disciplinary action by the Exchange pursuant to its authority as a self-regulatory organization under the Exchange Act. Because this information is obtained from members through the exercise of the Exchange's regulatory powers, the Commission does not believe it should be used for non-

regulatory purposes, unless the NASD makes available such OATS data to other market participants on the same terms as it is provided to the Nasdaq Exchange.

#### C. Trading System

##### 1. Trading Rules

In Amendment No. 4, Nasdaq proposed that only trades executed on the Nasdaq Exchange systems would be considered exchange trades. Currently, the Nasdaq systems that would be the Exchange's systems are the Nasdaq Market Center, formerly known as SuperMontage, Brut, and INET.<sup>137</sup>

The Nasdaq Exchange's proposed Nasdaq Market Center rules require price priority.<sup>138</sup> The rules, with limited exceptions, also require time priority.<sup>139</sup> Accordingly, the Nasdaq Exchange's proposed Nasdaq Market Center rules differ from current NASD rules governing the Nasdaq Market Center as follows:

(1) The Exchange's rules do not include the priority rule that first executes an incoming order against the submitting member's own interest reflected in the Nasdaq Market Center at

<sup>129</sup> In Amendment No. 6, Nasdaq proposed to modify Nasdaq Exchange Rule 11890(b) to reflect a proposed rule change approved by the Commission for the NASD. The proposed rule change clarified the time frames under which an officer of the NASD must initiate action to declare a transaction null and void. See Exchange Act Release No. 52508 (September 26, 2005), 70 FR 57346 (September 30, 2005).

<sup>130</sup> The INET ECN currently operates as a facility of the NASD. See *infra* note 137 and accompanying text. Nasdaq represents that until September 30, 2006, INET will report its trading activity to the National Stock Exchange ("NSX"). As a result, surveillance and disciplinary actions are currently handled by INET and NSX. Trading activity on INET will become subject to Nasdaq Exchange Rule 11890 on or before February 6, 2006, and clearly erroneous matters will be administered by MarketWatch pursuant to the same rules and processes as trading activity through The Nasdaq Market Center and Brut. INET will cease reporting its trading activity to NSX at or prior to the end of September 2006, when Nasdaq's trading systems are integrated onto a single platform. See *infra* note 144 and accompanying text. At that time, Nasdaq MarketWatch will assume the same functions for INET trading as for the Nasdaq Market Center and Brut.

<sup>131</sup> 15 U.S.C. 78f(b)(6) and (7).

<sup>132</sup> 15 U.S.C. 78f(b)(1).

<sup>133</sup> See Bloomberg Letter and STA Letter, *supra* note 10.

<sup>134</sup> See STA Letter, *supra* note 10.

<sup>135</sup> See Bloomberg Letter, *supra* note 10.

<sup>136</sup> See Bloomberg Letter, *supra* note 10. Nasdaq responded to commenters' concerns by reaffirming its commitment not to use OATS data for commercial purposes. Nasdaq, however, believes that its use of OATS data by Nasdaq's Department of Economic Research to study public policy issues, such as sub-penny trading and decimalization, does not constitute a commercial use of the data. The Commission believes that any non-regulatory use of the data would have a commercial benefit. See Nasdaq Response Letter, *supra* note 11.

<sup>137</sup> Nasdaq acquired Brut in September 2004 and the rules governing the execution of transactions on Brut were approved by the Commission in March 2005. Brut is a price/time priority system. See Exchange Act Release No. 51326 (March 7, 2005), 70 FR 12521 (March 14, 2005) ("Brut Order"). In addition, on December 8, 2005, Nasdaq purchased INET ECN, and the rules governing the trading on INET were approved by the Commission in December 2005. See INET Order, *supra* note 12. In Amendment No. 6, Nasdaq proposed to add Nasdaq Exchange Rules 4950 *et seq.*, governing the operation of INET, including its rules requiring orders to be executed in price/time priority.

<sup>138</sup> In Amendment No. 6, Nasdaq proposed to add two order types that are consistent with its priority rules and were previously approved by the Commission for the NASD: proactive limit orders and reverse pegged orders. See *respectively*, Exchange Act Release Nos. 52511 (September 27, 2005), 70 FR 57636 (October 3, 2005) (relating to proactive limit orders) and 52449 (September 15, 2005), 70 FR 55647 (September 22, 2005) (relating to reverse pegged orders).

<sup>139</sup> Because ERISA may restrict the ability of a Nasdaq Quoting Market Participant or Order Entry Firm that is trading for a managed account, pursuant to Exchange rules, these members may append an anti-internalization qualifier ("AIQ") to its quote or order to prevent an order from trading with the entering firms' own trading interest.

In addition, Nasdaq Market Center Participants may submit "Auto-Ex Orders," which would only trade with the quotes and orders of automatic execution participants that do not charge a separate quote-access fee. An Auto-Ex Order would cancel instead of locking or trading through the price of an order-delivery or quote-access fee charging participant's quote or order. Order delivery and quote-access charging participants would not retain time priority over the quotes and orders of automatic execution participants that do not charge a separate quote-access fee when such quotes and orders trade with Auto-Ex Orders.

the best price, irrespective of whether the member has time priority;<sup>140</sup> and

(2) The Exchange's rules do not permit preferenced orders by members, which permit trades to occur outside of time priority.<sup>141</sup>

In addition to the Nasdaq Market Center, Nasdaq currently owns and operates two other trading systems—the Brut Facility<sup>142</sup> and the INET Facility.<sup>143</sup> Nasdaq proposes to integrate its three execution systems into a single trading platform with an integrated quote/order book operated in accordance with a unified price priority execution algorithm prior to the end of September 2006.<sup>144</sup> Nasdaq has also represented that upon completion of this systems integration there will be a single integrated book where all orders interact with each other. If the Nasdaq Exchange satisfies each of the conditions required for it to begin operating as an exchange set forth in this Order prior to completing integration of the three systems, the Nasdaq Exchange may temporarily operate as many as three separate trading facilities, each of which trades the same securities, but do not fully interact with each other.<sup>145</sup>

The Commission believes that it is beneficial for orders in the same securities directed to an exchange to interact with each other. Such interaction promotes efficient exchange trading and protects investors by assuring that orders are executed pursuant to a single set of priority rules that are consistently and fairly applied. For example, consolidating the limit orders received by an exchange within a single trading facility affords an opportunity for such orders to be executed in accordance with price

priority, which may not be available when an exchange's orders are directed among multiple trading facilities.

Nasdaq's operation of three trading facilities is due to recent acquisitions by Nasdaq. Nasdaq has represented that it is in the process of combining these three trading systems into one system, which Nasdaq proposes to complete by September 30, 2006.<sup>146</sup> Both Brut and INET were operating as alternative trading systems prior to Nasdaq's acquisition, and are important trading markets with participants that rely on their continuing availability. The Commission believes that it is in the public interest for Brut and INET to be available while Nasdaq is integrating them together with its Nasdaq Market Center and, thus, for this limited period of time it is consistent with the Exchange Act for the Nasdaq Exchange to operate as many as three separate trading system until September 30, 2006.<sup>147</sup>

## 2. Trade Reporting Facility

In a separate filing with the Commission, the NASD proposes to establish a new Trade Reporting Facility to provide NASD members with a mechanism for reporting transactions in all exchange-listed securities executed otherwise than on an exchange.<sup>148</sup> In commenting on Nasdaq's application for exchange registration, several commenters criticized this NASD proposal.<sup>149</sup> These commenters contend, among other things, that because of the affiliation between the Nasdaq Exchange and the limited liability company that will operate the TRF, the Trade Reporting Facility would not really be a facility of the NASD, but instead would be a facility of the Nasdaq Exchange. At such time as the Commission considers the TRF proposal, it will take these comments into account.

## 3. Market Maker Obligations

Nasdaq Exchange members may register as Nasdaq Market Makers or ITS/CAES Market Makers.<sup>150</sup> As market makers, these members must engage in a course of dealings for their own

account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets.<sup>151</sup> In addition, Nasdaq Market Makers and ITS/CAES Market Makers, among other things, must maintain continuous two-sided quotes, that are firm, with a minimum quotation increment of \$0.01. The Commission believes that these requirements are consistent with the Exchange Act because they should help to ensure that Nasdaq Market Makers and ITS/CAES Market Makers perform their obligations in a manner that promotes just and equitable principles of trade.

## 4. Section 11 of the Exchange Act

Section 11(a)(1) of the Exchange Act<sup>152</sup> prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, "covered accounts") unless an exception applies. Rule 11a2-2(T)<sup>153</sup> under the Exchange Act, known as the "effect versus execute" rule, provides exchange members with an exemption from the section 11(a)(1) prohibition. Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange. To comply with Rule 11a2-2(T)'s conditions, a member (i) must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;<sup>154</sup> (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

In a letter to the Commission,<sup>155</sup> Nasdaq requested that the Commission concur with Nasdaq's conclusion that Nasdaq Exchange members that enter orders into Nasdaq Market Center, Brut, and INET (collectively "Nasdaq

<sup>140</sup> See NASD Rule 4710(b)(1)(B)(ii)(a).

<sup>141</sup> Currently, NASD rules permit the use of preferenced orders, which permit NASD members to direct orders to a particular contra party for execution. If the contra party is at the best price, the system executes the order against the preferenced party, irrespective of whether the preferenced party has time priority. See NASD Rule 4701(aa).

<sup>142</sup> See Brut Order, *supra* note 137.

<sup>143</sup> See INET Order, *supra* note 137.

<sup>144</sup> See Amendment No. 6, Nasdaq Exchange Rule 4720.

<sup>145</sup> As of the date of this Order, the Nasdaq INET Facility is a wholly-separate platform that posts its top-of-file quotes through the facilities of the National Stock Exchange ("NSX"). Nasdaq and Brut are partially integrated. Brut displays its entire book in the Nasdaq Market Center. Accordingly, all quotes and orders resident in the Nasdaq Market Center, including Brut's entire depth of the book, interact with incoming orders based on the Nasdaq Market Center's order execution algorithm. Orders sent directly to the Brut system, however, do not interact with quotes and orders resident in the Nasdaq Market Center; they interact solely with quotes and orders displayed in Brut.

<sup>146</sup> See Nasdaq Exchange Rule 4720.

<sup>147</sup> Pursuant to the Brut Order and the INET Order, Brut and INET are subject to all NASD rules applicable to their broker-dealer activities, including those requiring participation in market surveillance and audit trail programs conducted by the NASD and Nasdaq. Similarly, Brut and INET will be subject to all applicable Nasdaq Exchange broker-dealer rules as of the operation date of the Exchange.

<sup>148</sup> See NASD Proposal, *supra* note 8.

<sup>149</sup> See Arca Letter and NYSE Letter, *supra* note 10.

<sup>150</sup> See Nasdaq Exchange Rules 4611 and 5220.

<sup>151</sup> See Amendment No. 6, *supra* note 12 and Nasdaq Exchange Rules 4613 and 5221.

<sup>152</sup> 15 U.S.C. 78k(a)(1).

<sup>153</sup> 17 CFR 240.11a2-2(T).

<sup>154</sup> The member may, however, participate in clearing and settling the transaction.

<sup>155</sup> See letter to Nancy Morris, Secretary, Commission, and Elizabeth King, Associate Director, Division, Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated January 12, 2006 ("Nasdaq 11(a) Letter").

Execution Systems”) satisfy the requirements of Exchange Act Rule 11a2–2(T). For reasons set forth below, the Commission believes that Nasdaq Exchange members entering orders into the Nasdaq Execution Systems would satisfy the conditions of the Rule.

The Rule’s first condition is that orders for covered accounts be transmitted from off the exchange floor. The Nasdaq Execution Systems receive orders electronically through remote terminals or computer-to-computer interfaces. In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange’s floor by electronic means.<sup>156</sup> Since the Nasdaq Execution Systems receive orders electronically through remote terminals or computer-to-computer interfaces, the Commission believes that the Nasdaq Execution Systems satisfy the off-floor transmission requirement.

Second, the rule requires that the member not participate in the execution of its order. Nasdaq represented that at no time following the submission of an order is a member able to acquire control or influence over the result or timing of an order’s execution.<sup>157</sup> According to Nasdaq, the execution of a

member’s order is determined solely by what orders, bids, or offers are present in the system at the time the member submits the order. Accordingly, the Commission believes that a Nasdaq Exchange member does not participate in the execution of an order submitted into the Nasdaq Execution Systems.

Third, Rule 11a2–2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as the Nasdaq Execution Systems, are used.<sup>158</sup>

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to section 11(a) of the Exchange Act and Rule 11a2–2(T).<sup>159</sup> Nasdaq represented that Nasdaq Exchange members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule’s exemption.<sup>160</sup>

## 5. Short Sale Rule

### a. Background

Section 10(a) of the Exchange Act<sup>161</sup> gives the Commission plenary authority

<sup>158</sup> In considering the operation of automated execution systems operated by an exchange, the Commission noted that while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into the systems. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). See 1979 Release, *supra* note 156.

<sup>159</sup> 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated person thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2–2(T)(d). See also 1978 Release, *supra* note 156 (stating “[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests”).

<sup>160</sup> See Nasdaq 11(a) Letter, *supra* note 155.

<sup>161</sup> 15 U.S.C. 78j(a).

over short sales<sup>162</sup> of securities registered on a national securities exchange as necessary or appropriate in the public interest or for the protection of investors. The Commission adopted Rule 10a–1 in 1938 in order to restrict short selling in a declining market.<sup>163</sup> Paragraph (a) of Rule 10a–1 generally covers short sales in securities registered on, or admitted to unlisted trading privileges on, a national securities exchange if trades of the securities are reported pursuant to an “effective transaction reporting plan” and information as to such trades is made available in accordance with such plan on a real-time basis to vendors of market transaction information.<sup>164</sup> Paragraph (b) applies to short sales on national exchanges in securities that are not covered by paragraph (a).

Rule 10a–1(a)(1) provides that, subject to certain exceptions, an exchange-registered security may only be sold short: (1) At a price above the price at which the immediately preceding sale was effected (plus tick), or (2) at the last sale price if it is higher than the last different price (zero-plus tick). Conversely, short sales are not permitted on minus ticks or zero-minus ticks, subject to narrow exceptions. The operation of these provisions is commonly described as the “tick test.”

<sup>162</sup> A “short sale” is defined in Rule 200(a) of Regulation SHO as “any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.” 17 CFR 242.200(a).

<sup>163</sup> See Exchange Act Release No. 1548 (January 24, 1938), 3 FR 213 (January 26, 1938). In addition to section 10(a) of the Exchange Act, and Rule 10a–1 thereunder, Regulation SHO, which became effective on September 7, 2004, also governs the regulation of short sales. See Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004) (“Adopting Release”). Regulation SHO adopted the following provisions: (i) Rule 200—Definitions and Marking Requirements; (ii) Rule 202T—Pilot Program; and (iii) Rule 203—Locate and Delivery Requirements. Pursuant to the terms of Regulation SHO, the Commission approved an order establishing a one-year pilot program (“Pilot Program”) suspending the provisions of Rule 10a–1(a) under the Exchange Act and any short sale price test of any exchange or national securities association for short sales of certain securities for certain time periods. See Exchange Act Release No. 50104 (July 28, 2004), 69 FR 48032 (August 6, 2004). The Commission decided to defer consideration of proposed Rule 201, which would have replaced the current “tick” test of Rule 10a–1(a) with a new uniform bid test. See Exchange Act Release No. 48709 (October 28, 2003), 68 FR 62972 (November 6, 2003) (“Proposing Release”). The Commission will consider any further action on the price test after the completion of the Pilot Program. Therefore, Rule 10a–1’s tick test currently applies to short sales of securities registered on, or admitted to unlisted trading privileges on, a national securities exchange.

<sup>164</sup> Rule 10a–1 uses the term “effective transaction reporting plan” as defined in Rule 600 of Regulation NMS under the Exchange Act, 17 CFR 242.600. 17 CFR 240.10a–1(a)(1)(i).

<sup>156</sup> See, e.g., Exchange Act Release Nos. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (order approving Archipelago Exchange (“ArcaEx”) as an electronic trading facility of the Pacific Exchange (“PCX”) (“ArcaEx Order”)); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding NYSE’s Off-Hours Trading Facility); 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (regarding the American Stock Exchange (“Amex”) Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange’s (“Phlx”) Automated Communications and Execution System (“1979 Release”)); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (regarding the NYSE’s Designated Order Turnaround System (“1978 Release”)).

<sup>157</sup> See Nasdaq 11(a) Letter, *supra* note 155. The member may only cancel or modify the order, or modify the instructions for executing the order, but only from off the Exchange floor. *Id.* The Commission has stated that the non-participation requirement is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. See Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (stating that the “non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor”).

### b. Nasdaq Securities

Current short sale regulations apply different price tests to securities trading in different markets. Rule 10a-1's "tick test," which is based on the sale price reported pursuant to an effective transaction reporting plan, applies to short sales of securities registered on, or admitted to unlisted trading privileges on, a national securities exchange. In 1994, the Commission granted temporary approval to the NASD to apply its own short sale rule to Nasdaq National Market securities on a pilot basis.<sup>165</sup> Specifically, NASD Rule 3350 prohibits short sales at or below the current best (inside) bid when the current best (inside) bid is below the previous best (inside) bid in a security. Once Nasdaq operates as an exchange, Nasdaq National Market securities and Nasdaq Capital Market securities<sup>166</sup> will be exchange-registered securities reported pursuant to an effective transaction reporting plan and therefore subject to Rule 10a-1.<sup>167</sup>

In the Regulation SHO Proposing Release,<sup>168</sup> the Commission considered Nasdaq's request for an exemption from Rule 10a-1 in conjunction with its exchange registration to allow Nasdaq to apply Rule 3350 to Nasdaq exchange-listed securities, as well as other market developments<sup>169</sup> in proposing a uniform bid test using the consolidated best bid as the reference point for permissible short sales.<sup>170</sup> After considering comments to the Regulation SHO Proposing Release regarding the proposed uniform bid test, the Commission decided to defer consideration of a new uniform bid test

<sup>165</sup> See Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994). The NASD's short sale rule was originally approved on an eighteen-month pilot basis. The NASD has proposed and the Commission has approved, extensions of NASD Rule 3350 several times, most recently, until December 15, 2006. See Exchange Act Release No. 53093 (January 10, 2006). In Amendment No. 6, Nasdaq proposed to modify Nasdaq Exchange Rules 3350(k)(2) and 3350(l) to reflect the changes made to NASD Rule 3350.

<sup>166</sup> Nasdaq Capital Market securities were formerly known as "Nasdaq SmallCap Market securities." See Exchange Act Release No. 52489 (September 21, 2005), 70 FR 56948 (September 29, 2005).

<sup>167</sup> Nasdaq plans to request relief from the registration requirements of section 12(b) of the Exchange Act for certain issuers who are currently exempt grandfathered foreign private issuers (Rule 12g3-2(b) of the Exchange Act) and insurance companies (section 12(g)(2)(G) of the Exchange Act). If granted, such securities would trade on Nasdaq even though they would not be registered pursuant to section 12(b) of the Exchange Act. However, such securities would remain subject to Nasdaq Exchange Rule 3350.

<sup>168</sup> See Exchange Act Release No. 48709 (October 28, 2003), 68 FR 62972 (November 6, 2003).

<sup>169</sup> 68 FR at 62979.

<sup>170</sup> *Id.*

and instead adopted Rule 202T of Regulation SHO.<sup>171</sup> Rule 202T is a temporary rule that excludes designated securities from the operation of the "tick" test of Rule 10a-1(a) and any short sale price test rule of any exchange or national securities association for a designated period of time.<sup>172</sup> The Commission believes that conducting a Pilot Program pursuant to Rule 202T of Regulation SHO is an important component of evaluating the overall effectiveness of price test restrictions on short sales.<sup>173</sup> The empirical data obtained from the Pilot Program will help the Commission assess whether it is necessary or appropriate to amend, or possibly remove, the short sale price tests for some population of securities.<sup>174</sup> The Commission will consider any further action on the adoption of a price test after the completion of the Pilot Program. In order to promote efficient regulation and to avoid unnecessarily burdening markets with the imposition of costs associated with implementing a price test that may be temporary, the Commission believes that, as discussed below, it is necessary and appropriate in the public interest and consistent with the protection of investors to maintain the status quo for the price test to apply to short sales in Nasdaq National Market securities, and to continue to not apply to short sales in Nasdaq Capital Market securities.

### c. Request for exemption from Rule 10a-1

Nasdaq has requested<sup>175</sup> an exemption from Rule 10a-1 to continue regulating short sales of Nasdaq National Market securities under the bid test of Nasdaq Exchange Rule 3350.<sup>176</sup> Nasdaq has also requested an exemption from Rule 10a-1 for Nasdaq Capital Market securities, as current NASD Rule 3350 is inapplicable to such securities. The requested exemption would therefore allow Nasdaq Capital Market securities to continue to trade without being subject to a price test. Nasdaq proposes to continue all current exemptions to NASD Rule 3350 in its Rule 3350, including the exemption for

<sup>171</sup> 17 CFR 242.202T.

<sup>172</sup> See Exchange Act Release No. 50104 (July 28, 2004), 69 FR 48032 (August 6, 2004). See also Exchange Act Release No. 50747 (November 29, 2004), 69 FR 70480 (December 6, 2004).

<sup>173</sup> See Exchange Act Release No. 50104 (July 28, 2004), 69 FR 48032 (August 6, 2004).

<sup>174</sup> *Id.*

<sup>175</sup> See letter to James A. Brigagliano, Division, Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated January 4, 2006 ("Short Sale Letter").

<sup>176</sup> The Nasdaq Exchange's short sale rule is identical to the NASD's short sale rule.

qualified market makers in connection with bona fide market making.<sup>177</sup>

Nasdaq represents that its requested exemption would serve the public interest and protect investors by enabling Nasdaq to continue regulating short sales under Nasdaq Rule 3350 as it does today under NASD Rule 3350.<sup>178</sup> In addition, Nasdaq represents, among other things, that (i) its short sale rule would continue to prohibit the same conduct as Commission Rule 10a-1; (ii) Nasdaq would continue to vigorously and effectively enforce those prohibitions; and (iii) it is imperative that Nasdaq preserve its current structure to the greatest extent possible to avoid needless confusion during Nasdaq's transition to exchange status.<sup>179</sup>

Commenters generally supported the Commission granting an exemption to Nasdaq from Rule 10a-1 to allow the Nasdaq Exchange to apply its own bid test once it becomes a national securities exchange.<sup>180</sup> One commenter in particular noted that it is important for Nasdaq to retain the NASD short sale rule when it becomes an exchange for the following reasons, among others: (i) Because depriving market makers of the market maker exception would significantly hinder their ability to quickly adjust inventory risk positions; and (ii) because options market makers and block facilitators widely use the NASD short sale rule's options hedge exceptions as a risk management tool, the unavailability of the NASD short sale rule's exception may result in less

<sup>177</sup> Nasdaq's request states that, unlike exchange specialists, dealers in Nasdaq securities have no monopoly-like position in the securities they trade, nor do they have an inherent informational advantage over any other dealer. Additionally, they have no ability to close their market because of sudden volatility or an order imbalance. Given these differences, it believes that treating market makers and exchange specialists identically is not appropriate. See letter to James A. Brigagliano, Division, Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated January 4, 2006. Allowing Nasdaq to maintain the market maker exemption would also be consistent with the CBOE's position expressed in its comment letter. The CBOE stated that there is a critical need to maintain an exemption for options market makers until, at a minimum, the Commission makes a final determination concerning the future framework and provision of Rule 10a-1. See CBOE Letter, *supra* note 14.

<sup>178</sup> See Short Sale Letter, *supra* note 175.

<sup>179</sup> *Id.*

<sup>180</sup> See letter from Thomas N. McManus, Executive Director and Counsel, Morgan Stanley Dean Witter, dated September 4, 2001 ("Morgan Stanley Letter"). See also SIA Letter, *supra* note 15; and letters from Robert M. Funk, Executive Director, American Shareholders Association, dated July 17, 2001; Grover G. Norquist, President, Americans for Tax Reform, dated July 17, 2001; Congressman Patrick J. Tiberi, Ohio, dated July 20, 2001; and Congressman Jerry Weller, Illinois, dated August 23, 2001 and August 31, 2001.



willingness to commit capital to customer orders.<sup>181</sup>

A few commenters, on the other hand, believed that Nasdaq should not be granted an exemption from Rule 10a-1, noting, among other things, that from a regulatory, fairness and competitive perspective, Nasdaq should be required to comply with all Commission rules applicable to a national securities exchange, including the Commission's short sale rule.<sup>182</sup> One commenter, in particular, stated that the Commission should either propose amendments to Rule 10a-1 to apply to all exchanges equally, including Nasdaq, or require Nasdaq to amend its proposed rules to be consistent with the short sale regulatory regime applied to all other exchanges.<sup>183</sup>

#### d. Response

The Commission appreciates the concerns expressed by such commenters; however, as discussed above, the Commission believes that it is important to maintain the status quo of short sale regulation during the Pilot Program in order to avoid unnecessarily burdening the markets. Moreover, it is important to maintain the integrity of the data obtained by the Commission during this period on the impact of short selling in the absence of a price test. This data will, among other things, assist in (i) determining the extent to which a price test is necessary to further the objectives of short sale regulation; (ii) the effects of relatively unrestricted short selling on market volatility, price efficiency, and liquidity; and (iii) whether a short sale price test should be removed, in part or in whole, for some or all securities, or if retained, should be applied to additional securities. Investor protection will be enhanced because the Commission's determination with respect to the short sale price test will be based on sound empirical data obtained from the Pilot Program.

Based upon the representations and facts Nasdaq has presented in its request for exemption, as discussed above, and as necessary and appropriate in the public interest and consistent with the protection of investors, in particular the necessity and importance of maintaining the status quo during the Pilot Program, pursuant to section 36 of the Exchange Act,<sup>184</sup> the Commission hereby grants a temporary exemption<sup>185</sup>

from Rule 10a-1 to permit the Nasdaq Exchange to apply Nasdaq Exchange Rule 3350 to short sales in Nasdaq National Market securities occurring on the Nasdaq Exchange and to allow Nasdaq Capital Market securities to be exempt from the application of the tick test.<sup>186</sup> The exemptions from Rule 10a-1 will expire upon termination of the Pilot Program or at such other time the Commission determines that such exemptions are no longer necessary or appropriate in the public interest or consistent with the protection of investors.<sup>187</sup>

Because Nasdaq proposes to continue to maintain the exemption from its Rule 3350 for qualified market makers in connection with bona fide market making, the exemptions from Rule 10a-1 are subject to the following conditions:<sup>188</sup>

comments received on the Nasdaq Exchange Application. See SIA Letter, *supra* note 15.

<sup>186</sup> As exchange-registered securities reported pursuant to an effective transaction reporting plan, Rule 10a-1 applies to Nasdaq securities, as defined in Rule 600 of Regulation NMS, wherever they are traded. See 17 CFR 240.10a-1(a)(1)(i). Therefore, short sales in Nasdaq securities effected on any national securities exchange that trades Nasdaq securities on a unlisted trading privileges ("UTP") basis or in the OTC market are subject to Rule 10a-1 unless exempted. It may be appropriate for the Nasdaq short sale rule to apply uniformly to all Nasdaq National Market securities, wherever they are traded. 15 U.S.C. 78mm(a)(1). The Commission is therefore prepared to consider an appropriate exemptive request from Rule 10a-1 for any exchange trading Nasdaq National Market securities UTP to apply an analogue of Nasdaq Exchange Rule 3350, so that short sales in Nasdaq National Market securities would be treated consistently whether they occurred on Nasdaq or in another venue. Likewise, the Commission is prepared to consider an appropriate exemption from Rule 10a-1 for any exchange trading Nasdaq Capital Market securities UTP so that such securities would be exempt from the tick test wherever traded. This would be consistent with at least one commenter's position that if Nasdaq is granted an exemption from Rule 10a-1, other registered exchanges must equally be granted such an exemption. See CSE Letter, *supra* note 13.

<sup>187</sup> The Pilot Program is currently scheduled to end on April 28, 2006. See Exchange Act Release No. 50747 (November 29, 2004), 69 FR 70480 (December 6, 2004). However, the Commission may from time to time approve further orders affecting the Pilot Program, including extension of the duration of the Pilot Program.

<sup>188</sup> This exemption from Rule 10a-1 is strictly limited to the application of Rule 10a-1 to transactions in Nasdaq securities. The exemption does not affect any other provisions of the Federal securities laws, and is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Federal securities laws. Further, this exemption is subject to modification or revocation should the Commission amend Rule 10a-1 in such a manner as to render the exemption unnecessary or in conflict with any adopted amendments. In addition, Nasdaq is directed to the anti-fraud and anti-manipulation provisions of the Federal securities laws, including sections 9(a) and 10(b) of the Exchange Act, and Rule 10b-5 thereunder. Responsibility for these and

(1) The Nasdaq Exchange is required to surveil member firms in order to monitor whether firms claiming the bona fide market maker exception in Nasdaq Exchange Rule 3350 are engaged in bona fide market making activity; and

(2) The Nasdaq Exchange will issue a Notice to Members or other appropriate communication to its members to provide further clarification to Nasdaq market makers regarding what activity would not be deemed "bona fide market making activity" for purposes of claiming the exception to Nasdaq Exchange Rule 3350's bid test.

#### D. Section 11A of the Exchange Act

Section 11A of the Exchange Act and the rules thereunder form the basis of our national market system and impose requirements on exchanges to implement its objectives. Specifically, national securities exchanges are required, under Rule 601 of Regulation NMS,<sup>189</sup> to file transaction reporting plans regarding transactions in listed equity and Nasdaq securities that are executed on its facilities. Currently registered exchanges satisfy this requirement by participating in the Consolidated Transaction Association Plan ("CTA Plan"), for listed equities and the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Nasdaq UTP Plan") for Nasdaq securities.<sup>190</sup> Before the Nasdaq Exchange can begin operating as an exchange, it must join these plans as a participant in its own right. Currently, the transactions executed in Nasdaq trading facilities are reported to these plans as OTC trades pursuant to the NASD's participation in the plans. The NASD's continued participation in these plans is necessary for it to fulfill its obligations under section 11A of the Exchange Act and Rules 601 and 603.

National securities exchanges are required, under Rule 602 of Regulation NMS,<sup>191</sup> to collect bids, offers, quotation sizes and aggregate quotation sizes from those members who are responsible broker or dealers. National securities

any other applicable provisions of the federal securities laws must rest with those relying on the relief granted herein.

<sup>189</sup> 17 CFR 242.601.

<sup>190</sup> These plans also satisfy the requirement in Rule 603 that national securities exchanges and national securities associations act jointly pursuant to an effective national market system plan to disseminate consolidated information, including a national best bid and offer, and quotations for and transactions in NMS stocks. See 17 CFR 242.603.

<sup>191</sup> 17 CFR 242.602.

<sup>181</sup> See Morgan Stanley Letter, *supra* note 180.

<sup>182</sup> See NYSE August 2001 Letter, *supra* note 13. See also CSE Letter, *supra* note 13; SIA Letter, *supra* note 15.

<sup>183</sup> See CSE Letter, *supra* note 13.

<sup>184</sup> 15 U.S.C. 78mm(a)(1).

<sup>185</sup> Granting a temporary exemption to Nasdaq from Rule 10a-1 is consistent with certain

exchanges must then make this information available to vendors at all times when the exchange is open for trading. The current exchanges satisfy this requirement by participating in the Consolidated Quotation System Plan ("CQ Plan") for listed equity securities and the Nasdaq UTP Plan for Nasdaq securities. Before the Nasdaq Exchange can begin operating as an exchange it also must join the CQ Plan as a participant in its own right. As with transaction reports, quotations posted in Nasdaq trading facilities are currently provided to the CQ Plan and Nasdaq UTP Plan pursuant to the NASD's participation in the plans. The NASD must remain a member of these plans for OTC quotations in exchange-listed and Nasdaq securities so that it can continue to fulfill its obligations under sections 15A(b)(11)<sup>192</sup> and 11A of the Exchange Act and Rules 602 and 603.

An integral part of our national market system is the means by which quotations are accessible across the competing exchanges and the NASD.<sup>193</sup> Currently, the registered exchanges and the NASD are linked for the purpose of accessing quotations in exchange-listed securities via the Intermarket Trading System ("ITS"). The ITS Plan contains the rules pursuant to which its participants interact and contains the current trade-through rule.<sup>194</sup> Currently, the NASD is a member of the ITS Plan and as a participant complies with, and enforces compliance by its members, with the terms of the ITS Plan.<sup>195</sup> Accordingly, most OTC transactions in non-Nasdaq exchange-listed securities regulated by the NASD are subject to the requirements of the ITS Plan. The NASD plans to remain a member of the ITS Plan for the purpose of providing access to OTC quotations communicated by its members through NASD facilities and to provide its members access to exchanges' quotations. The NASD's Nasdaq facility currently is the means

by which the NASD and its members comply with obligations under the ITS Plan. Accordingly, the NASD must have the means to satisfy these obligations prior to completing the spin-off of its subsidiary as an independent national securities exchange. For this reason, the Commission is conditioning the operation of the Nasdaq Exchange, which will automatically terminate the NASD's control of Nasdaq,<sup>196</sup> on the NASD representing to the Commission that control of Nasdaq through the Preferred D share is no longer necessary.

To provide access to quotes and orders in non-Nasdaq exchange-listed securities displayed on the Nasdaq Exchange, the Nasdaq Exchange must become a member of the ITS Plan prior to its operation as a national securities exchange for trading such securities. Although required participation in the ITS Plan is of limited duration,<sup>197</sup> the Commission believes that it is necessary until the full implementation of Rule 611 that the Nasdaq Exchange join the ITS Plan to ensure that the Commission's policy of protecting limit orders and providing price protection across markets is maintained. Further, the Nasdaq Exchange participation in the ITS Plan should ensure that regulatory requirements are consistent across the markets for exchange-listed securities.<sup>198</sup> Nasdaq has proposed to adopt ITS rules that are similar to the current NASD ITS Rules. The Commission notes that the Nasdaq Exchange may have to amend its ITS rules to reflect its participation in the ITS Plan. Any changes to its rules to implement its participation in the ITS Plan must be filed with and approved by the Commission prior to its commencement of operations as a national securities exchange.

The NASD currently fulfills its obligations under Rules 602 and 603, the CTA Plan, CQ Plan, Nasdaq UTP Plan, and section 15A(b)(11) of the Exchange Act<sup>199</sup> through NASD facilities that are owned by the NASD's subsidiary, Nasdaq. The NASD also operates the ADF for collecting quotations and trade reports in Nasdaq securities but not exchange-listed securities. With respect to non-Nasdaq exchange-listed securities, the only

means currently available to the NASD to fulfill these statutory and regulatory obligations is through NASD facilities owned by Nasdaq. Accordingly, the Commission believes that, until the NASD has alternative means to satisfy these obligations, it cannot complete its separation from Nasdaq and Nasdaq cannot cease to operate as a facility of the NASD. For this reason, the Commission is conditioning the operation of the Nasdaq Exchange, which will automatically terminate the NASD's control of Nasdaq,<sup>200</sup> on the NASD representing to the Commission that control of Nasdaq through the Preferred D share is no longer necessary.

In the Original Notice, the Commission noted that the registration of the Nasdaq Exchange has implications for the NASD and its ability to satisfy its statutory and regulatory obligations.<sup>201</sup> The Commission further stated that the NASD must have an operational quotation and transaction reporting facility upon the registration of the Nasdaq Exchange. The Commission received comments on the Original Notice and Amendment Nos. 1, 2, and 3 that raised significant concerns about how the NASD would continue to satisfy its statutory and regulatory obligations.<sup>202</sup> In particular, one commenter expressed concern about Nasdaq's registration as an exchange because it "will eliminate the only non-exchange facilities that exist for trading NMS securities."<sup>203</sup> Therefore, this commenter believed that the Commission should withhold approval of Nasdaq's exchange registration until a viable NASD quotation display and trade reporting facility is in place because, without such a facility, market makers and electronic communication networks would essentially be mandated to become a member of the Nasdaq Exchange to meet their regulatory obligations. Similarly, another commenter noted that for several decades, Nasdaq has been the arm of the NASD through which broker-dealers satisfy their regulatory obligations for OTC transactions in NMS stocks. This commenter believed that Nasdaq's exchange application could not be reconciled with the requirements of the Exchange Act until after the NASD has in place operational facilities

<sup>192</sup> 15 U.S.C. 78o-3(b)(11).

<sup>193</sup> See section 11A(a)(1)(D) of the Exchange Act; 15 U.S.C. 78k-1(a)(1)(D). In this section, Congress found that the "[t]he linking of all markets for qualified securities through communications and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders."

<sup>194</sup> In June 2005, the Commission adopted Regulation NMS, which included the new Rule 611 that will supersede the trade-through rule found in the ITS Plan. Rule 611 requires a trading center to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs of protected quotations in NMS stocks. Rule 611 became effective on August 29, 2005; compliance with this rule shall begin starting on June 29, 2006. 17 CFR 242.611.

<sup>195</sup> 17 CFR 242.608(c).

<sup>196</sup> See *supra* note 25 and accompanying text.

<sup>197</sup> See *supra* note 194.

<sup>198</sup> See section 11A(a)(1)(ii) of the Exchange Act; 15 U.S.C. 78k-1(a)(1)(ii).

<sup>199</sup> 15 U.S.C. 78o-3(b)(11). Section 15A(b)(11) requires the rules of the NASD to include provisions governing the form and content of quotations relating to securities sold OTC that may be distributed or published by any NASD member or person associated with such member, and the persons to whom such quotations may be supplied.

<sup>200</sup> See *supra* note 25 and accompanying text.

<sup>201</sup> See Original Notice, *supra* note 2.

<sup>202</sup> See e.g., Bloomberg 2001 Letter, Instinet Letter, Phlx Letters, SIA Letter, *supra* note 15; and letters from Barry S. Porter, Chairman, The Nasdaq Stock Market Issuer Affairs Committee, dated August 8, 2001; and Senator Zell Miller, U.S. Senate, dated August 16, 2001.

<sup>203</sup> See SIA Letter, *supra* note 15.

to permit OTC trading to continue to flourish in the U.S.<sup>204</sup>

The Commission agrees with these commenters and is conditioning the operation of the Nasdaq Exchange upon the ability of the NASD to satisfy its statutory and regulatory obligations. The Commission does not believe that it would be consistent with the Exchange Act to allow the NASD to separate from the facilities by which it satisfies its regulatory obligations without having alternative means to do what the Exchange Act and the rules thereunder require. Accordingly, the Nasdaq Exchange may not begin operating as a national securities exchange and cease to operate as a facility of the NASD until NASD has the means to fulfill its regulatory obligations.

Finally, national securities exchanges must make available certain order execution information pursuant to Rule 605 of Regulation NMS.<sup>205</sup> Current exchanges have standardized the required disclosure mechanisms by participating in the Order Execution Quality Disclosure Plan.<sup>206</sup> The Nasdaq Exchange must join this plan before it begins operations as an exchange.

#### E. Listing Requirements

##### 1. Registration Under Section 12(b) of the Exchange Act

Once the Nasdaq Exchange begins operations as a national securities exchange, a security will be considered for listing on the Nasdaq Exchange only if such security is registered pursuant to section 12(b) of the Exchange Act<sup>207</sup> or such security is subject to an exemption.<sup>208</sup> An issuer may register a

security pursuant to section 12(b) by submitting to the Nasdaq Exchange a listing application that provides certain required information.<sup>209</sup> The Exchange will review the listing application and, if the listing application is approved, will certify to the Commission that it has approved the security for listing and registration.<sup>210</sup> Registration of the security will become effective thirty days after the receipt of such certification by the Commission or within a shorter period of time as the Commission may determine.<sup>211</sup> Once registration is effective the security is eligible for listing on the Nasdaq Exchange.<sup>212</sup>

##### 2. Initial and Continuing Listing Standards

Nasdaq proposes that its initial and continuing listing standards be largely the same as current NASD listing rules.<sup>213</sup> Nasdaq also proposes a transitional listing rule that would automatically qualify for initial listing any security trading on the Nasdaq facility of the NASD on the day prior to the Nasdaq Exchange's first day of operation as an independent exchange.<sup>214</sup> The Commission believes

whether to register under section 12(b). In its response to this comment, Nasdaq stated that it expects to submit a formal request to the Commission pursuant to which Nasdaq will seek a three-year exemption period for issuers such as Nissan.

<sup>209</sup> 15 U.S.C. 78l(b); Nasdaq Exchange Rules 4310(b) and 4320(b).

<sup>210</sup> See Nasdaq Exchange Rules 4310(b), 4320(b), and 4410(b); 15 U.S.C. 78l(d).

<sup>211</sup> 15 U.S.C. 78l(d).

<sup>212</sup> See Nasdaq Exchange Rules 4310(b), 4320(b), and 4410(b); 15 U.S.C. 78l(d).

<sup>213</sup> In Amendment No. 6, Nasdaq proposed to modify their listing standards to reflect proposed rule changes approved by the Commission for the NASD as follows: SR-NASD-2004-125 clarifies and increases the transparency of the procedures associated with denying companies initial or continued listing on Nasdaq, see Exchange Act Release No. 52342 (August 26, 2005), 70 FR 52456 (September 2, 2005); SR-NASD-2005-153 amends the procedures for review of listing determinations to allow for electronic delivery of documents, see Exchange Act Release No. 53067 (January 6, 2006); SR-NASD-2004-162 establishes a fee and notice requirements for substitution listing events for all Nasdaq issuers, except dual listed companies, see Exchange Act Release No. 52712 (November 1, 2005), 70 FR 67511 (November 7, 2005); SR-NASD-2005-136 permits Nasdaq to issue public reprimand letters to listed companies for certain rule violations when a determination is made that delisting is not an appropriate sanction, see Exchange Act Release No. 52899 (December 6, 2005), 70 FR 74392 (December 15, 2005); and SR-NASD-2005-082 clarifies the listing standards applicable to companies in bankruptcy proceedings, see Exchange Act Release No. 52603 (October 13, 2005), 70 FR 61163 (October 20, 2005). The Commission finds that these changes are consistent with section 6(b)(5) of the Exchange Act for the same reasons that the Commission approved them under section 15A(b)(6) of the Exchange Act.

<sup>214</sup> See Amendment No. 6, *supra* note 12 and Nasdaq Exchange Rule 4305.

that these rules are consistent with the requirements of the Exchange Act because they would enable current Nasdaq securities to continue trading once the Nasdaq Exchange begins operations as a national securities exchange thus providing a continuous market for investors for these securities.

##### 3. Corporate Governance Standards

In 2003, the Commission approved a proposal to revise the NASD rules by adding new corporate governance standards for listed issuers, as contained in NASD Rules 4200 and 4350.<sup>215</sup> These changes, which were applied to Nasdaq-listed issuers through the NASD as a national securities association, established enhanced requirements for audit committees of Nasdaq-listed issuers, as mandated by the Sarbanes-Oxley Act of 2002.<sup>216</sup> In addition, these changes established new requirements relating to the independence of the listed issuer's board of directors and key board committees and required issuers to adopt codes of conduct for directors, officers and employees. The corporate governance listing standards proposed for the Nasdaq Exchange are the same as those previously approved by the Commission for the NASD pursuant to section 10A(m) of the Exchange Act and Rule 10A-3 and pursuant to section 15A(b)(6) of the Exchange Act.<sup>217</sup>

<sup>215</sup> See Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approving changes to the corporate governance listing standards of the Nasdaq Stock Market, Inc. and the NYSE).

<sup>216</sup> The Sarbanes Oxley Act, Public Law 107-204, 116 Stat. 745 (2002), established, among other provisions, section 10A(m) of the Exchange Act, 15 U.S.C. 78j-1(m), which relates to standards for audit committees. Rule 10A-3 under the Exchange Act, which was adopted pursuant to section 10A(m) of the Exchange Act, directed each national securities exchange and national securities association to prohibit the listing of any security of an issuer that is not in compliance with the audit committee requirements specified in the Rule. 17 CFR 240.10A-3.

<sup>217</sup> 15 U.S.C. 78f(b)(5). Subsequent to the Commission's approval of changes to the corporate governance listing standards for Nasdaq-listed issuers, the NASD refined those standards. See Exchange Act Release Nos. 49060 (January 12, 2004), 69 FR 2954 (January 21, 2004); 49901 (June 22, 2004), 69 FR 38944 (June 29, 2004); 49903 (June 22, 2004), 69 FR 38941 (June 29, 2004); 50573 (October 20, 2004), 69 FR 62493 (October 26, 2004); 51221 (February 17, 2005), 70 FR 9122 (February 24, 2005); and 51420 (March 23, 2005), 70 FR 15968 (March 29, 2005). In Amendment No. 6, Nasdaq proposed to modify Nasdaq Exchange Rule 4350(k) to reflect a proposed rule change approved by the Commission for the NASD. This proposed rule change requires each listed issuer to be audited by an independent accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board. See Exchange Act Release No. 52896 (December 6, 2005), 70 FR 74074 (December 14, 2005). The Commission finds that this proposed rule change is consistent with section 6(b)(5) of the Exchange Act for the same reasons

<sup>204</sup> See Instinet Letter, *supra* note 15.

<sup>205</sup> 17 CFR 242.605.

<sup>206</sup> See Exchange Act Release No. 44177 (April 12, 2001), 66 FR 19814 (April 17, 2001).

<sup>207</sup> 15 U.S.C. 78l(b). Nasdaq has notified Commission staff of its intent to request appropriate regulatory relief to facilitate the efficient registration of its issuers' securities under section 12(b) of the Exchange Act. The Commission expects that any such process would include a notice by Nasdaq to the general public and an appropriate notice to issuers, and an opportunity for issuers to opt out of the process.

<sup>208</sup> 15 U.S.C. 78l(c); Nasdaq Exchange Rules 4310(a) and 4320(a). Certain issuers currently listed on Nasdaq are not required to register under section 12(g) of the Exchange Act because of exemptions provided to foreign private issuers, Rule 12(g)(3)-2(b), and insurance companies, section 12(g)(2)(G). These issuers, however, are not similarly exempt from section 12(b) of the Exchange Act. The Commission received one comment letter submitted on behalf of Nissan Motor Co., Ltd., whose shares (in the form of American Depositary Shares) are listed on Nasdaq but are exempt from registration under section 12(g). See Nissan Letter, *supra* note 10. Nissan requests that its current exemption from registration be continued, or alternatively that it and other similarly situated foreign private issuers be given a transition period after Nasdaq begins operating as an exchange within which to evaluate

The Commission finds that the proposed corporate governance listing standards contained in the Nasdaq Exchange's proposed rules are consistent with section 6(b)(5) of the Exchange Act and satisfy the requirements of the section 10A(m) of the Exchange Act and Rule 10A-3 thereunder. The Commission believes that the Nasdaq Exchange's corporate governance listing standards are designed to promote independent and objective review and oversight of the accounting and auditing practices of listed issuers and to enhance audit committee independence, authority, and responsibility by implementing the standards set forth in Rule 10A-3. Moreover, in the Commission's view, the listing standards should help safeguard the interests of shareholders and foster greater transparency, accountability, and objectivity in the oversight by, and the decision making processes of, the boards and key board committees of Nasdaq-listed issuers. The Nasdaq Exchange's listing standards also should help promote compliance with high standards of conduct by the issuers' directors, management, and personnel.

#### F. Unlisted Trading Privileges

Rule 602 of Regulation NMS requires the NASD to collect, process and make available to vendors the best bid, best offer, and quotation sizes in NMS securities<sup>218</sup> communicated off an exchange by members acting in the capacity of an OTC market maker. The NASD satisfies this obligation today through its operation of the Nasdaq facility through which NASD members quote and report trades in exchange-listed securities. In offering this quote and trade reporting facility for exchange-listed securities, the NASD does not have rules that comply, in all respects, to section 12(f) of the Exchange Act and Rule 12f-5 thereunder because those provisions apply only to exchanges.<sup>219</sup>

Once registered as an exchange, the Nasdaq Exchange will be permitted by section 12(f) of the Exchange Act to extend unlisted trading privileges to securities listed and registered on other exchanges, subject to Commission rules. Exchange Act Rule 12f-5 requires an

that the Commission approved this rule change under section 15A(b)(6).

<sup>218</sup> An NMS security is any security for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options. 17 CFR 242.600(b)(46).

<sup>219</sup> See also section 15A(b)(11) of the Exchange Act.

exchange that extends unlisted trading privileges to securities to have in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges.<sup>220</sup> The Commission notes that the Nasdaq Exchange does not have in effect rules that comply with Rule 12f-5 for all exchange-listed securities currently quoted on the Nasdaq facility of the NASD.<sup>221</sup> Accordingly, to continue trading such securities, the Nasdaq Exchange would have to file a proposed rule change with the Commission and obtain Commission approval of such rules.

#### IV. Exemption From Section 19(b) of the Exchange Act With Regard to NASD Rules Incorporated by Reference

Nasdaq proposes to incorporate by reference many NASD rules as Exchange rules. Thus, for certain Exchange rules, Exchange members will comply with an Exchange rule by complying with the NASD rule referenced.<sup>222</sup> In connection

<sup>220</sup> 17 CFR 240.12f-5. See also Exchange Act Release No. 35737 (April 21, 1995), 60 FR 20891 (April 28, 1995) (adopting Rule 12f-5).

<sup>221</sup> For example, the Nasdaq Exchange does not have rules that comply with Rule 12f-5 for certain exchange-traded funds whose holdings are primarily unregistered foreign securities (such as those formerly known as World Equity Benchmark Shares or WEBS), exchange-traded funds whose holdings are concentrated in a few securities, exchange-traded funds that provide a leveraged performance (such as xtraShares Trust Ultra Funds and Short Funds), and certain commodity or foreign currency based derivative securities (such as streetTracks Gold Shares (GLD), iShares Comex Gold Trust Shares (IAU), and Euro Currency Shares (FXE)).

<sup>222</sup> Nasdaq proposed to incorporate by reference the following NASD rules: Article IV, Section 8 of the NASD By-Laws; IM-1000-1032; 1120; 2111; IM-2110-2; 2210; IM-2210-1; 2211; 2212; 2240; 2250; 2260; IM-2260; 2270; 2310; IM-2310-2; IM-2310-3; 2330; IM-2330; 2340; 2341; 2360; 2361; 2370; 2430; 2510; 2520; 2810; 2830; 3010; IM-3010; 3011; 3012; 3013; IM-3013; 3020; 3030; 3040; 3050; 3060; 3070; 3080; IM-3110; 3120; 3130; IM-3130; 3150; 3510; 6953; 6954; 6955; 6957; the 10000 series; 11860; and 11870. In Amendment No. 6, Nasdaq proposed that the Nasdaq Exchange incorporate by reference recent amendments to the "Manning Rule," NASD IM-2110-2, and NASD Rule 2111, to reflect proposed rule changes approved by the Commission for the NASD. The amendments to NASD IM-2110-2 prohibit a Nasdaq Exchange member from trading for its own account in a Nasdaq or exchange-listed security at a price that is better than an unexecuted customer limit order in that security, unless the Nasdaq Exchange member immediately executes the customer limit order at the price at which the Nasdaq Exchange member traded for its own account or better. See Exchange Act Release No. 52210 (August 4, 2005), 70 FR 46897 (August 11, 2005). NASD Rule 2111 extends the Manning Rule to customer market orders. See Exchange Act Release No. 52226 (August 9, 2005), 70 FR 48219 (August 16, 2005). In addition, as a result of these proposed rule changes, in Amendment No. 6 Nasdaq proposed to delete certain provisions of Rule 6440(f) to reflect an NASD proposed rule change approved by the Commission. See Exchange Act Release No. 52722 (November 2, 2005), 70 FR

with its proposal to incorporate NASD rules by reference, Nasdaq requested, pursuant to Rule 240.0-12,<sup>223</sup> an exemption under section 36 of the Exchange Act from the rule filing requirements of section 19(b) of the Exchange Act for changes to those Nasdaq Exchange rules that are effected solely by virtue of a change to a cross-referenced NASD rule.<sup>224</sup> Nasdaq proposes to incorporate by reference categories of rules (rather than individual rules within a category) that are not trading rules. In addition, the Nasdaq Exchange agrees to provide written notice to its members whenever a proposed rule change to an NASD rule that is incorporated by reference is proposed.

Using its authority under section 36 of the Exchange Act, the Commission previously exempted certain SROs from the requirement to file proposed rule changes under section 19(b) of the Exchange Act.<sup>225</sup> Each such exempt SRO agreed to be governed by the incorporated rules, as amended from time to time, but is not required to file a separate proposed rule change with the Commission each time the SRO whose rules are incorporated by reference seeks to modify its rules.

In addition, each SRO incorporated by reference only regulatory rules (*i.e.*, margin, suitability, arbitration), not trading rules, and incorporated by reference whole categories of rules (*i.e.*, did not "cherry-pick" certain individual rules within a category). Each exempt SRO had reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO in order to provide its members with notice of a proposed rule change that affects their interests, so that they would have an opportunity to comment on it.

The Commission is granting Nasdaq's request for exemption, pursuant to section 36 of the Exchange Act, from the rule filing requirements of section 19(b) of the Exchange Act with respect to the rules that the Nasdaq Exchange proposes to incorporate by reference.

68120 (November 9, 2005). The Commission finds that these proposed rule changes are consistent with Section 6(b)(5) of the Exchange Act for the same reasons that the Commission approved these rule changes under section 15A(b)(6).

<sup>223</sup> See 17 CFR 240.0-12.

<sup>224</sup> See letter to Nancy Morris, Secretary, Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated January 13, 2006. This letter supersedes and replaces prior similar exemptive requests. See letters to Jonathan G. Katz, Secretary, Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated December 8, 2005 and May 6, 2002.

<sup>225</sup> See Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004).

This exemption is conditioned upon the Nasdaq Exchange providing written notice to its members whenever the NASD proposes to change a rule that the Nasdaq Exchange has incorporated by reference. The Commission believes that this exemption will promote more efficient use of Commission and SRO resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO. Consequently, the Commission grants Nasdaq's exemption request for the Nasdaq Exchange.

## V. Conclusion

It is ordered that the application of the Nasdaq Stock Market LLC for registration as a national securities exchange be, and hereby is, granted.

It is further ordered that operation of the Nasdaq Exchange is conditioned on the satisfaction of the requirements below.

A. *Participation in National Market System Plans.* The Nasdaq Exchange must join the CTA Plan, the CQ Plan, the Nasdaq UTP Plan, the ITS Plan, and the Order Execution Quality Disclosure Plan.

B. *The NASD's Ability to Fulfill its Statutory and Regulatory Obligations.* The NASD must represent to the Commission that control of Nasdaq through the Preferred D share is no longer necessary because the NASD can fulfill through other means its obligations with respect to non-Nasdaq exchange listed securities under Section 15A(b)(11) of the Exchange Act, Rules 602 and 603 of Regulation NMS, and the national market system plans in which the NASD participates.

C. *Intermarket Surveillance Group.* The Exchange must join the Intermarket Surveillance Group.

D. *Minor Rule Violation Plan.* A MRVP filed by the Nasdaq Exchange under Exchange Act Rule 19d-1(c)(2) must be declared effective by the Commission.<sup>226</sup>

E. *Fingerprint Plan.* A fingerprint plan filed by the Nasdaq Exchange under Exchange Act Rule 17f-2 must be declared effective by the Commission.<sup>227</sup>

F. *17d-2 Agreement.* An agreement pursuant to Exchange Act Rule 17d-2<sup>228</sup> between the NASD and the Nasdaq Exchange that allocates to the NASD regulatory responsibility for those matters specified above<sup>229</sup> must be approved by the Commission, or the Nasdaq Exchange must demonstrate that

it independently has the ability fulfill all of its regulatory obligations.

By the Commission (Chairman Cox and Commissioners Glassman, Atkins, Campos, and Nazareth).

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6-664 Filed 1-20-06; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[File No. 1-31993]

### Issuer Delisting; Notice of Application of Sterling Construction Company, Inc. To Withdraw Its Common Stock, \$.01 Par Value, From Listing and Registration on the American Stock Exchange LLC

January 13, 2006.

On January 9, 2006, Sterling Construction Company Inc., a Delaware corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw its common stock, \$.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

On November 15, 2005, the Board of Directors ("Board") of the Issuer authorized management to apply to list the Security on the Nasdaq National Market ("Nasdaq") and upon approval of such listing to withdraw the Security from listing and registration on Amex. The Issuer stated in its application that it decided to transfer the listing of the Security from Amex to Nasdaq because it believes that Nasdaq will provide greater exposure of the Security to investors, especially as more of the members of the Issuer's peer group of construction companies have a Nasdaq listing rather than an exchange listing. The Issuer stated that on January 4, 2006, Nasdaq approved its application to list the Security on Nasdaq. The Issuer expects the Security to trade on Nasdaq on or about January 20, 2006.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated, and provided written notice of withdrawal to Amex.

The Issuer's application relates solely to withdrawal of the Security from

listing on Amex and from registration under Section 12(b) of the Act,<sup>3</sup> and shall not affect its obligation to be registered under Section 12(g) of the Act.<sup>4</sup>

Any interested person may, on or before February 9, 2006, comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/delist.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include the File Number 1-31993 or;

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number 1-31993. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6-679 Filed 1-20-06; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>3</sup> 15 U.S.C. 781(b).

<sup>4</sup> 15 U.S.C. 781(g).

<sup>5</sup> 17 CFR 200.30-3(a)(1).

<sup>226</sup> 17 CFR 240.19d-1(c)(2).

<sup>227</sup> 17 CFR 240.17f-2(c).

<sup>228</sup> 17 CFR 240.17d-2.

<sup>229</sup> See *supra* text accompanying notes 114-117.

<sup>1</sup> 15 U.S.C. 781(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

**SECURITIES AND EXCHANGE COMMISSION**

[File No. 1-31795]

**Issuer Delisting; Notice of Application of The Washtenaw Group, Inc. To Withdraw Its Common Stock, \$.01 Par Value, From Listing and Registration on the American Stock Exchange LLC**

January 13, 2006.

On January 11, 2006, The Washtenaw Group, Inc., a Michigan corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-(d) thereunder,<sup>2</sup> to withdraw its common stock, \$.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

On January 6, 2006, the Board of Directors ("Board") of the Issuer approved resolutions to withdraw the Security from listing and registration on Amex. The Issuer stated that the Board authorized the Issuer to take all actions necessary to voluntarily delist and deregister the Security from Amex because the Board approved, on December 2, 2005, to discontinue mortgage loan production operations, and the Board wishes to ease the financial burden associated with compliance with filing periodic reporting requirements under the Act, particularly the enhanced audit and governance standards of the Sarbanes-Oxley Act of 2002.

The issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Michigan, in which it is incorporated, and providing written notice of withdrawal to Amex.

The Issuer's application relates solely to withdrawal of the Security from listing on the Amex and from registration under Section 12(b) of the Act,<sup>3</sup> and shall not affect its obligation to be registered under Section 12(g) of the Act.<sup>4</sup>

Any interested person may, on or before February 9, 2006 comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/delist.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include the File Number 1-31795 or;

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number 1-31795. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Nancy M. Morris,**  
Secretary.

[FR Doc. E6-678 Filed 1-20-06; 8:45 am]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[File No. 500-1]

**In the Matter of Safe Transportation Systems, Inc.; Order of Suspension of Trading**

January 19, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Safe Transportation Systems, Inc., because it is delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934, and Rules 13a-1 and 13a-13 thereunder,

having not filed a periodic report since the period ending March 31, 2002.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, *it is ordered*, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in securities of the above-listed company is suspended for the period from 9:30 a.m. EST on January 19, 2006, through 11:59 p.m. EST on February 1, 2006.

By the Commission.

**Jill M. Peterson,**

Assistant Secretary.

[FR Doc. 06-621 Filed 1-19-06; 11:26 am]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53123; File No. SR-Amex-2005-110]

**Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Specialist Clerks**

January 13, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 31, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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 amendments to Amex Rule 184 to require specialists to employ an adequate number of clerks to enable the specialist unit to efficiently handle trading volume in the unit's registered securities and meet its regulatory responsibilities.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

## Rule 184. Specialist Clerks

(a) A specialist or specialist unit *shall* [may] regularly employ, subject to such

<sup>1</sup> 15 U.S.C. 78s(b)(1).<sup>2</sup> 17 CFR 240.19b-4.<sup>1</sup> 15 U.S.C. 78j(d).<sup>2</sup> 17 CFR 240.12d2-2(d).<sup>3</sup> 15 U.S.C. 78j(b).<sup>4</sup> 15 U.S.C. 78j(g).<sup>5</sup> 17 CFR 200.30-3(a)(1).

rules and regulations as the Board of Governors may adopt[, *an adequate number of* [one or more] clerks[, ] to aid such specialist or specialist unit on the floor of the Exchange *and to enable the unit to efficiently handle actual and reasonably anticipated volume in the unit's registered securities*, provided each such clerk receives the approval of the Exchange. A yearly fee, as imposed by the Exchange and payable as directed by the Exchange, shall be charged the specialist or specialist unit for each clerk. No rebate shall be given with respect to the fee in the event that a specialist or specialist unit discontinues the services of such a clerk during any period.

(b) A specialist or specialist unit may, for the purpose of obtaining assistance on a temporary basis, utilize the services on the floor of the Exchange of a clerk regularly employed by another specialist or specialist unit, provided that: (1) Such use shall be subject to the approval of the Exchange and the consent of the specialist or specialist unit regularly employing the clerk and shall be subject to such conditions as the Exchange may impose; and (2) such clerk shall not disclose to one specialist or specialist unit any information with respect to orders entrusted to the other specialist or specialist unit.

#### [Commentary

.01 Each specialist unit will be allowed by the Exchange to employ a number of clerks which the Exchange approves as reasonable from time to time to enable the unit to efficiently handle actual and reasonably anticipated volume in the unit's registered securities.]

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

Amex Rule 184 governs the employment of clerks on the trading

floor by specialists, and provides that each specialist unit may regularly employ a number of clerks to aid the specialist unit on the trading floor provided that such clerk(s) receive Exchange approval. Commentary .01 to Amex Rule 184 further provides that each specialist unit will be allowed by the Exchange to employ a number of clerks which the Exchange approves as reasonable to enable the specialist unit to efficiently handle actual and reasonably anticipated volume in the unit's registered securities.

A number of Amex Rules, most notably Amex Rule 170, require specialists to comply with a variety of affirmative and negative obligations. Additionally, specialists are subject to certain Commission order handling rules. In order to comply with SEC and Amex Rules applicable to specialist activities as well as the Exchange Guidelines, it is essential that each specialist unit employ an adequate number of clerks on the trading floor. To clarify this requirement, the Exchange is proposing that Amex Rule 184 be amended to specifically provide that specialists must maintain adequate staffing levels on the trading floor, as necessary to fulfill their regulatory obligations.

The New York Stock Exchange, Inc. ("NYSE") imposes substantially similar staffing obligations on its specialist units.<sup>3</sup>

#### 2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>5</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received in response to the proposed rule change.

<sup>3</sup> See NYSE Rule 35, Supplementary Material .40.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall:

(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](mailto:rule-comments@sec.gov). Please include File No. SR-Amex-2005-110 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-110. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Amex.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2005-110 and should be submitted on or before February 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-676 Filed 1-20-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53116; File No. SR-Amex-2006-002]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Odd-Lots in Nasdaq Securities

January 13, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 4, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Amex. The Exchange filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to extend for an additional six-month period through June 30, 2006, the Exchange's pilot program for odd-lot execution procedures for Nasdaq securities traded on the Exchange pursuant to unlisted trading privileges. There is no proposed rule text. Amex is making no changes to

the pilot program as it currently operates, other than extending it through June 30, 2006.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Commission approved, and the Exchange implemented, a pilot program for odd-lot order<sup>5</sup> executions in Nasdaq securities transacted on the Exchange pursuant to unlisted trading privileges. Paragraph (j) of Amex Rule 118 ("Trading in Nasdaq National Market Securities") describes the Exchange's odd-lot execution procedures for Nasdaq securities, and Commentary .05 of Amex Rule 205 ("Manner of Executing Odd-Lot Orders") references Amex Rule 118(j) odd-lot procedures. The pilot program was originally approved on August 2, 2002 for a six-month period, was most recently extended on June 30, 2005, and is due to expire on December 30, 2005.<sup>6</sup>

Under the Exchange's current pilot program, after the opening of trading in Nasdaq securities, odd-lot market orders and executable odd-lot limit orders are executed at the qualified national best bid or offer<sup>7</sup> at the time the order is

<sup>5</sup> An odd-lot order is an order for less than 100 shares.

<sup>6</sup> The pilot program originally approved on August 2, 2002 was subsequently extended on July 14, 2003; December 24, 2003; June 14, 2004; December 27, 2004; and July 6, 2005. See Securities Exchange Act Release Nos. 46304 (August 2, 2002), 67 FR 51903 (August 9, 2002) (SR-Amex-2002-56); 48174 (July 14, 2003), 68 FR 43409 (July 22, 2003) (SR-Amex-2003-56); 48995 (December 24, 2003), 68 FR 75670 (December 31, 2003) (SR-Amex-2003-102); 49855 (June 14, 2004), 69 FR 35399 (June 24, 2004) (SR-Amex-2004-30); 50934 (December 27, 2004), 70 FR 412 (January 4, 2005) (SR-Amex-2004-108); 51975 (July 6, 2005); and 70 FR 40409 (July 13, 2005) (SR-Amex-2005-065).

<sup>7</sup> In Amex Rule 118(j), the qualified national best bid and offer are defined as the highest bid and lowest offer, respectively, disseminated (A) by the Exchange or (B) by another market center participating in the Joint Self-Regulatory Organization Plan Governing the Collection,

received at the trading post or through Amex Order File. Odd-lot market orders and executable odd-lot limit orders entered before the opening of trading in Nasdaq securities are executed at the price of the first round-lot or part of round-lot transaction on the Exchange. Non-executable limit orders, stop orders, stop limit orders, orders filled after the close and non-regular way trades are executed in accordance with Amex Rule 205 A(2), A(3), A(4), C(1), and C(2), respectively. Orders to buy or sell "at the close" are filled at the price of the closing round-lot sale on the Exchange. In a locked market condition, odd-lot market orders and executable odd-lot limit orders are executed at the locked market price. In a crossed market condition, odd-lot market orders are executed at the mean of the bid and offer prices when the displayed national best bid is higher than the displayed national best offer by \$.05 or less. When the displayed national best bid is higher than the displayed national best offer by more than \$.05, odd-lot market orders are executed when the crossed market condition no longer exists. In addition, in a crossed market condition, executable odd-lot limit orders are executed at the crossed market bid price (in the case of an order to sell) or at the crossed market offer price (in the case of an order to buy). For example, if the bid and offer are 20.10 and 20.00, respectively, an executable odd-lot sell limit order priced at 20.10 or less will be executed at 20.10 and an executable odd-lot buy limit order priced at 20.00 or higher will be executed at 20.00.

The Exchange believes that the existing odd-lot execution procedures have operated efficiently. Furthermore, the Exchange has received no complaints from members or the public regarding odd-lot executions. Therefore, the Exchange seeks an extension to the pilot program for an additional six-month period through June 30, 2006, providing the Exchange time to assess

Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Plan"); provided, however, that the bid and offer in another such market center will be considered in determining the qualified national best bid or offer in a stock only if (i) the quotation conforms to the requirements of Amex Rule 127 ("Minimum Price Variations"), (ii) the quotation does not result in a locked or crossed market, (iii) the market center is not experiencing operational or system problems with respect to the dissemination of quotation information, and (iv) the bid or offer is "firm," that is, members of the market center disseminating the bid or offer are not relieved of their obligations with respect to such bid or offer under paragraph (b)(2) of Rule 602 pursuant to the "unusual market" exception of paragraph (a)(3)(i) of Rule 602 under the Act. 17 CFR 242.602.

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).



further enhancements to the odd-lot execution procedures.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general and furthers the objectives of Section 6(b)(5)<sup>9</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

Amex requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>12</sup> and

designate the proposed rule change to become operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue operating through June 30, 2006 without interruption.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Amex-2006-002 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2006-002. 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

<sup>13</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Amex.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2006-002 and should be submitted on or before February 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Nancy M. Morris,

Secretary.

[FR Doc. E6-698 Filed 1-20-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53130; File No. SR-Amex-2005-072]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Listing and Trading of Shares of the iShares® Silver Trust

January 17, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 30, 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. On September 15, 2005, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade under Amex Rules 1200A *et seq.*,

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 to the proposed rule change clarifies the valuation procedure that would be used by the Bank of New York to determine the daily value of the silver contained in the iShares® Silver Trust.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6)(iii) under the Act requires the self-regulatory organization to provide the Commission written notice of its intent to file the proposed rule change at least five business days (or such shorter time as designated by the Commission) before doing so. Amex has requested that the Commission waive the five-day pre-filing notice requirement. The Commission granted Amex's request.

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

the iShares® Silver Trust shares (the “Silver Shares” or “Shares”).<sup>4</sup>

## 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, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange proposes to list and trade the iShares Silver Trust (the “Silver Trust” or “Trust”) shares that represent beneficial ownership interests in the net assets of the Trust consisting primarily of silver bullion (“silver”). The Exchange states that the Trust will not be actively managed, and therefore, a holder of Silver Shares will not be hedged to protect against the price volatility of the underlying silver.

Under Amex Rule 1201A, the Exchange may approve for listing and trading Commodity-Based Trust Shares on an underlying commodity.<sup>5</sup> Accordingly, the Amex proposes to list for trading Silver Shares under Exchange Rule 1200A et. seq.<sup>6</sup>

**Introduction.** In January 2005, the Exchange adopted rules for the listing and trading of “Commodity-Based Trust Shares.”<sup>7</sup> Commodity-Based Trust Shares (the “Commodity Shares”) are securities issued by a trust that represent investors’ discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the trust. Commodity Shares are a form of trust issued receipt (“TIR”)<sup>8</sup> that instead of holding one or

more discrete securities will hold one or more physical commodities. The Exchange has listed the iShares COMEX Gold Trust<sup>9</sup> and trades pursuant to unlisted trading privileges (“UTP”), the streetTRACKS Gold Trust,<sup>10</sup> as Commodity-Based Trust Shares pursuant to Exchange Rules 1200A et seq.

The Exchange may list and trade the Silver Shares pursuant to Amex Rules 1200A et seq. subject to Commission review and approval. The Silver Shares will conform to the initial and continued listing criteria under Amex Rule 1202A.<sup>11</sup> The Silver Trust will be formed under a depositary trust agreement, among Bank of New York, as Trustee; Barclays Global Investors International, Inc. (“Barclays” or “Sponsor”), the Sponsor; all depositors, if any; and the holders of Silver Shares.<sup>12</sup>

The Exchange notes that the Commission has permitted the listing and trading of products linked to the performance of an underlying commodity or commodities.<sup>13</sup>

in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities. Under Amex Rule 1201, the Exchange may approve for listing and trading TIRs based on one or more securities. The Exchange defines a “security” or “securities” to include stocks, bonds, options, and other interests or instruments commonly known as securities. See Article I, Section 3(j) of the Amex Constitution.

<sup>9</sup> See *supra* note 7.

<sup>10</sup> See Securities Exchange Act Release No. 51446 (March 29, 2005), 70 FR 17272 (April 5, 2005) (approving the UTP trading of the streetTRACKS Gold Shares).

<sup>11</sup> The initial listing standards set forth in Amex Rule 1202A(a) provide that the Exchange establish a minimum number of TIRs required to be outstanding at the time of the commencement of trading on the Exchange. As set forth in the section “Criteria for Initial and Continued Listing,” the Exchange expects the minimum number of Silver Shares required to be outstanding at the time of trading to be 150,000. This section, *infra*, specifically details the initial and continued listing standards for the Silver Trust.

<sup>12</sup> The trust is not an investment company as defined in Section 3(a) of the Investment Company Act of 1940 (the “1940 Act”).

<sup>13</sup> See Securities Exchange Act Release Nos. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (approving the listing and trading of the iShares COMEX Gold Trust); 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (approving the listing and trading of streetTRACKS Gold Shares); 43427 (October 10, 2000), 65 FR 62783 (October 19, 2000) (approving the listing and trading of inflation indexed securities); 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (approving the listing and trading of commodity index preferred or debt securities (ComPS) on various agricultural futures contracts and commodities indexes); 36885 (February 26, 1996), 61 FR 8315 (March 4, 1996) (approving the listing and trading of ComPS linked to the value of single commodity); and 35518 (March 21, 1995), 60

**Description of the Silver Market.** The silver market is a global marketplace consisting of both over-the-counter (“OTC”) transactions and exchange-traded products. The OTC market generally consists of transactions in spot, forwards, options and other derivatives, while exchange-traded transactions consist of futures and options. Set forth below, the Exchange has provided a description of each of the OTC and exchange-traded markets for silver as well as a summary of their respective regulatory structures.

**The OTC Market.** The OTC market trades on a 24-hour continuous basis and accounts for the substantial portion of global silver trading. Specifically, the London OTC market is the largest silver clearing market. Liquidity in the OTC market can vary from time to time during the course of the 24-hour trading day. Fluctuations in liquidity are reflected in adjustments to dealing spreads—the differential between a dealer’s buy and sell prices. The Exchange believes the period of greatest liquidity in the silver market is typically that time of day when trading in the European time zone overlaps with trading in the United States. This occurs when the OTC market trading in New York, London, Zurich and other centers coincides with futures and options trading on the Commodity Exchange, Inc. (“COMEX”).<sup>14</sup> This period lasts for approximately five (5) hours<sup>15</sup> each New York business day, from 8:25 a.m.–1:25 p.m. Eastern Time (“ET”).<sup>16</sup>

Market makers, as well as others in the OTC market, trade with each other and with their clients on a principal-to-principal basis. All risks and issues of credit are between the parties directly involved in the transaction. Market makers include the market-making

FR 15804 (March 27, 1995) (approving the listing and trading of commodity indexed notes or COINS). See also Central Fund of Canada (Registration No. 033–15180) (closed-end fund listed and traded on the Amex that invests in silver) and Salmon Phibro Oil Trust (Registration No. 033–33823) (trust units listed and traded on the Amex that held the right to a forward contract for the delivery of crude oil).

<sup>14</sup> COMEX is a division of the New York Mercantile Exchange, Inc. (“NYMEX”) where silver futures contracts and related options are traded.

<sup>15</sup> Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

<sup>16</sup> The Exchange submits that Silver Shares may be used as a price discovery mechanism for silver from 1:25 p.m. to 4:15 p.m. ET. The open outcry trading hours of the COMEX silver futures contract is from 8:25 a.m. to 1:25 p.m. ET Monday through Friday. NYMEX ACCESS(r), an electronic trading system, is open for price discovery on COMEX silver futures contracts from 2 p.m. Monday afternoon until 8 a.m. Friday morning ET; and from 7 p.m. Sunday night until Monday morning at 8 a.m. ET.

<sup>4</sup> iShares® is a registered trademark of Barclays Global Investors, N.A.

<sup>5</sup> Amex Rule 1200A(b)(2) defines “commodity” as set forth in Section 1(a)(4) of the Commodity Exchange Act (“CEA”).

<sup>6</sup> See applicable Amex Rules 1200A, 1201A, 1202A, 1203A, 1204A, and 1205A.

<sup>7</sup> See Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (approving the listing and trading of the iShares COMEX Gold Trust).

<sup>8</sup> A Trust Issued Receipt or “TIR” is defined in Exchange Rule 1200(b) as a security (a) that is issued by a trust that holds specified securities deposited with the trust; (b) that, when aggregated

members of the London Bullion Market Association (“LBMA”), the trade association that acts as the coordinator for activities conducted on behalf of its members and other participants in the London bullion market.<sup>17</sup> The current market-making members of the LBMA are: Bank of Nova Scotia-ScotiaMocatta, Barclays Bank Plc, Deutsche Bank AG, HSBC Bank USA (London branch), Goldman Sachs International, JPMorganChase Bank, Royal Bank of Canada Ltd., Societe Generale, and UBS AG. JPMorganChase Bank NA (London branch) is an affiliate of the custodian for the Trust. Barclays Bank Plc is an affiliate of the Sponsor and the Initial Purchaser, Barclays Capital, Inc. The OTC market provides a relatively flexible market in terms of quotes, price, size, destinations for delivery, and other factors. Bullion dealers customize transactions to meet clients’ requirements. The OTC market has no formal structure and no open-outcry meeting place. The main centers of the OTC market are London (the largest market), New York, and Zurich. Bullion dealers have offices around the world, and most of the world’s major bullion dealers are either members or associate members of the LBMA.

The Exchange indicates that there are no authoritative published figures for overall worldwide volume in silver trading. There are published sources that do suggest the significant size of the overall market. The LBMA publishes statistics compiled from the five (5) members offering clearing services.<sup>18</sup> The Exchange notes that the monthly average daily volume figures published by the LBMA for 2004 range from, a high of 143.4 million to a low of 75.5 million troy ounces per day. Through May 2005, the monthly average daily volume has ranged from a high of 152.1 million to a low of 76.9 million. The COMEX also publishes price and volume statistics for exchange-traded transactions in contracts for the future

<sup>17</sup> Further information about the LBMA may be found at <http://www.lbma.org.uk>. There are currently nine (9) market-making members of the LBMA, five of which offer clearing services, and 51 full members.

<sup>18</sup> Information regarding clearing volume estimates by the LBMA can be found at [http://www.lbma.org.uk/clearing\\_table.htm](http://www.lbma.org.uk/clearing_table.htm). The three measures published by the LBMA are: volume, the amount of metal transferred on average each day measured in millions of troy ounces; value, measured in U.S. dollars, using the monthly average London PM fixing price; and the number of transfers, which is the average number recorded each day. The statistics exclude allocated and unallocated balance transfers where the sole purpose is for overnight credit and physical movements arranged by clearing members in locations other than London.

delivery of silver (and related options).<sup>19</sup>

*The London Bullion Market and the London “Fix” Process.* Although the market for physical silver is distributed globally, most OTC market trades are cleared through London. In addition to coordinating market activities, the Exchange notes that the LBMA acts as the principal point of contact between the market and its regulators. A primary function of the LBMA is its involvement in the promotion of refining standards by maintenance of the “London Good Delivery Lists,” which are the lists of LBMA accredited melters and assayers of silver. The LBMA also coordinates market clearing and vaulting, promotes good trading practices, and develops standard documentation for such clearing and warehousing activities. The LBMA also publishes “The Good Delivery Rules for Gold and Silver Bars,” the specifications for gold and silver bars acceptable for delivery in settlement of a transaction on the London market. Silver bars meeting these requirements are referred to herein as “London Good Delivery Bars.” The silver spot price always refers to that of a London Good Delivery Bar, unless otherwise specified. In the OTC market, business is generally conducted over the phone and through a widely used electronic dealing system.

A London silver “fix” is conducted each trading day at 12 p.m. London time (7 a.m. ET) providing reference silver prices for that day’s trading.<sup>20</sup> The

<sup>19</sup> Information regarding price and average daily volume on the COMEX can be found at [http://www.nymex.com/jsp/markets.md\\_annual\\_volume.jsp](http://www.nymex.com/jsp/markets.md_annual_volume.jsp).

<sup>20</sup> Formal participation in the London silver fix is limited to three (3) LBMA members, each of which is a bullion dealer. The chairmanship of the London silver fix committee is The Bank of Nova Scotia—ScotiaMocatta. The fix takes place by telephone at 12:00 p.m. London time and also has a web-based commentary. The other members of the London silver fix are currently Deutsche Bank AG and HSBC Bank USA, NA. Any other market participant wishing to participate in trading on the fix is required to do so through one of these three (3) dealers. Clients place orders either with one of the three (3) fixing members or with another bullion dealer who will then be in contact with a fixing member during the fixing. The fixing members net-off all orders when communicating their net interest at the fixing. The fix begins with the fixing chairman suggesting a “trying price,” reflecting the market price prevailing at the opening of the fix. This is relayed by the fixing members to their dealing rooms that have direct communication with all interested parties. Any market participant may enter the fixing process at any time, or adjust or withdraw his order. The silver price is adjusted up or down until all the buy and sell orders are matched, at which time the price is declared fixed. All fixing orders are transacted on the basis of this fixed price, which is instantly relayed to the market through various media. Barclays and the Exchange believe that the London fix is widely viewed as a full and fair representation of all market interest at the time of the fix.

Exchange notes that many long-term contracts are priced on the basis of the London silver fix and market participants will usually refer to the London silver fix when looking for a basis for valuation. The Exchange believes that the London fix is the most widely used benchmark for daily silver prices and is quoted by various financial information sources.

*Futures Exchanges.* The Exchange states that the most significant silver futures exchanges are the COMEX and the Tokyo Commodity Exchange (“TOCOM”).<sup>21</sup> Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded. Trading costs on these exchanges are negotiable. The Exchange represents that as a matter of practice, only a small percentage of the future market turnover ever comes to physical delivery of the silver represented by the contracts traded. Both COMEX and TOCOM permit trading on margin. COMEX operates through a central clearance system. TOCOM has a similar clearance system. In each case, the exchange acts as a counterparty for each member for clearing purposes.

*Silver Market Regulation.* There is no direct regulation of the global OTC market in silver. However, indirect regulation of some of the overseas participants does occur. In the United Kingdom, responsibility for the regulation of financial market participants, including the major participating members of the LBMA, falls under the authority of the Financial Services Authority (“FSA”) as provided by the Financial Services and Market Act of 2000 (“FSM Act”). The Exchange states that under the FSM Act, all UK-based banks, together with other investment firms, are subject to a range of requirements, including fitness and prudence, capital adequacy, liquidity, and systems and controls. The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial forwards and deposits of silver not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which was established by market participants in conjunction with the Bank of England, and is a voluntary code of conduct among market participants.

The Exchange states that participants in the U.S. OTC market for silver are

<sup>21</sup> There are other silver exchange markets, such as the London Metals Exchange, the Istanbul Gold Exchange, the Shanghai Gold Exchange, and the Hong Kong Chinese Gold & Silver Exchange Society.

generally regulated by their institutional supervisors, which regulate their activities in the other markets in which they operate. For example, participating banks are regulated by the banking authorities. In the U.S., the Commodities Futures Trading Commission ("CFTC"), an independent governmental agency with the mandate to regulate commodity futures and options markets in the U.S., regulates market participants and has established rules designed to prevent market manipulation, abusive trade practices and fraud.

The Exchange states that TOCOM has authority to perform financial and operational surveillance on its members' trading activities, scrutinize positions held by members and large-scale customers, and monitor price movements of futures markets by comparing them with cash and other derivative markets' prices.

**Product Description.** 1. *Creation and Redemption Process.* Issuances of Silver Shares will be made only in baskets of 50,000 shares or multiples thereof (the "Basket Aggregations" or "Baskets").<sup>22</sup> The Trust will issue and redeem Basket Aggregations on a continuous basis, by or through registered broker-dealers that have entered into participant agreements (each, an "Authorized Participant")<sup>23</sup> with the Sponsor and the Trustee, Bank of New York ("BNY").<sup>24</sup> Following issuance, the Shares will be traded on the Exchange similar to other equity securities, such as shares of the iShares COMEX Gold Trust and the streetTRACKS Gold Trust.<sup>25</sup>

Basket Aggregations of Shares will be issued as an in-kind exchange for a corresponding amount of silver. The basket amount of silver, measured in ounces (the "Basket Silver Amount") will be determined on each business day by the Trustee, BNY.<sup>26</sup> Authorized

Participants that wish to purchase a Basket must transfer the Basket Silver Amount to the Trust in exchange for a Basket of Shares. Authorized Participants that wish to redeem a Basket of Shares will receive the Basket Silver Amount in exchange for each Basket surrendered. JP Morgan Chase Bank, N.A., London Branch ("JP Morgan Chase" or "Custodian") will be the custodian for the Trust and responsible for safekeeping the silver.<sup>27</sup> Silver deposited with JP Morgan Chase must meet the specifications for weight, dimensions, fineness (or purity), identifying marks and appearance of silver bars as set forth in "The Good Delivery Rules for Silver and Silver Bars" published by the LBMA.

On each business day, BNY will make available immediately prior to the opening of trading on the Amex, the Indicative Basket Silver Amount for the creation of a Basket.<sup>28</sup> BNY will adjust the quantity of silver included in the Basket Silver Amount (determined shortly after 4 p.m.) to reflect sales of silver to cover expenses and any loss of deposited silver that may occur since the previous calculation. The Amex will disseminate at least every 15 seconds throughout the trading day, via the facilities of the CTA, an amount representing on a per share basis, the current value of the Basket Silver Amount, known as the "Indicative Trust Amount." It is anticipated that the deposit of silver in exchange for Silver Shares will be made primarily by institutional investors, arbitrageurs, and the Exchange specialist. Baskets are then separable upon issuance into identical shares that will be listed and traded on the Amex.<sup>29</sup> Silver Shares are expected to be traded on the Exchange

gems and drugs. In that system, a pound is 16 ounces and an ounce is 16 drams.

<sup>27</sup> If the total value of the Trust's silver held by the Custodian exceeds \$1 billion, then the Custodian will be under no obligation to accept additional silver deliveries. In such a case, the trustee will retain an additional custodian.

<sup>28</sup> The Sponsor will also make the next day's Indicative Basket Silver Amount available on the Trust Web site (<http://www.iShares.com>) shortly after 4 p.m. ET each business day. The Basket Silver Amount, Indicative Basket Silver Amount, and net asset value ("NAV") will be publicly available simultaneously to all market participants (to avoid any informational advantage) on either the Trust Web site or Amex Web site. These items will also be communicated to Authorized Participants via facsimile or electronic mail message. Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

<sup>29</sup> Silver Shares are separate and distinct from the underlying silver comprising the portfolio of the Silver Trust. The Exchange expects that the number of outstanding Silver Shares will increase and decrease as a result of in-kind deposits and withdrawals of the underlying silver.

by professionals, as well as institutional and retail investors. Silver Shares may be acquired in two (2) ways: (1) Through a deposit of the Basket Silver Amount with BNY during normal business hours by Authorized Participants, or (2) through a purchase on the Exchange by investors.

The Shares will not be individually redeemable but will only be redeemable in Basket Aggregations. To redeem, an Authorized Participant will be required to accumulate enough Silver Shares to constitute a Basket Aggregation (*i.e.*, 50,000 shares). An Authorized Participant redeeming a Basket Aggregation will receive the silver amount of the Basket Silver Amount announced by the Trustee. Upon the surrender of the Shares and payment of applicable Trustee's fee and any expenses, taxes or charges, BNY will deliver to the redeeming Authorized Participant the amount of silver corresponding to the redeemed Baskets. Unless otherwise requested by the Authorized Participants, silver will then be delivered to the redeeming Authorized Participants in the form of physical bars only. Silver Shares will be registered in book entry form through DTC.

The Exchange states that the Basket Silver Amount necessary for the creation of a Basket will slightly diminish each day depending on the Trust's daily expense accrual. The initial Basket Silver Amount is 500,000 ounces of silver (with each Share initially representing 10 ounces of Silver). On each day that the Amex is open for regular trading, BNY will adjust the quantity of silver constituting the Basket Silver Amount as appropriate to reflect sales of silver needed for payment of the Sponsor's fee (which is similar to an expense ratio)<sup>30</sup> and any extraordinary expenses or liabilities not assumed by the Sponsor. BNY will determine the Basket Silver Amount for a given business day by subtracting the daily expense accrual from the previous day's total ounces of silver in the Trust and then dividing by the number of Baskets outstanding. Fractions of an

<sup>30</sup> The Sponsor has agreed to assume the following administrative and marketing expenses incurred by the Trust: The Trustee's fee, the Custodian's fee, Amex listing fees, SEC registration fees, printing and mailing costs, audit fees and expenses and up to \$100,000 per annum in legal fees and expenses. The Sponsor will also pay the costs of the Trust's organization and the initial sale of the iShares, including applicable SEC registration fees. Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

<sup>22</sup> Initially, each Share represents 10 ounces of silver. Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

<sup>23</sup> An "Authorized Participant" is a person, who at the time of submitting to the Trustee an order to create or redeem one or more Baskets, (i) is a registered broker-dealer, (ii) is a Depository Trust Company ("DTC") Participant or an Indirect Participant and (iii) has in effect a valid Authorized Participant Agreement.

<sup>24</sup> BNY will charge a transaction fee in connection with the redemption and/or creation of Baskets. In addition, Barclays Capital, Inc., the Initial Purchaser, will purchase 150,000 shares of the Trust that compose the initial Baskets.

<sup>25</sup> See *supra* notes 7 and 10.

<sup>26</sup> A troy ounce, equal to 1.0971428 ounces avoirdupois, with a minimum fineness of 0.999. "Avoirdupois" is the system of weights used in the U.S. and U.K. for goods other than precious metals,

ounce of silver smaller than .001 will be disregarded.

The creation/redemption process in connection with the Silver Shares is an in-kind exchange of silver for Shares, rather than an exchange of silver for cash. Except for the accrual of the Sponsor's fee or extraordinary expenses or liabilities, the process is based entirely on the delivery of silver in exchange for Shares. Thus, throughout each business day, the Exchange states that the actual number of ounces required for the Basket Silver Amount usually will not change even though the value of the Basket Silver Amount may change based on the market price of silver.

2. *Determination of NAV, Basket Silver Amount, and Indicative Basket Amount.* Shortly after 4 p.m. (ET) each business day, the BNY will determine the NAV of the Trust, utilizing that day's announced London silver fix price (unless the Sponsor, in consultation with the Trustee, determines that an alternative publicly available pricing benchmark more fairly represents the commercial value of the silver held by the Trust).<sup>31</sup> Once the value of the silver is determined, BNY will then determine an "adjusted NAV" by subtracting all accrued fees (other than the fees to be computed by reference to the value of the Trust or its assets (*i.e.*, the Sponsor's fee)), expenses, and other liabilities of the Trust from the total value of silver and all other assets of the Trust. This adjusted NAV is then used to compute the Sponsor's fees that are calculated from the value of Trust assets. Then to determine the final NAV, BNY will subtract from the adjusted NAV the amount of accrued fees from the value of Trust assets. BNY will calculate the NAV per share by dividing the NAV by

<sup>31</sup> In Amendment No. 1, Amex clarified that if there is no London silver fix price on that day, the BNY will use the most recently announced London silver fix price unless the BNY, in consultation, with Barclays Global Investors International, Inc. ("Barclays"), determines such London silver fix price to be inappropriate.

Barclays, in consultation with the BNY, may determine that an alternative publicly available pricing benchmark more fairly represents the commercial value of silver held by the Trust. In the case of a temporary disruption of the London silver fix price, the Exchange believes that it is unnecessary for a filing pursuant to Section 19(b) under the Act to be submitted to the Commission. The Exchange submits that for a temporary disruption of the London silver fix, a determination by Barclays, in consultation with the BNY, to use an alternative pricing source for silver, is appropriate. However, the Exchange represents that if the use of an alternative pricing source for the London silver fix price is more than of a temporary nature, a rule filing will be submitted pursuant to Section 19(b) of the Act.

the number of Silver Shares outstanding.

After the NAV is determined, at or about 4 p.m. each business day, BNY will then determine the Basket Silver Amount for orders placed by Authorized Participants received before 4 p.m. that day. BNY will also at the same time determine an "Indicative Basket Silver Amount" that Authorized Participants can use as an indicative amount of silver to be deposited for issuance of the Silver Shares on the next business day. Thus, although Authorized Participants place orders to purchase Silver Shares throughout the trading day, the actual Basket Silver Amount is determined at 4 p.m. or shortly thereafter.

Shortly after 4 p.m. each business day, BNY and the Sponsor will disseminate the NAV for the Silver Shares, the Basket Silver Amount (for orders properly placed by 4 p.m. during the day), and the next day's Indicative Basket Silver Amount. The Basket Silver Amount, the Indicative Basket Silver Amount, and the NAV are communicated by BNY to all Authorized Participants via facsimile or electronic mail message and on the Trust's Web site at <http://www.ishares.com>. The Amex will also disclose the NAV, Basket Silver Amount, and Indicative Basket Silver Amount on its Web site.

The Sponsor fee, in the absence of any extraordinary expenses and liabilities, is established at 0.50% of the net assets of the Trust. As a result, assuming there is no extraordinary movement in the intraday market price of silver, the amount of silver by which the Basket Silver Amount will decrease each day will be predictable (*i.e.*,  $\frac{1}{365}$  of the net asset value of the Trust multiplied by 0.50%). Given the anticipated predictability of the daily decline in the Basket Silver Amount, as stated, BNY will disclose and disseminate the Indicative Basket Silver Amount for the next business day shortly after 4 p.m. Authorized Participants may use the Indicative Basket Silver Amount as guidance regarding the amount of silver expected to be deposited with the custodian, JP Morgan Chase, in connection with the issuance of Silver Shares on the next business day.

As a result, the amount of silver required for the Basket Silver Amount is not disseminated during the trading day to correspond to changes in the value of silver as measured by spot silver prices.<sup>32</sup> Before 4 p.m., the Authorized

<sup>32</sup> The Amex will disseminate an "Indicative Trust Value" at least every 15 seconds during the

Participants may use the Indicative Basket Silver Amount published by the Sponsor and BNY the day before as guidance in respect of the amount of silver that they may expect to be required to deposit. But if the Indicative Basket Silver Amount published by the Sponsor and BNY turns out to be incorrect (for example, because the Trust incurred an extraordinary expense such as legal fees in excess of the amount assumed by the Sponsor), the amount actually determined by BNY will control.

3. *Liquidity.* The Exchange states that the amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by the non-concurrent trading hours between the major silver markets and the Amex. While the Silver Shares will trade on the Exchange until 4:15 p.m. ET, liquidity in the OTC market for silver will be reduced after the close of the major world silver markets, including London, Zurich, and the COMEX. As a result, trading spreads and the resulting premium or discount on the Silver Shares may widen as a result of reduced liquidity.<sup>33</sup>

The Exchange believes that Silver Shares will not trade at a material discount or premium to the underlying silver held by the Trust based on potential arbitrage opportunities. Due to the fact that the Shares can be created and redeemed only in Basket Aggregations, the Exchange submits that arbitrage opportunities should provide a mechanism to mitigate the effect of any premiums or discounts that may exist from time to time. If the price of the Shares deviates enough from the price of silver to create a material discount or premium, an arbitrage opportunity is created. If the Shares are inexpensive compared to the silver that underlies them, an arbitrageur may buy the Shares at a discount, immediately redeem them in exchange for silver, and sell the silver in the cash market at a profit. If the Shares are expensive compared to the silver that underlies them, an arbitrageur may sell the Shares short, buy enough silver to acquire the number of Shares sold short, acquire the Shares through the creation process, and

trading day that represents an indicative value for the Silver Shares based on the silver spot price.

<sup>33</sup> As noted above in the section titled "Description of the Silver Market," the period of greatest liquidity in the silver market is typically that time of the day when trading in the European time zones overlaps with trading in the United States, which is when OTC market trading in New York, London, Zurich and other centers coincides with futures and options trading on the COMEX division of the NYMEX. This period lasts for approximately four hours each New York business day morning.

deliver the Shares to close out the short position. In both instances, the arbitrageur serves efficiently to correct price discrepancies between the Shares and the underlying silver.

*Availability of Information Regarding Silver Prices.* Although the spot price of silver will not be disseminated over the facilities of CTA, the last sale price for the Shares, as is the case for all equity securities traded on the Exchange will be disseminated over the CTA's Network B. In addition, there is a considerable amount of silver price and market information available on public Web sites and through professional and subscription services.

Investors may obtain on a 24-hour basis silver pricing information based on the spot price of an ounce of silver from various financial information service providers, such as Reuters and Bloomberg. In addition, the daily London silver fix is also disseminated by various market data vendors and is available from the LBMA's Web site. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of silver and last sale prices of silver futures contracts and related options, as well as information about news and developments in the silver market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on silver prices directly from market participants.<sup>34</sup> Complete real-time data for silver futures contracts and options prices traded on the COMEX (a division of the NYMEX) is available by subscription from Reuters and Bloomberg and also on a delayed basis free of charge on the NYMEX Web site at <http://www.nymex.com>. The Exchange also notes that there are a variety of other public Web sites providing information on silver, ranging from those specializing in precious metals to sites maintained by major

<sup>34</sup> In addition, EBS also provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot silver, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. EBS was launched in September 1993 by a group of the world's largest foreign exchange market making banks. The Exchange states that EBS is the pre-eminent provider of precious metals and foreign exchange trading solutions to the precious metals and interbank spot foreign exchange community. Approximately 500,000 ounces in gold, 4 million ounces in silver and \$110 billion a day in spot foreign exchange transactions is traded each day over the EBS trading platform. The shareholders of EBS include the subsidiaries of the following organizations: ABN AMRO, Bank of America, Barclays, Citibank, Commerzbank, Credit Suisse First Boston, Lehman Brothers, HSBC, JPMorgan Chase, The Royal Bank of Scotland, S-E-Banken, UBS AG and the Minex Corporation of Japan. See <http://www.ebs.com>.

newspapers, such as *The Wall Street Journal*. Current silver spot prices are also generally available with bid/ask spreads from silver bullion dealers.

The Amex, via a link to the Trust's Web site, will provide at no charge continuously updated bids and offers indicative of the spot price (*i.e.*, real time information) of silver on its own public Web site at <http://www.amex.com>.<sup>35</sup>

*Availability of Information Regarding Silver Shares.* The Web site for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) The prior business day's NAV and the reported closing price; (b) the mid-point of the bid-ask price<sup>36</sup> in relation to the NAV as of the time the NAV is calculated (the "Bid-Asked Price"); (c) calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four (4) previous calendar quarters; (e) the Basket Silver Amount; (f) the Indicative Basket Silver Amount; (g) the Prospectus; and (h) other applicable quantitative information.

As described above, the NAV for the Trust will be calculated and disseminated daily. The Amex also intends to disseminate for the Trust on a daily basis by means of CTA/CQ High Speed Lines information with respect to the Indicative Trust Value (as discussed below), recent NAV, and shares outstanding. As stated, the Trust Web site will also provide a real time indicative silver spot price through The Bullion Desk at <http://www.thebulliondesk.com>, which will be used to calculate the Indicative Trust Value.<sup>37</sup> Notwithstanding that they will

<sup>35</sup> The Trust Web site's silver spot price will be provided by The Bullion Desk at <http://www.thebulliondesk.com>. The Amex will provide a link to the Trust Web site. The Bullion Desk is not affiliated with the Trust, Sponsor, Custodian or the Exchange. The silver spot price is indicative only, constructed using a variety of sources to compile a spot price that is intended to represent a theoretical quote that might be obtained from a market maker from time to time. The Trust Web site will indicate, as noted above in the discussion titled "Availability of Information Regarding Silver Prices," that there are other sources for obtaining the silver spot price. In the event that the Trust Web site should cease to provide this indicative spot price from an unaffiliated source and the intraday indicative value of the Shares, the Exchange will delist the shares. See "Criteria for Initial and Continued Listing," below.

<sup>36</sup> The bid-ask price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

<sup>37</sup> Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of

be provided free of charge, the indicative spot price from BullionDesk.com and the Indicative Trust Value per Share will be provided essentially on a real-time basis.<sup>38</sup> The Exchange will also make available on its Web site daily trading volume, closing prices, NAV, and the Basket Silver Amount. The London silver fix price is readily available from the LBMA at <http://www.lbma.org.uk>, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, the Exchange will provide a hyperlink on its Web site at <http://www.amex.com> to the Trust's Web site at <http://www.ishares.com>.

*Dissemination of Indicative Trust Value.* As noted above, BNY calculates the NAV of the Silver Trust once each trading day. In addition, BNY causes to be made available on a daily basis the required amount of silver to be deposited in connection with the issuance of Silver Shares in Basket Aggregations. In addition, other investors can request such information directly from the BNY.

In order to provide updated information relating to the Trust for use by investors, professionals, and Authorized Persons wishing to create or redeem Silver Shares, the Exchange will disseminate through the facilities of CTA an updated Indicative Trust Value (the "Indicative Trust Value"). The Indicative Trust Value will be disseminated on a per Silver Share basis at least every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. ET. The Indicative Trust Value will be calculated based on the amount of silver required for creations and redemptions and a price of silver derived from updated bids and offers indicative of the spot price of silver.<sup>39</sup> The Indicative Trust Value on a per Silver Share basis disseminated during Amex trading hours should not be viewed as a real time update of the NAV, which is calculated only once a day.

The Exchange believes that dissemination of the Indicative Trust Value based on the amount of silver required for a Basket Aggregation provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with Silver Shares trading on the Exchange or the creation or redemption of Silver Shares.

Market Regulation, Commission, on January 13, 2006.

<sup>38</sup> The Trust Web site is expected to indicate that these values are subject to an average delay of 5 to 10 seconds.

<sup>39</sup> See *supra* note 29.

In addition, the Trust's Web site at <http://www.ishares.com> will also provide from The Bullion Desk continuously updated bids and offers indicative of the spot price of silver in the OTC market for the purpose of disclosing to investors on a real-time basis the underlying or spot price of silver.

**Termination Events.** The Trust will be terminated if any of the following circumstances occur: (1) The Silver Shares are delisted from the Amex and are not listed for trading on another national securities exchange within five business days from the date the Silver Shares are delisted; (2) holders of at least 75% of the outstanding Silver Shares notify the Trustee that they elect to terminate the trust; (3) the Trustee resigns and no successor trustee is appointed within 60 days from the date the trustee provides notice to the Sponsor of its intent to resign; (4) the Commission finds that the Trust should be registered as an investment company under the Investment Company Act of 1940, and the Trustee has actual knowledge of the Commission finding; (5) the aggregate market capitalization of the Trust, based upon the closing price for the Silver Trust, was less than \$350 million on each of five (5) consecutive trading days and the Trustee receives, within six (6) months from the last of those trading days, notice that the Sponsor has decided to terminate the Trust; (6) the CFTC determines that the Trust is a commodity pool under the Commodity Exchange Act and the Trustee has actual knowledge of that determination; or (7) the Trust fails to qualify for treatment, or ceases to be treated, as a grantor trust for U.S. federal income tax purposes and the Trustee receives notice that the Sponsor has determined that the termination of the Trust is advisable.

If not terminated earlier by the trustee, the Trust will terminate in 2045 on a date to be determined once the Trust is established. Upon termination of the Trust, holders of the Silver Shares will surrender their shares and receive from the Trustee their portion of the underlying silver.

**Criteria for Initial and Continued Listing.** The Trust will be subject to the criteria in Amex Rules 1201A and 1202A for initial and continued listing of Silver Shares. The continued listing criteria provides for the delisting or removal from listing of the Silver Shares under any of the following circumstances:

- Following the initial twelve month period from the date of commencement of trading of the Silver Shares: (i) If the Trust has more than 60 days remaining

until termination and there are fewer than 50 record and/or beneficial holders of the Silver Shares for 30 or more consecutive trading days; (ii) if the Trust has fewer than 50,000 Silver Shares issued and outstanding; or (iii) if the market value of all Silver Shares is less than \$1,000,000.

- If the value of the underlying silver is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or the Exchange or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated silver value.

- The Indicative Trust Value is no longer made available on at least a 15-second delayed basis.

- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

It is anticipated that a minimum of 150,000 Silver Shares will be required to be outstanding at the start of trading. The minimum number of shares required to be outstanding at the start of trading is comparable to requirements that have been applied to previously listed series of the iShares COMEX Gold Trust, the streetTRACKS Gold Trust, trust issues receipts and exchange-traded funds ("ETFs"). It is anticipated that the initial price of a Silver Share will be approximately \$91.<sup>40</sup> The Exchange believes that the anticipated minimum number of Silver Shares outstanding at the start of trading is sufficient to provide adequate market liquidity and to further the Trust's objective to seek to provide a simple and cost effective means of making an investment similar to an investment in silver.

The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A-3 under the Securities Exchange Act of 1934 (the "1934 Act").<sup>41</sup>

**Original and Annual Listing Fees.** The Amex original listing fee applicable to the listing of the Silver Trust is \$5,000. In addition, the annual listing fee applicable under section 141 of the Amex Company Guide ("Company Guide") will be based upon the year-end aggregate number of shares in all series of Silver Trusts outstanding at the end of each calendar year.

<sup>40</sup> Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006 (updating initial price of a Silver Share that initially will represent 10 ounces of silver).

<sup>41</sup> See Rule 10A-3(c)(7) under the 1934 Act.

**Trading Rules.** Silver Shares are equity securities subject to Amex Rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities and account opening and customer suitability (Amex Rule 411). Initial equity margin requirements of 50% will apply to transactions in Silver Shares. Silver Shares will trade on the Amex until 4:15 p.m. ET each business day and will trade in a minimum price variation of \$0.01 pursuant to Amex Rule 127. Trading rules pertaining to odd-lot trading in Amex equities (Amex Rule 205) will also apply.

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto), the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i-v). The Exchange has designated Silver Shares as eligible for this treatment.<sup>42</sup>

Silver Shares will be deemed "Eligible Securities", as defined in Amex Rule 230, for purposes of the Intermarket Trading System Plan and therefore will be subject to the trade through provisions of Amex Rule 236, which require that Amex members avoid initiating trade-throughs for ITS securities.

Specialist transactions of Silver Shares made in connection with the creation and redemption of Silver Shares will not be subject to the prohibitions of Amex Rule 190.<sup>43</sup> Unless exemptive or no-action relief is available, Silver Shares will be subject to the short sale rule, Rule 10a-1 and Regulation SHO under the Act.<sup>44</sup> If exemptive or no-action relief is provided, the Exchange will issue a notice detailing the terms of the exemption or relief. The Silver Shares will generally be subject to the Exchange's stabilization rule, Amex Rule 170, except that specialists may buy on "plus ticks" and sell on "minus ticks," in order to bring the Silver Shares into parity with the underlying

<sup>42</sup> See Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) at note 9, regarding the Exchange's designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c).

<sup>43</sup> See Commentary .05 to Amex Rule 190.

<sup>44</sup> The Silver Trust has requested relief in connection with the trading of Silver Shares from the operation of the short sale rule, Rule 10a-1 and Regulation SHO under the Act.

silver and/or futures price. Commentary .01 to Amex Rule 1203A sets forth this limited exception to Amex Rule 170.

Amex Rule 1203A relating to certain specialist prohibitions addresses potential conflicts of interest in connection with acting as a specialist in the Silver Shares. Specifically, Amex Rule 1203A provides that the prohibitions in Amex Rule 175(c) apply to a specialist in the Silver Shares so that the specialist or affiliated person may not act or function as a market maker in the underlying silver, related silver futures contract or option or any other related silver derivative. An affiliated person of the specialist consistent with Amex Rule 193 may be afforded an exemption to act in a market making capacity, other than as a specialist in the Silver Shares on another market center, in the underlying silver, related silver futures or options, or any other related silver derivative. In particular, Amex Rule 1203A provides that an approved person of an equity specialist that has established and obtained Exchange approval for procedures restricting the flow of material, non-public market information between itself and the specialist member organization, and any member, officer, or employee associated therewith, may act in a market making capacity, other than as a specialist in the Silver Shares on another market center, in the underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives.

Amex Rule 1204A(a) provides that the member organization acting as specialist in Commodity-Based Trust Shares is obligated to conduct all trading in the Shares in its specialist account, subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange (see Rule 170). In addition, the member organization acting as specialist in Commodity-Based Trust Shares must file, with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the member organization acting as specialist may have or over which it may exercise investment discretion. No member organization acting as specialist in Commodity-Based Trust Shares shall trade in the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a member organization acting as specialist,

directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule.<sup>45</sup>

Amex Rule 1204A(b) also ensures that specialists handling the Silver Shares provide the Exchange with all the necessary information relating to their trading in physical silver, related silver futures contracts and options thereon or any other silver derivative. As a general matter, the Exchange has regulatory jurisdiction over its members, member organizations, and approved persons of a member organization. The Exchange also has regulatory jurisdiction over any person or entity controlling a member organization, as well as a subsidiary or affiliate of a member organization that is in the securities business. A subsidiary or affiliate of a member organization that does business only in commodities would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

Amex Rule 1204A(c) also prohibits the specialist in the Silver Shares from using any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in physical silver, silver futures contracts, options on silver futures, or any other silver derivative (including the Silver Shares).<sup>46</sup>

Prior to the commencement of trading, the Exchange will issue an Information Circular (described below) to members informing them of, among other things, Exchange policies regarding trading halts in Silver Shares. First, the Circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in Amex Rule 117 have been reached. Second, the Circular will advise that, in addition to the parameters set forth in Amex Rule 117, the Exchange may halt trading in Silver Shares if conditions in the underlying silver market have caused disruptions and/or lack of trading. Third, with respect to a halt in trading that is not

specified above, the Exchange may also consider other relevant factors and the existence of unusual conditions or circumstances that may be detrimental to the maintenance of a fair and orderly market. The Exchange will halt trading in the Shares if the Trust Web site (to which Amex will link) ceases to provide: (1) The value of the silver updated at least every 15 seconds from a source not affiliated with the Sponsor, Trust, or the Exchange, or (2) the Indicative Trust Value per Share updated at least every 15 seconds.<sup>47</sup>

*Information Circular.* The Amex will distribute an Information Circular (the "Circular") to its members in connection with the trading of Silver Shares. The Circular, will discuss the special characteristics and risks of trading this type of security. Specifically, the Circular, among other things, will discuss what the Silver Shares are, notify members and member organization about the procedures for creation and redemption of Silver Shares in a basket, the requirement, as described below, that members and member firms deliver a prospectus to investors purchasing the Silver Shares prior to or concurrently with the confirmation of a transaction, applicable Amex rules, dissemination of information regarding the per share Indicative Trust Value, NAV, and other information pertaining to the Shares, including trading information, trading halt procedures, and applicable suitability rules. For example, in the Information Circular, members and member organizations will be informed that procedures for purchases and redemptions of Silver Shares in Basket Aggregations are described in the Prospectus and that Silver Shares are not individually redeemable but are redeemable only in Basket Aggregations or multiples thereof. Similarly, the Information Circular will advise members and member organizations, prior to commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Silver Shares directly from the Trust (by delivery of the Basket Silver Amount) will receive a prospectus. Amex members purchasing Silver Shares from

<sup>45</sup> Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006 (inserting discussion of Amex Rule 1204A(a)).

<sup>46</sup> Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006 (inserting discussion of Amex Rule 1204A(c)).

<sup>47</sup> In the event such spot price of silver or Indicative Trust Value is no longer calculated or disseminated, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.



the Trust for resale to investors will deliver a prospectus to such investors.

The Circular will also explain that the Silver Trust is subject to various fees and expenses described in the Registration Statement and that the number of ounces of silver required to create a basket or to be delivered upon a redemption of a basket will gradually decrease over time because the Silver Shares comprising a basket will represent a decreasing amount of silver due to the sale of the Silver Trust's silver to pay Trust expenses. The Circular will also reference the fact that there is no regulated source of last sale information regarding physical silver, that the Commission has no jurisdiction over the trading of silver as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of silver futures contracts and options on silver futures contracts.

The Circular will advise members of their suitability obligations with respect to recommended transactions to customers in the Silver Shares. The Exchange notes that pursuant to Amex Rule 411 (Duty to Know and Approve Customers), members and member organizations are required in connection with recommending transactions in the Silver Shares to have a reasonable basis to believe that a customer is suitable for the particular investment given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member.

The Circular will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

*Surveillance.* The Exchange represents that its surveillance procedures applicable to trading in the proposed Silver Shares will be similar to those applicable to the iShares COMEX Gold Trust, the streetTRACKS Gold Trust, trust issued receipts, Portfolio Depository Receipts and Index Fund Shares currently trading on the Exchange. For intermarket surveillance purposes, the Exchange currently has in place an Information Sharing Agreement with the NYMEX for the purpose of providing information in connection with trading in or related to COMEX silver futures contracts. The Exchange submits that its surveillance procedures are adequate to properly monitor the trading of the Shares.

Also, as noted above, the Exchange states that Amex Rule 1204A(b), which requires that the specialist handling the Silver Shares provide the Exchange with information relating to its trading in physical silver, silver futures contracts, options on silver futures, or any other silver derivative, will facilitate

surveillance of specialist handling Silver Shares.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act<sup>48</sup> in general, and furthers the objectives of section 6(b)(5)<sup>49</sup> 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 Exchange does not believe that the proposed rule change, as amended, would 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*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2005-072 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-072. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-Amex-2005-072 and should be submitted on or before February 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>50</sup>

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6-700 Filed 1-20-06; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>48</sup> 15 U.S.C. 78f(b).

<sup>49</sup> 15 U.S.C. 78f(b)(5).

<sup>50</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53112; File No. SR-CBOE-2004-21]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change To Establish Rules for a Screen-Based Trading System for Non-option Securities

January 12, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 14, 2004, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On January 11, 2006, CBOE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adopt rules governing the trading of non-option securities on CBOE*direct*, the Exchange’s screen-based trading platform. The proposed new system would be called the Stock Trading on CBOE*direct* System (“STOC System” or “System”). The text of the proposed rule change is available at CBOE’s Web site (<http://www.cboe.org/legal/default.aspx>), at CBOE’s principal office, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

As an Intermarket Trading System (“ITS”) participant, CBOE trades a small number of non-option securities.<sup>4</sup> These products are not traded on CBOE’s options trading platform. Instead, they trade on CBOE’s stand-alone stock platform in an open-outcry environment pursuant to Chapter XXX (30) of CBOE’s rules. In 2003, the Commission approved Chapters XL (40) through XLVI (46) of CBOE’s rules,<sup>5</sup> which established a purely screen-based trading platform for the trading of options on CBOE.<sup>6</sup> That screen-based platform is commonly referred to as CBOE*direct*, and components of that system have been successfully used to create CBOE’s Hybrid Trading System (currently in use for options trading), to facilitate the trading of single-stock futures by OneChicago, and to trade security futures products on the newly-created CBOE Futures Exchange.<sup>7</sup> CBOE now proposes to adopt a new set of rules as Chapters L (50) through LV (55) of CBOE’s rules to allow for the trading of non-option securities in a purely screen-based environment. CBOE*direct* would be the foundation for this platform. CBOE intends that all products currently traded under Chapter 30 would migrate to the new platform and trade pursuant to Chapters 50–55. The proposed new platform is called the Stock Trading on CBOE*direct* System, or STOC System. The STOC System would be substantially similar to CBOE’s screen-based platform for options in that it (1) would be entirely screen-based; (2) would utilize a DPM/LMM-driven model with optional supplemental liquidity provided by STOC Market-Makers; (3) would utilize a configurable matching algorithm based on either price-time or pro-rata priority with optional priority overlays; and (4) would integrate all quotes and orders entered into the system into the STOC book.

CBOE believes the STOC System would greatly enhance the trading of

stock products on the Exchange. Unlike CBOE’s current non-option security trading system, the STOC System would be fully integrated with ITS to facilitate the sending and receipt of ITS Commitments. It would automatically execute marketable orders against CBOE’s quote up to the size of the quote (assuming such executions would not cause an impermissible trade-through of another exchange’s quote). STOC Market-Maker quotes and all orders (customer or otherwise) would be integrated into the STOC Book. Further, the audit trail process would be greatly simplified for regulatory purposes.

Almost all of the rules contained in proposed Chapters 50–55 are substantially identical to previously approved rules contained in Chapters 30 and 40–46 of CBOE’s rules. Of course, not all the rules from those chapters are proposed to be adopted for the STOC System rules—only ones that would be appropriate for screen-based stock trading. Any new rules or material modifications to the rules proposed to be adopted from Chapters 30 and 40–46 are explained below.

#### Chapter 50

This chapter provides an introduction to the STOC System by setting forth definitions (including definitions of the various market participant types), explaining the application of other CBOE rules, setting forth the registration process for members,<sup>8</sup> stating communication access guidelines, and establishing a limitation on liability with respect to certain reporting authorities. All of the rules in this chapter come from Chapters 40 and 41 of CBOE’s rules, except for proposed CBOE Rule 50.7, Limitation on Reporting Authorities’ Liability, which is based on CBOE Rule 30.55.

#### Chapter 51

This chapter contains rules concerning operational matters—for example, business hours, units of trading, minimum increments for bids and offers, and types or orders handled. Proposed CBOE Rules 51.1, 51.2, 51.4, 51.5, 51.7, and 51.8 through 51.11 are rules that can also be found in Chapter

<sup>4</sup> Currently, CBOE trades four such products.

<sup>5</sup> See Securities Exchange Act Release No. 47628 (April 3, 2003), 68 FR 17697 (April 10, 2003) (approving SR-CBOE-00-55); see also Securities Exchange Act Release No. 45829 (April 25, 2002), 67 FR 31002 (May 8, 2002) (notice of filing of SR-CBOE-00-55).

<sup>6</sup> At this time, CBOE does not trade options pursuant to Chapters 40–46.

<sup>7</sup> CBOE represents that these different uses of the CBOE*direct* platform have not had, and will not have, an adverse effect on trading or the stability of the platform.

<sup>8</sup> With respect to the registration process for members, any Exchange member who chooses to participate on the STOC System must apply with the Exchange to act as a STOC Market-Maker, STOC Broker, or Proprietary Trader in accordance with proposed CBOE Rule 50.4. Such applications must be submitted to the Exchange Membership Committee for approval pursuant to CBOE Rule 3.9. CBOE Rule 3.9 provides that an applicant must submit an application in a form and manner prescribed by the Exchange and describes the application procedures and process for approval or disapproval.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 replaced the original rule filing in its entirety.

30. CBOE Rule 51.3 is based on current CBOE Rule 42.2.

#### Chapter 52

This chapter contains proposed trading and order processing rules for the STOC System. Proposed CBOE Rule 52.1 describes the System's matching algorithm and governs priority on the System. It is similar to CBOE Rule 43.1, which governs priority for options orders. As proposed, the appropriate STOC Trading Committee would apply one of two priority schemes, on a security-by-security basis. Trades would be allocated by the System pursuant to either price-time priority or pro-rata priority. Once one of those two priority schemes is in place, the appropriate STOC Trading Committee could implement additional optional priority overlays. Namely, an additional priority could be provided to public customer orders, the market turner, or to the STOC DPM/LMM (CBOE's specialist equivalent)<sup>9</sup> as part of a participation entitlement.<sup>10</sup> Thus, if pro-rata priority were in place for a particular security, and the market turner, public customer, and trade participation right overlays were in place (in that order of priority), incoming marketable orders would be allocated by the System to all participants in pro-rata fashion after the participant that first established that price (the market turner), any public customers resting at the best price, and the STOC DPM/LMM for the product (assuming its order and/or quote is at the best price) have been satisfied (in that order). As part of the participation right, the STOC DPM/LMM could never receive a quantity larger than the size of its quote. The participation right percentage would be established pursuant to proposed CBOE Rule 53.56 by the STOC DPM Committee and could not exceed 40%. Any participant (including a public customer) could be a market turner.

Proposed CBOE Rule 52.2 would govern the System's opening procedures. The opening would occur in one of two ways, depending on whether CBOE was the primary market for a security. If CBOE were the primary market, the System would calculate a price point at which the most pre-opening buy and sell orders could be

matched (based on share volume) and then execute those orders to establish an opening price and open trading. If CBOE were not the primary market, the STOC DPM/LMM would open the security at a single price that matches the primary market or at a price that does not trade-through another exchange's quotes. This would allow the STOC DPM to assess the quantity and balance of pre-opening orders and to interact with the primary market as necessary via ITS.

Proposed CBOE Rule 52.4 would govern "clearly erroneous" transactions executed on the Exchange. The proposed rule sets forth the procedure for requesting Exchange review, the review procedures, and the steps taken in the event of system disruption or malfunction. The Exchange notes that this proposed rule is based on PCX Equities ("PCXE") Rule 7.10, which governs clearly erroneous executions.

Proposed CBOE Rule 52.6 would govern market order processing. It provides that market orders would automatically execute against the STOC Book (including against orders behind the best price at varying price points) until the order is fully executed or until such execution would result in an impermissible trade-through.<sup>11</sup> To the extent a market order is not automatically executed against the STOC book because CBOE is not the NBBO, the System would "flash" the order at the NBBO price to STOC Market-Makers on the System (to see if they would match or improve the NBBO) for a period of time not to exceed three seconds. After such time, if the order has not been traded, the System will route it to the STOC DPM/LMM for manual handling (which would allow the DPM/LMM to transmit an ITS commitment on behalf of the order).

Proposed CBOE Rule 52.7, which would govern limit order processing, provides that limit orders would be booked by the System and that they would not automatically execute at prices inferior to the NBBO. When a limit order is received that is marketable against the quote of another exchange but not marketable on CBOE, the System would "flash" the order at its limit price to STOC Traders on the System (to see

if they would match or improve the NBBO) for a period of time not to exceed three seconds. After such time, if the limit order has not been traded, the System would route it to the STOC DPM/LMM for manual handling (which would allow the DPM/LMM to transmit an ITS Commitment on behalf of the limit order).

Proposed CBOE Rule 52.8 provides that market odd-lot orders would be executed against STOC Market-Maker interest on the STOC Book provided such interest equals the NBBO. If no STOC Market-Makers are quoting at the NBBO, odd-lot orders would route to the STOC DPM/LMM for execution. Limit odd lot orders would execute against the STOC DPM/LMM if (i) the limit price is marketable against the STOC DPM/LMM quote, or (ii) a trade occurs at the limit price on another exchange. Pre-opening odd lot orders that are marketable against the opening price would receive the opening price.

Proposed CBOE Rule 52.10 would provide that the System would automatically execute inbound ITS Commitments against the best prices available in the STOC Book to the extent such commitments are marketable. When an ITS Commitment is not marketable against the STOC Book, the System would "flash" the commitment at its limit price to STOC Traders on the System (to see if they would match or improve the NBBO) for a period of time not to exceed 3 seconds. After such time, any unexecuted portion would be cancelled by the System. Inbound market ITS Commitments would be executed at the NBBO or cancelled.

Proposed CBOE Rule 52.11(a) governs the facilitation of the non-option security portion of option-related complex orders. This rule defines a complex order as an order involving one or more option order components and one or more non-option security order components. Such facilitation transactions would be entered into the STOC System at a price at or within the prevailing quotation for the non-option security at the time the options portion of the complex orders are executed. The non-option security portion of the order would have priority at that price irrespective of pre-existing bids and offers and any priority designations in place pursuant to proposed CBOE Rule 52.1, provided that the option order component(s) bettered the corresponding bid (offer) in the options market on which they were executed.

Proposed CBOE Rule 52.11(b), regarding crossing transactions on the STOC System, provides that a STOC Trader that wishes to cross two original orders or to facilitate an original order

<sup>9</sup> Throughout the proposed rules, references to STOC DPMs are also applicable to STOC LMMs (which are essentially rotating STOC DPMs). A product cannot have both a STOC DPM and a STOC LMM appointed to it. See proposed CBOE Rule 53.51 (defining STOC LMM).

<sup>10</sup> Proposed CBOE Rule 52.1(b)(3)(C) provides that the participation entitlement may not be in effect unless the public customer priority is in effect and ahead of the participation entitlement in the priority sequence.

<sup>11</sup> In most cases any trade-through would be impermissible, but the Commission has provided a temporary 3-tick exemption for certain products. See Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) (order implementing the exemption as a pilot program); Securities Exchange Act Release No. 52382 (September 6, 2005), 70 FR 53695 (September 9, 2005) (order extending pilot program through June 28, 2006). Any such exemption would be factored into what can automatically execute on the STOC System.

must first send a Request for Quote (RFQ) with size. Within 10–30 seconds, as determined by the appropriate STOC Trading Committee, from the conclusion of the RFQ response period, the orders may, at the STOC Trader's discretion, be crossed (i) between the bid-offer if the transaction would be less than 25,000 shares; or (ii) at or between the bid-offer if the transaction would be greater than 25,000 shares and in which case the cross transaction will have priority. The cross transaction information would be received and effected by the Exchange's Help Desk.

The remaining rules in proposed Chapter 52 are taken from existing CBOE rules. CBOE Rule 52.3 (Unusual Market Conditions) is based on existing CBOE Rule 30.5, and CBOE Rules 52.5 (Order Entry and Maintenance), 52.13 (Firm Quotations), and 52.14 (Quote and Trading Information) are based on rules contained in Chapter 30. CBOE Rule 52.9 (Processing of Requests for Quotes) is based on existing CBOE Rule 43.11.

#### Chapter 53

The chapter relates to requirements and obligations of members, both generally and by participant type (e.g., STOC DPM, STOC Broker, etc.). Proposed Section A carries over Chapter 30 rules that currently apply to all members trading non-option securities on CBOE. They relate to matters such as trading in member accounts, members acting as brokers, short sale requirements, and doing business with the public.

Proposed Section B contains provisions that are applicable to all STOC Market-Makers (including STOC DPMs/LMMs). These provisions are based on similar provisions that apply to SBT Market-Makers trading options under Chapters 40–46. Accordingly, the registration and appointment process for STOC Market-Makers is identical to the process in place for SBT Market-Makers. Further, STOC Market-Maker obligations, as set forth in proposed CBOE Rule 53.23, are centered on RFQ response requirements. STOC Market-Makers that are not providing a two-sided quote at the time of an RFQ would have to respond to the RFQs with a two-sided market that must last in duration for at least 30 seconds (unless traded) and for a minimum size designated by the appropriate STOC Market Performance Committee. As part of their obligations, STOC Market-Makers would be required to respond to at least 75% of all RFQs in their appointed securities.

Proposed Section C sets forth additional considerations and requirements applicable to STOC DPMs

and LMMs. As previously stated, a STOC LMM essentially would be a rotating STOC DPM. There would never be a STOC DPM and STOC LMM for the same security. As with the STOC Market-Maker provisions, these provisions are patterned after rules in Chapter 44. STOC DPMs/LMMs would be required to provide continuous two-sided markets in assigned securities and to handle customer orders received by the STOC System that are not automatically executed or booked. Thus, STOC DPMs/LMMs would have dealer and agent functions and obligations.

Proposed Sections D and E relate to definitions and requirements applicable to STOC Brokers and Clearing Firm Brokers. These provisions are identical to provisions in Chapter 45.

#### Chapters 54 and 55

Proposed Chapter 54 sets forth additional provisions that would be applicable to certain product types that could trade on the STOC System. These product types, which include index portfolio receipts (IPRs)<sup>12</sup> and Index Portfolio Shares (IPSS),<sup>13</sup> are currently available for trading on CBOE under Chapter 30. All of the proposed rules in this Chapter are identical to rules contained in Chapter 30. Proposed Chapter 55 contains CBOE's ITS-related rules, which are modeled on PCXE's ITS rules. CBOE deemed those an appropriate model because, like the proposed STOC system, PCXE is an all-electronic trading platform. Lastly, CBOE is attaching an index to Chapters 50–55 to set forth the applicability of other CBOE rules to trading under Chapters 50–55.

#### Conclusion

CBOE believes that the proposed migration of trading of non-option securities to the STOC System would significantly enhance the trading of these products on the Exchange. CBOE proposes that Chapters 50–55 be approved on a pilot basis for a period commencing on the approval date of this filing and ending on the final compliance date for the Order Protection Rule of Regulation NMS.<sup>14</sup> CBOE acknowledges that it will need to file additional rule changes to comply with Regulation NMS,<sup>15</sup> and the

Exchange commits to submitting such filings in a timely manner.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Exchange Act in general and furthers the objectives of Section 6(b)(5) in particular in that it would enhance the trading of non-option securities on CBOE and 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 protect investors and the public interest.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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

The Exchange neither solicited nor received comments with respect to the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change, as amended, or
- (B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2004-21 on the subject line.

<sup>12</sup> See CBOE Rule 1.1, Interpretations and Policies .02.

<sup>13</sup> See CBOE Rule 1.1, Interpretations and Policies .03.

<sup>14</sup> 17 CFR 242.611.

<sup>15</sup> See generally Securities Exchange Act Release 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (order adopting rules under Regulation NMS).

*Paper Comments*

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-CBOE-2004-21. 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. Copies of such filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should only submit information you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2004-21 and should

be submitted on or before February 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Nancy M. Morris,**  
*Secretary.*

[FR Doc. E6-662 Filed 1-20-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53127; File No. SR-ISE-2005-57]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Payment for Order Flow Fee Changes

January 13, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 1, 2005, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 23, 2005, the ISE

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The ISE has designated this proposal as one changing a fee imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the proposal, as amended, effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its payment for order flow program to allow preferenced Competitive Market Makers to administer payment for order flow fees collected by the Exchange.<sup>6</sup>

Below is the text of the proposed rule change, as amended. Proposed new language is in italics; proposed deletions are in [brackets].<sup>7</sup>

<sup>3</sup> In Amendment No. 1 ("Amendment No. 1"), the ISE: (1) Eliminates the proposed \$450,000 per firm cap and keeps the current cap of \$450,000 per group of option classes; (2) states the procedures that Competitive Market Makers must follow in order to opt out of the payment for order flow program; (3) clarifies that the payment for order flow portion of the fee schedule will expire when the preferenced market maker program pilot program expires; (4) makes minor clarifications to the purpose section; (5) amends the rule text to conform it to the amended purpose section; and (6) makes technical corrections to the rule text.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> See Amendment No. 1, *supra* note 3.

<sup>7</sup> *Id.*

ISE SCHEDULE OF FEES

Electronic market place	Amount	Billable unit	Frequency	Notes
Execution Fees				
* * * * *				
• Payment for Order Flow ...	\$0.55	Contract .....	Transaction .....	Applies to market makers only for each public customer contract executed; does not apply to Complex Orders; does not apply to the execution of a Public Customer Order by a Primary Market Maker if the Primary Market Maker executes a corresponding P/A trade on another exchange; does not apply to a market maker executing a Public Customer Order in the Price Improvement Mechanism; does not apply to transactions in HSX, OOG, BYT, HVY, RUF, JLO, SIN, RND, IXZ, IXX and IXK. The Payment for Order Flow Fee will be <i>rebated proportionately to the members that paid the fee</i> [suspended for a Group of options established under Rule 802(b) when] <i>such that on a quarterly basis the Payment for Order Flow fund balance administered by a Primary Market Maker for [such Group reaches] a Group of options established under Rule 802(b) does not exceed \$450,000 and the Payment for Order Flow fund balance administered by a preferred Competitive Market Maker for such a Group does not exceed \$50,000</i> , and shall be reinstated when any such fund balance falls below \$450,000]. <i>With respect to orders preferred to a Competitive Market Maker under Rule 713, a preferred Competitive Market Maker that elects not to administer a fund will not be charged the Payment for Order Flow fee. The Payment for Order Flow fee administered by preferred Competitive Market Makers, as described above, will be in effect until June 10, 2006, the date on which the Preferred Orders pilot program expires.</i>
* * * * *				

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The ISE proposes to amend its payment for order flow program to allow preferred Competitive Market Makers to administer payment for order flow fees collected by the Exchange. The Commission recently approved the Exchange's proposed rule change to permit Electronic Access Members (EAMs) to "preference" their order flow

to specified market makers.<sup>8</sup> The Exchange states that, under this rule, if a preferred market maker, which could be either a Primary Market Maker (PMM) or a Competitive Market Maker (CMM), is quoting at the national best bid or offer when ISE receives a preferred order, that market maker receives an enhanced allocation of the order. The Exchange also operates a payment for order flow ("PFOF") program as approved by the Commission.<sup>9</sup> The Exchange states that this program is funded through a fee paid by Exchange market makers for each customer contract they execute. The Exchange represents that, currently, all funds collected by the Exchange are administered by the PMM for their group (or "bin") of options classes.

The Exchange proposes to amend its PFOF program to allow a CMM to administer the PFOF funds collected by the Exchange with respect to orders preferred to it in a group of options

classes.<sup>10</sup> Each CMM pool would have a ceiling of \$50,000.<sup>11</sup> Preferred CMMs would be able to choose not to administer PFOF pools, in which case the PFOF fee collected by the Exchange would go into the PFOF fund administered by the PMM in the group of options as it would have had the order not been preferred to the CMM.<sup>12</sup> A CMM will not be charged the PFOF fee for orders preferred to it if

<sup>10</sup> As is the case with the PFOF funds administered by the PMM, the PFOF fee collected on a preferred order would be administered by the preferred CMM whether or not the CMM was a party on a particular trade.

<sup>11</sup> In order to accommodate the introduction of the preferred CMM PFOF pools each having a \$50,000 ceiling in addition to the existing PMM PFOF fund that has a \$450,000 ceiling, the Exchange will rebate back to members any balance of a fund that exceeds the applicable ceiling for a particular PFOF fund on a quarterly basis.

<sup>12</sup> CMMs must notify the Exchange if they elect to opt-out of the proposed payment for order flow fee program in writing no later than five business days prior to the end of the month for which the payment for order flow fee is to be assessed. Once an election not to participate has been made by a CMM, no notice to the Exchange is required in subsequent months unless there is a change in participation status.

<sup>8</sup> See Exchange Act Release No. 51818 (June 10, 2005), 70 FR 35146 (June 16, 2005) (SR-ISE-2005-18).

<sup>9</sup> See Exchange Act Release No. 43833 (January 10, 2001), 66 FR 7822 (January 25, 2001) (SR-ISE-2000-10).

it determines not to administer PFOF pools.<sup>13</sup>

## 2. Statutory Basis

The Exchange believes that its proposal, as amended, is consistent with Section 6(b) of the Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>15</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among ISE members and other persons using its facilities.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>16</sup> and Rule 19b-4(f)(2)<sup>17</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

<sup>13</sup> The Exchange states that the proposed rule change would be in effect until June 10, 2006, the date on which the Preferred Orders pilot program expires. See Exchange Act Release No. 52066 (July 20, 2005), 70 FR 43479 (July 27, 2005) (SR-ISE-2005-35). The Exchange notes that allowing a preferred CMM to administer the PFOF fees collected by the Exchange with respect to preferred orders is similar to the Philadelphia Stock Exchange's PFOF program. See Exchange Act Release No. 52568 (October 6, 2005), 70 FR 60120 (October 14, 2005) (SR-Phlx-2005-58).

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(4).

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>17</sup> 17 CFR 240.19b-4(f)(2).

investors, or otherwise in furtherance of the purposes of the Act.<sup>18</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2005-57 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-ISE-2005-57. 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, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2005-57 and should be

<sup>18</sup> The effective date of the original proposed rule change is December 1, 2005, and the effective date of Amendment No. 1 is December 23, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on December 23, 2005, the date on which the Exchange submitted Amendment No. 1.

submitted on or before February 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-666 Filed 1-20-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53132; File No. SR-NASD-2005-144]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Order Entry and Execution Practices

January 17, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 8, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. 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

NASD is proposing to add Rule 3380 to prohibit members and associated persons from splitting any order into multiple smaller orders for execution or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind payment to the member or associated persons as a result of the execution of such orders or the transaction reporting of such executions. The text of the proposed rule change appears below. Additions are in *italics*.

\* \* \* \* \*

#### 3380. Order Entry and Execution Practices

*No member or associated person may engage in conduct that has the intent or effect of splitting any order into multiple smaller orders for execution or any execution into multiple smaller*

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind amount to be received by the member or associated person as a result of the execution of such orders or the transaction reporting of such executions. For purposes of this rule, "monetary or in-kind amount" shall be defined to include, but not be limited to, any credits, commissions, gratuities, payments for or rebates of fees, or any other payments of value to the member or associated person.

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

"Trade shredding" is a term used to describe the practice of splitting customer orders for securities into multiple smaller orders (e.g., a 1,000 share order is split into 10 100 share orders) for the primary purpose of maximizing payments or rebates to the member. Among other things, concerns have been raised about market participants increasingly engaging in the practice of trade shredding as a means to increase their share of market data revenues under the joint industry plans ("Plans"),<sup>3</sup> where the Plan participant has adopted a practice of sharing its Plan revenues with market participants who send it orders. Specifically, because the current allocation formulas for distributing Plan income heavily emphasize the number of trades, no matter how small the size of the trade, an incentive can exist for market participants to engage in distortive behavior, such as trade shredding, as a

<sup>3</sup> The three joint-industry plans are (1) the CTA Plan, which is operated by the Consolidated Tape Association and disseminates transaction information for exchange-listed securities, (2) the CQ Plan, which disseminates consolidated quotation information for exchange-listed securities, and (3) the Nasdaq UTP Plan, which disseminates consolidated transaction and quotation information for Nasdaq-listed securities.

means to increase their share of market data revenues.

To address these concerns, among others, the Commission adopted Regulation NMS, which contains amendments to the current Plan formulas used to allocate Plan income.<sup>4</sup> These modifications incorporate a more broad-based measure of a self-regulatory organization's ("SRO") contribution to the consolidated trade stream, including both an SRO's quotes and trades, intended to reduce the incentives for trade shredding.

Although these modifications in Plan formulas should reduce the incentives for trade shredding, the Commission continues to believe that SRO rules prohibiting trade shredding are necessary and appropriate and has requested that all SROs implement rule changes to inhibit the practice of trade shredding. In response to the Commission's request, NASD is proposing to adopt new Rule 3380, which would prohibit such practices. Specifically, new Rule 3380 would prohibit members and associated persons from splitting any order into multiple smaller orders for execution or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind payment to the member or associated persons as a result of the execution of such orders or the transaction reporting of such executions. For purposes of the proposed new rule, "monetary or in-kind amount" shall be defined to include, but not be limited to credits, commissions, gratuities, payments for or rebates of fees, or any other payments of value to the member or associated person.

#### 2. Statutory Basis

NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>5</sup> which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will further the goal of preventing manipulative acts and practices by prohibiting this potentially distortive practice.

<sup>4</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

### B. Self-Regulatory Organization's Statement on Burden on Competition

NASD believes that the proposed rule change will impose no 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

NASD has neither solicited nor received comments on this proposal.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-144 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-144. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent



amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2005-144 and should be submitted on or before February 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-663 Filed 1-20-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53126; File No. SR-NYSE-2005-93]

### Self-Regulatory Organizations; New York Stock Exchange, Inc; Notice of Filing of Proposed Rule Change to Rule 431 ("Margin Requirements") and Rule 726 ("Delivery of Options Disclosure Document and Prospectus") To Expand the Products Eligible for Customer Portfolio Margining and Cross-Margining

January 13, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 29, 2005, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is filing with the Commission proposed amendments to NYSE Rule 431 ("Margin Requirements") that would expand the scope of products that are eligible for treatment as part of the Commission's approved Portfolio Margin Pilot Program (the "Pilot").<sup>3</sup> Amendments to Rule 726 ("Options Disclosure Document") also are proposed to include the Commission approved products on the disclosure document required to be furnished to customers pursuant to this rule. The text of the proposed rule change is below. Additions are in italics. Deletions are in brackets.

\* \* \* \* \*

#### Margin Requirements

Rule 431. (a) through (f) unchanged.

#### Portfolio Margin and Cross-Margin [for Index Options]

(g) As an alternative to the ["strategy" based] "strategy-based" margin requirements set forth in sections [paragraphs] (a) through (f) of this Rule, member organizations may elect to apply the portfolio margin requirements set forth in this section (g) to [margin for] (1) listed, broad-based U.S. index options, index warrants and underlying instruments and (2) listed security futures contracts<sup>4</sup> and listed single stock options, (See section (g)(6)(C)(1)). [(as defined below) in accordance with the portfolio margin requirements set forth in this Rule.]

In addition, member organizations, provided they are a Futures Commission Merchant ("FCM") and are either a clearing member of a futures clearing organization or have an affiliate that is a clearing member of a futures clearing organization, are permitted under this

<sup>3</sup> See Securities Exchange Act Release No. 52031 (July 14, 2005), 70 FR 42130 (July 21, 2005), (SR-NYSE-2002-19). On July 14, 2005, the Commission approved on a Pilot Basis expiring July 31, 2007, amendments to Exchange Rule 431 to permit the use of a prescribed risk-based margin requirement ("portfolio margin") for certain specified products as an alternative to the strategy based margin requirements currently required in section (a) through (f) of the Rule. Amendments to Rule 726 were also approved to require disclosure to, and written acknowledgement from, customers in connection with the use of portfolio margin. See NYSE Information Memo 05-56, dated August 18, 2005 for additional information.

<sup>4</sup> For purposes of this section of the Rule, the term "security future" utilizes the definition at section 3(a)(55) of the Exchange Act, excluding narrow-based security indices.

section (g) to combine an *eligible participant's* [a customer's] related instruments [(] as defined in section (g)(2)(C), [below] and] with listed, broad-based U.S. index options, index warrants and underlying instruments and compute a margin requirement for such combined products [{"cross margin"}] on a portfolio margin basis. [{"cross-margin"}]. Member organizations must confine cross-margin positions to a portfolio margin account dedicated exclusively to cross-margining.

The portfolio margin and cross-margining provisions of this Rule shall not apply to Individual Retirement Accounts ("IRAs").

(1) Member organizations *must* [will be expected to] monitor the risk of portfolio margin accounts and maintain a written risk analysis methodology for assessing the potential risk to the member organization's capital over a specified range of possible market movements of positions maintained in such accounts. The risk analysis methodology shall specify the computations to be made, the frequency of computations, the records to be reviewed and maintained, and the person(s) [position(s)] within the organization responsible for the risk function. This risk analysis methodology shall be made available to the Exchange upon request. In performing the risk analysis of portfolio margin accounts required by this Rule, each member organization shall include the following in the written risk analysis methodology:

(A) Procedures and guidelines for the determination, review and approval of credit limits to each *eligible participant*, [customer,] and across all *eligible participants*, [customers,] utilizing a portfolio margin account.

(B) Procedures and guidelines for monitoring credit risk exposure to the member organization, including intraday credit risk, related to portfolio margin accounts.

(C) Procedures and guidelines for the use of stress testing of portfolio margin accounts in order to monitor market risk exposure from individual accounts and in the aggregate.

(D) Procedures providing for the regular review and testing of these risk analysis procedures by an independent unit such as internal audit or other comparable group.

(2) Definitions.—For purposes of this section [paragraph] (g), the following terms shall have the meanings specified below:

(A) The term "listed option" [shall] means any option traded on a registered national securities exchange or

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

automated facility of a registered national securities association.

(B) [(F)] The term “underlying instrument” means long and short positions in an exchange traded fund or other fund product registered under the Investment Company Act of 1940, that holds the same securities, and in the same proportion, as contained in a broad-based index on which options are listed. The term “underlying instrument” shall not be deemed to include[,] futures contracts, options on futures contracts, underlying stock baskets, or unlisted instruments.

(C) [(E)] The term “related instrument” within an option class or product group means futures contracts and options on futures contracts covering the same underlying instrument.

(D) [(B)] The term “options class” refers to all options contracts covering the same underlying instrument.

(E) [(C)] The term “portfolio” means any eligible product, as defined in section (g)(6)(C)(1), [options of the same options class] grouped with their underlying instruments and related instruments.

(F) [(D)] The term “option series” relates to listed options and means all option contracts of the same type (either a call or a put) and exercise style, covering the same underlying instrument with the same exercise price, expiration date, and number of underlying units.

(G) The term “product group” means two or more portfolios of the same type (see table in section [sub-paragraph] (g)(2) [(H)] (I) below) for which it has been determined by Rule 15c3–1a under the Securities Exchange Act of 1934 that a percentage of offsetting profits may be applied to losses at the same valuation point.

(H) For purposes of portfolio margin and cross-margin the term “equity”, as defined in section (a)(4) of this Rule, includes the market value of any long or short option positions held in an eligible participant’s account.

(I) [(H)] The term “theoretical gains and losses” means the gain and loss in the value of individual eligible products [option series] and related instruments at 10 equidistant intervals (valuation points) ranging from an assumed movement (both up and down) in the current market value of the underlying instrument. The magnitude of the

valuation point range shall be as follows:<sup>5 6</sup>

Portfolio type	Up/down market move (high & low valuation points)
Listed Security Futures Contract and Listed Single Stock Option .....	+/- 15%
Non-High Capitalization, Broad-based U.S. Market Index Option .....	+/- 10%
High Capitalization, Broad-based U.S. Market Index Option .....	+6%/- 8%

(3) Approved Theoretical Pricing Models.—Theoretical pricing models must be approved by a Designated Examining Authority and reviewed by the Securities and Exchange Commission (“The Commission”) in order to qualify. Currently, the theoretical model utilized by [The] the Options Clearing Corporation (“[The] OCC”)[,] is the only model qualified pursuant to [The] the Commission’s Net Capital Rule. All member organizations [participating in the pilot program] shall obtain their theoretical values from [The] the OCC.

(4) Eligible Participants.—The application of the portfolio margin provisions of this section [paragraph] (g), including cross-margining, is limited to the following:

(A) any broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934;

(B) any member of a national futures exchange to the extent that listed index options hedge the member’s index futures; and

(C) any other person or entity not included in sections (g)(4)(A) and [through] (g)(4)(B) above that has or establishes, and maintains, equity of at least five [5] million dollars. For purposes of this equity requirement, all securities and futures accounts carried by the member organization for the same eligible participant [customer] may be combined provided ownership across the accounts is identical. A guarantee pursuant to section [paragraph] (f)(4) of this Rule is not permitted for purposes of the minimum equity requirement. For those accounts that are solely limited to listed security

<sup>5</sup> In accordance with section [sub-paragraph] (b)(1)(i)(B) of Rule 15c3–1a (Appendix A to Rule 15c3–1) under the Securities Exchange Act of 1934, 17 CFR 240.15c3–1a(b)(1)(i)(B).

<sup>6</sup> See footnote above.

<sup>7</sup> For purposes of this Rule, the term “related instruments,” within an option class or product means futures contracts and options on futures contracts covering the same underlying instrument.

futures contracts and listed single stock options, the five million dollar equity requirement shall be waived.

(5) Opening of Accounts.

(A) Member organizations must notify and receive approval from the Exchange prior to establishing a portfolio margin or cross-margin methodology for eligible participants.

(B) [(A)] Only eligible participants [customers] that have been approved for options transactions and approved to engage in uncovered short option contracts pursuant to Exchange Rule 721, are permitted to utilize a portfolio margin account.

(C) [(B)] On or before the date of the initial transaction in a portfolio margin account, a member organization shall:

(1) [(i)] furnish the eligible participant [customer] with a special written disclosure statement describing the nature and risks of portfolio margining and cross-margining which includes an acknowledgement for all portfolio margin account owners to sign, and an additional acknowledgement for owners that also engage in cross-margining to sign, attesting that they have read and understood the disclosure statement, and agree to the terms under which a portfolio margin account and the cross-margin account respectively, are provided (see Exchange Rule 726 (d)), and (2) [(ii)] obtain the signed acknowledgement(s) noted above from the eligible participant [customer] (both of which are required for cross-margining eligible participants [customers]) and record the date of receipt.

(6) Establishing Account and Eligible Positions.

(A) [(1)] Portfolio Margin Account. For purposes of applying the portfolio margin requirements [provided] prescribed in this [paragraph] section (g), member organizations are to establish and utilize a specific securities margin account, or sub-account of a margin account, clearly identified as a portfolio margin account that is separate from any other securities account carried for an eligible participant [a customer].

(B) [(2)] Cross-Margin Account. For purposes of combining related instruments [and] with listed, broad-based U.S. index options, index warrants, and underlying instruments, and applying the portfolio margin requirements, member[s] organizations are to establish [and utilize a portfolio margin account, clearly identified as] a cross-margin account[,], that is separate from any other securities account or portfolio margin account carried for an eligible participant. [a customer.]

A margin deficit in either the portfolio margin account or the cross-margin account of an *eligible participant* [a customer] may not be considered as satisfied by excess equity in the other account. Funds and/or securities must be transferred to the deficient account and a written record created and maintained.

(C) [(A)] Portfolio Margin Account—Eligible [Positions] Products

(1) For eligible participants as described in sections (g)(4)(A) through (g)(4)(C), [(i) A] a transaction in, or transfer of, [a listed, broad-based U.S. index option or index warrant] an *eligible product* may be effected in the portfolio margin account. *Eligible products under this section consist of:*

(i) a listed, broad-based U.S. index option or index warrant and underlying instrument.

(ii) a listed security futures contract or listed single stock option.

(2) [(ii)] A transaction in, or transfer of, an underlying instrument may be effected in the portfolio margin account provided a position in an offsetting listed, broad-based U.S. index option or index warrant is in the account or is established in the account on the same day.

(3) A transaction in, or transfer of, a listed security futures contract or listed single stock option may also be effected in the portfolio margin account.

(4) Any long position or any short position in any *eligible product* that is no longer part of a hedge strategy must be transferred from the portfolio margin account to the appropriate securities account within ten business days, subject to any applicable margin requirement, unless the position becomes part of a hedge strategy again. Member organizations must monitor portfolio margin accounts for possible abuse of this provision.

[(iii)] If, in the portfolio margin account, the listed, broad-based U.S. index option or index warrant position offsetting an underlying instrument position ceases to exist and is not replaced within ten business days, the underlying instrument position must be transferred to a regular margin account, subject to initial Regulation T and margined according to the other provisions of this Rule. Member organizations will be expected to monitor portfolio margin accounts for possible abuse of this provision.

(iv) In the event that fully paid for long options and/or index warrants are the only positions contained within a portfolio margin account, such long positions must be transferred to a securities account other than a portfolio margin account or cross-margin account

within 10 business days, subject to the margin required, unless the status of the account changes such that it is no longer composed solely of fully paid for long options and/or index warrants.]

(D) [(B)] Cross-Margin Account—Eligible [Positions] Products

(1) For eligible participants, as described in sections (g)(4)(A) through (g)(4)(C), a transaction in, or transfer of, an *eligible product* may be effected in the cross-margin account.

(2) [(i)] A transaction in, or transfer of, a related instrument may be effected in the cross-margin account provided a position in an offsetting *eligible product* [listed, U.S. broad-based index option, index warrant or underlying instrument] is in the account or is established in the account on the same day.

(3) Any long position or any short position in any *eligible product* that is no longer part of a hedge strategy must be transferred from the cross-margin account to the appropriate securities account or futures account within ten business days, subject to any applicable margin requirement, unless the position becomes part of a hedge strategy again. Member organizations must monitor cross-margin accounts for possible abuse of this provision.

[(ii)] If the listed, U.S. broad-based index option, index warrant or underlying instrument position offsetting a related instrument ceases to exist and is not replaced within ten business days, the related instrument position must be transferred to a futures account and margined accordingly. Member organizations will be expected to monitor cross-margin accounts for possible abuse of this provision.

[(iii)] In the event that fully paid for long options and/or index warrants (securities) are the only positions contained within a cross-margin account, such long positions must be transferred to a securities account other than a portfolio margin account or cross margin account within 10 business days, subject to the margin required, unless the status of the account changes such that it is no longer composed solely of fully paid for long options and/or index warrants.]

(7) Initial and Maintenance Margin Required.—The amount of margin required under this section [paragraph] (g) for each portfolio shall be the greater of:

(A) the amount for any of the 10 equidistant valuation points representing the largest theoretical loss as calculated pursuant to section [paragraph] (g)(8) below, or

(B) \$.375 for each contract [listed index option] and related instrument multiplied by the contract's or

instrument's multiplier, not to exceed the market value in the case of long positions in *eligible products*. [listed options and options on futures contracts.]

(C) Account guarantees pursuant to section [paragraph] (f)(4) of this Rule are not permitted for purposes of meeting initial and maintenance margin requirements.

(8) Method of Calculation.

(A) Long and short contracts, [positions in listed options,] including underlying instruments and related instruments, are to be grouped [by option class; each option class group being] as a "portfolio." [.] Each portfolio is categorized as one of the portfolio types specified in section [sub-paragraph] (g)(2)(I) [(H)] above.

(B) For each portfolio, theoretical gains and losses are calculated for each position as specified in section [sub-paragraph] (g)(2)(I) [(H)] above. For purposes of determining the theoretical gains and losses at each valuation point, member organizations shall obtain and utilize the theoretical values of *eligible products* as described in this section [a listed index option, underlying instrument or related instrument] rendered by an approved [a] theoretical pricing model. [that, in accordance with sub-paragraph (b)(1)(i)(B) of Rule 15c3-1a under the Securities Exchange Act of 1934, qualifies for purposes of determining the amount to be deducted in computing net capital under a portfolio based methodology.]

(C) Offsets. Within each portfolio, theoretical gains and losses may be netted fully at each valuation point.

Offsets between portfolios within *eligible product groups*, as described in section (g)(2)(I), [the High Capitalization, Broad-based Index Option product group and the Non-High Capitalization, Broad-based Index Option product group] may then be applied as permitted by Rule 15c3-1a under the Securities Exchange Act of 1934.

(D) After applying the [Offsets] *offsets* above, the sum of the greatest loss from each portfolio is computed to arrive at the total margin required for the account (subject to the per contract minimum).

(9) Portfolio Margin Minimum Equity Call [Equity Deficiency .—]

(A) If, at any time, the equity in the portfolio margin or cross-margin account of an *eligible participant*, as described in section (g)(4)(C), declines below the [5] five million dollar minimum equity required, [under sub-paragraph (4)(D) of this paragraph (g)] and is not restored to at least [5] five million dollars within three [(3)] business days (T+3) by a deposit of

funds and/or securities, [;] member organizations are prohibited from accepting opening orders starting on T+4, except that opening orders entered for the purpose of hedging existing positions may be accepted if the result would be to lower margin requirements. This prohibition shall remain in effect until equity of five [5] million dollars is established. *For those accounts that are solely limited to security futures contracts and single stock options, the five million dollar equity requirement shall be waived.*

(B) Member organizations will not be permitted to deduct any portfolio margin minimum equity call amount from Net Capital in lieu of collecting the minimum equity required.

(10) [(11)] *Portfolio Margin Maintenance Call* [Additional Margin.—]

(A) If at any time, the equity in the [any] portfolio margin or cross-margin account of an eligible participant, as described in sections (g)(4)(A) through (g)(4)(C), is less than the margin required, the eligible participant [customer] may deposit additional margin or establish a hedge to meet the margin requirement within [one] three business days [(T+1)] (T+3). During the three business day period, member organizations are prohibited from accepting opening orders, except that opening orders entered for the purpose of hedging existing positions may be accepted if the result would be to lower margin requirements. In the event an eligible participant [a customer] fails to hedge existing positions or deposit additional margin within [one] three business days, the member organization must liquidate positions in an amount sufficient to, at a minimum, lower the total margin required to an amount less than or equal to the account equity. [Paragraph (f)(7) of this Rule—Practice of Meeting Regulation T Margin Calls by Liquidation Prohibited shall not apply to portfolio margin accounts. However, member organizations will be expected to monitor portfolio margin and cross-margin accounts for possible abuse of this provision.]

(B) *If the portfolio margin maintenance call is not met by the close of business T+1, member organizations will be required to deduct from Net Capital the amount of the call until such time the call is satisfied.*

(C) Member organizations will not be permitted to deduct any portfolio margin maintenance call amount from Net Capital in lieu of collecting the margin required.

(11) [(10)] *Determination of Value for Margin Purposes.*—For the purposes of this section [paragraph] (g), all eligible

products [listed index options] and related instrument positions shall be valued at current market prices. Account equity for the purposes of this section [paragraph] (g) shall be calculated separately for each portfolio margin or cross-margin account. [by adding the current market value of all long positions, subtracting the current market value of all short positions, and adding the credit (or subtracting the debit) balance in the account.]

(12) *Net Capital Treatment of Portfolio Margin and Cross-Margin Accounts.*

(A) No member organization that requires margin in any eligible participant [customer] account pursuant to section [paragraph] (g) of this Rule shall permit [gross] the aggregate eligible participant [customer] portfolio margin and cross-margin initial and maintenance requirements to exceed [1,000 percent] ten times [of] its net capital for any period exceeding three business days. The member organization shall, beginning on the fourth business day, cease opening new portfolio margin and cross-margin accounts until compliance is achieved.

(B) If, at any time, a member organization's [gross] aggregate eligible participant [customer] portfolio margin and cross-margin requirements exceed [1,000 percent] ten times [of] its net capital, the member organization shall immediately transmit telegraphic or facsimile notice of such deficiency to the principal office of the Securities and Exchange Commission in Washington, DC, [450 Fifth Street, NW., Washington, DC 20549; to] the district or regional office of the Securities and Exchange Commission for the district or region in which the member organization maintains its principal place of business; and to the New York Stock Exchange. [its Designated Examining Authority.]

(13) *Day Trading Requirements.*—The requirements of section [sub-paragraph] (f)(8)(B) of this Rule—Day-Trading shall not apply to portfolio margin accounts or [including] cross-margin accounts.

(14) *Cross-Margin Accounts—Requirements to Liquidate*

(A) A member is required immediately either to liquidate, or transfer to another broker-dealer eligible to carry cross-margin accounts, all eligible participant [customer] cross-margin accounts that contain positions eligible for cross-margining [in futures and/or options on futures] if the member is:

(1) [(i)] insolvent as defined in section 101 of title 11 of the United States Code, or is unable to meet its obligations as they mature;

(2) [(ii)] the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed;

(3) [(iii)] not in compliance with applicable requirements under the Securities Exchange Act of 1934 or rules of the Securities and Exchange Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of eligible participant's [customer's] securities; or

(4) [(iv)] unable to make such computations as may be necessary to establish compliance with such financial responsibility or hypothecation rules.

(B) Nothing in this section [paragraph] (14) shall be construed as limiting or restricting in any way the exercise of any right of a registered clearing agency to liquidate or cause the liquidation of positions in accordance with its by-laws and rules.

\* \* \* \* \*

*Delivery of Options Disclosure Document and Prospectus*

Rule 726 (a) through (c) unchanged.

*Portfolio Margining and Cross-Margining Disclosure Statement and Acknowledgement*

(d) The special written disclosure statement describing the nature and risks of portfolio margining and cross-margining, and acknowledgement for an eligible participant [customer] signature, required by Rule 431(g)(5)(B) shall be in a format prescribed by the Exchange or in a format developed by the member organization, provided it contains substantially similar information as in the prescribed Exchange format and has received the prior written approval of the Exchange.

*Sample Portfolio Margining and Cross-Margining Risk Disclosure Statement To Satisfy Requirements of Exchange Rule 431(g)*

*Overview of Portfolio Margining*

1. Portfolio margining is a margin methodology that sets margin requirements for an account based on the greatest projected net loss of all positions in a “product class” or “product group” as determined by an options pricing model using multiple pricing scenarios. These pricing scenarios are designed to measure the theoretical loss of the positions given changes in both the underlying price and implied volatility inputs to the model. Portfolio margining is currently

limited to product classes and groups of index products relating to *listed*, broad-based market indexes, *listed security futures contracts and listed single stock options*.

2. The goal of portfolio margining is to set levels of margin that more precisely reflects actual net risk. The *eligible participant* [customer] benefits from portfolio margining in that margin requirements calculated on net risk are generally lower than alternative "position" or "strategy" based methodologies for determining margin requirements. Lower margin requirements allow the customer more leverage in an account.

#### Customers Eligible for Portfolio Margining

3. To be eligible for portfolio margining, customers (other than broker-dealers) must meet the basic standards for having an options account that is approved for uncovered writing and must have and maintain at all times account net equity of not less than [\$5] *five million dollars*, aggregated across all accounts under identical ownership at the clearing broker. [The] *This* identical ownership requirement excludes accounts held by the same customer in different capacities (e.g., as a trustee and as an individual) and accounts where ownership is overlapping but not identical (e.g., individual accounts and joint accounts). *For those accounts that are solely limited to listed security futures contracts and listed single stock options, the five million dollar equity requirement shall be waived.*

#### Positions Eligible for a Portfolio Margin Account

4. All positions in *listed security futures contracts, listed single stock options, listed*, broad-based U.S. market index options [and] or index warrants, [listed on a national securities exchange, and] exchange traded funds and other products registered under the Investment Company Act of 1940 that are managed to track the same index that underlies permitted index options, are eligible for a portfolio margin account.

#### Special Rules for Portfolio Margin Accounts

5. A portfolio margin account may be either a separate account or a sub-account of a customer's *standard* [regular] margin account. In the case of a sub-account, equity in the *standard* [regular] account will be available to satisfy any margin requirement in the portfolio margin sub-account without transfer to the sub-account.

6. A portfolio margin account or sub-account will be subject to a minimum margin requirement of \$.375 multiplied by the *contract's* [index] multiplier for every *contract* [option contract or index warrant] carried long or short in the account. No minimum margin is required in the case of eligible exchange traded funds or other eligible fund products.

7. Margin calls in the portfolio margin account or sub-account, regardless of whether due to new commitments or the effect of adverse market [moves] *movements* on existing positions, must be met within [one] *three* business days. Any shortfall in aggregate net equity across accounts must be met within three business days. Failure to meet a *portfolio margin maintenance* call when due will result in immediate liquidation of positions to the extent necessary to reduce the margin requirement. Failure to meet [an] *a minimum* equity call prior to the end of the third business day will result in a prohibition on entering any opening orders, with the exception of opening orders that hedge existing positions, beginning on the fourth business day and continuing until such time as the minimum equity requirement is satisfied.

8. A position in an exchange traded index fund or other eligible fund product may not be established in a portfolio margin account unless there exists, or there is established on the same day, an offsetting position in securities options, or other eligible securities. *The position(s)* [Exchange traded index funds and/or other eligible funds] will be transferred out of the portfolio margin account and into a *standard* [regular] securities account subject to *any applicable margin requirement* [initial Regulation T and NYSE Rule 431 margin] if the offsetting securities options, other eligible securities and/or related instruments no longer remain in the account for ten business days.

9. When a broker-dealer carries a *standard* [regular] cash account or margin account for a customer, the broker-dealer is limited by rules of the Securities and Exchange Commission and of The Options Clearing Corporation ("OCC") to the extent to which the broker-dealer may permit OCC to have a lien against long option positions in those accounts. In contrast, OCC will have a lien against all long option positions that are carried by a broker-dealer in a portfolio margin account, and this could, under certain circumstances, result in greater losses to a customer having long option positions in such an account in the event of the insolvency of the customer's broker.

Accordingly, to the extent that a customer does not borrow against long option positions in a portfolio margin account or have margin requirements in the account against which the long option can be credited, there is no advantage to carrying the long options in a portfolio margin account and the customer should consider carrying them in an account other than a portfolio margin account.

#### Special Risks of Portfolio Margin Accounts

10. Portfolio margining generally permits greater leverage in an account, and greater leverage creates greater losses in the event of adverse market movements.

11. Because the time limit for meeting margin calls is shorter than in a *standard* [regular] margin account, there is increased risk that a customer's portfolio margin account will be liquidated involuntarily, possibly causing losses to the customer.

12. Because portfolio margin requirements are determined using sophisticated mathematical calculations and theoretical values that must be calculated from market data, it may be more difficult for customers to predict the size of future margin calls in a portfolio margin account. This is particularly true in the case of customers who do not have access to specialized software necessary to make such calculations or who do not receive theoretical values calculated and distributed periodically by The Options Clearing Corporation.

13. For the reasons noted above, a customer that carries long options positions in a portfolio margin account could, under certain circumstances, be less likely to recover the full value of those positions in the event of the insolvency of the carrying broker.

14. Trading of securities index products in a portfolio margin account is generally subject to all the risks of trading those same products in a *standard* [regular] securities margin account. Customers should be thoroughly familiar with the risk disclosure materials applicable to those products, including the booklet entitled "Characteristics and Risks of Standardized Options".

15. Customers should consult with their tax advisers to be certain that they are familiar with the tax treatment of transactions in securities *options* [index] and *futures* products.

16. The descriptions in this disclosure statement relating to eligibility requirements for portfolio margin accounts, and minimum equity and margin requirements for those accounts,

are minimums imposed under Exchange rules. Time frames within which margin and equity calls must be met are maximums imposed under Exchange rules. Broker-dealers may impose their own more stringent requirements.

#### Overview Of Cross-Margining

17. In a cross-margin account, [With cross-margining,] index futures, [and] options on index futures are combined with offsetting positions in securities index options and underlying instruments, for the purpose of computing a margin requirement based on the net risk. This generally produces lower margin requirements than if the related instruments<sup>7</sup> and securities products are viewed separately, thus providing more leverage in the account.

18. Cross-margining must be *effected* [done] in a portfolio margin account type. A separate portfolio margin account must be established exclusively for cross-margining.

19. *Cross-margining is achieved when* [When] index futures and options on futures are combined with offsetting positions in index options and underlying instruments in a dedicated account, and a portfolio margining methodology is applied to them. [, cross-margining is achieved.]

#### Customers Eligible for Cross-Margining

20. The eligibility requirements for cross-margining are generally the same as for portfolio margining. [,] *Accordingly,* [and] any customer eligible for portfolio margining is eligible for cross-margining.

21. Members of futures exchanges on which cross-margining eligible index contracts are traded are also permitted to carry positions in cross-margin accounts without regard to the minimum aggregate account equity.

#### Positions Eligible for Cross-Margining

22. All securities products eligible for portfolio margining are also eligible for cross-margining.

23. All broad-based U.S. listed market index futures and options on index futures traded on a designated contract market subject to the jurisdiction of the Commodity Futures Trading Commission ("CFTC") are eligible for cross-margining.

#### Special Rules for Cross-Margining

24. Cross-margining must be conducted in a portfolio margin account type. A separate portfolio margin account must be established exclusively

for cross-margining. A cross-margin account is a securities account, and must be maintained separately from all other securities account.

25. Cross-margining is automatically accomplished with the portfolio margining methodology. Cross-margin positions are subject to the same minimum margin requirement for every contract, including futures contracts.

26. Margin calls arising in a cross-margin account, and any shortfall in aggregate net equity across accounts, must be satisfied within the same timeframe, and subject to the same consequences, as in a portfolio margin account.

27. A position in a futures product may not be established in a cross-margin account unless there exists, or there is established on the same day, an offsetting position in securities options and/or other eligible securities. Related instruments will be transferred out of the cross-margin account and into a futures account if, for more than ten business days and for any reason, the offsetting securities options and/or other eligible securities no longer remain in the account. If the transfer of related instruments to a futures account causes the futures account to be undermargined, a margin call will be issued or positions will be liquidated to the extent necessary to eliminate the deficit.

28. Customers participating in cross-margining will be required to sign an agreement acknowledging that their positions and property in the cross-margin account will be subject to the customer protection provisions of Rule 15c3-3 under the Securities Exchange Act of 1934 and the Securities Investor Protection Act, and will not be subject to the provisions of the Commodity Exchange Act, including segregation of funds.

29. According to the rules of the exchanges, a broker-dealer is required to immediately liquidate[,] or, if feasible, transfer to another broker-dealer eligible to carry cross-margin accounts, all customer cross-margin accounts that contain positions in futures and/or options on futures in the event that the carrying broker-dealer becomes insolvent.

30. In signing the agreement referred to in paragraph 28 above, a customer also acknowledges that a cross-margin account that contains positions in futures and/or options on futures will be immediately liquidated, or, if feasible, transferred to another broker-dealer eligible to carry cross-margin accounts, in the event that the carrying broker-dealer becomes insolvent.

#### Special Risks of Cross-Margining

31. Cross-margining must be conducted in a portfolio margin account type. Generally, cross-margining and the portfolio margining methodology both contribute to provide greater leverage than a *standard* [regular] margin account, and greater leverage creates greater losses in the event of adverse market movements.

32. Since cross-margining must be conducted in a portfolio margin account type, the time required for meeting margin calls is shorter than in a *standard* [regular] securities margin account and may be shorter than the time ordinarily required by a futures commission merchant for meeting margin calls in a futures account. Consequently, there is increased risk that a customer's cross-margin positions will be liquidated involuntarily, causing possible loss to the customer.

33. As noted above, cross-margin accounts are securities accounts and are subject to the customer protections set forth in Rule 15c3-3 under the Securities Exchange Act of 1934 and the Securities Investor Protection Act. Cross-margin positions are not subject to the customer protection rules under the segregation provisions of the Commodity Exchange Act and the rules of the CFTC adopted pursuant to the Commodity Exchange Act.

34. Trading of index options and futures contracts in a cross-margin account is generally subject to all the risks of trading those same products in a futures account or a standard [regular] securities margin account. Customers should be thoroughly familiar with the risk disclosure materials applicable to those products, including the booklet entitled Characteristics and Risks of Standardized Options and the risk disclosure document required by the CFTC to be delivered to futures customers. Because this disclosure statement does not disclose the risks and other significant aspects of trading in futures and options, customers should review those materials carefully before trading in a cross-margin account.

35. Customers should bear in mind that the discrepancies in the cash flow characteristics of futures and certain options are still present even when those products are carried together in a cross-margin account. Both futures and options contracts are generally marked to the market at least once each business day, but the marks may take place with different frequency and at different times within the day. When a futures contract is marked to the market, the gain or loss is immediately credited to

<sup>7</sup> For purposes of this Rule, the term "related instruments," within an option class or product means futures contracts and options on futures contracts covering the same underlying instrument.

or debited from[, respectively,] the customer's account in cash. While an increase in the value of a long option contract may increase the equity in the account, the gain is not realized until the option is sold or exercised. Accordingly, a customer may be required to deposit cash in the account in order to meet a variation payment on a futures contract even though the customer is in a hedged position and has experienced a corresponding (but yet unrealized) gain on a long option. Alternatively, a customer who is in a hedged position and would otherwise be entitled to receive a variation payment on a futures contract may find that the cash is required to be held in the account as margin collateral on an offsetting option position.

36. Customers should consult with their tax advisers to be certain that they are familiar with the tax treatment of transactions in index products, including tax consequences of trading strategies involving both futures and option contracts.

37. The descriptions in this disclosure statement relating to eligibility requirements for cross-margining, and minimum equity and margin requirements for cross margin accounts, are minimums imposed under Exchange rules. Time frames within which margin and equity calls must be met are maximums imposed under Exchange rules. The broker-dealer carrying a customer's portfolio margin account, including any cross-margin account, may impose [its own] more stringent requirements.

\* \* \* \* \*

#### *Sample Portfolio Margining and Cross-Margining Acknowledgements*

##### **Acknowledgement for Customers Utilizing a Portfolio Margin Account—Cross-Margining And Non-Cross-Margining—**

Rule 15c3-3 under the Securities Exchange Act of 1934 requires that a broker or dealer promptly obtain and maintain physical possession or control of all fully-paid securities and excess margin securities of a customer. Fully-paid securities are securities carried in a cash account and margin equity securities carried in a margin or special account (other than a cash account) that have been fully paid for. Excess margin securities are a customer's margin securities having a market value in excess of 140% of the total of the debit balances in the customer's non-cash accounts. For the purposes of Rule 15c3-3, securities held subject to a lien to secure obligations of the broker-dealer are not within the broker-dealer's

physical possession or control. The Commission staff has taken the position that all long option positions in a customer's portfolio[-]margin account (including any cross-margin account) may be subject to such a lien by OCC and will not be deemed fully-paid or excess margin securities under Rule 15c3-3.

The hypothecation rules under the Securities Exchange Act of 1934 (Rules 8c-1 and 15c2-1)[,] prohibit broker-dealers from permitting the hypothecation of customer securities in a manner that allows those securities to be subject to any lien or liens in an amount that exceeds the customer's aggregate indebtedness. However, all long option positions in a portfolio[-]margin account (including any cross-margining account) will be subject to OCC's lien, including any positions that exceed the customer's aggregate indebtedness. The Commission staff has taken a position that would [to] allow customers to carry positions in portfolio[-]margin accounts[,] (including any cross-margining account) even when those positions exceed the customer's aggregate indebtedness. Accordingly, within a portfolio margin account or cross-margin account, to the extent that you have long option positions that do not operate to offset your aggregate indebtedness and thereby reduce your margin requirement, you receive no benefit from carrying those positions in your portfolio[-]margin account or cross-margin account and incur the additional risk of OCC's lien on your long option position(s).

By signing below the customer affirms that the customer has read and understood the foregoing disclosure statement and acknowledges and agrees that long option positions in portfolio[-]margin accounts, and cross-margining accounts, will be exempted from certain customer protection rules of the Securities and Exchange Commission as described above and will be subject to a lien by the options clearing corporation without regard to such rules.

Customer Name: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

(Signature/title)

##### **Acknowledgement for Customers Engaged in Cross-Margining**

As disclosed above, futures contracts and other property carried in customer accounts with Futures Commission Merchants ("FCM") are normally subject to special protection afforded under the customer segregation provisions of the Commodity Exchange

Act ("CEA") and the rules of the Commodity Futures Trading Commission adopted pursuant to the CEA. These rules require that customer funds be segregated from the accounts of financial intermediaries and be accounted for separately. However, they do not provide for, and *standard* [regular] futures accounts do not enjoy the benefit of, insurance protecting customer accounts against loss in the event of the insolvency of the intermediary carrying the accounts.

As discussed above, cross-margining must be conducted in a portfolio margin account, dedicated exclusively to cross-margining and cross-margin accounts are not treated as a futures account with an FCM. Instead, cross-margin accounts are treated as securities accounts carried with broker-dealers. As such, cross-margin accounts are covered by Rule 15c3-3 under the Securities Exchange Act of 1934, which protects customer accounts. Rule 15c3-3, among other things, requires a broker-dealer to maintain physical possession or control of all fully-paid and excess margin securities and maintain a special reserve account for the benefit of their customers. However, with regard to cross-margin accounts, there is an exception to the possession or control requirement of Rule 15c3-3 that permits The Options Clearing Corporation to have a lien on long positions. This exception is outlined in a separate acknowledgement form that must be signed prior to or concurrent with this form. Additionally, the Securities Investor Protection Corporation ("SIPC") insures customer accounts against the financial insolvency of a broker-dealer in the amount of up to \$500,000 to protect against the loss of registered securities and cash maintained in the account for purchasing securities or as proceeds from selling securities (although the limit on cash claims is \$100,000). According to the rules of the exchanges, a broker-dealer is required to immediately liquidate[,], or, if feasible, transfer to another broker-dealer eligible to carry cross-margin accounts, all customer cross-margin accounts that contain positions in futures and/or options on futures in the event that the carrying broker-dealer becomes insolvent.

By signing below the customer affirms that the customer has read and understood the foregoing disclosure statement and acknowledges and agrees that: (1) Positions and property in cross-margining accounts, will not be subject to the customer protection rules under the customer segregation provisions of the Commodity Exchange Act and the

rules of the Commodity Futures Trading Commission adopted pursuant to the CEA and (2) cross-margining accounts that contain positions in futures and/or options on futures will be immediately liquidated, or if feasible, transferred to another broker-dealer eligible to carry cross-margin accounts in the event that the carrying broker-dealer becomes insolvent.

Customer Name: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

(Signature/title)

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

Amendments to NYSE Rule 431 ("Margin Requirements") are proposed that would include security futures<sup>8</sup> and single stock options as products eligible for treatment under portfolio margin requirements as part of the Portfolio Margin Pilot Program recently approved by the Commission. Amendments to Rule 726 ("Delivery of Options Disclosure Document and Prospectus") also are proposed to include the SEC approved products on the disclosure document required to be furnished to customers pursuant to this rule.

#### a. Background

Section 7(a)<sup>9</sup> of the Exchange Act of 1934<sup>10</sup> empowers the Board of Governors of the Federal Reserve System to prescribe the rules and regulations regarding credit that may be extended by broker-dealers on securities (Regulation T) to their customers. NYSE Rule 431 prescribes specific margin

requirements that must be maintained in all customer accounts, based on the type of securities products held in such accounts.

In April 1996, the Exchange established a Rule 431 Committee (the "Committee") to assess the adequacy of Rule 431 on an ongoing basis, review margin requirements, and make recommendations for change. A number of proposed amendments resulting from the Committee's recommendations have been approved by the Exchange's Board of Directors since the Committee was established. Similarly, the Committee has endorsed the proposed amendments discussed below.<sup>11</sup>

#### b. The Pilot

The Board of Governors of the Federal Reserve System in its amendments to Regulation T in 1998 permitted SROs to implement portfolio margin rules, subject to SEC approval.<sup>12</sup> As noted above, on July 14, 2005 the Commission approved amendments to Exchange Rules 431 and 726 to permit, on a two year pilot basis, the use of a prescribed risk-based methodology ("Portfolio Margin")<sup>13</sup> for certain products as an alternative to the strategy or position based margin requirements currently required in Rule 431(a) through (f). Exchange member organizations may utilize portfolio margin for listed, broad-based U.S. index options and index warrants, along with any underlying instruments.<sup>14</sup> These positions are to be margined (either for initial or

<sup>11</sup> The Committee is composed of several member organizations, including Goldman, Sachs & Co., Morgan Stanley & Co., Inc., Merrill Lynch, Pierce, Fenner and Smith, Inc., Bear Stearns Corp. and Credit Suisse First Boston Corp. and several self-regulatory organizations, including: the NYSE, the Chicago Board Options Exchange, the Options, Clearing Corporation, the American Stock Exchange, the Chicago Board of Trade, the Chicago Mercantile Exchange, and the National Association of Securities Dealers.

<sup>12</sup> See Federal Reserve System, "Securities Credit Transactions; Borrowing by Broker and Dealers;" Regulations G, T, U and X; Docket Nos. R-0905, R-0923 and R-0944, 63 FR 2806 (January 16, 1998).

<sup>13</sup> As a pre-condition to permitting portfolio margining, member organization are required to establish procedures and guidelines to monitor credit risk to the member organization's capital, including intra-day credit risk and stress testing of portfolio margin accounts. Further, member organizations must establish procedures for regular review and testing of these required risk analysis procedures (see Rule 431(g)(1)).

<sup>14</sup> For purposes of these amendments, the term "underlying instrument," means long and short positions in an exchange traded fund of other fund product registered under the Investment Company Act of 1940, that holds the same securities, and in the same proportion, as contained in a broad-based index on which options are listed. The term "underlying instrument" shall not be deemed to include futures contracts, options on futures contracts, underlying stock baskets, or unlisted instruments.

maintenance) in a separate portfolio margin account dedicated exclusively for such margin computation.

#### c. Strategy or Positioned-Based Margin Requirements

Prior to the Pilot, member organizations were subject, pursuant to NYSE Rule 431, to strategy or positioned-based margin requirements. This methodology applied specific margin percentage requirements as prescribed in Rule 431 to each security position and/or strategy, either long or short, held in a customer's account, irrespective of the fact that all security (e.g., options) prices do not change equally (in percentage terms) with a change in the price of the underlying security. As discussed in more detail below, when utilizing a portfolio margin methodology, offsets are fully realized, whereas under strategy or position-based methodology, positions and or groups of positions comprising a single strategy are margined independently of each other and offsets between them do not efficiently impact the total margin requirement.

#### d. Portfolio Margin Requirements

Portfolio margining is a margin methodology that sets margin requirements for an account based on the greatest projected net loss of all positions in a product class or group. The Pilot utilizes a Commission approved theoretical options pricing model using multiple pricing scenarios to set or determine the risk level.<sup>15</sup> These scenarios are designed to measure the theoretical loss of the positions given changes in both the underlying price and implied volatility inputs to the model. Accordingly, the margin required is based on the greatest loss that would be incurred in a portfolio if the value of its components move up or down by a predetermined amount.

Generally, the purpose and benefit of portfolio margining is to efficiently set levels of margin that reflect historical moves that more precisely reflects actual net risk of all positions in the account. A customer benefits from portfolio margining in that margin requirements calculated on net position

<sup>15</sup> The theoretical options pricing model is used to derive position values at each valuation point for the purpose of determining the gain or loss. The amount of initial and maintenance margin required with respect to a portfolio would be the larger of: (1) The greatest loss amount among the valuation calculations; or (2) the sum of \$.375 for each option and security future in the portfolio multiplied by the contract's (e.g. 100 shares per contract) or instrument's multiplier. This computation establishes a minimum margin requirement to ensure that a certain level of margin is required from a customer.

<sup>8</sup> For purposes of this filing term "security futures" utilizes the definition at Section 3(a)(55) of the Exchange Act, excluding narrow-based security indices.

<sup>9</sup> 15 U.S.C. 78g.

<sup>10</sup> 15 U.S.C. 78a et seq.



risk are generally lower than strategy-based margin methodologies currently in place. In permitting margin computation based on actual net risk, member organizations are no longer required to compute a margin requirement for each individual position or strategy in a customer's account (see NYSE Rule 431).

As discussed in more detail below, utilizing portfolio margin for options portfolios and any related instruments enables the portfolio to be subjected to certain preset market volatility parameters that reflect historical moves in the underlying security thereby assessing potential loss in the portfolio in the aggregate. Accordingly, such a methodology provides an accurate and realistic assessment of reasonable margin requirements.

#### e. Proposed Amendments

The Exchange and CBOE received letters in late September 2005 from Commission Chairman Christopher Cox asking the SROs to consider expanding portfolio margining to a broader universe of products. The Commission encouraged the Exchanges to file a rule proposal before year-end.<sup>16</sup> Accordingly, the Exchange is proposing the amendments discussed below.

#### f. Eligible Products/Minimum Equity Requirements

The proposed amendments to Rule 431 seek to expand the eligible products previously approved, provided all products can be priced within a prescribed risk-based theoretical pricing methodology. Specifically, the proposed amendments will expand the eligible products to include security futures as well as listed single stock options. The proposed amendments will also permit customers effecting transactions in security futures and listed single stock options to do so without maintaining the \$5 million equity requirement, which is currently required under the Pilot for all other eligible products.

#### g. Valuation Points

Further, the proposed amendments will establish theoretical prices at 10 equidistant valuation points within a range consisting of an increase or a decrease of  $\pm 15\%$ <sup>17</sup> (i.e.,  $\pm 3\%$ ,

$6\%$ ,  $9\%$ ,  $12\%$ , and  $15\%$ ) in the current market value of the underlying instrument. As proposed, the price range for computing a portfolio margin requirement is the same parameter required under Appendix A of Rule 15c3-1a<sup>18</sup> under the Exchange Act for computing deductions to a firm's net capital for proprietary positions. Currently the only theoretical model qualified pursuant to Rule 15c3-1a under the Exchange Act is the Theoretical Intermarket Margin System ("TIMS") administered by The Options Clearing Corporation.

#### h. Margin Deficiency

In addition, the proposed amendments will require a member organization to deduct from its net capital the amount of any portfolio margin maintenance call which is not met by the close of business of trade date plus one (T+1).<sup>19</sup> Member organizations will not be permitted to deduct any portfolio margin maintenance call amount from net capital in lieu of collecting the required margin.

#### i. Definitions

The proposed amendments expand upon the core definition of the term "equity" as defined in section (a)(4) of Rule 431 (see proposed Rule 431(g)(2)(H)) for purposes of portfolio margin and cross-margin to include the market value of any long or short option positions held in an eligible participant's account. In addition, other non-substantive changes and/or modification to other definitions in Rule 431 were made in light of the proposed amendments.

Options ( $\pm 10\%$ ) and High Capitalization/Broad-based U.S. Market Index Options ( $\pm 8\%$ ).

<sup>18</sup> 17 CFR 240.15c3-1a(b)(1)(i)(B). The requirements of this rule include, among other things, that any model be non-proprietary, approved by a Designated Examining Authority ("DEA") and available on the same terms to all broker-dealers. Referencing to the SEC's net capital coupled with DEA approval and SEC review assures uniformity across pricing models and that portfolio and cross-margin requirements will not vary significantly from firm to firm.

<sup>19</sup> Several paragraphs in the proposed rule amendments use the term "portfolio margin maintenance call" rather than the term "portfolio margin maintenance deficiency." The proposed rule text was intended to measure the time period for a customer to meet a margin call or a member to make a deduction in calculating net capital from the time of the margin deficiency, not the time of the margin call. The Exchange has represented that it will amend the proposed rule changes to clarify this technical non-substantive change prior to any Commission approval of the proposed rule change. Telephone conversation between William Jannace, Director, Rule and Interpretive Standards, Member Firm Regulation, NYSE and Randall Roy, Branch Chief, and Sheila Swartz, Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

#### j. Disclosure Document and Customer Attestation

Exchange Rule 726 prescribes requirements for the delivery of options disclosure documents concerning the opening of customer accounts. As part of the Pilot amendments, members and member organizations are required to provide every portfolio margin customer with a written risk disclosure statement at or prior to the initial opening of a portfolio margin account. The disclosure statement is divided into two sections, one dealing with portfolio margining and the other with cross-margining. The statement discloses the special risk and operation of portfolio margin accounts, including cross-margining, and the differences between portfolio margin and strategy-based margin requirements. The disclosure statement also addresses who is eligible to open a portfolio margin account, the instruments that are allowed, and when deposits to meet margin and minimum equity are required.

In addition, at or prior to the time a portfolio margin account is initially opened, members and member organizations are required to obtain a signed acknowledgement regarding certain implications of portfolio margining (e.g. treatment under Exchange Act Rules 8c-1, 15c2-1 and 15c3-3) from the customer. Further, prior to providing cross-margining, members and member organizations are required to obtain a second signed customer acknowledgement relative to the segregation treatment for futures contracts and Securities Investor Protection Corporation coverage. As proposed, the disclosure document required by Rule 726 is being amended to incorporate the approved Commission products.

Finally, the filing includes several minor technical amendments to the rules for purposes of clarity and consistency.

## 2. Statutory Basis

The statutory basis for this proposed rule change is Section 6(b)(5)<sup>20</sup> of the Exchange Act which requires, among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and

<sup>16</sup> Chairman of the Commission, Christopher Cox, in a letter dated September 27, 2005, to William J. Brodsky and John A. Thain, the Chief Executive Offices of CBOE and NYSE, respectively, encouraged each SRO to file a rule proposal to make portfolio margin available to equity options and security futures with the Commission by year-end 2005.

<sup>17</sup> The Pilot established valuation points for the following eligible products: Non-High Capitalization/Broad-based U.S. Market Index

<sup>20</sup> 15 U.S.C. 78f(b)(5).

open market and national market system, and in general to protect investors and the public interest. The proposed amendments are consistent with this section in that they will better align margin requirements with the actual risk of hedged products, will also potentially alleviate excess margin calls and potentially reduce the risk of forced liquidations of positions in customer accounts.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended; 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 Exchange 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2005-93 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NYSE-2005-93. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submission should refer to File Number SR-NYSE-2005-93 and should be submitted on or before February 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**Nancy M. Morris,**  
*Secretary.*

[FR Doc. E6-668 Filed 1-20-06; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53124; File No. SR-NYSE-2005-37]

### **Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving a Proposed Rule Change and Amendments No. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Thereto Relating to Amendments to Certain Sections of the Exchange Constitution Concerning the Exchange's Hearing Board and Related Amendments to Exchange Rule 475 and Rule 476**

January 13, 2006.

#### **I. Introduction**

On May 23, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Article IX of the Exchange's Constitution and Exchange Rules 475 and 476 to modify certain aspects of the Exchange's disciplinary procedures and to provide a structure for a summary suspension hearing and a "call up" procedure for review by members of the Board of Directors ("Board"), certain members of the Board of Executives listed in NYSE Rule 476(f), any member of the Regulation, Enforcement and Listing Standards Committee, and either the Division of the Exchange that initiated the proceedings or the respondent. On September 9, 2005, the NYSE filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on October 26, 2005.<sup>3</sup> The Commission received no comments regarding the proposal, as amended. On November 28, 2005 and December 2, 2005, the NYSE filed Amendments No. 2<sup>4</sup> and 3,<sup>5</sup> respectively, to the proposed rule change. This order approves the proposed rule change, as amended by

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 52638 (October 19, 2005), 70 FR 61866.

<sup>4</sup> In Amendment No. 2, the Exchange makes minor, non-substantive changes to the rule text contained in Exhibit 5 of the proposed rule change. This was a technical amendment and is not subject to notice and comment.

<sup>5</sup> In Amendment No. 3, the Exchange proposes that the proposed rule change, as amended, be implemented on or about April 1, 2006 and attaches a revised Exhibit 5 to reflect changes made to the rule text in Amendments No. 1 and 2.

<sup>21</sup> 17 CFR 200.30-3(a)(12).

Amendments No. 1 and 2, grants accelerated approval to Amendment No. 3, and solicits comments from interested persons on Amendment No. 3 to the proposed rule change.

## II. Description of the Proposal

The Exchange proposes to amend Article IX of the Exchange's Constitution and NYSE Rules 475 and 476 to modify certain aspects of the Exchange's disciplinary procedures and to provide a structure for a summary suspension hearing and a "call-up" procedure for review by members of the Board, certain members of the Board of Executives listed in NYSE Rule 476(f), any member of the Regulation, Enforcement and Listing Standards Committee, and either the Division of the Exchange that initiated the proceedings or the respondent.

### *Amendment to NYSE Rule 475*

NYSE Rule 475 currently provides a process for the Exchange: (i) To prohibit or limit a person with respect to access of services offered by the Exchange, or (ii) to summarily suspend an Exchange member or member organization facing certain circumstances, such as financial or operating difficulties, or expulsion or suspension by another self-regulatory organization. The proposed rule change would provide a structure for such a hearing and for a "call-up" procedure for review by members of the Board and certain members of the Board of Executives,<sup>6</sup> any member of the Regulation, Enforcement and Listing Standards Committee, and either the Division of the Exchange that initiated the proceedings or the respondent.

### *Amendments to Article IX of the Constitution and NYSE Rule 476*

#### Composition of the Hearing Panel

The Exchange currently requires that disciplinary hearings be conducted before a Hearing Panel consisting of a Hearing Officer (an Exchange staff member) and two peer panelists. The Exchange believes that this "trial by peers" requirement raises a concern about bias and perception of bias, especially in cases involving charges against individuals on the trading floor because of the relatively small floor community. Accordingly, the Exchange proposes that a Hearing Panel consist of at least one member who is engaged in securities activities differing from that of the respondent. In any disciplinary

proceeding involving activities on the floor of the Exchange, the Exchange also proposes that no more than one of the persons serving on the Hearing Panel be, or if retired, has been, active on the floor. For example, with respect to cases involving the trading floor, the intent of the proposal is such that charges against a specialist or floor broker would be heard before a panel consisting of no more than one individual employed on the trading floor. In addition, the Exchange proposes that a Hearing Panel could include only one retired person.

#### Composition of the Hearing Board and Hearing Officers

The Exchange also proposes to eliminate the requirement that Exchange Hearing Officers be employees or officers of the Exchange, thereby enabling the Exchange to retain outside professionals to serve as Hearing Officers, if needed. However, under the amendments to the Exchange's Constitution and NYSE Rule 476, an individual who is, or was within the last three years, a member, allied member, or registered or non-registered employee of a member or member organization would not be eligible to serve as a Hearing Officer. The proposed rule change also would allow former members, allied members, and registered and non-registered employees of members and member organizations to be appointed to the Hearing Board within five years of their retirement.<sup>7</sup>

#### Hearing Officer's Authority

The Exchange also proposes to permit Hearing Officers to handle stipulations and uncontested cases without the full Hearing Panel. At present, all disciplinary hearings (including settled cases, in which a respondent consents to a penalty, and uncontested cases, in which a respondent does not file an answer to the charges) must be heard before a full Hearing Panel. The Exchange proposes to confer authority on an Exchange Hearing Officer to act alone in considering such uncontested and settled cases and impose penalties, without a hearing, in order to expedite resolution of such matters. Under the proposal, the Hearing Officer would convene a panel and hold a hearing if either the Enforcement Division or the respondent requests a hearing before a full panel, or if the Hearing Officer, on

his or her own initiative, calls for a hearing. Moreover, the Hearing Officer could not reject a stipulated penalty without convening a Hearing Panel.

Furthermore, the proposed rule change would permit the Hearing Officer to resolve substantive legal motions, such as motions to dismiss and motions for summary judgment, by no longer requiring that a Hearing Panel resolve such motions. The proposed rule change also would clarify the Hearing Officer's authority to order pre-hearing discovery of documents from the Division of Enforcement and from the respondent.

Finally, the proposal would clarify the Hearing Officer's authority to penalize contemptuous participants and permit the Hearing Officer to impose fines on a party for inappropriate behavior of either the party or the party's representative. This authority would not be limited to dealing with such behavior during a hearing, but would allow for sanctions to be imposed at any time during the course of proceedings. The Hearing Officer could also exclude, in extreme situations, any such persons from further participation in the proceeding.

#### Conferring Jurisdiction on the Hearing Board Upon Filing of the Charge Memorandum

Under current procedures, the hearing in a disciplinary matter is scheduled only upon request of the Division of Enforcement, after a respondent's answer is received or the time to file an answer has expired. The Hearing Board has no jurisdiction to resolve any issues that arise until the Division of Enforcement requests a hearing, and a respondent has no avenue of recourse if the respondent believes there has been an unreasonable or prejudicial delay. The proposed rule change would require the filing of charges with the Hearing Board at the time they are served on the respondent. The Hearing Board would assume jurisdiction of the matter at that juncture and be able to schedule expeditiously hearings, as well as rule on pre-hearing motions.

#### "Call Up" Authority Reallocated

At present, all members of the Board of Executives (as well as all Directors other than the Chief Executive Officer) have the right and the responsibility to "call up" disciplinary decisions for review. The Exchange proposes amendments to its Constitution and NYSE Rule 476 to reallocate this responsibility to members of the Board, Board of Executives' members representing the trading floor, members of the Regulation, Enforcement and

<sup>6</sup> These are members of the Board of Executives representing the groups referenced in clauses (ii) and (iii) of Article V, Section 2(b) of the Exchange's Constitution, namely, members who spend a substantial part of their time on the trading floor.

<sup>7</sup> The Exchange also proposes to amend NYSE Rule 476 to conform this rule with language in Article IX, Section 3 of the Exchange's Constitution prohibiting members of the Board or the Board of Executives from serving on the Hearing Board. Members of the Hearing Panel, other than the Hearing Officer, are selected from members of the Hearing Board. See Article 14, Secs. 2-4 of the Exchange's Constitution.

Listing Standards Committee, the Exchange Division that initiated the proceedings or the respondent, but would preserve the Board's right to designate, by rule, categories of members of the Board of Executives with this responsibility, if warranted.

#### *Amendment No. 3*

In Amendment No. 3, the Exchange proposes to implement the proposed rule change, as amended, on or about April 1, 2006 and attached an Exhibit 5 to reflect changes made to the rule text in Amendments No.1 and 2.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 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](mailto:rule-comments@sec.gov). Please include File No. SR-NYSE-2005-37 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.
- All submissions should refer to File Number SR-NYSE-2005-37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2005-37 and should be submitted on or before February 13, 2006.

### IV. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that, the proposed rule change, as amended, is consistent with Section 6(b)(1) of the Act<sup>9</sup> which requires that the exchange be "so organized and [have] the capacity to carry out the purposes of [the Act]" and to "enforce compliance by its members and persons associated with its members with the provisions of [the Act]." The Commission also finds that the proposed amendments relating to the composition of the Hearing Panel comport with the requirements of Section 6(b)(3) of the Act,<sup>10</sup> which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The Commission also finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act<sup>11</sup> in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(7) of the Act,<sup>12</sup> which, among other things, requires that the rules of a national securities exchange provide a fair

procedure for the disciplining of members and persons associated with members.

Specifically, the Commission believes that the proposed changes to the Exchange's disciplinary procedures should help strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization. The Commission also believes that the proposal is reasonably designed to improve the timeliness, fairness, and efficiency of the disciplinary process to address violations of the Exchange's rules and the federal securities laws by the Exchange's members and persons associated with members.

In particular, the Commission believes that it is appropriate for the Exchange to provide a structure in NYSE Rule 475 for a summary suspension hearing to prohibit or limit a person's access to services and to provide a "call-up" procedure for Board review of such proceedings by members of the Board, certain specified members of the Board of Executives, any member of the Regulation, Enforcement and Listing Standards Committee, and either the Division of the Exchange that initiated the proceeding or the respondent. In addition, the Commission believes that it is appropriate for the Exchange to revise Article IX of its Constitution to permit the "call up" for Board review of any disciplinary determination or penalty (other than a proceeding involving a written consent to a specified penalty) by any member of the Board, certain specified members of the Board of Executives, any member of the Regulation, Enforcement and Listing Standards Committee, as well as the Exchange Division that brought the charges or the respondent. The Commission notes, however, that the proposed revision to this "call up" procedure contained in the Exchange's Constitution would preserve the Board's right to designate, by rule, other categories of members of the Board of Executives that can require such review by the Board.

In addition, the Commission believes that the proposed changes to Article IX of the Exchange's Constitution and NYSE Rule 476 with respect to the composition of the Hearing Panel should expand the available pool of panelists with the requisite knowledge of the securities industry to serve on the Hearing Panel. At the same time, the Commission believes that the proposed requirement that a Hearing Panel have at least one member who is engaged in securities activities differing from that of the respondent is designed to mitigate

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(1).

<sup>10</sup> 15 U.S.C. 78f(b)(3).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78f(b)(7).

the perception of bias that may have occurred when a majority of the panel members in the same line of business as the respondent was not precluded from serving on such panel. Similarly, the Commission believes that the proposed changes to allow recently retired members and employees of members to serve on the Hearing Board and to allow non-NYSE employees to serve as Hearing Officers should enlarge the pool of individuals with the requisite expertise to hear and adjudicate cases and with the ability to readily serve during regular business hours, thereby potentially allowing cases to be resolved more expeditiously. Moreover, the Commission notes that the proposal specifies that, in any disciplinary proceeding involving activities on the floor of the Exchange, no more than one person on the Hearing Panel shall have been active on the floor of the Exchange, which also is intended to reduce the perception of bias in the Exchange's disciplinary process.

In addition, the Commission believes that the Exchange's proposal to expand the Hearing Officer's authority to handle stipulations and uncontested cases, procedural and evidentiary matters, and substantive legal motions is designed to expedite the hearing process by allowing the Hearing Officer to resolve efficiently certain matters that currently require action by the full Hearing Panel. The Commission notes that, according to the Exchange, these motions often involve legal issues that the Hearing Officer is best suited to resolve.

Finally, the Commission believes that the Exchange's proposal to require that the filing of charges be made with the Hearing Board at the time they are served on the respondent will allow the Hearing Board to immediately assume jurisdiction of the matter and to be able to expeditiously schedule hearings, as well as rule on pre-hearing motions.

#### *Accelerated Approval of Amendment No. 3*

The Commission finds good cause to approve Amendment No. 3 to the proposed rule change, as amended, prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.<sup>13</sup> Amendment No. 3 clarifies that the Exchange intends to implement the proposed rule change, as amended, on or about April 1, 2006. The Commission notes that the Exchange has represented that it will issue an Information Memo to alert its members of the proposed rule change and its implementation date

which is scheduled to occur on or about April 1, 2006.<sup>14</sup>

Specifically, the Commission finds that Amendment No. 3 provides clarification to members and other appropriate parties of the intended implementation date of the proposed changes to the Exchange's disciplinary procedures that are contained in Article IX of the Exchange's Constitution and NYSE Rules 475 and 476 and raises no new issues of regulatory concern. For these reasons, the Commission believes that good cause exists to accelerate approval of Amendment No. 3.

#### **IV. Conclusion**

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Sections 6(b)(1), 6(b)(5), and 6(b)(7) of the Act.<sup>15</sup>

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-NYSE-2005-37) and Amendments No. 1 and 2 thereto are approved, and that Amendment No. 3 thereto is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Nancy M. Morris,**  
Secretary.

[FR Doc. E6-674 Filed 1-20-06; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53133; File No. SR-PCX-2005-135]

### **Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Exposure of Orders in the PCX Plus Crossing Mechanism**

January 17, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 22, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the

<sup>14</sup> Telephone conversation between Peggy Kuo, Chief Hearing Officer, NYSE, and Cyndi N. Rodriguez, Special Counsel, Division of Market Regulation, Commission, on January 11, 2006.

<sup>15</sup> 15 U.S.C. 78f(b)(1), 15 U.S.C. 78f(b)(5), and 15 U.S.C. 78f(b)(7).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 PCX. 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 PCX is proposing to decrease the exposure period in its Crossing Mechanism from ten seconds to three seconds. The text of the proposed rule change is available on the PCX's Web site (<http://www.pacificex.com>), at the PCX'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 PCX 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 PCX 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**

PCX rules provide that a PCX Broker may not facilitate orders or cross two orders, using the Crossing Mechanism of the PCX Plus System ("PCX Plus" or "System"), unless it enters into the System the terms of each order that is to be included as part of a Cross Order,<sup>3</sup> pursuant to PCX Rule 6.76(c)(2)(A). Both facilitation crosses and non-facilitation crosses are executed in the same manner in PCX Plus. Upon entry into PCX Plus, the System will evaluate the terms of the Cross Order and, after accepting the Cross Order, will execute the cross in accordance with PCX Rule 6.76(c)(2)(B). Among other conditions, Rule 6.76(c)(2)(B) requires a ten-second exposure period in which OTP Holders and OTP Firms may enter orders to trade against the side of the Cross Order that has been designated as the Exposed

<sup>3</sup> See PCX Rule 6.76(c)(1)(A), which defines Cross Order for the purposes of PCX Rule 6.76(c) as "two orders with instructions to match the identified buy-side with the identified sell-side at a specified price (the "Cross Price")."

<sup>13</sup> 15 U.S.C. 78s(b)(2).

Order.<sup>4</sup> It is this portion of the Crossing Mechanism rule that the PCX proposes to change. The PCX believes that establishing a three-second exposure period within the PCX Plus Crossing Mechanism would be consistent with the three-second exposure period that was recently approved for use at the International Securities Exchange ("ISE") in SR-ISE-2004-04.<sup>5</sup>

The Exchange proposes to shorten the duration of the exposure period contained in the rules governing the Crossing Mechanism, as set forth in PCX Rule 6.76(c)(2)(B)(i)(a) and PCX Rule 6.76(c)(2)(B)(ii)(b),<sup>6</sup> from ten seconds to three seconds. This shortened exposure period is fully consistent with the electronic nature of the System. All market participants on the PCX utilize electronic trading systems that monitor all updates to the PCX market, including changes resulting from orders being entered into the Crossing Mechanism, and can automatically respond based upon pre-set parameters. In this all-electronic environment, it is not necessary to provide an exposure time sufficiently long to permit a person to manually respond to an updated market in order to provide the opportunity for crowd interaction. Thus, an exposure period of three seconds will permit exposure of orders on the PCX in a manner consistent with the Exchange's electronic market.

By reducing the exposure period from ten seconds to three seconds the PCX believes that OTP Holders and OTP Firms will be able to provide liquidity to their customers' orders on a timelier basis, thus providing investors with more speedy executions. Timely and accurate executions are consistent with the principles under which PCX Plus was developed. Reducing the exposure period to three seconds will also allow the PCX to remain competitive with the ISE, which has already received approval to reduce its exposure period to three seconds.

<sup>4</sup> See PCX Rule 6.76(c)(1)(D), which defines "Exposed Order" as follows: "the buy or sell side of a Cross Order that has been designated by a PCX Broker as the side to be exposed to the market and that is eligible for execution against all trading interest. Public Customer orders will always be deemed to be the Exposed Order in a Cross Order. In the case of a Cross Order involving a non-customer on both the buy side and sell side, the PCX Broker must designate one side of the Cross Order as the Exposed Order."

<sup>5</sup> See Securities Exchange Act Release No. 52711 (November 1, 2005), 70 FR 67508 (November 7, 2005) (order approving a reduction in the exposure time under ISE Rule 716).

<sup>6</sup> PCX Rules 6.76(c)(2)(B)(i) and 6.76(c)(2)(B)(ii) govern the execution of Cross Orders when the Cross Price is between the Best Bid and Offer ("BBO") and when it is at the BBO, respectively.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>7</sup> that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change will provide investors with more timely execution of their options orders, while ensuring that there is an adequate exposure of all crossing orders in the PCX marketplace.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 PCX 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](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2005-135 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-PCX-2005-135. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2005-135 and should be submitted on or before February 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6-703 Filed 1-20-06; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53115; File No. SR-Phlx-2005-82]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to its Dividend Spread Strategy Program License Fees

January 13, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 14, 2005, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which items have been prepared by Phlx. On January 11, 2006, the Exchange filed Amendment No. 1 to the proposal.<sup>3</sup> Phlx has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend its dividend spread strategy program in order to: (i) Recapture license fees associated with certain equity option and index option contracts that carry a license fee and that are executed as part of a dividend spread strategy transaction, and (ii) make minor technical changes to its fee schedule. The license fee proposal is scheduled to become effective for dividend strategy transactions settling on or after December 15, 2005, and it will remain in effect as a pilot program that is scheduled to expire on March 1, 2006.

The text of the proposed rule change is available on Phlx’s Web site at <http://www.phlx.com>,

at the Office of the Secretary at Phlx, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Currently, the Exchange imposes a fee cap on equity option transaction and comparison charges for dividend spread strategy transactions<sup>6</sup> executed the day immediately prior to the ex-date<sup>7</sup> and occurring on the same trading day in the same options class. Specifically, Registered Options Traders’ (“ROTs”) and specialists’ equity option transaction and comparison charges are capped at \$1,750 for transactions effected pursuant to a dividend spread strategy when the declared dividend or distribution is \$0.25 or greater. However, for dividend spread transactions for a security with a declared dividend or distribution of less than \$0.25, the ROTs’ and specialists’ equity option transaction and comparison charges are capped at \$1,000 for transactions effected pursuant to a dividend spread strategy executed on the same trading day in the same options class. The fee caps are implemented after any applicable rebates are applied to ROT and specialist equity option transaction and comparison charges.<sup>8</sup>

<sup>6</sup> A “dividend spread” is any trade done within a defined timeframe in which a dividend arbitrage can be achieved between any two (2) deep-in-the-money options.

<sup>7</sup> The ex-date is the date on or after which a security is traded without a previously declared dividend or distribution. After the ex-date a stock is said to trade ex-dividend.

<sup>8</sup> Currently, the Exchange provides a rebate for certain contracts executed in connection with transactions occurring as part of a dividend spread strategy. Specifically, for those options contracts executed pursuant to a dividend spread strategy, the Exchange rebates \$0.08 per contract side for ROT executions and \$0.07 per side for specialist executions on the business day before the underlying stock’s ex-date.

The Exchange is now proposing to assess a license fee associated with certain equity option and index option contracts executed as part of a dividend spread strategy transaction. Specifically, the Exchange is proposing to assess a license fee of \$0.05 per contract side for dividend spread strategy transactions in options on: Nasdaq-100 Index Tracking Stock<sup>SM</sup><sup>9</sup> traded under the symbol QQQQ; Russell 1000 Growth iShares, traded under the symbol IWF; Russell 2000 iShares, traded under the symbol IWM; Russell 2000 Value iShares, traded under the symbol IWN; Russell 2000 Growth iShares, traded under the symbol IWO; Russell Midcap Growth iShares, traded under the symbol IWP; Russell Midcap Value iShares, traded under the symbol IWS; NYSE Composite Index, traded under the symbol NYC; NYSE U.S. 100 Index, traded under the symbol NY; Standard & Poor’s Depository Receipts,<sup>10</sup> Trust Series 1, traded under the symbol SPY; iShares Lehman 1-3 Year Treasury Bond Fund, traded under the symbol SHY; iShares Lehman 7-10 Year Treasury Bond Fund, traded under the symbol IEF; iShares Lehman 20+ Year Treasury Bond Fund, traded under the symbol TLT; iShares Lehman Aggregate Bond Fund, traded under the symbol AGG; iShares Lehman TIPS Bond Fund, traded under the symbol TIP; KBW Capital Markets Index,<sup>11</sup> traded under the symbol KSX; KBW Insurance Index, traded under the symbol KIX; Phlx/KBW Bank Index, traded under the symbol BKX; iShares S&P 100 Index, traded under the symbol OEF; iShares

<sup>9</sup> The Nasdaq-100<sup>®</sup>, Nasdaq-100 Index<sup>®</sup>, Nasdaq<sup>®</sup>, The Nasdaq Stock Market<sup>®</sup>, Nasdaq-100 Shares<sup>SM</sup>, Nasdaq-100 Trust<sup>SM</sup>, Nasdaq-100 Index Tracking Stock<sup>SM</sup>, and QQQ<sup>SM</sup> are trademarks or service marks of The Nasdaq Stock Market, Inc. (“Nasdaq”) and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index<sup>®</sup> (the “Index”) is determined, composed, and calculated by Nasdaq without regard to the licensee, the Nasdaq-100 Trust<sup>SM</sup>, or the beneficial owners of Nasdaq-100 Shares<sup>SM</sup>. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

<sup>10</sup> Standard & Poor’s<sup>®</sup>, “S&P<sup>®</sup>,” “S&P 500<sup>®</sup>,” “Standard & Poor’s 500<sup>®</sup>,” “Standard & Poor’s Depository Receipts<sup>®</sup>,” and “500” are trademarks of The McGraw-Hill Companies, Inc., and have been licensed for use by the Phlx in connection with the listing and trading of SPDRs on the Phlx. These products are not sponsored, sold or endorsed by S&P, a division of The McGraw-Hill Companies, Inc., and S&P makes no representation regarding the advisability of investing SPDRs.

<sup>11</sup> “KBW,” “Keefe, Bruyette & Woods Capital Markets Index,” and “KBW Capital Markets Index” are trademarks of Keefe, Bruyette & Woods, Inc. and have been licensed for use by the Phlx. Keefe, Bruyette & Woods, Inc. makes no recommendations concerning the advisability of investing in options based on the KBW Capital Markets Index.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, Phlx revised the proposed rule text and its discussion to clarify which products would be subject to the license fee, that the license fee is not subject to and does not count towards the fee cap, and that the proposed license fee is part of a pilot program due to expire on March 1, 2006.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

S&P Europe 350, traded under the symbol IEV; iShares S&P Global 100 Index, traded under the symbol IOO; iShares S&P Global Energy Sector Index, traded under the symbol IXC; iShares S&P Global Financial Sector Index, traded under the symbol IXG; iShares S&P Global Healthcare Sector Index, traded under the symbol IXJ; iShares S&P Global Information Technology Sector Index, traded under the symbol IXN; iShares S&P Global Telecom Sector Index, traded under the symbol IXP; iShares S&P Latin America 40, traded under the symbol ILF; iShares S&P MidCap 400, traded under the symbol IJH; iShares S&P SmallCap 600, traded under the symbol IJR; iShares S&P TOPIX 150, traded under the symbol ITF; iShares S&P 500, traded under the symbol IVV; S&P Industrial Select Sector SPDR, traded under the symbol XLI; S&P Technology Select Sector SPDR, traded under the symbol XLK; S&P Utilities Select Sector SPDR, traded under the symbol XLU; S&P Consumer Staples Select Sector SPDR, traded under the symbol XLP; S&P Energy Select Sector SPDR, traded under the symbol XLE; S&P Financial Select Sector SPDR, traded under the symbol XLF; S&P Health Care Select Sector SPDR, traded under the symbol XLV; S&P Materials Select Sector SPDR, traded under the symbol XLB; S&P Consumer Discretionary Select Sector SPDR, traded under the symbol XLY; MidCap SPDR, traded under the symbol MDY; Keefe, Bruyette & Woods Regional Banking Index or the KBW Regional Banking Index, traded under the symbol KRX; and Keefe, Bruyette & Woods Mortgage Finance Index or the KBW Mortgage Finance Index, traded under the symbol MFJ.

The license fee of \$0.05 per contract side will be assessed on every transaction and will not be subject to the \$1,750 or \$1,000 caps described above. Thus, this fee will be assessed in addition to any other transaction and comparison charges associated with dividend spread strategy transactions, and it will not count towards reaching the \$1,750 or \$1,000 caps. The license fee proposal is scheduled to become effective for dividend strategy transactions settling on or after December 15, 2005, and it will remain in effect as a pilot program that is scheduled to expire on March 1, 2006.

The purpose of this proposal is to recoup the license fees owed in connection with the trading of the products listed above. Even with the assessment of the \$0.05 license fee per contract side, Phlx believes that the fee caps and rebates should continue to encourage specialists and ROTs to

provide liquidity for dividend spread strategy transactions.

The Exchange is also proposing to add a "Q" to the trading symbol "QQQ" on its \$60,000 "Firm Related" Equity Option and Index Option Cap Fee Schedule to reflect the current trading symbol of the Nasdaq-100 Index Tracking Stock<sup>sm</sup>. In addition, the Exchange proposes to delete WellSpring Bio-Clinical Trials Index from the \$60,000 "Firm Related" Equity Option and Index Option Cap Fee Schedule, traded under the symbol WHC,<sup>12</sup> as that product is no longer listed or traded at the Exchange.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>14</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received on the proposed rule change, as amended.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>15</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>16</sup> because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>17</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2005-82 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-Phlx-2005-82. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Phlx. All comments received will be posted without change; the Commission does not edit personal identifying

<sup>12</sup> WellSpring Bio-Clinical Trials Index ("WHC"), "ORCHIDS," and "WellSpring" are trademarks of WellSpring BioCapital Partners, LLC ("WellSpring LLC") and have been licensed for use by the Phlx. WellSpring LLC makes no recommendations concerning the advisability of investing in options based on the WellSpring Bio-Clinical Trials Index.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

<sup>17</sup> The effective date of the original proposed rule change is December 14, 2005, the date of the original filing, and the effective date of Amendment No. 1 is January 11, 2006, the filing date of the amendment. For purposes of calculating the 60-day abrogation period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on January 11, 2006, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).



information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2005-82 and should be submitted on or before February 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-699 Filed 1-20-06; 8:45 am]

BILLING CODE 8010-01-P

## DEPARTMENT OF STATE

[Public Notice 5279]

### Request for Nominations for the General Advisory Committee and the Scientific Advisory Subcommittee to the United States Section to the Inter-American Tropical Tuna Commission

**SUMMARY:** The Department of State is seeking applications and nominations for the renewal of the General Advisory Committee to the Inter-American Tropical Tuna Commission (IATTC) as well as to a Scientific Advisory Subcommittee of the General Advisory Committee. The purpose of the General Advisory Committee and the Scientific Advisory Subcommittee is to provide public input and advice to the United States Section to the IATTC in the formulation of U.S. policy and positions at meetings of the IATTC and its subsidiary bodies. The Scientific Advisory Subcommittee shall also function as the National Scientific Advisory Committee (NATSAC) provided for in the Agreement on the International Dolphin Conservation Program (AIDCP). The United States Section to the IATTC is composed of the Commissioners to the IATTC, appointed by the President, and the Deputy Assistant Secretary of State for Oceans and Fisheries or his or her designated representative. Authority to establish the General Advisory Committee and Scientific Advisory Subcommittee is provided under the Tuna Conventions Act of 1950, as amended by the International Dolphin Conservation Program Act (IDCPA) of 1997.

**DATES:** Nominations must be submitted on or before March 31, 2006.

**ADDRESSES:** Nominations should be submitted to David Balton, Deputy Assistant Secretary for Oceans and Fisheries, Bureau of Oceans and International Environmental and Scientific Affairs, Room 7831,

Department of State, Washington, DC 20520-7818; or by fax to 202-736-7350.

**FOR FURTHER INFORMATION CONTACT:** David Hogan, Office of Marine Conservation, Department of State: 202-647-2335.

#### SUPPLEMENTARY INFORMATION:

##### General Advisory Committee

The Tuna Conventions Act (16 U.S.C. 951 et seq.), as amended by the IDCPA (Pub. L. 105-42), provides that the Secretary of State, in consultation with the U.S. Commissioners to the IATTC, shall appoint a General Advisory Committee (the Committee) to the U.S. Section to the IATTC (U.S. Section). The Committee shall be composed of not less than 5 nor more than 15 persons, with balanced representation from the various groups participating in the fisheries included under the IATTC Convention, and from non-governmental conservation organizations. Members of the Committee shall be invited to have representatives attend all non-executive meetings of the U.S. Section, and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, and regulations adopted by the Commission. Members of the Committee may attend meetings of the IATTC and the AIDCP as members of the U.S. delegation or otherwise in accordance with the rules of those bodies governing such participation. Participation as a member of the U.S. delegation shall be subject to such conditions as may be placed on the size or composition of the delegation.

##### Scientific Advisory Subcommittee

The Act, as amended, also provides that the Secretary of State, in consultation with the U.S. Commissioners to the IATTC, shall appoint a Scientific Advisory Subcommittee (the Subcommittee) of the General Advisory Committee. The Subcommittee shall be composed of not less than 5 and not more than 15 qualified scientists with balanced representation from the public and private sectors, including non-governmental conservation organizations. The Subcommittee shall advise the Committee and the U.S. Section on matters including: The conservation of ecosystems; the sustainable uses of living marine resources related to the tuna fishery in the eastern Pacific Ocean; and the long-term conservation and management of stocks of living marine resources in the eastern tropical Pacific Ocean.

In addition, at the request of the Committee, the U.S. Commissioners or

the Secretary of State, the Subcommittee shall perform such functions and provide such assistance as may be required by formal agreements entered into by the United States for the eastern Pacific tuna fishery, including the AIDCP. The functions may include: The review of data from the International Dolphin Conservation Program (IDCP), including data received from the IATTC staff; recommendations on research needs and the coordination and facilitation of such research; recommendations on scientific reviews and assessments required under the IDCP; recommendations with respect to measures to assure the regular and timely full exchange of data among the Parties to the AIDCP and each nation's NATSAC (or its equivalent); and consulting with other experts as needed.

The Subcommittee shall be invited to have representatives attend all non-executive meetings of the U.S. Section and the General Advisory Committee and shall be given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the Commission. Representatives of the Subcommittee may attend meetings of the IATTC and the AIDCP as members of the U.S. delegation or otherwise in accordance with the rules of those bodies governing such participation. Participation as a member of the U.S. delegation shall be subject to such limits as may be placed on the size of the delegation.

##### National Scientific Advisory Committee

The Scientific Advisory Subcommittee shall also function as the NATSAC established pursuant to Article IX of the AIDCP. In this regard, the Subcommittee shall perform the functions of the NATSAC as specified in Annex VI of the AIDCP including, but not limited to: Receiving and reviewing relevant data, including data provided to the National Marine Fisheries Service (NMFS) by the IATTC Staff; advising and recommending to the U.S. Government measures and actions that should be undertaken to conserve and manage stocks of living marine resources in the AIDCP Area; making recommendations to the U.S. Government regarding research needs related to the eastern Pacific Ocean tuna purse seine fishery; promoting the regular and timely full exchange of data among the Parties on a variety of matters related to the implementation of the AIDCP; and consulting with other experts as necessary in order to achieve the objectives of the Agreement.

<sup>18</sup> 17 CFR 200.30-3(a)(12).

## General Provisions

Each appointed member of the Committee and the Subcommittee/NATSAC shall be appointed for a term of 3 years and may be reappointed.

Logistical and administrative support for the operation of the Committee and the Subcommittee will be provided by the Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, and by the Department of Commerce, National Marine Fisheries Service. Members shall receive no compensation for their service on either the Committee or the Subcommittee/NATSAC, nor will members be compensated for travel or other expenses associated with their participation.

## Procedures for Submitting Applications/Nominations

Applications/nominations for the General Advisory Committee and the Scientific Advisory Subcommittee/NATSAC should be submitted to the Department of State (See **ADDRESSES**). Such applications/nominations should include the following information:

- (1) Full name/address/phone/fax and e-mail of applicant/nominee;
- (2) Whether applying/nominating for the General Advisory Committee or the Scientific Advisory Committee/NATSAC (applicants may specify both);
- (3) Applicant/nominee's organization or professional affiliation serving as the basis for the application/nomination;
- (4) Background statement describing the applicant/nominee's qualifications and experience, especially as related to the tuna purse seine fishery in the eastern Pacific Ocean or other factors relevant to the implementation of the Convention Establishing the IATTC or the Agreement on the International Dolphin Conservation Program;
- (5) A written statement from the applicant/nominee of intent to participate actively and in good faith in the meetings and activities of the General Advisory Committee and/or the Scientific Advisory Subcommittee/NATSAC.

Applicants/nominees who submitted material in response to the **Federal Register** Notice published by the National Marine Fisheries Service on November 12, 2002 or February 5, 2003, should resubmit their applications pursuant to this notice.

### Margaret F. Hayes,

*Acting Deputy Assistant Secretary for Oceans and Fisheries, Department of State.*

[FR Doc. E6-714 Filed 1-20-06; 8:45 am]

**BILLING CODE 4710-09-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-2006-02]

### Petitions for Exemption; Summary of Petitions Received

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

**ACTION:** Notice of petitions for exemption received.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before February 13, 2006.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number FAA-2005-23188] by any of the following methods:

- Web Site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.
- 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.

*Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### FOR FURTHER INFORMATION CONTACT:

Kenna Sinclair (425-227-1556), Transport Airplane Directorate (ANM-113), Federal Aviation Administration, 1601 Lind Ave. SW., Renton, WA 98055-4056; or John Linsenmeyer (202-

267-5174), Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on January 13, 2006.

**Anthony F. Fazio,**

*Director, Office of Rulemaking.*

### Petitions for Exemption

*Docket No.:* FAA-2005-23188.

*Petitioner:* The Boeing Company.

*Section of 14 CFR Affected:* 14 CFR 25.857(e).

*Description of Relief Sought:* To permit the carriage of up to six supernumeraries on Boeing Model 767-200 tanker transport airplanes with a Class E main deck cargo compartment.

[FR Doc. E6-656 Filed 1-20-06; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Draft Environmental Impact Statement (DEIS): Kenosha-Racine-Milwaukee Commuter Rail Extension

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** The FTA, in cooperation with the Southeastern Wisconsin Regional Planning Commission (SEWRPC), is issuing this notice to advise the public that a Draft Environmental Impact Statement (DEIS) will be prepared for the proposed initiation of commuter rail or bus services between Kenosha, Racine and Milwaukee, Wisconsin.

The FTA is the lead Federal agency under the National Environmental Policy Act of 1969 (NEPA). The project is being conducted by SEWRPC which is acting as the manager and fiscal agent for the DEIS and associated alternatives analysis study on behalf of an Intergovernmental Partnership of the Cities and Counties of Kenosha, Milwaukee, and Racine, and the Wisconsin Department of Transportation, and SEWRPC.

The FTA and SEWRPC invite interested individuals, organizations, and Federal, State, and local agencies to participate in refining the alternatives to be evaluated and identifying any significant social, economic, and environmental issues related to the alternatives. Comments on the appropriateness of the alternatives and

impact-related issues are encouraged. Specific suggestions on additional alternatives to be examined and issues to be addressed are welcomed and will be considered in the final study scope. Scoping of these alternatives and their potential impacts will be accomplished through meetings and correspondence with interested persons, organizations, and Federal, State, regional, and local agencies.

**DATES:** There will be three public scoping meetings held on Tuesday, February 21, 2006, Wednesday, February 22, 2006, and Thursday, February 23, 2006 and one interagency scoping meeting held on Thursday, February 23, 2006 at the locations and times identified below under **ADDRESSES** to ensure that all significant issues are identified and considered. SEWRPC representatives will be available for informal questions and comments throughout the duration of each scoping meeting. Subsequent opportunities for public involvement will be announced by mail and through other appropriate mechanisms, and will be conducted throughout the study area.

**ADDRESSES:** The public scoping meetings will be held on the following dates at the following locations and times:

- Tuesday, February 21, 2006—Kenosha Gateway Technical College, Madrigrano Auditorium, 3520 30th Avenue, Kenosha, Wisconsin from 6 p.m. to 8 p.m. Presentation at 6:45 p.m.
- Wednesday, February 22, 2006—Racine Gateway Technical College, Great Lakes Room, Racine Building, 901 Pershing Drive, Racine, Wisconsin from 6 p.m. to 8 p.m. Presentation at 6:45 p.m.
- Thursday, February 23, 2006—Milwaukee Downtown Transit Center, Harbor Lights Room, 909 E. Michigan Avenue, Milwaukee, Wisconsin from 6 p.m. to 8 p.m. Presentation at 6:45 p.m.

The interagency scoping meeting will be held at the following location and time:

- Thursday, February 23, 2006—Milwaukee Downtown Transit Center, Harbor Lights Room, 909 E. Michigan Avenue, Milwaukee, Wisconsin from 2 p.m. to 4 p.m.

The scoping meeting sites are accessible to mobility-impaired people and interpreter services will be provided for hearing-impaired people upon request. Written comments will be taken at the meeting or may be sent to Mr. Kenneth R. Yunker, Deputy Director, Southeastern Wisconsin Regional Planning Commission, P.O. Box 1607, Waukesha, Wisconsin, 53187-1607 by March 24, 2006. A

scoping information packet will be available and may be requested by writing to this address or by calling (262) 547-6721.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments on the scope of this proposed action and the impacts to be considered should be directed to the Southeastern Wisconsin Regional Planning Commission at the address provided above by March 24, 2006.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed, or are known to have interest in this proposal. A series of public meetings will be held in the project corridor throughout the data gathering and development of alternatives. In addition, a public hearing will be held. Public notice will be given of the time and place of additional meetings and of the hearing. The DEIS will be available for public and agency review and comment prior to the hearing. As part of the scoping process, coordination activities with other agencies have begun. Scoping meetings will be held on an individual or group meeting basis. Agency coordination will be accomplished during these meetings.

**FOR FURTHER INFORMATION CONTACT:** Mr. Victor M. Austin, Community Planner, Federal Transit Administration, 200 W. Adams Street, Suite 320, Chicago, Illinois, 60606-5232, telephone: (312) 886-1625. You may also contact Mr. Kenneth R. Yunker, Deputy Director, SEWRPC, P.O. Box 1607, Waukesha, Wisconsin 53187-1607; (262) 547-6721.

**SUPPLEMENTARY INFORMATION:** Over the past decade a very high level of interest has developed in the Kenosha-Racine-Milwaukee (KRM) corridor for improved commuter transportation service. This interest has been manifested by the creation of groups involving major employers and municipalities and counties within the corridor which have as their objective the improvement of transit service within the corridor. At the request of the local units of government, the Southeastern Wisconsin Regional Planning Commission (SEWRPC), the Metropolitan Planning Organization (MPO) for the seven-county Southeastern Wisconsin region, has completed two studies which focus on transit improvements throughout the KRM corridor.

On behalf of an intergovernmental partnership of the counties and cities of Kenosha, Racine and Milwaukee, the Wisconsin Department of Transportation (WisDOT) and SEWRPC, SEWRPC is undertaking the DEIS and Project Development phase of the KRM Alternatives Analysis in order to produce a Draft Environmental Impact Statement (DEIS), refine the previous alternatives analysis, and develop further a commuter transportation project within the corridor. This study is funded by the Federal Transit Administration (FTA) Section 5309 "New Starts" program, WisDOT, and the members of the KRM Intergovernmental Partnership. The products of this study will be used to support an application to the FTA for funding of Preliminary Engineering (PE) under the FTA's New Starts program.

### I. Study Area and Project Need

The study area extends from the City of Kenosha through the City of Racine to the City of Milwaukee and is located along State Trunk Highways 31 and 32 and the Union Pacific Railroad Kenosha Subdivision, a distance of about 33 miles. The study area is bounded by Lake Michigan on the east, Interstate Highway 94 on the west, the Wisconsin-Illinois state line on the south, and the Milwaukee Central Business District on the north. The study area includes the eastern portions of Kenosha and Racine Counties and Milwaukee County.

In the KRM corridor increasing travel demand and traffic congestion are a problem and there exists a need to improve mobility within this corridor. There is a lack of transportation options for travel between the communities in the corridor, as well as for travel between the corridor and northeastern Illinois. This lack of options affects the mobility of residents and visitors and their ability to travel within the corridor. Persons with limited or no access to private automobiles are particularly limited in their options. Existing transit services do operate within the corridor, but consist largely of separate local systems with services that are slow, operate only in a limited service area, are not coordinated throughout the corridor, do not connect in a convenient manner, and provide limited service. In particular, accessibility to jobs for people within the corridor and accessibility to potential workers for employers within the corridor is affected by this lack of transportation options.

The KRM corridor is part of a larger continuous and highly urbanized corridor extending 85 miles from Milwaukee in southeastern Wisconsin

to Chicago through the North Shore suburbs in Lake and Cook Counties in northeastern Illinois. There is a need for public transit connections within this corridor in southeastern Wisconsin, and between southeastern Wisconsin and northeastern Illinois, to serve the travel needs and markets that exist in this unique corridor. These needs not only include travel to and from Milwaukee, Chicago, and the two intermediate central cities of Kenosha and Racine, each with a population in excess of 50,000; but also travel to and from the older, inner-ring suburbs and the newer developing suburban communities. Specifically, there is a need to provide access to jobs not only in the Milwaukee and Chicago central business districts, but also in Racine and Kenosha, the older inner-ring and newer suburban communities in southeastern Wisconsin, and the Chicago North Shore communities in Cook and Lake Counties.

The corridor has a high potential to generate transit ridership because of its high concentrations of population, including population groups with high transit needs, significant employment, and it includes the downtown areas of three large and well established cities (Milwaukee, Racine, and Kenosha). Arterial street and highway capacity is limited, traffic volumes and congestion are a problem and will continue to grow, and opportunities for new highways are extremely limited, providing an opportunity for an attractive and high-quality transit service in the corridor to be competitive with the private automobile in terms of travel time, cost, and convenience.

There is a need to contribute to desirable economic and community development in the KRM corridor. High quality and attractive transit service that is appropriate to the travel needs of a densely developed urban corridor such as this one can help meet regional, state, and national land use objectives through influence on, and promotion of, land development and redevelopment in an efficient, desirable, and sound manner. The provision of attractive and improved transit services and facilities can help focus desirable and positive land use development and redevelopment in the older major cities such as Kenosha, Milwaukee, and Racine, in the older suburban communities such as Cudahy, St. Francis, and South Milwaukee, and in the newer developing communities such as Caledonia, Oak Creek, and Somers.

The primary goals of these transportation improvements are to:

- Improve transit mobility and access in the KRM corridor.

- Attract increased transit ridership.
- Contribute to and enhance desirable economic and community development.

## II. Alternatives

The DEIS will assess the environmental impacts of a No-Build Alternative and various Build Alternatives. The Build Alternatives will include, but not be limited to a (1) Transportation System Management (TSM) Alternative, (2) a Bus Rapid Transit (BRT) Alternative, and (3) a Commuter Rail Alternative. These alternatives are briefly described below.

The No-Build Alternative will include existing transit services and facilities and those planned and programmed new transportation services, facilities, and system management improvements that are included in the 2035 Regional Transportation System Plan for Southeastern Wisconsin.

The TSM Alternative will include operational and low cost capital investments to the existing transit services in the corridor, providing a level of capital investment that is greater than the No-Build Alternative but substantially less than either the BRT or Commuter Rail Alternatives. The TSM Alternative will not include major fixed guideway improvements.

The BRT Alternative will include a significant expansion of bus service between Kenosha, Racine, and Milwaukee that will be coordinated with the existing Metra Union Pacific North Line commuter rail service between Kenosha and Chicago. It will utilize operational and performance enhancements along the entire corridor such as exclusive or semi-exclusive route alignments, on-line passenger stations, compatible vehicles appropriate for such service, and operating measures to mitigate traffic capacity and congestion constraints. One variation of this alternative will include low to medium cost capital improvements and another variation will include medium to high cost capital improvements.

The Commuter Rail Alternative will include the provision of commuter rail service between Kenosha, Racine, and Milwaukee. One variation of this alternative will include a through service combined with the existing Metra Union Pacific North Line commuter rail service between Kenosha and Chicago. Another variation of this alternative will include a separate but coordinated service requiring a cross-platform transfer to and from the Metra Union Pacific North Line commuter rail service.

In addition to these initially identified alternatives, other alternatives generated

by the scoping process may be considered. The proposed action may include expansion of commuter rail or bus service in the corridor and modifications to existing transit services. It may include modifications or additions of sidings, crossovers, interlockings, signal systems, and retaining walls for potential commuter rail services and bus lanes and roadways, highway improvements, and signal systems for potential bus services. Modifications to existing stations may be required such as changes to station buildings, parking, and platform placement. Additional stations located along the potential rail and bus routes will also be investigated. Property acquisitions may be necessary to accommodate the proposed action, as well as utility relocations.

## III. Potential Social and Environmental Effects

Potential social, economic, and environmental impacts will be identified and evaluated in the DEIS. Impacts may include: Mobility and accessibility; land use, zoning, and economic development, land acquisition, displacements, and relocation of existing uses; historic and archeological resources; parklands and recreational uses; visual and aesthetic qualities; neighborhoods and communities; environmental justice; air quality; noise and vibration; hazardous materials; ecosystems; water resources; energy and construction impacts; safety and security; utilities; cost and financial impacts; and transit, highway, railroad, and other transportation. Other potential impact issues may be added as a result of scoping and agency coordination efforts. The potential impact assessment and evaluation will take into account both positive and negative effects, direct and indirect impacts, short-term (construction) and long-term impacts, and cumulative effects. Measures to avoid or mitigate any significant adverse impacts will be identified.

## IV. FTA Procedures

In accordance with FTA policy, all federal laws, regulations and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508 and 23 CFR part 771), the 1990 Clean Air Act Amendments, Section 404 of the Clean Water Act, Executive Order 12898 regarding environmental justice, the National Historic Preservation Act, the Endangered Species Act, and Section 4(f) of the Department of Transportation

Act, will be addressed to the maximum extent possible during the NEPA process.

A DEIS will be prepared and made available for public and agency review and comment. One or more public hearings will be held on the DEIS. On the basis of the DEIS and the public and agency comments received, the preferred alternative will be further refined as necessary and the Final Environmental Impact Statement will be prepared.

Issued on: January 17, 2006.

**Donald Gismond,**

*Acting Regional Administrator, Federal Transit Administration, Chicago, Illinois.*  
[FR Doc. E6-657 Filed 1-20-06; 8:45 am]

BILLING CODE 4910-57-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2006-23570]

#### Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

**SUMMARY:** This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

**DATES:** These decisions became effective on the dates specified in Annex A.

**FOR FURTHER INFORMATION CONTACT:** Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202-366-3151).

#### SUPPLEMENTARY INFORMATION:

##### Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation

into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No substantive comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

#### Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

#### Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

**Authority:** 49 U.S.C. 30141(a)(1)(A), (a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

#### Annex A—Nonconforming Motor Vehicles Decided To Be Eligible for Importation

- Docket No. NHTSA-2005-21844.  
*Nonconforming Vehicles:* 2003-2005 Mercedes Benz SL Class (230) European Market Passenger Cars.  
*Substantially Similar:* U.S.-Certified Vehicles: 2003-2005 Mercedes Benz SL Class (230) European Market Passenger Cars.  
*Notice of Petition:* Published at: 70 FR 41477 (July 19, 2005).  
*Vehicle Eligibility Number:* VSP-470 (effective date August 30, 2005).
- Docket No. NHTSA-2005-22019.  
*Nonconforming Vehicles:* 1997 Ford Mustang Passenger Cars.  
*Substantially Similar:* U.S.-Certified Vehicles: 1997 Ford Mustang Passenger Cars.  
*Notice of Petition:* Published at: 70 FR 45485 (August 5, 2005).  
*Vehicle Eligibility Number:* VSP-471 (effective date September 15, 2005).
- Docket No. NHTSA-2005-22003.  
*Nonconforming Vehicles:* 2005 Harley Davidson FX, FL, and XL Motorcycles.  
*Substantially Similar:* U.S.-Certified Vehicles: 2005 Harley Davidson FX, FL, and XL Motorcycles.  
*Notice of Petition:* Published at: 70 FR 45484 (August 5, 2005).  
*Vehicle Eligibility Number:* VSP-472 (effective date September 15, 2005).
- Docket No. NHTSA-2005-22644.  
*Nonconforming Vehicles:* 2001 Bentley Arnage Passenger Cars, Manufactured From January 1, 2001, Through December 31, 2001.  
*Substantially Similar:* U.S.-Certified Vehicles: 2001 Bentley Arnage Passenger Cars, Manufactured From January 1, 2001, Through December 31, 2001.  
*Notice of Petition:* Published at: 70 FR 60878 (October 19, 2005).  
*Vehicle Eligibility Number:* VSP-473 (effective date December 5, 2005).
- Docket No. NHTSA-2005-22797.  
*Nonconforming Vehicles:* 1999-2005 Ducati ST4s Motorcycles.  
*Substantially Similar:* U.S.-Certified Vehicles: 1999-2005 Ducati ST4s Motorcycles.  
*Notice of Petition:* Published at: 70 FR 62369 (October 31, 2005).  
*Vehicle Eligibility Number:* VSP-474 (effective date December 12, 2005).
- Docket No. NHTSA-2005-22847.  
*Nonconforming Vehicles:* 1999-2001 Ducati 996 Biposto Motorcycles.  
*Substantially Similar:* U.S.-Certified Vehicles: 1999-2001 Ducati 996 Biposto Motorcycles.  
*Notice of Petition:* Published at: 70 FR 66893 (November 3, 2005).  
*Vehicle Eligibility Number:* VSP-475 (effective date December 13, 2005).
- Docket No. NHTSA-2005-23083.  
*Nonconforming Vehicles:* 2005 Lamborghini Murcielago Roadster Passenger Cars.

*Substantially Similar:* U.S.-Certified Vehicles; 2005 Lamborghini Murcielago Roadster Passenger Cars.

*Notice of Petition:* Published at: 70 FR 71373 (November 28, 2005).

*Vehicle Eligibility Number:* VSP-476 (effective date January 6, 2006).

[FR Doc. E6-707 Filed 1-20-06; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Revenue Procedure 2003-11

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2003-11, Offshore Voluntary Compliance Initiative.

**DATES:** Written comments should be received on or before March 24, 2006 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3179, or through the Internet at ([Larnice.Mack@irs.gov](mailto:Larnice.Mack@irs.gov)).

#### SUPPLEMENTARY INFORMATION:

*Title:* Offshore Voluntary Compliance Initiative.

*OMB Number:* 1545-1822.

*Revenue Procedure Number:* Revenue Procedure 2003-11.

*Abstract:* Revenue Procedure 2003-11 describes the Offshore Voluntary Compliance Initiative, which is directed at taxpayers that have under-reported their tax liability through financial arrangements outside the United States that rely on the use of credit, debit, or charge cards (offshore credit cards) or foreign banks, financial institutions,

corporations, partnerships, trusts, or other entities (offshore financial arrangements). Taxpayers that participate in the initiative and provide the information and material that their participation requires can avoid certain penalties.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, individuals, and not-for-profits institutions.

*Estimated Number of Respondents:* 2000.

*Estimated Time per Respondent:* 50 hours.

*Estimated Total Annual Burden Hours:* 100,000.

*The following paragraph applies to all the collections of information covered by this notice:*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 12, 2006.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E6-744 Filed 1-20-06; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Revenue Procedure 96-53

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 96-53, Section 482—Allocations Between Return Parties.

**DATES:** Written comments should be received on or before March 24, 2006 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3179, or through the Internet at ([Larnice.Mack@irs.gov](mailto:Larnice.Mack@irs.gov)).

#### SUPPLEMENTARY INFORMATION:

*Title:* Allocations Between Related Parties.

*OMB Number:* 1545-1503.

*Revenue Procedure Number:* Revenue Procedure 96-53.

*Abstract:* The information requested in this revenue procedure is required to enable the Internal Revenue Service to give advice on filing Advance Pricing Agreement applications, to process such applications, to process such applications and negotiate agreements, and to verify compliance with the agreements and whether the agreements require modification.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 160.

*Estimated Time per Respondent:* 32 hours., 49 minutes.

*Estimated Total Annual Burden Hours:* 5,250.

*The following paragraph applies to all the collections of information covered by this notice:*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 12, 2006.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E6-745 Filed 1-20-06; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

[FI-104-90]

#### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI-104-90 (TD 8390), Tax Treatment of Salvage and Reinsurance (§ 1.832-4).

**DATES:** Written comments should be received on or before March 24, 2006 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3179, or through the Internet at ([Larnice.Mack@irs.gov](mailto:Larnice.Mack@irs.gov)).

**SUPPLEMENTARY INFORMATION:**

*Title:* Tax Treatment of Salvage and Reinsurance.

*OMB Number:* 1545-1227.

*Regulation Project Number:* FI-104-90.

*Abstract:* Section 1.832-4(d) of this regulation allows a nonlife insurance company to increase unpaid losses on a yearly basis by the amount of estimated salvage recoverable if the company discloses this to the state insurance regulatory authority.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 2,500.

*Estimated Time per Respondent:* 2 hours.

*Estimated Total Annual Burden Hours:* 5,000.

*The following paragraph applies to all of the collections of information covered by this notice:*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 12, 2006.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E6-747 Filed 1-20-06; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

[REG-113572-99]

#### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG-133572-99 (TD 8933), Qualified Transportation Fringe Benefits (1.132-9(b)).

**DATES:** Written comments should be received on or before March 24, 2006 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal

Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3179, or through the internet at ([Larnice.Mack@irs.gov](mailto:Larnice.Mack@irs.gov)).

**SUPPLEMENTARY INFORMATION:**

*Title:* Qualified Transportation Fringe Benefits.

*OMB Number:* 1545-1676.

*Regulation Project Number:* REG-113572-99.

*Abstract:* These regulations provide guidance to employers that provide qualified transportation fringe benefits under section 132(f), including guidance to employers that provide cash reimbursement for qualified transportation fringes and employers that offer qualified transportation fringes in lieu of compensation. Employers that provide cash reimbursement are required to keep records of documentation received from employees who receive reimbursement. Employers that offer qualified transportation fringes in lieu of compensation are required to keep records of employee compensation reduction elections.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, individual or households, and not-for-profit institutions.

The burden is reflected in the burden for Form W-2.

*Estimated Total Annual*

*Recordkeeping Burden:* 7,020,000.

*Estimated Average Annual*

*Recordkeeping Burden per*

*Recordkeeper:* The average annual

recordkeeping burden will vary

depending on the size of the employer.

*Estimated Average Annual*

*Recordkeeping Burden per*

*Recordkeeper:* 26.5 hours.

*Estimated Number of Recordkeepers:*

265,343.

*Estimated Total Annual Reporting*

*Burden:* 5,948,728 hours.

*Estimated Average Annual Reporting*

*Burden per Respondent:* 8 hours.

*Estimated Number of Respondents:*

7,264,970.

*The following paragraph applies to all of the collections of information covered by this notice:*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material

in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 10, 2006.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E6-748 Filed 1-20-06; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Open Meeting of the AD Hoc Committee of the Taxpayer Advocacy Panel**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the AD Hoc Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, February 16, 2006 at 2 p.m. e.t.

**FOR FURTHER INFORMATION CONTACT:** Inez De Jesus at 1-888-912-1227, or 954-423-7977.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Thursday, February

16, 2006 at 2 p.m. e.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 954-423-7977, or write Inez De Jesus, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez De Jesus. Ms. De Jesus can be reached at 1-888-912-1227 or 954-423-7977, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include: Various IRS issues.

Dated: January 18, 2006.

**Martha Curry,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E6-734 Filed 1-20-06; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, February 14, 2006.

**FOR FURTHER INFORMATION CONTACT:** Audrey Y. Jenkins at 1-888-912-1227 (toll-free), or 718-488-2085 (non toll-free).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Tuesday, February 14, 2006 from 12 pm to 1 pm e.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For information or to confirm attendance, notification of intent to attend the meeting must be made with Audrey Y. Jenkins. Ms. Jenkins may be reached at 1-888-912-1227 or (718) 488-2085, send written comments to Audrey Y. Jenkins, TAP



Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201 or post comments to the Web site: <http://www.improveirs.org>. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance.

The agenda will include various IRS issues.

Dated: January 18, 2006.

**Martha Curry,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E6-736 Filed 1-20-06; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance (VITA) Issue Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel VITA Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, February 7, 2006, at 3 p.m. eastern time.

**FOR FURTHER INFORMATION CONTACT:** Sandy McQuin at 1-888-912-1227, or (414) 297-1604.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel VITA Issue Committee will be held Tuesday, February 7, 2006, at 3 p.m. eastern time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 297-1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203-2221, or you can contact us at <http://www.improveirs.org>. This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Sandy McQuin at 1-888-912-1227 or (414) 297-1604 for additional information.

The agenda will include the following: Various IRS issues.

Dated: January 18, 2006.

**Martha Curry,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E6-737 Filed 1-20-06; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, February 14, 2006, at 9:30 a.m. Central Time.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Delzer at 1-888-912-1227, or (414) 297-1604.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, February 14, 2006, at 9:30 a.m. Central Time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 297-1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203-2221, or you can contact us at <http://www.improveirs.org>. This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Mary Ann Delzer at 1-888-912-1227 or (414) 297-1604 for additional information.

The agenda will include the following: Various IRS issues.

Dated: January 18, 2006.

**Martha Curry,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E6-738 Filed 1-20-06; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and Puerto Rico)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, February 21, 2006 at 11:30 a.m. ET.

**FOR FURTHER INFORMATION CONTACT:** Sallie Chavez at 1-888-912-1227, or 954-423-7979.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Tuesday, February 21, 2006, from 11:30 a.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 954-423-7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1-888-912-1227 or 954-423-7979, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include: Various IRS issues.

Dated: January 18, 2006.

**Martha Curry,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E6-739 Filed 1-20-06; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, February 28, 2006, at 11 a.m., central time.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Delzer at 1-888-912-1227, or (414) 297-1604.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, February 28, 2006, at 11 a.m., Central time via a telephone conference call. You can submit written comments to the panel by faxing the comments to (414) 297-1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203-2221, or you can contact us at <http://www.improveirs.org>. This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Mary Ann Delzer at 1-888-912-1227 or (414) 297-1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: January 18, 2006.

**Martha Curry,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E6-740 Filed 1-20-06; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, February 16, 2006, from 11 a.m. ET.

**FOR FURTHER INFORMATION CONTACT:** Sallie Chavez at 1-888-912-1227, or 954-423-7979.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Thursday, February 16, 2006, from 11 a.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 954-423-7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1-888-912-1227 or 954-423-7979, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include: Various IRS issues.

Dated: January 18, 2006.

**Martha Curry,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E6-741 Filed 1-20-06; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, February 15, 2006.

**FOR FURTHER INFORMATION CONTACT:** Dave Coffman at 1-888-912-1227, or 206-220-6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988)

that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, February 15, 2006 from 2 p.m. Pacific Time to 3 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 206-220-6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174 or you can contact us at <http://www.improveirs.org>. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1-888-912-1227 or 206-220-6096.

The agenda will include the following: Various IRS issues.

Dated: January 17, 2006.

**Martha Curry,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E6-742 Filed 1-20-06; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, February 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Audrey Y. Jenkins at 1-888-912-1227 (toll-free), or 718-488-2085 (non toll-free).

**SUPPLEMENTARY INFORMATION:** An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, February 21, 2006 from 9 a.m. ET to 10 a.m. ET via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 718-488-2085, or write Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625

Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Audrey Y. Jenkins. Ms. Jenkins can be reached at 1-888-912-1227 or 718-488-2085, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: January 18, 2006.

**Martha Curry,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E6-751 Filed 1-20-06; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### **Open Meeting of The Area 2 Taxpayer Advocacy Panel (Including The States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia And The District of Columbia)**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, February 21, 2006, at 2:30 p.m. ET.

**FOR FURTHER INFORMATION CONTACT:** Inez E. De Jesus at 1-888-912-1227, or 954-423-7977.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Tuesday, February 21, 2006 at 2:30 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 954-423-7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1-888-912-1227 or 954-423-7977, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include the following: Various IRS issues.

Dated: January 18, 2006.

**Martha Curry,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E6-752 Filed 1-20-06; 8:45 am]

**BILLING CODE 4830-01-P**

# Corrections

Federal Register

Vol. 71, No. 14

Monday, January 23, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Part 48

RIN 1219-AB35

#### Training Standards for Shaft and Slope Construction Workers at Underground Mines and Surface Areas of Underground Mines

##### *Correction*

In rule document 05-24624 beginning on page 77716 in the issue of Friday, December 30, 2005, make the following corrections:

1. On page 77718, in Table 2, in the third column, in the first and second lines of the column heading, “UG & ≤ surf.” should read “UG & surf.”.

2. On page 77721, in the first column, in the second full paragraph, in the first line, “Shaft and slope workers” should read, ““Shaft and slope workers””.

[FR Doc. C5-24624 Filed 1-20-06; 8:45 am]

BILLING CODE 1505-01-D

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Parts 383 and 384

[Docket No. FMCSA-2005-21603]

RIN 2126-AA94

#### Commercial Driver’s License Standards; School Bus Endorsement

##### *Correction*

In rule document 06-413 beginning on page 2897 in the issue of Wednesday,

January 18, 2006, make the following correction:

On page 2897, in the second column, footnote 1 at the bottom of the column should read “<sup>1</sup>As pertinent to this rule, a CMV is a motor vehicle used in commerce that is designed to transport at least 16 passengers, including the driver. 49 U.S.C. 31301(4)(B)”.

[FR Doc. C6-413 Filed 1-20-06; 8:45 am]

BILLING CODE 1505-01-D



# Federal Register

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**Monday,  
January 23, 2006**

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**Part II**

**Department of  
Health and Human  
Services**

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**Centers for Medicare & Medicaid Services**

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**42 CFR Parts 412 and 424**

**Medicare Program; Inpatient Psychiatric  
Facilities Prospective Payment System  
Payment Update for Rate Year Beginning  
July 1, 2006 (RY 2007); Proposed Rule**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 412 and 424

[CMS–1306–P]

#### Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System Payment Update for Rate Year Beginning July 1, 2006 (RY 2007)

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would update the prospective payment rates for Medicare inpatient hospital services provided by inpatient psychiatric facilities (IPFs). These changes are applicable to IPF discharges occurring during the rate year beginning July 1, 2006 through June 30, 2007. We are proposing to adopt the new Office of Management and Budget (OMB) labor market area definitions for the purpose of geographic classification and the wage index. In addition, we are proposing other new policies and making changes to existing policies.

**DATES:** We will consider comments if we receive them at the appropriate address provided below, no later than 5 p.m. on March 14, 2006.

**ADDRESSES:** In commenting, please refer to file code CMS–1306–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/eRulemaking>. (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–1306–P, P.O. Box 8010, Baltimore, MD 21244.

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 21244–1850.

(Because access to the interior of the Humphrey Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

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:** Janet Samen, (410) 786–4533 for general information. Mary Lee Seifert, (410) 786–0030 for information regarding the market basket and labor-related share. Theresa Bean, (410) 786–2287 for impact. Matthew Quarrick, (410) 786–9867 for wage index.

#### **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–1306–P and the specific "issue identifier" that precedes the section on which you choose to comment.

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. CMS posts all electronic comments received before the close of the comment period on its public Web site as soon as possible after they have been received. Hard copy comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document,

at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

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- VI. Collection of Information Requirements
- VII. Regulatory Impact Analysis

#### Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding terms in alphabetical order below:

- BBA Balanced Budget Act of 1997, (Pub. L. 105–33)
- BBRA Medicare, Medicaid and SCHIP [State Children’s Health Insurance Program] Balanced Budget Refinement Act of 1999, (Pub. L. 106–113)
- BIPA Medicare, Medicaid, and SCHIP [State Children’s Health Insurance Program] Benefits Improvement and Protection Act of 2000, (Pub. L. 106–554)
- CBSA Core-Based Statistical Areas
- CCR Cost-to-charge ratio
- CMS Centers for Medicare & Medicaid Services
- CMSA Consolidated Metropolitan Statistical Area
- DSM–IV–TR Diagnostic and Statistical Manual of Mental Disorders Fourth Edition—Text Revision
- DRGs Diagnosis-related groups
- FY Federal fiscal year
- HCRIS Hospital Cost Report Information System
- ICD–9–CM International Classification of Diseases, 9th Revision, Clinical Modification
- IPFs Inpatient psychiatric facilities
- IRFs Inpatient rehabilitation facilities
- LTCHs Long-term care hospitals
- MedPAR Medicare provider analysis and review file
- MMA Medicare Prescription Drug, Improvement and Modernization Act of 2003, (Pub. L. 108–173)
- MSA Metropolitan Statistical Area
- NECMA New England County Metropolitan Area

OMB Office of Management and Budget  
PIP Periodic interim payments  
RY Rate Year (July 1 through June 30)  
TEFRA Tax Equity and Fiscal Responsibility Act of 1982, (Pub. L. 97–248)

#### I. Background

[If you choose to comment on issues in this section, please include the caption “BACKGROUND” at the beginning of your comments.]

##### A. General and Legislative History

The Congress directed implementation of a prospective payment system (PPS) for acute care hospitals with the enactment of Public Law 98–21. Section 601 of the Social Security Amendments of 1983 (Pub. L. 98–21) added a new section 1886(d) to the Social Security Act (the Act) that replaced the reasonable cost-based payment system for most hospital inpatient services with a PPS.

Although most hospital inpatient services became subject to the PPS, certain hospitals, including IPFs, inpatient rehabilitation facilities (IRFs), long term care hospitals (LTCHs), and children’s hospitals were excluded from the PPS for acute care hospitals. These hospitals and units were paid their reasonable costs for inpatient services, subject to a per discharge limitation or target amount under the authority of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Public Law 97–248. The regulations implementing the TEFRA (reasonable cost-based) payment provisions are located at 42 CFR part 413. Cancer hospitals were added to the list of excluded hospitals by section 6004(a) of the Omnibus Budget Reconciliation Act of 1989, (Pub. L. 101–239).

The Congress enacted various provisions in the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), the Medicare, Medicaid, and SCHIP (State Children’s Health Insurance Program) Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554) to replace the reasonable cost-based method of reimbursement with a PPS for IRFs, LTCHs, and IPFs. Section 124 of the BBRA required implementation of the IPF PPS.

Section 124 of the BBRA mandated that the Secretary—(1) develop a per diem PPS for inpatient hospital services furnished in psychiatric hospitals and psychiatric units; (2) include in the PPS an adequate patient classification system that reflects the differences in patient resource use and costs among

psychiatric hospitals and psychiatric units; (3) maintain budget neutrality; (4) permit the Secretary to require psychiatric hospitals and psychiatric units to submit information necessary for the development of the PPS; and (5) submit a report to the Congress describing the development of the PPS. Section 124 of the BBRA also required that the IPF PPS be implemented for cost reporting periods beginning on or after October 1, 2002.

Section 405(g)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) extended the IPF PPS to distinct part psychiatric units of critical access hospitals (CAHs).

##### B. Overview of the Establishment of the IPF PPS

On November 28, 2003, we published a proposed rule in the **Federal Register** (68 FR 66920) that proposed to implement section 124 of the BBRA. In the November 15, 2004 **Federal Register** (69 FR 66922) our final rule implemented the IPF PPS for cost reporting periods beginning on or after January 1, 2005. Although section 124 of the BBRA directed that the IPF PPS be implemented for cost reporting periods beginning on or after October 1, 2002, we explained in the proposed and final rules that the creation of a PPS requires an extraordinary amount of lead-time to create a completely new payment system and that we were unable to perform the analysis required in time for an October 1, 2002 implementation, to ensure that a system based on CMS administrative data would fulfill the statutory mandate of section 124 of the BBRA. We explained that despite our best efforts, we could not engage in notice and comment rulemaking and achieve implementation of the IPF PPS by October 1, 2002.

The November 2004 final rule (hereinafter referred to as the IPF PPS final rule) established regulations for the IPF PPS under 42 CFR 412, subpart N.

The IPF PPS established the Federal per diem base rate for each patient day in an IPF derived from the national average daily routine operating, ancillary, and capital costs in IPFs in FY 2002. The average per diem cost was updated to the midpoint of the first year under the IPF PPS, standardized to account for the overall positive effects of the IPF PPS payment adjustments, and adjusted for budget neutrality. The Federal per diem payment under the IPF PPS is comprised of the Federal per diem base rate described above and certain patient and facility payment adjustments that were found in the regression analysis to be associated with

statistically significant per diem cost differences (see 69 FR 66933 through 66936 for a description of the regression analysis). The patient-level adjustments include age, DRG assignment, comorbidities, and variable per diem adjustments to reflect the higher cost incurred in the early days of a psychiatric stay. Facility-level adjustments include adjustments for the IPF's wage index, rural location, teaching status, a cost of living adjustment for IPFs located in Alaska and Hawaii, and presence of a qualifying emergency department (ED). The IPF PPS provides additional payments for outlier cases, stop-loss protection which is applicable only during the IPF PPS transition period, includes special payment provisions for interrupted stays, and a per treatment adjustment for patients who undergo electroconvulsive therapy (ECT). We refer readers to the IPF PPS final rule for a comprehensive discussion of the research and data that supported the establishment of the IPF PPS.

On April 1, 2005, we published a correction to the IPF PPS final rule in the **Federal Register** (70 FR 16724). Any reference to the IPF PPS final rule in this proposed rule includes the provisions in the correction notice. We established a CMS website that contains useful information regarding the IPF PPS including the proposed rule, final rule, and the correction notice. The website URL is <http://www.cms.hhs.gov/InpatientPsychFacilPPS/> and may be accessed by downloading or viewing publications and other information pertinent to the IPF PPS.

### C. Applicability of the IPF PPS

The IPF PPS is applicable to freestanding psychiatric hospitals, including government-operated psychiatric hospitals, and distinct part psychiatric units of acute care hospitals and CAHs.

The regulations at § 412.402 define an IPF as a hospital that meets the requirements specified in § 412.22, § 412.23(a), § 482.60, § 482.61, and § 482.62, and units that meet the requirements specified in § 412.22, § 412.25, and § 412.27.

However, the following hospitals are paid under a special payment provision, as described in § 412.22(c) and, therefore, are not subject to the IPF PPS rules:

- Veterans Administration hospitals.
- Hospitals that are reimbursed under State cost control systems approved under 42 CFR part 403.
- Hospitals that are reimbursed in accordance with demonstration projects specified in section 402(a) of Public Law

90–248 (42 U.S.C. 1395b–1) or section 222(a) of Public Law 92–603 (42 U.S.C. 1395b–1(note)).

- Non-participating hospitals furnishing emergency services to Medicare beneficiaries.

## II. Overview for Updating the IPF PPS

[If you choose to comment on issues in this section, please include the caption "OVERVIEW FOR UPDATING THE IPF PPS" at the beginning of your comments.]

### A. Requirements for Updating the IPF PPS

Section 124 of the BBRA does not specify an update strategy for the IPF PPS and is broadly written to give the Secretary discretion in establishing an update methodology. Therefore, we reviewed the update approach used in other hospital PPSs (specifically, the IRF and LTCH PPS update methodologies). As a result of this analysis, we stated in the IPF PPS final rule (69 FR 66966) that we would implement the IPF PPS using the following update strategy—(1) calculate the final Federal per diem base rate to be budget neutral for the 18-month period (that is, January 1, 2005 through June 30, 2006); (2) use a July 1 through June 30 annual update cycle; and (3) allow the IPF PPS first update to be effective for discharges July 1, 2006 through June 30, 2007. In this proposed rule, we are proposing updates to the IPF PPS for the period of July 1, 2006 through June 30, 2007.

As explained in the IPF PPS final rule, we believe it is important to delay updating the adjustment factors derived from the regression analysis until we have IPF PPS data that include as much information as possible regarding the patient-level characteristics of the population that each IPF serves. For this reason, we do not intend to update the regression analysis and recalculate the Federal per diem base rate until we have analyzed 1 year of IPF PPS claims and cost report data (that is, no earlier than FY 2008). Until that analysis is complete, we stated our intention to publish a notice in the **Federal Register** each spring to update the IPF PPS as specified in § 412.428 to include:

- A description of the methodology and data used to calculate the updated Federal per diem base payment amount.
- The rate of increase factor as described in § 412.424(a)(2)(iii), which is based on the excluded hospital with capital market basket under the update methodology of 1886(b)(3)(B)(ii) of the Act for each year.
- The best available hospital wage index and information regarding

whether an adjustment to the Federal per diem base rate is needed to maintain budget neutrality.

- Updates to the fixed dollar loss amount in order to maintain the appropriate outlier percentage.
- Describe the ICD–9–CM coding and DRG classification changes discussed in the annual update to the hospital inpatient prospective payment system regulations.
- Update the ECT adjustment by a factor specified by CMS.

### B. Proposed Updates to the IPF PPS

As discussed above, we intended to publish a notice in the **Federal Register** in the spring of 2006 that would announce the updates to the IPF PPS in accordance with § 412.428 rather than update through rulemaking (69 FR 66966). However, since the implementation of the IPF PPS, a new market basket index was announced in the August 2005 IPPS final rule. We believe that this new market basket should be implemented in the IPF PPS as well in order to update the system using the best data available. Therefore, rather than publish a notice to update the IPF PPS in 2006, we are proposing changes in this proposed rule to give interested parties the opportunity to comment.

Furthermore, we indicated in the IPF PPS final rule (69 FR 66952) that we were not adopting the new labor market definitions developed by the OMB and adopted under the IPPS. Rather, we explained that we intended to use the metropolitan statistical areas (MSAs) developed by OMB in 1993 for the wage index under the IPF PPS. At the time we published the proposed IPF PPS rule, the 2003 MSA definitions had not been implemented for any Medicare programs. In addition, we indicated that we believe that the adoption of the new labor market area definitions may have a significant impact on the wage index applied to IPFs and associated payments and that we would assess the implications of the new MSA definitions on IPFs before proposing to adopt them.

We believe that IPFs should be afforded an opportunity to comment on the use of the new labor market definitions before we adopt them under the IPF PPS. For this reason also, we are publishing this proposed rule, rather than a notice, in order to give interested parties an opportunity to comment on the new labor market definitions (see section III.C.1. of this proposed rule).



*C. Transition Period for Implementation of the IPF PPS*

In the IPF PPS final rule, we established § 412.426 to provide for a 3-year transition period from reasonable

cost-based reimbursement to full prospective payment for IPFs. New IPFs are paid 100 percent of the Federal per diem rate. However, for those IPFs that are transitioning to a new system, during the 3-year period as specified in

the IPF PPS final rule, payment is based on an increasing percentage of the PPS payment and a decreasing percentage of each IPF's facility-specific TEFRA reimbursement rate. The blend percentages are as follows:

TABLE 1.—IPF PPS FINAL RULE TRANSITION BLEND FACTORS

Transition year	Cost reporting periods beginning on or after	TEFRA rate percentage	IPF PPS Federal rate percentage
1	January 1, 2005	75	25
2	January 1, 2006	50	50
3	January 1, 2007	25	75
	January 1, 2008	0	100

Changes to the blend percentages occur at the beginning of an IPF's cost reporting period. As a result, for discharges occurring during IPF cost reporting periods beginning in CY 2006, IPFs would receive a blended payment consisting of 50 percent of the facility-specific TEFRA payment and 50 percent of the IPF PPS payment amount. However, regardless of when an IPF's cost reporting year begins, the payment update we are proposing would be effective for discharges occurring on or after July 1, 2006 through June 30, 2007. We are not proposing any changes to the transition approach established in the IPF PPS final rule.

**III. Proposed Updates to the IPF PPS for Rate Year beginning July 1, 2006**

The IPF PPS is based on a standardized Federal per diem base rate calculated from IPF average per diem costs and adjusted for budget-neutrality in the implementation year. The Federal per diem base rate is used as the standard payment per day under the IPF PPS and is adjusted by the applicable wage index factor and the patient-level and facility-level adjustments that are applicable to the IPF stay.

The following is an explanation of how we calculated the Federal per diem base rate and the standardization and budget neutrality factors as described in the IPF PPS final rule.

*A. Calculation of the Average Per Diem Cost*

[If you choose to comment on issues in this section, please include the caption "PER DIEM COST" at the beginning of your comments.]

As indicated in the IPF PPS final rule, to calculate the Federal per diem base rate, we estimated the average cost per day for—(1) routine services from FY 2002 cost reports (supplemented with FY 2001 cost reports if the FY 2002 cost report was missing); and (2) ancillary

services using data from the FY 2002 Medicare claims and corresponding data from facility cost reports.

For routine services, the per diem operating and capital costs were used to develop the average per diem cost amount. The per diem routine costs were obtained from each facility's Medicare cost report. To estimate the costs for routine services included in the Federal per diem base rate calculation, we added the total routine costs (including costs for capital) submitted on the cost report for each provider and divided it by the total Medicare days.

Some average routine costs per day were determined to be aberrant, that is, the costs were extraordinarily high or low and most likely contained data errors. We provided a detailed discussion in the IPF PPS final rule (69 FR 66926 through 66927) of the method used to trim extraordinarily high or low cost values from the per diem rate development file in order to improve the accuracy of our results. For ancillary services, we calculated the costs by converting charges from the FY 2002 Medicare claims into costs using facility-specific, cost-center specific cost-to-charge ratios obtained from each provider's applicable cost reports. We matched each provider's departmental cost-to-charge ratios from their Medicare cost report to each charge on their claims reported in the MedPAR file. Multiplying the total charges for each type of ancillary service by the corresponding cost-to-charge ratio provided an estimate of the costs for all ancillary services received by the patient during the stay. We determined the average ancillary amount per day by dividing the total ancillary costs for all stays by the total number of covered Medicare days.

Adding the average ancillary costs per day and the average routine costs per day including capital costs provided the

estimated average per diem cost for each patient day of inpatient psychiatric care in FY 2002.

*B. Determining the Standardized Budget-Neutral Federal Per Diem Base Rate*

[If you choose to comment on issues in this section, please include the caption "BUDGET NEUTRAL BASE RATE" at the beginning of your comments.]

Section 124(a)(1) of the BBRA requires that the implementing IPF PPS be budget neutral. In other words, the amount of total payments under the IPF PPS, including any payment adjustments, must be projected to be equal to the amount of total payments that would have been made if the IPF PPS were not implemented. Therefore, in the IPF PPS final rule, we calculated the budget-neutrality factor by setting the total estimated IPF PPS payments to be equal to the total estimated payments that would have been made under the TEFRA methodology had the IPF PPS not been implemented. The IPF PPS final rule includes a step-by-step description of the methodology we used to estimate payments under the TEFRA payment system (69 FR 66930). For the IPF PPS methodology, we calculated the final Federal per diem base rate to be budget neutral during the implementation period under the IPF PPS using a July 1 update cycle. Thus, the implementation period for the IPF PPS is the 18-month period January 1, 2005 through June 30, 2006.

We updated the average cost per day to the midpoint of the IPF PPS implementation period (that is, October 1, 2005). We used the most recent projection of the full percentage increase in the 1997-based excluded hospital with capital market basket index for FY 2003 and later in accordance with § 413.40(c)(3)(viii). The updated average cost per day of \$724.43 was used in the payment model to

establish the budget neutrality adjustment.

#### 1. Standardization of the Federal Per Diem Base Rate

In the IPF PPS final rule, we standardized the IPF PPS Federal per diem base rate in order to account for the overall positive effects of the IPF PPS payment adjustment factors. To standardize the IPF PPS payments, we compared the IPF PPS payment amounts calculated from the psychiatric stays in the FY 2002 MedPAR file to the projected TEFRA payments from the FY 2002 cost report file updated to the midpoint of the IPF PPS implementation period (that is October 2005). The standardization factor was calculated by dividing total estimated payments under the TEFRA payment system by estimated payments under the IPF PPS. The standardization factor was calculated to be 0.8367. As a result, in the IPF PPS final rule, the \$724.43 average cost per day was reduced by 16.33 percent (100 percent minus 83.67 percent).

#### 2. Calculation of the Budget Neutrality Adjustment

To compute the budget neutrality adjustment for the IPF PPS, we separately identified each component of the adjustment, that is, the outlier adjustment, stop-loss adjustment, and behavioral offset.

##### a. Outlier Adjustment

Since the IPF PPS payment amount for each IPF includes applicable outlier amounts, we reduced the standardized Federal per diem base rate to account for aggregate IPF PPS payments estimated to be made as outlier payments. The appropriate outlier amount was determined by comparing the adjusted prospective payment for the entire stay to the computed cost per case. If costs were above the prospective payment plus the adjusted fixed dollar loss threshold amount, an outlier payment was computed using the applicable risk-sharing percentages, as explained in greater detail in section IV.D.1 of this proposed rule. The outlier amount was computed for all stays, and the total outlier amount was added to the final IPF PPS payment. The outlier adjustment was calculated to be 2 percent. As a result, the standardized Federal per diem base rate was reduced by 2 percent to account for projected outlier payments.

##### b. Stop-Loss Provision Adjustment

As explained in the IPF PPS final rule, we provide a stop-loss payment to ensure that an IPF's total PPS payments

are no less than a minimum percentage of their TEFRA payment, had the IPF PPS not been implemented. We reduced the standardized Federal per diem base rate by the percentage of aggregate IPF PPS payments estimated to be made for stop-loss payments.

The stop-loss payment amount was determined by comparing aggregate prospective payments that the provider would receive under the IPF PPS to aggregate TEFRA payments that the provider would have otherwise received without implementation of the IPF PPS. If an IPF's aggregate IPF PPS payments are less than 70 percent of its aggregate payments under TEFRA, a stop-loss payment was computed for that IPF. The stop-loss payment amounts were computed for those IPFs that were projected to receive the payments, and the total amount was added to the final IPF PPS payment amount. As a result, the standardized Federal per diem base rate was reduced by 0.39 percent in order to maintain budget neutrality in the IPF PPS.

##### c. Behavioral Offset

As explained in the IPF PPS final rule, implementation of the IPF PPS may result in certain changes in IPF practices especially with respect to coding for comorbid medical conditions. As a result, Medicare may incur higher payments than assumed in our calculations. Accounting for these effects through an adjustment is commonly known as a behavioral offset.

Based on accepted actuarial practices and consistent with the assumptions made in other prospective payment systems, we assumed in determining the behavioral offset that IPFs would regain 15 percent of potential "losses" and augment payment increases by 5 percent. We applied this actuarial assumption, which is based on our historical experience with new payment systems, to the estimated "losses" and "gains" among the IPFs. The behavioral offset for the IPF PPS was calculated to be 2.66 percent. As a result, we reduced the standardized Federal per diem base rate by 2.66 percent to maintain budget neutrality.

To summarize, the \$724.43 updated average per diem cost was reduced by 16.33 percent to account for standardization to projected TEFRA per diem payments for the implementation period, by 2 percent to account for outlier payments, by 0.39 percent to account for stop-loss payments, and by 2.66 percent reduction to account for the behavioral offset. The final standardized budget-neutral Federal per diem base rate for the IPF PPS implementation year was calculated to

be \$575.95. We discuss the Federal per diem base rate for RY 2007 in section III B.3. of this proposed rule.

#### 3. Revision of Standardization Factor

In reviewing the methodology used to simulate the IPF PPS payments used for the IPF PPS final rule, we discovered that the computer code incorrectly assigned non-teaching status to most teaching facilities. As a result, total IPF PPS payments were underestimated by about 1.36 percent. The IPF PPS estimated payment total was used in calculating the IPF PPS standardization factor. The standardization factor indicates the proportion by which the IPF PPS per diem payment rate and the ECT rate must be reduced in order to make total IPF PPS payments equal to estimated total TEFRA payments assuming IPFs continued to be paid solely under TEFRA for the first PPS payment year. The standardization factor is calculated as the ratio of estimated total TEFRA payments to estimated total IPF PPS payments assuming no reduction to the per diem and ECT payment rates. Since the IPF PPS payment total should have been larger than the estimated figure, the standardization factor should have been smaller (0.8254 vs. 0.8367). In turn, the per diem rate and the ECT rate should have been reduced by 0.8254 instead of 0.8367.

To resolve this issue, we are proposing to amend the Federal per diem base rate prospectively. Using the standardization factor of 0.8254, the base rate should have been \$568.17 for the implementation year of the IPF PPS. It is this base rate that we propose to update using the market basket rate of increase of 4.5 percent and the budget-neutral wage index factor of 1.00156 (as discussed in section IV.C.1.f. of this proposed rule). Applying these factors yields a proposed Federal per diem base rate of \$594.66 for the rate year (RY) beginning July 1, 2006 through June 30, 2007.

#### C. Update of the Federal Per Diem Base Rate

[If you choose to comment on issues in this section, please include the caption "UPDATE ON PER DIEM BASE RATE" at the beginning of your comments.]

##### 1. Market Basket for IPFs Reimbursed under the IPF PPS

###### a. Proposed IPF Market Basket Index

The market basket index used to develop the IPF PPS is the excluded hospital with capital market basket. This market basket was based on 1997 Medicare cost report data and includes data for Medicare participating IPFs,

IRFs, LTCHs, cancer, and children's hospitals.

We are presently unable to create a separate market basket specifically for psychiatric hospitals due to the small number of facilities and the limited data that are provided (for instance, approximately 4 percent of psychiatric facilities reported contract labor cost data for 2002). However, since all IRFs, LTCHs, and IPFs are now paid under a PPS, we are proposing to update PPS payments made under the IRF PPS, the LTCH PPS, and the IPF PPS, in their respective **Federal Register** updates, using a market basket reflecting the operating and capital cost structures for IRFs, IPFs, and LTCHs, hereafter referred to as the RPL (rehabilitation, psychiatric, long-term care) market basket. We are excluding children's and cancer hospitals from the RPL market basket because their payments are based entirely on reasonable costs subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in § 413.40 of the regulations. They are not reimbursed under a PPS. Also, the FY 2002 cost structures for children's and cancer hospitals are noticeably different than the cost structures of the IRFs, IPFs, and LTCHs.

The services offered in IRFs, IPFs, and LTCHs are typically more labor-intensive than those offered in cancer and children's hospitals. Therefore, the compensation cost weights for IRFs, IPFs, and LTCHs are larger than those in cancer and children's hospitals. In addition, the depreciation cost weights for IRFs, IPFs, and LTCHs are noticeably smaller than those for children's and cancer hospitals.

In the following discussion, we provide an overview on the market basket and describe the methodologies we propose to use for purposes of determining the operating and capital portions of the proposed FY 2002-based RPL market basket.

#### b. Overview of the Proposed RPL Market Basket

The proposed RPL market basket is a fixed weight, Laspeyres-type price index that is constructed in three steps. First, a base period is selected (in this case, FY 2002) and total base period expenditures are estimated for a set of mutually exclusive and exhaustive spending categories based upon type of expenditure. Then the proportion of total costs that each category represents is determined. These proportions are called cost or expenditure weights. Second, each expenditure category is matched to an appropriate price or wage variable, referred to as a price proxy. In

nearly every instance, these price proxies are price levels derived from publicly available statistical series that are published on a consistent schedule, preferably at least on a quarterly basis.

Finally, the expenditure weight for each cost category is multiplied by the level of its respective price proxy for a given period. The sum of these products (that is, the expenditure weights multiplied by their price levels) for all cost categories yields the composite index level of the market basket in a given period. Repeating this step for other periods produces a series of market basket levels over time. Dividing an index level for a given period by an index level for an earlier period produces a rate of growth in the input price index over that time period.

A market basket is described as a fixed-weight index because it answers the question of how much it would cost, at another time, to purchase the same mix of goods and services purchased to provide hospital services in a base period. The effects on total expenditures resulting from changes in the quantity or mix of goods and services (intensity) purchased subsequent to the base period are not measured. In this manner, the market basket measures only pure price change. Only when the index is rebased would the quantity and intensity effects be captured in the cost weights. Therefore, we rebase the market basket periodically so that cost weights reflect changes in the mix of goods and services that hospitals purchase (hospital inputs) to furnish patient care between base periods.

The terms rebasing and revising, while often used interchangeably, actually denote different activities. Rebasing means moving the base year for the structure of costs of an input price index (for example, shifting the base year cost structure from FY 1997 to FY 2002). Revising means changing data sources, methodology, or price proxies used in the input price index. We propose to rebase and revise the market basket used to update the IPF PPS.

#### 2. Proposed Methodology for Operating Portion of the RPL Market Basket

The operating portion of the proposed FY 2002-based RPL market basket consists of several major cost categories derived from the FY 2002 Medicare cost reports for IRFs, IPFs, and LTCHs: wages, drugs, professional liability insurance, and a residual. We choose to use FY 2002 as the base year because we believe this is the most recent, complete year of Medicare cost report data and is consistent with the data year on which the IPF PPS is based. Due to insufficient Medicare cost report data for IRFs, IPFs,

and LTCHs, we propose to develop cost weights for benefits, contract labor, and blood and blood products using the FY 2002-based IPPS market basket (70 FR 23384), which we explain in more detail later in this section. For example, less than 30 percent of IRFs, IPFs, and LTCHs reported benefit cost data in FY 2002. We have noticed an increase in cost data for these expense categories over the last 4 years. The next time we rebase the RPL market basket there may be sufficient IRFs, IPFs, and LTCHs cost report data to develop the weights for these expenditure categories.

Since the cost weights for the RPL market basket are based on facility costs, we are proposing to limit our sample to hospitals with a Medicare average length of stay (LOS) within a comparable range of the total facility average LOS. We believe this provides a more accurate reflection of the structure of costs for Medicare covered days. Our goal is to measure cost shares that are reflective of case mix and practice patterns associated with providing services to Medicare beneficiaries.

We propose to use those cost reports for IRFs and LTCHs whose Medicare average LOS is within 15 percent (that is, 15 percent higher or lower) of the total facility average LOS for the hospital. This is the same edit applied to the FY 1992-based and FY 1997-based excluded hospital with capital market basket. We are proposing 15 percent because it includes those LTCHs and IRFs whose Medicare LOS is within approximately 5 days of the facility LOS.

However, we are proposing to use a less stringent measure of Medicare LOS for IPFs whose average LOS is within 30 or 50 percent (depending on the total facility average LOS) of the total facility average LOS. Using this less stringent edit allows us to increase our sample size by over 150 cost reports and produce a cost weight more consistent with the overall facility. The edit we applied to IPFs when developing the FY 1997-based excluded hospital with capital market basket was based on the best available data at the time.

The detailed cost categories under the residual (that is, the remaining portion of the market basket after excluding wages and salaries, drugs, and professional liability cost weights) are derived from the FY 2002-based IPPS market basket and the 1997 Benchmark Input-Output (I-O) Tables published by the Bureau of Economic Analysis, U.S. Department of Commerce. The FY 2002-based IPPS market basket was developed using FY 2002 Medicare hospital cost reports with the most

recent and detailed cost data (see the IPPS final rule in the August 12, 2005 **Federal Register** (70 FR 47388)). The 1997 Benchmark I-O is the most recent, comprehensive source of cost data for all hospitals. The proposed RPL cost weights for benefits, contract labor, and blood and blood products were derived using the FY 2002-based IPPS market basket. For example, the ratio of the benefit cost weight to the wages and salaries cost weight in the FY 2002-based IPPS market basket was applied to the RPL wages and salaries cost weight to derive a benefit cost weight for the RPL market basket. The remaining proposed RPL operating cost categories were derived using the 1997 Benchmark I-O Tables, aged to 2002 using relative price changes. (The methodology we used to age the data involves applying the annual price changes from the price proxies to the appropriate cost categories. We repeat this practice for each year.) Therefore, using this

methodology, roughly 59 percent of the proposed RPL market basket is accounted for by wages, drugs, and professional liability insurance data from FY 2002 Medicare cost report data for IRFs, LTCHs, and IPFs.

Table 2 below sets forth the complete proposed 2002-based RPL market basket including cost categories, weights, and price proxies. For comparison purposes, the corresponding FY 1997-based excluded hospital with capital market basket is listed as well.

Wages and salaries are 52.895 percent of total costs in the proposed FY 2002-based RPL market basket compared to 47.335 percent for the FY 1997-based excluded hospital with capital market basket. Employee benefits are 12.982 percent in the proposed FY 2002-based RPL market basket compared to 10.244 percent for the FY 1997-based excluded hospital with capital market basket. As a result, compensation costs (wages and salaries plus employee benefits) for the

proposed FY 2002-based RPL market basket are 65.877 percent of costs compared to 57.579 percent for the FY 1997-based excluded hospital with capital market basket. Of the 8 percentage-point difference between the compensation shares, approximately 3 percentage points are due to the proposed new base year (FY 2002 instead of FY 1997), 3 percentage points are due to revised length of stay edit, and the remaining 2 percentage points are due to the proposed exclusion of other hospitals (that is, only including IPFs, IRFs, and LTCHs in the market basket).

Following the table is a summary outlining the choice of the proxies we propose to use for the operating portion of the market basket. The price proxies for the capital portion are described in more detail in the capital methodology section (see section III.C.3 of this proposed rule).

TABLE 2.—PROPOSED FY 2002-BASED RPL MARKET BASKET COST CATEGORIES, WEIGHTS, AND PROXIES WITH FY 1997-BASED EXCLUDED HOSPITAL WITH CAPITAL MARKET BASKET USED FOR COMPARISON

Expense categories	FY 1997-based excluded hospital with capital market basket	Proposed FY 2002-based RPL market basket	Proposed FY 2002 RPL market basket price proxies
Total .....	100.000	100.000	
Compensation .....	57.579	65.877	
Wages and Salaries* .....	47.335	52.895	ECI-Wages and Salaries, Civilian Hospital Workers.
Employee Benefits* .....	10.244	12.982	ECI-Benefits, Civilian Hospital Workers.
Professional Fees, Non-Medical .....	4.423	2.892	ECI-Compensation for Professional, Specialty & Technical Workers.
Utilities .....	1.180	0.656	
Electricity .....	0.726	0.351	PPI-Commercial Electric Power.
Fuel Oil, Coal, etc. ....	0.248	0.108	PPI-Refined Petroleum Products.
Water and Sewage .....	0.206	0.197	CPI-U—Water & Sewage Maintenance.
Professional Liability Insurance .....	0.733	1.161	CMS Professional Liability Premium Index.
All Other Products and Services .....	27.117	19.265	
All Other Products .....	17.914	13.323	
Pharmaceuticals .....	6.318	5.103	PPI Prescription Drugs.
Food: Direct Purchase .....	1.122	0.873	PPI Processed Foods & Feeds.
Food: Contract Service .....	1.043	0.620	CPI-U Food Away From Home.
Chemicals .....	2.133	1.100	PPI Industrial Chemicals.
Blood and Blood Products** .....	0.748	.....	
Medical Instruments .....	1.795	1.014	PPI Medical Instruments & Equipment.
Photographic Supplies .....	0.167	0.096	PPI Photographic Supplies.
Rubber and Plastics .....	1.366	1.052	PPI Rubber & Plastic Products.
Paper Products .....	1.110	1.000	PPI Converted Paper & Paperboard Products.
Apparel .....	0.478	0.207	PPI Apparel.
Machinery and Equipment .....	0.852	0.297	PPI Machinery & Equipment.
Miscellaneous .....	0.783	1.963	PPI Finished Goods less Food & Energy.
All Other Services .....	9.203	5.942	
Telephone .....	0.348	0.240	CPI-U Telephone Services.
Postage .....	0.702	0.682	CPI-U Postage.
All Other: Labor Intensive .....	4.453	2.219	ECI-Compensation for Intensive Private Service Occupations.
All Other: Non-labor Intensive .....	3.700	2.800	CPI-U All Items.
Capital-Related Costs .....	8.968	10.149	
Depreciation .....	5.586	6.186	
Fixed Assets .....	3.503	4.250	Boeckh Institutional Construction 23-year useful life.
Movable Equipment .....	2.083	1.937	WPI Machinery & Equipment 11-year useful life.
Interest Costs .....	2.682	2.775	
Nonprofit .....	2.280	2.081	Average yield on domestic municipal bonds (Bond Buyer 20 bonds) vintage- weighted (23 years).

TABLE 2.—PROPOSED FY 2002-BASED RPL MARKET BASKET COST CATEGORIES, WEIGHTS, AND PROXIES WITH FY 1997-BASED EXCLUDED HOSPITAL WITH CAPITAL MARKET BASKET USED FOR COMPARISON—Continued

Expense categories	FY 1997-based excluded hospital with capital market basket	Proposed FY 2002-based RPL market basket	Proposed FY 2002 RPL market basket price proxies
For Profit .....	0.402	0.694	Average yield on Moody's Aaa bonds vintage weighted (23 years).
Other Capital-Related Costs .....	0.699	1.187	CPI-U Residential Rent.

\* Labor-related.

\*\* Blood and blood-related products is included in miscellaneous products.

**Note:** Due to rounding, weights may not sum to total.

Below we provide the proxies that we are proposing to use for the FY 2002-based RPL market basket. With the exception of the Professional Liability proxy, all the proposed price proxies for the operating portion of the proposed RPL market basket are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the following BLS categories:

- **Producer Price Indexes—**Producer Price Indexes (PPIs) measure price changes for goods sold in other than retail markets. PPIs are preferable price proxies for goods that hospitals purchase as inputs in producing their outputs because the PPIs better reflect the prices faced by hospitals. For example, we use a special PPI for prescription drugs, rather than the Consumer Price Index (CPI) for prescription drugs because hospitals generally purchase drugs directly from the wholesaler. The PPIs that we use measure price change at the final stage of production.

- **Consumer Price Indexes—**Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by the typical consumer. Because they may not represent the price faced by a producer, we use CPIs only if an appropriate PPI is not available, or if the expenditures are more similar to those of retail consumers in general rather than purchases at the wholesale level. For example, the CPI for food purchases away from home is used as a proxy for contracted food services.

- **Employment Cost Indexes—**Employment Cost Indexes (ECIs) measure the rate of change in employee wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. Appropriately, they are not affected by shifts in employment mix.

We evaluated the price proxies using the criteria of reliability, timeliness,

availability, and relevance. Reliability indicates that the index is based on valid statistical methods and has low sampling variability. Timeliness implies that the proxy is published regularly, preferably at least once a quarter. Availability means that the proxy is publicly available. Finally, relevance means that the proxy is applicable and representative of the cost category weight to which it is applied. The CPIs, PPIs, and ECIs selected by us to be proposed in this regulation meet these criteria.

We note that the proxies are the same as those used for the FY 1997-based excluded hospital with capital market basket. Because these proxies meet our criteria of reliability, timeliness, availability, and relevance, we believe they continue to be the best measure of price changes for the cost categories. For further discussion on the FY 1997-based excluded hospital with capital market basket, see the IPPS final rule published in the **Federal Register** on August 1, 2002 (67 FR at 50042).

#### *Wages and Salaries*

For measuring the price growth of wages in the proposed FY 2002-based RPL market basket, we propose to use the ECI for wages and salaries for civilian hospital workers as the proxy for wages in the RPL market basket.

#### *Employee Benefits*

The proposed FY 2002-based RPL market basket uses the ECI for employee benefits for civilian hospital workers.

#### *Nonmedical Professional Fees*

The ECI for compensation for professional and technical workers in private industry would be applied to this category since it includes occupations such as management and consulting, legal, accounting, and engineering services.

#### *Fuel, Oil, and Gasoline*

The percentage change in the price of gas fuels as measured by the PPI

(Commodity Code #0552) would be applied to this component.

#### *Electricity*

The percentage change in the price of commercial electric power as measured by the PPI (Commodity Code #0542) would be applied to this component.

#### *Water and Sewage*

The percentage change in the price of water and sewage maintenance as measured by the Consumer Price Index (CPI) for all urban consumers (CPI Code #CUUR0000SEHG01) would be applied to this component.

#### *Professional Liability Insurance*

The proposed FY 2002-based RPL market basket would use the percentage change in hospital professional liability insurance (PLI) premiums as estimated by the CMS Hospital Professional Liability Index for the proxy of this category. In the FY 1997-based excluded hospital with capital market basket, the same proxy was used.

We continue to research options for improving our proxy for professional liability insurance. This research includes exploring various options for expanding our current survey, including the identification of another entity that would be willing to work with us to collect more complete and comprehensive data. We are also exploring other options such as third party or industry data that might assist us in creating a more precise measure of PLI premiums. At this time we have not identified a preferred option, therefore no change is proposed for the proxy in this proposed rule.

#### *Pharmaceuticals*

The percentage change in the price of prescription drugs as measured by the PPI (PPI Code #PPI32541DRX) would be used as a proxy for this cost category. This is a special index produced by BLS as a proxy in the 1997-based excluded hospital with capital market basket.

*Food, Direct Purchases*

The percentage change in the price of processed foods and feeds as measured by the PPI (Commodity Code #02) would be applied to this component.

*Food, Contract Service*

The percentage change in the price of food purchased away from home as measured by the CPI for all urban consumers (CPI Code #CUUR0000SEFV) would be applied to this component.

*Chemicals*

The percentage change in the price of industrial chemical products as measured by the PPI (Commodity Code #061) would be applied to this component. While the chemicals hospitals purchase include industrial as well as other types of chemicals, the industrial chemicals component constitutes the largest proportion by far. Thus we believe that Commodity Code #061 is the appropriate proxy.

*Medical Instruments*

The percentage change in the price of medical and surgical instruments as measured by the PPI (Commodity Code #1562) would be applied to this component.

*Photographic Supplies*

The percentage change in the price of photographic supplies as measured by the PPI (Commodity Code #1542) would be applied to this component.

*Rubber and Plastics*

The percentage change in the price of rubber and plastic products as measured by the PPI (Commodity Code #07) would be applied to this component.

*Paper Products*

The percentage change in the price of converted paper and paperboard products as measured by the PPI (Commodity Code #0915) would be applied to this component.

*Apparel*

The percentage change in the price of apparel as measured by the PPI (Commodity Code #381) would be applied to this component.

*Machinery and Equipment*

The percentage change in the price of machinery and equipment as measured by the PPI (Commodity Code #11) would be applied to this component.

*Miscellaneous Products*

The percentage change in the price of all finished goods less food and energy as measured by the PPI (Commodity Code #SOP3500) would be applied to

this component. Using this index would remove the double-counting of food and energy prices, which are captured elsewhere in the market basket. The weight for this cost category is higher, in part, than in the 1997-based index because the weight for blood and blood products (1.188) is added to it. In the 1997-based excluded hospital with capital market basket, we included a separate cost category for blood and blood products, using the BLS PPI for blood and derivatives as a price proxy. A review of recent trends in the PPI for blood and derivatives suggests that its movements may not be consistent with the trends in blood costs faced by hospitals. While this proxy did not match exactly with the product hospitals are buying, its trend over time appears to be reflective of the historical price changes of blood purchased by hospitals. However, an apparent divergence over recent years led us to reevaluate whether the PPI for blood and derivatives was an appropriate measure of the changing price of blood. We ran test market baskets classifying blood in three separate cost categories: blood and blood products, contained within chemicals as was done for the 1992-based excluded hospital with capital market basket, and within miscellaneous products. These categories use as proxies the following PPIs: The PPI for blood and blood products, the PPI for chemicals, and the PPI for finished goods less food and energy, respectively. Of these three proxies, the PPI for finished goods less food and energy moved most like the recent blood cost and price trends. In addition, the impact on the overall market basket by using different proxies for blood was negligible, mostly due to the relatively small weight for blood in the market basket.

Therefore, we are proposing to use the PPI for finished goods less food and energy for the blood proxy because we believe it more appropriately proxies the price changes (not quantities or required tests) associated with blood purchased by hospitals. We will continue to evaluate this proxy for its appropriateness and will explore the development of alternative price indexes to proxy the price changes associated with this cost.

*Telephone*

The percentage change in the price of telephone services as measured by the CPI for all urban consumers (CPI Code #CUUR0000SEED) would be applied to this component.

*Postage*

The percentage change in the price of postage as measured by the CPI for all urban consumers (CPI Code #CUUR0000SEEC01) would be applied to this component.

*All Other Services, Labor Intensive*

The percentage change in the ECI for compensation paid to service workers employed in private industry would be applied to this component.

*All Other Services, Nonlabor Intensive*

The percentage change in the all items component of the CPI for all urban consumers (CPI Code # CUUR0000SA0) would be applied to this component.

*3. Proposed Methodology for Capital Portion of the RPL Market Basket*

Unlike for the operating costs of the proposed FY 2002-based RPL market basket, we did not have IRF, IPF, and LTCH FY 2002 Medicare cost report data for the capital cost weights, due to a change in the FY 2002 reporting requirements. Rather, we used these hospitals' expenditure data for the capital cost categories of depreciation, interest, and other capital expenses for FY 2001, and aged the data to a FY 2002 base year using relevant price proxies.

We calculated weights for the proposed RPL market basket capital costs using the same set of Medicare cost reports used to develop the operating share for IRFs, IPFs, and LTCHs. The resulting proposed capital weight for the FY 2002 base year is 10.149 percent. This is based on FY 2001 Medicare cost report data for IRFs, IPFs, and LTCHs, aged to FY 2002 using relevant price proxies.

Lease expenses are not a separate cost category in the market basket, but are distributed among the cost categories of depreciation, interest, and other, reflecting the assumption that the underlying cost structure of leases is similar to capital costs in general. We assumed 10 percent of lease expenses are overhead and assigned them to the other capital expenses cost category as overhead. We base this assignment of 10 percent of lease expenses to overhead on the common assumption that overhead is 10 percent of costs. The remaining lease expenses were distributed to the three cost categories based on the weights of depreciation, interest, and other capital expenses not including lease expenses.

Depreciation contains two subcategories: building and fixed equipment and movable equipment. The split between building and fixed equipment and movable equipment was determined using the FY 2001 Medicare

cost reports for IRFs, IPFs, and LTCHs. This methodology was also used to compute the 1997-based index (67 FR at 50044).

The total interest expense cost category is split between the government/nonprofit and for-profit hospitals. The 1997-based excluded hospital with capital market basket allocated 85 percent of the total interest cost weight to the government nonprofit interest, proxies by average yield on domestic municipal bonds, and 15 percent to for-profit interest, proxies by average yield on Moody's Aaa bonds.

We propose to derive the split using the relative FY 2001 Medicare cost report data for IPPS hospitals on interest expenses for the government/nonprofit and for-profit hospitals. Due to insufficient Medicare cost report data for IPFs, IRFs, and LTCHs, we propose to use the same split used in the IPPS capital input price index. We believe it is important that this split reflect the latest relative cost structure of interest expenses for hospitals and, therefore, we propose to use a 75–25 split to allocate interest expenses to government/nonprofit and for-profit (70 FR at 47408).

Since capital is acquired and paid for over time, capital expenses in any given year are determined by both past and present purchases of physical and financial capital. The vintage-weighted capital index is intended to capture the long-term consumption of capital, using vintage weights for depreciation (physical capital) and interest (financial capital). These vintage weights reflect the purchase patterns of building and fixed equipment and movable equipment over time. Depreciation and interest expenses are determined by the amount of past and current capital purchases. Therefore we are proposing to use the vintage weights to compute vintage-weighted price changes associated with depreciation and interest expense.

Vintage weights are an integral part of the proposed FY 2002-based RPL market basket. Capital costs are inherently complicated and are determined by complex capital purchasing decisions, over time, based on such factors as interest rates and debt financing. In addition, capital is depreciated over time instead of being consumed in the same period it is purchased. The capital portion of the proposed FY 2002-based RPL market basket would reflect the annual price changes associated with capital costs, and would be a useful simplification of the actual capital investment process. By accounting for the vintage nature of capital, we are able to provide an accurate, stable annual

measure of price changes. Annual non-vintage price changes for capital are unstable due to the volatility of interest rate changes and, therefore, do not reflect the actual annual price changes for Medicare capital-related costs. The capital component of the proposed FY 2002-based RPL market basket would reflect the underlying stability of the capital acquisition process and provide hospitals with the ability to plan for changes in capital payments.

To calculate the vintage weights for depreciation and interest expenses, we needed a time series of capital purchases for building and fixed equipment and movable equipment. We found no single source that provides the best time series of capital purchases by hospitals for all of the above components of capital purchases. The early Medicare Cost Reports did not have sufficient capital data to meet this need. While the American Hospital Association (AHA) Panel Survey provided a consistent database back to 1963, it did not provide annual capital purchases. However, the AHA Panel Survey provided a time series of depreciation expenses through 1997 which could be used to infer capital purchases over time. From 1998 to 2001, hospital depreciation expenses were calculated by multiplying the AHA Annual Survey total hospital expenses by the ratio of depreciation to total hospital expenses from the Medicare cost reports. Beginning in 2001, the AHA Annual Survey began collecting depreciation expenses. We hope to be able to use these data in future rebasings.

In order to estimate capital purchases from AHA data on depreciation and interest expenses, the expected life for each cost category (building and fixed equipment, movable equipment, and debt instruments) is needed. Due to insufficient Medicare cost report data for IPFs, IRFs, and LTCHs, we propose to use FY 2001 Medicare Cost Reports for IPPS hospitals to determine the expected life of building and fixed equipment and movable equipment. We believe this data source reflects the latest relative cost structure of depreciation expenses for hospitals and is analogous to IPFs, IRFs, and LTCHs. The expected life of any piece of equipment can be determined by dividing the value of the asset (excluding fully depreciated assets) by its current year depreciation amount. This calculation yields the estimated useful life of an asset if depreciation were to continue at current year levels, assuming straight-line depreciation. From the FY 2001 Medicare cost reports for IPPS hospitals the expected life of

building and fixed equipment was determined to be 23 years, and the expected life of movable equipment was determined to be 11 years.

We also propose to use the fixed and movable weights derived from FY 2001 Medicare cost reports for IPFs, IRFs, and LTCHs to separate the depreciation expenses into annual amounts of building and fixed equipment depreciation and movable equipment depreciation. By multiplying the annual depreciation amounts by the expected life calculations from the FY 2001 Medicare cost reports, year-end asset costs for building and fixed equipment and movable equipment were determined. We then calculated a time series back to 1963 of annual capital purchases by subtracting the previous year asset costs from the current year asset costs. From this capital purchase time series we were able to calculate the vintage weights for building and fixed equipment, movable equipment, and debt instruments. An explanation of each of these sets of vintage weights follows.

For proposed building and fixed equipment vintage weights, the real annual capital purchase amounts for building and fixed equipment derived from the AHA Panel Survey were used. The real annual purchase amount was used to capture the actual amount of the physical acquisition, net of the effect of price inflation. This real annual purchase amount for building and fixed equipment was produced by deflating the nominal annual purchase amount by the building and fixed equipment price proxy, the Boeckh Institutional Construction Index. This is the same proxy used for the FY 1997-based excluded hospital with capital market basket. We believe this proxy continues to meet our criteria of reliability, timeliness, availability, and relevance. Since building and fixed equipment has an expected life of 23 years, the vintage weights for building and fixed equipment are deemed to represent the average purchase pattern of building and fixed equipment over 23-year periods. With real building and fixed equipment purchase estimates back to 1963, sixteen 23-year periods could be averaged to determine the average vintage weights for building and fixed equipment that are representative of average building and fixed equipment purchase patterns over time. Vintage weights for each 23-year period are calculated by dividing the real building and fixed capital purchase amount in any given year by the total amount of purchases in the 23-year period. This calculation is done for each year in the 23-year period, and for each of the

sixteen 23-year periods. The average of each year across the sixteen 23-year periods is used to determine the 2002 average building and fixed equipment vintage weights.

For proposed movable equipment vintage weights, the real annual capital purchase amounts for movable equipment derived from the AHA Panel Survey were used to capture the actual amount of the physical acquisition, net of price inflation. This real annual purchase amount for movable equipment was calculated by deflating the nominal annual purchase amount by the movable equipment price proxy, the PPI for Machinery and Equipment. This is the same proxy used for the FY 1997-based excluded hospital with capital market basket. We believe this proxy, which meets our criteria, is the best measure of price changes for this cost category. Since movable equipment has an expected life of 11 years, the vintage weights for movable equipment are deemed to represent the average purchase pattern of movable equipment over an 11-year period. With real movable equipment purchase estimates available back to 1963, twenty-eight 11-

year periods could be averaged to determine the average vintage weights for movable equipment that are representative of average movable equipment purchase patterns over time. Vintage weights for each 11-year period would be calculated by dividing the real movable capital purchase amount for any given year by the total amount of purchases in the 11-year period. This calculation is done for each year in the 11-year period, and for each of the twenty-eight 11-year periods. The average of the twenty-eight 11-year periods would be used to determine the FY 2002 average movable equipment vintage weights.

For proposed interest vintage weights, the nominal annual capital purchase amounts for total equipment (building and fixed and movable) derived from the AHA Panel and Annual Surveys were used. Nominal annual purchase amounts were used to capture the value of the debt instrument. Since hospital debt instruments have an expected life of 23 years, the vintage weights for interest are deemed to represent the average purchase pattern of total equipment over 23-year periods. With

nominal total equipment purchase estimates available back to 1963, sixteen 23-year periods could be averaged to determine the average vintage weights for interest that are representative of average capital purchase patterns over time. Vintage weights for each 23-year period would be calculated by dividing the nominal total capital purchase amount for any given year by the total amount of purchases in the 23-year period. This calculation would be done for each year in the 23-year period and for each of the sixteen 23-year periods. The average of the sixteen 23-year periods would be used to determine the FY 2002 average interest vintage weights. The vintage weights for the index are presented in Table 3 below.

In addition to the price proxies for depreciation and interest costs described above in the vintage weighted capital section, we propose to use the CPI-U for Residential Rent as a price proxy for other capital-related costs. The price proxies for each of the capital cost categories are the same as those used for the IPPS final rule (67 FR at 50044) capital input price index.

TABLE 3.—PROPOSED CMS FY 2002-BASED RPL MARKET BASKET CAPITAL VINTAGE WEIGHTS

Year	Fixed assets (23 year weights)	Movable assets (11 year weights)	Interest: Cap- ital-related (23 year weights)
1	0.021	0.065	0.010
2	0.022	0.071	0.012
3	0.025	0.077	0.014
4	0.027	0.082	0.016
5	0.029	0.086	0.019
6	0.031	0.091	0.023
7	0.033	0.095	0.026
8	0.035	0.100	0.029
9	0.038	0.106	0.033
10	0.040	0.112	0.036
11	0.042	0.117	0.039
12	0.045	.....	0.043
13	0.047	.....	0.048
14	0.049	.....	0.053
15	0.051	.....	0.056
16	0.053	.....	0.059
17	0.056	.....	0.062
18	0.057	.....	0.064
19	0.058	.....	0.066
20	0.060	.....	0.070
21	0.060	.....	0.071
22	0.061	.....	0.074
23	0.061	.....	0.076
Total	1.000	1.000	1.000

The proposed rate year (that is, beginning July 1, 2006) update for the IPF PPS using the proposed FY 2002-based RPL market basket and Global Insight's 3rd quarter 2005 forecast would be 4.5 percent. This reflects

increases in both the operating and capital portions of the market basket from the 18-month period (that is, January 1, 2005 through June 30, 2006). Global Insight, Inc. is a nationally recognized economic and financial

forecasting firm that contracts with CMS to forecast the components of the market baskets. Using the current FY 1997-based excluded hospital with capital market basket (66 FR 41427), Global Insight's 3rd quarter 2005 forecast for



the proposed rate year beginning July 1, 2006 would be 4.5 percent. Table 4 below compares the proposed FY 2002-based RPL market basket and the FY 1997-based excluded hospital with capital market basket percent changes. For both the historical and forecasted periods between RY 2000 and RY 2008, the difference between the two market baskets is minor with the exception of

RY 2002, where the proposed FY 2002-based RPL market basket increased three tenths of a percentage point higher than the FY 1997-based excluded hospital with capital market basket. This is primarily due to the proposed FY 2002-based RPL having a larger compensation (that is, the sum of wages and salaries and benefits) cost weight than the FY 1997-based index and the price changes

associated with compensation costs increasing much faster than the prices of other market basket components. Also contributing is the "all other nonlabor intensive" cost weight, which is smaller in the proposed FY 2002-based RPL market basket than in the FY 1997-based index, as well as the slower price changes associated with these costs.

TABLE 4.—PROPOSED FY 2002-BASED RPL MARKET BASKET AND FY 1997-BASED EXCLUDED HOSPITAL WITH CAPITAL MARKET BASKET, PERCENT CHANGES: 2000–2008

Rate year (RY)	Proposed rebased FY 2002-based RPL market basket	FY 1997-based excluded hospital market basket with capital
Historical data:		
RY 2000 .....	2.8	2.7
RY 2001 .....	3.8	3.9
RY 2002 .....	4.1	3.8
RY 2003 .....	3.8	3.7
RY 2004 .....	3.6	3.6
Average RY 2000–2004 .....	3.6	3.5
Forecast:		
RY 2005 .....	3.8	3.9
RY 2006 .....	3.7	3.8
RY 2007 .....	3.6	3.6
RY 2008 .....	3.5	3.5
Average RY 2005–2008 .....	3.7	3.7

**Source:** Global Insight, Inc. 3rd Qtr 2005, @USMACRO/CNTL0905 @CISSIM/TL0805.SIM

**Note:** The RY forecasts are based on the standard 12-month period of July 1 to June 30. For this proposed rule, we are moving from an 18-month period to a 12-month period.

#### 4. Proposed Labor-Related Share

As described in section IV.C.1 of this proposed rule, due to the variations in costs and geographic wage levels, we are proposing that payment rates under the IPF PPS continue to be adjusted by a geographic wage index. This wage index would apply to the labor-related portion of the proposed Federal per diem base rate, hereafter referred to as the labor-related share.

The labor-related share is determined by identifying the national average proportion of operating costs that are related to, influenced by, or vary with the local labor market. Using our current definition of labor-related, the labor-related share is the sum of the relative importance of wages and salaries, fringe benefits, professional fees, labor-intensive services, and a portion of the capital share from an appropriate market basket.

We are proposing to use the FY 2002-based RPL market basket costs to determine the proposed labor-related share for the IPF PPS. The proposed labor-related share for RY 2007 would be the sum of the proposed RY 2007 relative importance of each labor-related cost category, and would reflect the different rates of price change for these cost categories between the base year (FY 2002) and RY 2007. The sum of the proposed relative importance for RY 2007 for operating costs (wages and salaries, employee benefits, professional fees, and labor-intensive services) would be 71.845, as shown in Table 5 below. The portion of capital that is influenced by the local labor market would be estimated to be 46 percent, which is the same percentage used in the FY 1997-based IRF and IPF payment systems. Since the relative importance for capital would be 8.866 (RY 2007) percent of the proposed FY 2002-based RPL market basket in RY 2007, we are

proposing to take 46 percent of 8.866 percent to determine the proposed labor-related share of capital for RY 2007. The result would be 4.078 percent, which we propose to add to 71.845 percent for the operating cost amount to determine the total proposed labor-related share for RY 2007. Thus, the labor-related share that we propose to use for IPF PPS in RY 2007 would be 75.923 percent. This proposed labor-related share is determined using the same methodology as employed in calculating all previous IPF labor-related shares (69 FR at 66952).

Table 5 below shows the proposed RY 2007 relative importance labor-related share using the proposed FY 2002-based RPL market basket and the FY 1997-based excluded hospital with capital market basket. We note that the revised and rebased labor-related share would benefit those hospitals with a wage index greater than or equal to 1.000.

TABLE 5.—TOTAL LABOR-RELATED SHARE—RELATIVE IMPORTANCE FOR RY 2007

Cost category	FY 2002-based RPL market basket relative importance (Percent) RY 2007	FY 1997 excluded hospital with capital market basket relative importance (Percent) RY 2007
Wages and salaries .....	52.761	48.301
Employee benefits .....	14.008	11.517
Professional fees .....	2.903	4.527
All other labor-intensive services .....	2.173	4.457
Subtotal .....	71.845	68.802
Labor-related share of capital costs .....	4.078	3.225
Total .....	75.923	72.027

*IPFs Paid Based on a Blend of the Reasonable Cost-based Payments*

Under the broad authority of sections 1886(b)(3)(A) and (b)(3)(B) of the Act and as stated in the FY 2006 IPFS final rule (70 FR 47399), for IPFs that are transitioning to the fully Federal prospective payment rate, we are now using the rebased and revised FY 2002-based excluded hospital market basket to update the reasonable cost-based portion of their payments. We rebase the market basket periodically so that the cost weights reflect changes in the mix of goods and services that hospitals purchase to furnish inpatient care between base periods. We chose FY 2002 as the base year for the excluded hospital market basket because we believe this is the most recent, complete year of Medicare cost report data.

The reasonable cost-based payments, subject to TEFRA limits, are determined on a FY basis. For purposes of the update factor for FY 2006, the portion of the IPF PPS transitional blend payment based on reasonable costs was determined by updating the IPF's TEFRA limit by the FY 2002-based excluded hospital market basket (or 3.8 percent) (70 FR 47691).

As discussed in section III.B.3 of this proposed rule, the proposed Federal per diem base rate is \$594.66 for the RY beginning July 1, 2006 and ending June 30, 2007.

**IV. Update of the IPF PPS Adjustment Factors**

[If you choose to comment on issues in this section, please include the caption "ADJUSTMENT FACTORS" at the beginning of your comments.]

*A. Overview of the IPF PPS Adjustment Factors*

In developing the IPF PPS, in order to ensure that the IPF PPS would be able

to account adequately for each IPF's case-mix, we performed an extensive regression analysis of the relationship between the per diem costs and certain patient and facility characteristics to determine those characteristics associated with statistically significant cost differences on a per diem basis. For characteristics with statistically significant cost differences, we used the regression coefficients of those variables to determine the size of the corresponding payment adjustments.

The IPF PPS payment adjustments were derived from a regression analysis of 100 percent of the FY 2002 MedPAR data file which contained 483,038 cases. We propose to use the same results of this regression analysis for this proposed rule. For a more detailed description of the data file used for the regression analysis, see the IPF PPS final rule.

We computed a per diem cost for each Medicare inpatient psychiatric stay, including routine operating, ancillary, and capital components using information from the FY 2002 MedPAR file and data from the FY 2002 Medicare cost reports. To calculate the cost per day for each inpatient psychiatric stay, routine costs were estimated by multiplying the routine cost per day from the IPF's FY 2002 Medicare cost report by the number of Medicare covered days on the FY 2002 MedPAR stay record. Ancillary costs were estimated by multiplying each departmental cost-to-charge ratio by the corresponding ancillary charges on the MedPAR stay record. The total cost per day was calculated by summing routine and ancillary costs for the stay and dividing it by the number of Medicare covered days for each day of the stay.

As discussed in more detail in section IV.C.5 of this proposed rule, the IPF PPS includes a payment adjustment for IPFs

with qualifying Emergency Departments (EDs), and IPFs that are part of acute care hospitals and CAHs with qualifying EDs. As a result, ED costs were excluded from the dependent variable used in the cost regression in order to remove the effects of ED costs from other payment adjustment factors with which ED costs may be correlated and thus avoid overpaying ED costs.

The log of per diem cost, like most health care cost measures, appeared to be normally distributed. Therefore, the natural logarithm of the per diem cost was the dependent variable in the regression analysis. We included variables in the regression to control for psychiatric hospitals that do not bill ancillary costs and for ECT costs that we pay separately. The per diem cost was adjusted for differences in labor cost across geographic areas using the FY 2005 hospital wage index unadjusted for geographic reclassifications, in order to be consistent with our use of the market basket labor share in applying the wage index adjustment.

As discussed in the IPF PPS final rule (69 FR 66936), we computed a wage adjustment factor for each case by multiplying the Medicare 2005 hospital wage index based on MSA definitions defined by OMB in 1993 for each facility by the labor-related share and adding the non-labor share. We used the 1997-based excluded hospital with capital market basket to determine the labor-related share. The per diem cost for each case was divided by this factor before taking the natural logarithm. The payment adjustment for the wage index was computed consistently with the wage adjustment factor, which is equivalent to separating the per diem cost into a labor portion and a non-labor portion and adjusting the labor portion by the wage index.

With the exception of the teaching adjustment, the independent variables were specified as one or more categorical variables. Once the regression model was finalized based on the log normal variables, the regression coefficients for these variables were converted to payment adjustment factors by treating each coefficient as an exponent of the base “e” for natural logarithms, which is approximately equal to 2.718. The payment adjustment factors represent the proportional effect of each variable relative to a reference variable. As a result of the regression analysis, we established patient-level payment adjustments for age, DRG assignment based on patients’ principal diagnoses, selected comorbidities, and a day of stay adjustment (the variable per diem adjustments) to reflect higher resource use in the early days of an IPF stay. We also established facility-level payment adjustments for wage area, rural location, teaching status, cost of living adjustment for IPFs located in Alaska and Hawaii, and an adjustment for IPFs with a qualifying ED. We do not intend to update the regression analysis until we can analyze 1 year of IPF PPS claims and cost report data (that is, no earlier than RY 2008). CMS plans to monitor claims and payment data independently from cost report data to assess issues, or whether changes in case-mix or payment shifts have occurred between free-standing governmental, non-profit, and private psychiatric hospitals, and/or psychiatric units of general hospital, and other impact issues of importance to psychiatric facilities.

**B. Proposed Patient-Level Adjustments**

[If you choose to comment on issues in this section, please include the caption “PATIENT-LEVEL ADJUSTMENTS” at the beginning of your comments.]

We provided payment adjustments for the following payment-level characteristics in the IPF PPS final rule: DRG assignment of the patient’s principal diagnosis, selected comorbidities, patient age, and the variable per diem adjustments.

**1. Proposed Adjustment for DRG Assignment**

The IPF PPS includes payment adjustments for the psychiatric DRG assigned to the claim based on each

patient’s principal diagnosis. In the IPF PPS final rule, we explained that the IPF PPS includes 15 diagnosis-related group (DRG) adjustment factors (69 FR 66936). The adjustment factors were expressed relative to the most frequently reported DRG in FY 2002, that is, DRG 430. The coefficient values and adjustment factors were derived from the regression analysis.

In accordance with § 412.27, payment under the IPF PPS is made for claims with a principal diagnosis included in the Diagnostic and Statistical Manual of Mental Disorder—Fourth Edition—Text Revision (DSM-IV-TR) or Chapter Five of the International Classification of Diseases—9th Revision—Clinical Modifications (ICD-9-CM). The Standards for Electronic Transaction final rule published in the **Federal Register** on August 17, 2000 (65 FR 50312), adopted the ICD-9-CM as the designated code set for reporting diseases, injuries, impairments, other health related problems, their manifestations, and causes of injury, disease, impairment, or other health-related problems. As a result, the DSM-IV-TR, while essential for the diagnosis and treatment of mentally ill patients, may not be reported on Medicare claims. However, in order to recognize the importance of the DSM-IV-TR in mental health treatment, we updated the reference to the DSM in § 412.27 from DSM-III-TR to DSM-IV-TR in the IPF PPS final rule. As a result, under the revised § 412.27, IPFs that are distinct part psychiatric units of acute care hospitals and CAHs may only admit patients who have a principal diagnosis in the DSM-IV-TR or Chapter Five of the ICD-9-CM although DSM codes may not be reported on medical claims.

IPF claims with a principal diagnosis included in Chapter Five of the ICD-9-CM or the DSM-IV-TR will be paid the Federal per diem base rate payment under the IPF PPS. Psychiatric principal diagnoses that do not group to one of the 15 designated DRGs receive the Federal per diem base rate and all other applicable adjustments, but the payment does not include a DRG adjustment. Only those claims with diagnoses that group to one of these psychiatric DRGs would receive a DRG adjustment.

We believe it is vital to maintain the same diagnostic coding and DRG classification for IPFs that is used under

the IPPS for providing the same psychiatric care. As we explained in the IPF PPS proposed rule (68 FR 66924), all changes to the ICD-9-CM coding system that would impact the IPF PPS are addressed annually in the IPPS proposed and final rules published each year. The updated codes are effective October 1 of each year and must be used to report diagnostic or procedure information. The official version of the ICD-9-CM is available on CD-ROM from the U.S. Government Printing Office. The FY 2005 version can be ordered by contacting the Superintendent of Documents, U.S. Government Printing Office, Department 50, Washington, D.C. 20402-9329, telephone number (202) 512-1800. The stock number is 017-022-01544-7, and the price is \$25.00. In addition, private vendors publish the ICD-9-CM. Questions concerning the ICD-9-CM should be directed to Patricia E. Brooks, Co-Chairperson, ICD-9-CM Coordination and Maintenance Committee, CMS, Center for Medicare Management, Purchasing Policy Group, Division of Acute Care, Mailstop C4-08-06, 7500 Security Boulevard, Baltimore, Maryland 21244-1850. Questions and comments may be sent via e-mail to: [Patricia.Brooks1@cms.hhs.gov](mailto:Patricia.Brooks1@cms.hhs.gov).

Further information concerning the Official Version of the ICD-9-CM can be found in the IPPS final regulation, “Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2006 Rates; Final Rule,” in the August 12, 2005 **Federal Register** (70 FR 47278) and at <http://www.cms.hhs.gov/QuarterlyProviderUpdates/downloads/cms1500f.pdf>.

The following two tables below list the FY 2006 new ICD diagnosis codes and FY 2006 revised diagnosis code titles, respectively. These tables are only a listing of FY 2006 changes and do not reflect all of the currently valid and applicable ICD codes classified in the DRGs. Table 6 below lists the new FY 2006 ICD diagnosis codes that are classified to one of the 15 DRGs that are provided a DRG adjustment in the IPF PPS. When coded as a principal code or diagnosis, these codes would receive the correlating DRG adjustment.

**TABLE 6.—FY 2006 NEW DIAGNOSIS CODES DIAGNOSIS**

Diagnosis code	Description	DRG
291.82 .....	Alcohol-induced sleep disorders .....	521, 522, 523
292.85 .....	Drug-induced sleep disorders .....	521, 522, 523
327.00 .....	Organic insomnia, unspecified .....	432

TABLE 6.—FY 2006 NEW DIAGNOSIS CODES DIAGNOSIS—Continued

Diagnosis code	Description	DRG
327.01	Insomnia due to medical condition classified elsewhere	432
327.02	Insomnia due to mental disorder	432
327.09	Other organic insomnia	432
327.10	Organic hypersomnia, unspecified	432
327.11	Idiopathic hypersomnia with long sleep time	432
327.12	Idiopathic hypersomnia without long sleep time	432
327.13	Recurrent hypersomnia	432
327.14	Hypersomnia due to medical condition classified elsewhere	432
327.15	Hypersomnia due to mental disorder	432
327.19	Other organic hypersomnia	432

Table 7 below lists ICD diagnosis codes whose titles have been modified in FY 2006. Title changes do not impact

the DRG adjustment. When used as a principal diagnosis, these codes would

still receive the correlating DRG adjustment.

TABLE 7.—REVISED DIAGNOSIS CODE TITLES

Diagnosis code	Description	DRG
307.45	Circadian rhythm sleep disorder of nonorganic origin	432
780.52	Insomnia, unspecified	432
780.54	Hypersomnia, unspecified	432
780.55	Disruption of 24 hour sleep wake cycle, unspecified	432
780.58	Sleep related movement disorder, unspecified	432

In addition to the aforementioned, in the August 2005 IPPS final rule, we finalized ICD code 305.1, Tobacco Use Disorder, in order to designate this code as a noncovered Medicare service when reported as the principal diagnosis. Below we have republished the explanation that was included in the IPPS final rule (70 FR 47312) and published on the CMS website at <http://www.cms.hhs.gov/QuarterlyProviderUpdates/downloads/cms1500f.pdf>.

We have become aware of the possible need to add code 305.1 (Tobacco use disorder) to the MCE in order to make admissions for tobacco use disorder a noncovered Medicare service when code 305.1 is reported as the principal diagnosis. On March 22, 2005, CMS published a final

decision memorandum and related national coverage determination (NCD) on smoking cessation counseling services on its Web site: (<http://www.cms.hhs.gov/coverage/>). Among other things, this NCD provides that: ‘Inpatient hospital stays with the principal diagnosis of 305.1, Tobacco Use Disorder, are not reasonable and necessary for the effective delivery of tobacco cessation counseling services. Therefore, we will not cover tobacco cessation services if tobacco cessation is the primary reason for the patient’s hospital stay.’ Therefore, in order to maintain internal consistency with CMS programs and decisions, we proposed to add code 305.1 to the MCE edit “Questionable Admission—Principal Diagnosis Only” in order to make tobacco use disorder a noncovered admission. (70 FR 47312).

In order to maintain consistency with the IPPS, for discharges on or after October 1, 2005, ICD code 305.1,

Tobacco Use Disorder, would not be a covered principal diagnosis under the IPF PPS.

Although we are updating the IPF PPS to reflect ICD–9–CM coding changes and DRG classification changes discussed in the annual update to the IPPS, we are proposing that the DRG adjustment factors currently being paid to IPFs would remain the same for discharges occurring during the rate year July 1, 2006 through June 30, 2007. As indicated in the IPF PPS final rule, we do not intend to update the regression analysis until we have analyzed 1 year of IPF PPS claims and cost report data. As a result, we are proposing to adopt the DRG adjustments that are currently being paid as indicated in Table 8 below.

TABLE 8.—FY 2006 PROPOSED DRGs AND ADJUSTMENT FACTOR

DRG	DRG definition	Adjustment factor
DRG 424	O.R. Procedure with Principal Diagnosis of Mental Illness	1.22
DRG 425	Acute Adjustment Reaction & Psychosocial Dysfunction	1.05
DRG 426	Depressive Neurosis	0.99
DRG 427	Neurosis, Except Depressive	1.02
DRG 428	Disorders of Personality & Impulse Control	1.02
DRG 429	Organic Disturbances & Mental Retardation	1.03
DRG 430	Psychoses	1.00
DRG 431	Childhood Mental Disorders	0.99
DRG 432	Other Mental Disorder Diagnoses	0.92
DRG 433	Alcohol/Drug Abuse or Dependence, Leave Against Medical Advice (LAMA)	0.97
DRG 521	Alcohol/Drug Abuse or Dependence with CC	1.02
DRG 522	Alcohol/Drug Abuse or Dependence with Rehabilitation Therapy without CC	0.98
DRG 523	Alcohol/Drug Abuse or Dependence without Rehabilitation Therapy without CC	0.88
DRG 12	Degenerative Nervous System Disorders	1.05

TABLE 8.—FY 2006 PROPOSED DRGS AND ADJUSTMENT FACTOR—Continued

DRG	DRG definition	Adjustment factor
DRG 23 .....	Non-traumatic Stupor & Coma .....	1.07

Section § 412.424(d) separately identifies both “Diagnosis-related group assignment” and “Principal diagnosis” as patient level adjustments. Since publication of the IPF PPS final rule, we have received inquiries related to whether the IPF PPS includes two patient-level payment adjustments for principal diagnosis, an adjustment for the diagnosis-related group assignment and a separate adjustment for providing a principal diagnosis in general. We intended that the IPF PPS provide one patient-level adjustment for principal diagnosis, that is “Diagnosis-related group assignment.”

In order to clarify our policy, we are proposing to modify the language in section § 412.424(d). We are proposing to delete sub-paragraph § 412.424(d)(2)(iii).

## 2. Proposed Payment for Comorbid Conditions

In the IPF PPS final rule, we established 17 comorbidity categories and identified the ICD-9-CM diagnosis codes that generate a payment adjustment under the IPF PPS.

Comorbidities are specific patient conditions that are secondary to the patient’s primary diagnosis, and that require treatment during the stay. Diagnoses that relate to an earlier episode of care and have no bearing on the current hospital stay are excluded and not reported on IPF claims. Comorbid conditions must co-exist at the time of admission, develop subsequently, affect the treatment received, affect the length of stay or affect both treatment and length of stay.

The intent of the comorbidity adjustments was to recognize the increased cost associated with comorbid conditions by providing additional payments for certain concurrent medical or psychiatric conditions that are expensive to treat. An IPF may receive only one comorbidity adjustment per comorbidity category, but it may receive an adjustment for more than one comorbidity category. Billing instructions require that IPFs must enter the full ICD-9-CM codes for up to 8 additional diagnoses if they co-exist at the time of admission or developed subsequently.

The comorbidity adjustments were determined based on regression analysis using the diagnoses reported by

hospitals as other diagnoses in FY 2002. The principal diagnoses were used to establish the DRG adjustment and were not accounted for in establishing the comorbidity category adjustments, except where ICD-9-CM “code first” instructions apply. As we explained in the IPF PPS final rule, the code first rule applies when a condition has both an underlying etiology and a manifestation due to the underlying etiology. For these conditions, the ICD-9-CM has a coding convention that requires the underlying conditions to be sequenced first followed by the manifestation. Whenever a combination exists, there is a “use additional code” note at the etiology code and a “code first” note at the manifestation code.

Although we are updating the IPF PPS to reflect updates to the ICD-9-CM codes, we are proposing that the comorbidity adjustment factors currently in effect would remain in effect for the rate year beginning July 1, 2006. As we indicated in the IPF PPS final rule, we do not intend to update the regression analysis until we have analyzed 1 year of IPF PPS claims and cost report data. The proposed comorbidity adjustments are shown in Table 9 below.

As previously discussed in the DRG section, we believe it is essential to maintain the same diagnostic coding set for IPFs that is used under the IPPS for providing the same psychiatric care. Therefore, we are proposing to use the most current FY 2006 ICD codes. They are reflected in the FY 2006 GROUPE, version 23.0 and are effective for discharges occurring on or after October 1, 2005.

Table 9 lists the updated FY 2006 new ICD diagnosis codes that impact the comorbidity adjustment under the IPF PPS and Table 10 lists the invalid ICD codes no longer applicable for the comorbidity adjustment. Table 9 only lists the FY 2006 new codes and does not reflect all of the currently valid ICD codes applicable for the IPF PPS comorbidity adjustment.

We note that ICD diagnosis code 585 Chronic Renal Failure was modified in two ways—(1) by expanding the level of specificity to include seven new codes; and (2) by changing the original code of 585 to invalid, thereby leaving the remaining more specific codes reportable. Since diagnosis code 585 is

no longer valid, we are proposing to eliminate this code from the comorbidity category “Renal Failure, Chronic.”

ICD diagnosis code 585 chronic Renal Failure is defined in the ICD-9-CM as “Progressive, persistent inadequate kidney function characterized by anuria, accumulation of urea and other nitrogenous bodies in the blood, nausea, vomiting, gastrointestinal bleeding, and yellowish-brown discoloration of the skin.” This code included the various stages of chronic kidney disease, but it is no longer valid. The new codes listed below reflect the various stages of chronic kidney failure. Since diagnosis code 585 is no longer valid, we are proposing to eliminate it from the comorbidity category, “Renal Failure, Chronic.”

We are proposing to provide comorbidity adjustments for 585.3, “Chronic kidney disease, Stage III (moderate),” 585.4, “Chronic kidney disease, Stage IV (severe),” 585.5, “Chronic kidney disease, Stage V,” 585.6, “End Stage renal disease,” and 585.9, “Chronic kidney disease, unspecified.” However, since the purpose of the comorbidity adjustment is to account for the higher resource costs associated with comorbid conditions that are expensive to treat on a per diem basis, we are not proposing a comorbidity adjustment for 585.1, “Chronic kidney disease, Stage I” and 585.2, “Chronic kidney disease, Stage II (mild).”

We believe that these conditions (585.1 and 585.2) are less costly to treat on a per diem basis because patients with these conditions are either asymptomatic or may have only mild symptoms. These conditions represent a minimal to mild decrease in kidney function that is almost completely compensated such that the only finding is typically an abnormal laboratory test. Unlike patients with more significant kidney dysfunction, these patients do not usually require more costly patient care interventions such as additional lab tests to monitor renal function, special pharmacy attention to reduced dosages or kidney-sparing medications, or fluid and electrolyte precautions with special diets, frequent weights, Input/Output balance, and fluid restriction. As such, the resources and costs that these patients require for staff time,

medications and supplies, and administrative services are expected to be similar to other patients without these conditions.

TABLE 9.—FY 2006 NEW ICD CODES APPLICABLE FOR THE COMORBIDITY ADJUSTMENT

Diagnosis code	Description	DRG	Comorbidity category
585.3	Chronic kidney disease, Stage III (moderate)	315–316	Renal Failure, Chronic.
585.4	Chronic kidney disease, Stage IV (severe)	315–316	Renal Failure, Chronic.
585.5	Chronic kidney disease, Stage V	315–316	Renal Failure, Chronic.
585.6	End stage renal disease	315–316	Renal Failure, Chronic.
585.9	Chronic kidney disease, unspecified	315–316	Renal Failure, Chronic.
V46.13	Encounter for weaning from respirator [ventilator]	467	Chronic Obstructive Pulmonary Disease.
V46.14	Mechanical complication of respirator [ventilator]	467	Chronic Obstructive Pulmonary Disease.

In Table 10 below, we list the FY 2006 invalid ICD diagnosis code 585 that we are proposing to remove from the comorbidity adjustment under the IPF PPS. This table does not reflect all of the currently valid ICD codes applicable for the IPF PPS comorbidity adjustment.

TABLE 10.—FY 2006 INVALID ICD CODES NO LONGER APPLICABLE FOR THE COMORBIDITY ADJUSTMENT

Diagnosis code	Description	DR	Comorbidity category
585	Chronic renal failure	315–36	Renal Failure, Chronic.

We are aware that ICD code 404.03, Hypertensive Heart and Renal Disease, Malignant, with Heart Failure and Renal Failure, has caused confusion since this ICD code is currently used to code an adjustment in two separate IPF comorbidity categories, (that is, both “Renal Failure, Chronic” and “Cardiac Conditions”). After a careful review of this code, we believe that it more appropriately corresponds to the

“Cardiac Conditions” comorbidity than to the “Renal Failure, Chronic” comorbidity. Therefore, to be more clinically cohesive and to eliminate confusion, we are proposing to remove ICD code 404.03 from the comorbidity adjustment category “Renal Failure, Chronic,” but retaining it in the “Cardiac Conditions” comorbidity category. Since both comorbidity categories have the same adjustment

factor of 1.11, no negative payment consequence would result from this change.

The seventeen comorbidity categories for which we are proposing to provide an adjustment, their respective codes including the new FY 2006 ICD codes, and their respective adjustment factors are listed below in Table 11.

TABLE 11.—FY 2006 DIAGNOSIS CODES AND ADJUSTMENT FACTORS FOR COMORBIDITY CATEGORIES

Description of comorbidity	ICD–9CM Code	Adjustment factor
Development Disabilities	317, 3180, 3181, 3182, and 319	1.04
Coagulation Factor deficits	2860 through 2864	1.13
Tracheotomy	51900—through 51909 and V440	1.06
Renal Failure, Acute	5845 through 5849, 63630, 63631, 63632, 63730, 63731, 63732, 6383, 6393, 66932, 66934, 9585.	1.11
Renal Failure, Chronic	40301, 40311, 40391, 40402, 40412, 40413, 40492, 40493, 5853, 5854, 5855, 5856, 5859, 586, V451, V560, V561, and V562.	1.11
Oncology Treatment	1400 through 2399 with a radiation therapy code 92.21–92.29 or chemotherapy code 99.25 ..	1.07
Uncontrolled Diabetes-Mellitus with or without complications.	25002, 25003, 25012, 25013, 25022, 25023, 25032, 25033, 25042, 25043, 25052, 25053, 25062, 25063, 25072, 25073, 25082, 25083, 25092, and 25093.	1.05
Severe Protein calorie malnutrition.	260 through 262	1.13
Eating and Conduct Disorders	3071, 30750, 31203, 31233, and 31234	1.12
Infectious Disease	01000 through 04110, 042, 04500 through 05319, 05440 through 05449, 0550 through 0770, 0782 through 07889, and 07950 through 07959.	1.07
Drug and/or Alcohol Induced Mental Disorders.	2910, 2920, 29212, 2922, 30300, and 30400	1.03
Cardiac Conditions	3910, 3911, 3912, 40201, 40403, 4160, 4210, 4211, and 4219	1.11
Gangrene	44024 and 7854	1.10
Chronic Obstructive Pulmonary Disease.	49121, 4941, 5100, 51883, 51884, V4611 and V4612, V4613 and V4614	1.12
Artificial Openings—Digestive and Urinary.	56960 through 56969, 9975, and V441 through V446	1.08
Severe Musculoskeletal and Connective Tissue Diseases.	6960, 7100, 73000 through 73009, 73010 through 73019, and 73020 through 73029	1.11
Poisoning	96500 through 96509, 9654, 9670 through 9699, 9770, 9800 through 9809, 9830 through 9839, 986, 9890 through 9897.	1.11

3. Proposed Patient Age Adjustments

As explained in the IPF PPS final rule, we analyzed the impact of age on per diem cost by examining the age variable (that is, the range of ages) for payment adjustments.

In general, we found that the cost per day increases with increasing age. The older age groups are more costly than the under 45 years of age group, the differences in per diem cost increase for each successive age group, and the differences are statistically significant.

Based on the results of the regression analysis, we established 8 adjustment factors for age beginning with age groupings, 45 and under 50, 50 and under 55, 55 and under 60, 60 and under 65, 65 and under 70, 70 and under 75, 75 and under 80, and 80 years of age and over. Patients under 45 years of age are assigned an age adjustment factor of 1.00. As we indicated in the IPF PPS final rule, we do not intend to update the regression analysis until we can analyze 1 year of IPF PPS claims and cost report data. As a result, in this proposed rule, we are proposing to adopt the patient age adjustments currently in effect and shown in Table 12 below.

TABLE 12.—AGE GROUPINGS AND ADJUSTMENT FACTORS

Age	Adjustment factor
Under 45 .....	1.00
45 and under 50 .....	1.01
50 and under 55 .....	1.02
55 and under 60 .....	1.04
60 and under 65 .....	1.07
65 and under 70 .....	1.10
70 and under 75 .....	1.13
75 and under 80 .....	1.15
80 and over .....	1.17

4. Proposed Variable Per Diem Adjustments

We explained in the IPF PPS final rule that cost regressions indicated that per diem cost declines as the length of stay increases (69 FR 66947). The variable per diem adjustments to the Federal per diem base rate account for ancillary and administrative costs that occur disproportionately in the first days after admission to an IPF.

We used regression analysis to estimate the average differences in per diem cost among stays of different length. Regression analysis simultaneously controls for cost differences associated with the other variables (for example, age, DRG, and presence of specific comorbidities). The regression coefficients measure the relative average cost per day for stays of

differing lengths compared to a reference group's length of stay. We analyzed through cost regression, the relative cost per day for day 1 through day 30. We determined that the average per diem cost declined smoothly until the 22nd day. As a result of this analysis, we established variable per diem adjustments that begin on day 1 and decline gradually until day 21 of a patient's stay. For day 22 and thereafter, the variable per diem adjustment remains the same each day for the remainder of the stay. However, the adjustment applied to day 1 depends upon whether the IPF has a qualifying Emergency Department (ED). If an IPF has a qualifying ED, it receives a 1.31 adjustment for day 1 of each patient stay. If an IPF does not have a qualifying ED, it receives a 1.19 adjustment for day 1 of the stay. The ED adjustment is explained in more detail in section IV.C.5. of this proposed rule.

As we indicated in the IPF PPS final rule, we do not intend to make changes to the regression analysis until we can analyze 1 year of IPF PPS claims and cost report data. As a result, for the rate year beginning July 1, 2006, we are proposing to adopt the variable per diem adjustment factors currently in effect. Table 13 below shows the variable per diem adjustments we are proposing for updating the IPF PPS. Higher payments for the early days of stay in IPFs are not fully compensated by the lower payments after day 10, but are paid for by the standardization portion which is applied to the federal per diem base rate.

TABLE 13.—VARIABLE PER DIEM ADJUSTMENTS

Day-of-stay	Adjustment factor
Day 1-IPF Without a Qualified ED .....	1.19
Day 1-IPF With a Qualified ED .....	1.31
Day 2 .....	1.12
Day 3 .....	1.08
Day 4 .....	1.05
Day 5 .....	1.04
Day 6 .....	1.02
Day 7 .....	1.01
Day 8 .....	1.01
Day 9 .....	1.00
Day 10 .....	1.00
Day 11 .....	0.99
Day 12 .....	0.99
Day 13 .....	0.99
Day 14 .....	0.99
Day 15 .....	0.98
Day 16 .....	0.97
Day 17 .....	0.97
Day 18 .....	0.96
Day 19 .....	0.95
Day 20 .....	0.95
Day 21 .....	0.95

TABLE 13.—VARIABLE PER DIEM ADJUSTMENTS—Continued

Day-of-stay	Adjustment factor
After Day 21 .....	0.92

C. Facility-Level Adjustments

[If you choose to comment on issues in this section, please include the caption "FACILITY-LEVEL ADJUSTMENTS" at the beginning of your comments.]

The IPF PPS includes facility-level adjustments for the wage index, IPFs located in rural areas, teaching IPFs, cost of living adjustments for IPFs located in Alaska and Hawaii, and IPFs with a qualifying ED.

1. Wage Index Adjustment

a. Proposed Revisions of IPF PPS Geographic Classifications

In the IPF PPS final rule, we explained that in establishing an adjustment for area wage levels, the labor-related portion of an IPF's Federal prospective payment is adjusted by using an appropriate wage index. We also explained that an IPF's wage index is determined based on the location of the IPF in an urban or rural area as defined in § 412.62(f)(1)(ii) and (f)(1)(iii), respectively. An urban area under the IPF PPS is defined at § 412.62(f)(1)(ii)(A) and (B). In general, an urban area is defined as a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA) as defined by the Office of Management and Budget (OMB). In addition, a few counties located outside of MSAs are considered urban as specified at § 412.62(f)(1)(ii)(B). Under § 412.62(f)(1)(iii), a rural area is defined as any area outside of an urban area. The geographic classifications defined in § 412.62(f)(1)(ii) and (f)(1)(iii), were used under the IPPS from FYs 1984 through 2004 (§ 412.62(f) and § 412.63(b)), and have been used under the IPF PPS since it was implemented for cost reporting periods beginning on or after January 1, 2005.

Under the IPPS, the wage index is calculated and assigned to hospitals on the basis of the labor market area in which the hospital is located or geographically reclassified to in accordance with sections 1886(d)(8) and (d)(10) of the Act. Under the IPF PPS, the wage index is calculated using IPPS wage index data (as discussed below in section IV C.1.d of this preamble) on the basis of the labor market area in which the IPF is located, without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of

the Act and without applying the “rural floor” established under section 4410 of the BBA. (Section 4410 of the BBA provides that for the purposes of section 1886(d)(3)(E) of the Act, the area wage index applicable to hospitals located in an urban area of a State may not be less than the area wage index applicable to hospitals located in rural areas in the State. This provision is commonly referred to as the “rural floor” under the IPPS.) However, when we established the IPF PPS, we did not apply the rural floor to IPFs. For this reason, the hospital wage index used for IPFs is commonly referred to as the “pre-floor” hospital wage index indicating that the “rural floor” provision of the BBA is not applied. As a result, the applicable IPF wage index value is assigned to the IPF on the basis of the labor market area in which the IPF is geographically located.

As noted above, the current IPF PPS labor market areas are defined based on the definitions of MSAs, Primary MSAs (PMSAs), and NECMAs issued by the OMB (commonly referred to collectively as “MSAs”). The MSA definitions, which are discussed in greater detail below, are currently used under the IPF PPS and other PPSs (that is, the IRF PPS, the LTCH PPS, and the PPSs for home health agencies (HHA PPS) and skilled nursing facilities (SNF PPS)). In the FY 2005 IPPS final rule (69 FR 49026 through 49034), revised labor market area definitions were adopted under the IPPS (§ 412.64(b)), which were effective October 1, 2004. These new standards, called Core-Based Statistical Areas (CBSAs), were announced by the OMB late in 2000 and are discussed in greater detail below.

#### b. Current IPF PPS Labor Market Areas Based on MSAs

When we published the IPF PPS final rule, we explained that we were not adopting the new statistical area definitions defined by OMB for the following reasons. First, the change in labor market areas under the IPPS had not changed at the time we published the IPF PPS proposed rule on November 28, 2003. As a result, IPFs and other interested parties were not afforded an opportunity to comment on the use of the new labor market area definitions under the IPF PPS. Second, we wanted to conduct a thorough analysis of the impact of the new labor market area definitions on payments under the IPF PPS. Finally, in the IPF PPS final rule, we indicated our intent to publish in a proposed rule any changes we were considering for new labor market definitions.

The analysis of the impact of the new labor market definitions has been

completed and we are proposing to adopt new labor market area definitions under the IPF PPS. As a result, we believe it is helpful to provide a detailed description of the current IPF PPS labor market areas, in order to better understand the proposed changes to the IPF PPS labor market areas presented in this proposed rule.

As mentioned earlier, since the implementation of the IPF PPS, we have used labor market areas to further characterize urban and rural areas as determined under § 412.62(f)(1)(ii) and (iii). To this end, we have defined labor market areas under the IPF PPS based on the definitions of MSAs, PMSAs, and NECMAs issued by the OMB in 1993, which is consistent with the IPPS approach prior to FY 2005. We note that OMB also defines Consolidated MSAs (CMSAs). A CMSA is a metropolitan area with a population of 1 million or more, comprising two or more PMSAs (identified by their separate economic and social character). However, for purposes of the wage index, we use the PMSAs rather than CMSAs because they allow a more precise breakdown of labor costs. If a metropolitan area is not designated as part of a PMSA, we use the applicable MSA.

These different designations use counties as the building blocks upon which they are based. Therefore, under the IPF PPS, hospitals are assigned to either an MSA, PMSA, or NECMA based on whether the county in which the IPF is located is part of that area. All of the counties in a State outside a designated MSA, PMSA, or NECMA are designated as rural.

#### c. Core-Based Statistical Areas

The OMB reviews its Metropolitan Area definitions preceding each decennial census. As discussed in the FY 2005 IPPS final rule (69 FR 49026), in the fall of 1998, OMB chartered the Metropolitan Area Standards Review Committee to examine the Metropolitan Area standards and develop recommendations for possible changes to those standards. Three notices related to the review of the standards, providing an opportunity for public comment on the recommendations of the Committee, were published in the **Federal Register** on the following dates: December 21, 1998 (63 FR 70526); October 20, 1999 (64 FR 56628); and August 22, 2000 (65 FR 51060).

In the December 27, 2000 **Federal Register** (65 FR 82228 through 82238), OMB announced its new standards. In that notice, OMB defines a Core-Based Statistical Area (CBSA), beginning in 2003, as “a geographic entity associated with at least one core of 10,000 or more

population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties. The standards designate and define two categories of CBSAs: Metropolitan Statistical Areas and Micropolitan Statistical Areas.” (65 FR 82236 through 82238).

According to the OMB, MSAs are based on urbanized areas of 50,000 or more population, and Micropolitan Statistical Areas (referred to in this discussion as Micropolitan Areas) are based on urban clusters of at least 10,000 population, but less than 50,000 population. Counties that do not fall within CBSAs (either MSAs or Micropolitan Areas) are deemed “Outside CBSAs.” In the past, OMB defined MSAs around areas with a minimum core population of 50,000, and smaller areas were “Outside MSAs.” On June 6, 2003, the OMB announced the new CBSAs, comprised of MSAs and the new Micropolitan Areas based on Census 2000 data. (A copy of the announcement may be obtained at the following Internet address: <http://www.whitehouse.gov/omb/bulletins/fy04/b04-b03.html>.)

The new CBSA designations recognize 49 new MSAs and 565 new Micropolitan Areas, and extensively revise the composition of many of the existing MSAs. There are 1,090 counties in MSAs under the new CBSA designations (previously, there were 848 counties in MSAs). Of these 1,090 counties, 737 are in the same MSA as they were prior to the change in designations, 65 are in a different MSA, and 288 were not previously designated to any MSA. There are 674 counties in Micropolitan Areas. Of these, 41 were previously in an MSA, while 633 were not previously designated to an MSA. There are five counties that previously were designated to an MSA but are no longer designated to either an MSA or a new Micropolitan Area: Carter County, KY; St. James Parish, LA; Kane County, UT; Culpepper County, VA; and King George County, VA. For a more detailed discussion of the conceptual basis of the new CBSAs, refer to the FY 2005 IPPS final rule (67 FR 49026 through 49034).

#### d. Proposed Revision of the IPF PPS Labor Market Areas

In its June 6, 2003 announcement, OMB cautioned that these new definitions “should not be used to develop and implement Federal, State, and local nonstatistical programs and policies without full consideration of the effects of using these definitions for such purposes. These areas should not serve as a general-purpose geographic



framework for nonstatistical activities, and they may or may not be suitable for use in program funding formulas.”

We currently use MSAs to define labor market areas for purposes of Medicare wage indices in the IPF PPS since its implementation for cost reporting periods beginning on or after January 1, 2005. Until recently, MSAs were used to define labor market areas for purposes of the wage index for many of the other Medicare payment systems (for example, IRF PPS, SNF PPS, HHA PPS, and Outpatient PPS). While we recognize MSAs are not designed specifically to define labor market areas, we believe they represent a useful proxy for this purpose, because they are based upon characteristics we believe also generally reflect the characteristics of unified labor market areas. For example, CBSAs consist of a core population plus an adjacent territory that reflects a high degree of social and economic integration. This integration is measured by commuting ties, thus demonstrating that these areas may draw workers from the same general areas. In addition, the most recent CBSAs reflect the most up-to-date information. Our analysis and discussion here are focused on issues related to adopting the new CBSA designations to define labor market areas for the purposes of the IPF PPS.

Historically, Medicare PPSs have utilized Metropolitan Area definitions developed by the OMB. As noted above, the labor market areas currently used under the IPF PPS are based on the Metropolitan Area definitions issued by the OMB and the OMB reviews its Metropolitan Area definitions preceding each decennial census to reflect more recent population changes. The CBSAs are OMB's latest Metropolitan Area definitions based on the Census 2000 data. Because we believe that the OMB's latest Metropolitan Area designations more accurately reflect the local economies and wage levels of the areas in which hospitals are currently located, we adopted revised labor market area designations based on the OMB's CBSA designations under the IPPS effective October 1, 2004. When we implemented the wage index adjustment at § 412.424(d)(1)(i) under the IPF PPS final rule (69 FR 66952 through 66954), we explained that the IPF PPS wage index adjustment was intended to reflect the relative hospital wage levels in the geographic area of the hospital as compared to the national average hospital wage level. The OMB's CBSA designations based on Census 2000 data reflect the most recent available geographic classifications (Metropolitan Area definitions). Therefore, we are proposing to revise the labor market

area definitions used under the IPF PPS based on the OMB's CBSA designations. This change would ensure that the IPF PPS wage index adjustment most appropriately accounts for and reflects the relative hospital wage levels in the geographic area of the hospital as compared to the national average hospital wage level.

Specifically, we are proposing to revise the IPF PPS labor market definitions based on the OMB's new CBSA designations (as discussed in greater detail below) effective for IPF PPS discharges occurring on or after July 1, 2006. Accordingly, we are proposing to revise § 412.402, definitions for rural and urban areas, effective for discharges occurring on or after July 1, 2006 would be defined in § 412.64(b)(1)(ii)(A) through (C). These definitions are the labor market definitions based on OMB's CBSA designations. For clarity, we are proposing to revise the regulation text to explicitly reference urban and rural definitions for a cost reporting period beginning on or after January 1, 2005, with respect to discharges occurring during the period covered by such cost reports but before July 1, 2006 under § 412.62(f)(1)(ii) and § 412.62(f)(1)(iii).

We note that these are the same labor market area definitions (based on the OMB's new CBSA designations) implemented for acute care hospitals under the IPPS at § 412.64(b), which were effective for those hospitals beginning October 1, 2004 as discussed in the FY 2005 IPPS final rule (69 FR 49026–49034). The IPF PPS uses the acute care inpatient hospitals' wage data in calculating the IPF PPS wage index. However, unlike the IPPS, and similar to other Medicare payment systems (for example, SNF PPS and IRF PPS), the IPF PPS uses the pre-floor, pre-reclassified hospital wage index.

Below, we discuss the composition of the proposed IPF PPS labor market areas based on OMB's new CBSA designations. It should be noted that OMB's new CBSA designations are comprised of several county-based area definitions as explained above, which include Metropolitan Areas, Micropolitan Areas, and areas “outside CBSAs.” We implemented the IPF PPS using two types of labor market areas, that is, urban and rural. In this proposed rule, we are proposing to adopt the revised labor market areas based on OMB's new CBSA-based designations. We are also proposing to continue to have 2 types of labor market areas (urban and rural). In the discussion that follows, we explain our proposal to recognize Metropolitan Areas, which include New England MSAs and

Metropolitan Divisions, as urban. We also explain our proposal to recognize Micropolitan Areas and areas “outside CBSAs” as rural. The following discussion describes the proposed methodology for mapping OMB's CBSA-based designations into the IPF PPS (urban area or rural area) format.

#### i. New England MSAs

As stated above, we currently use NECMAs to define labor market areas in New England, because these are county-based designations, rather than the 1990 MSA definitions for New England, which used minor civil divisions such as cities and towns. Under the current MSA definitions, NECMAs provided more consistency in labor market definitions for New England compared with the rest of the country, where MSAs are county-based. Under the new CBSAs, the OMB has now defined the MSAs and Micropolitan Areas in New England on the basis of counties. The OMB also established New England City and Town Areas, which are similar to the previous New England MSAs.

In order to create consistency across all IPF labor market areas, we are proposing to use the county-based areas for all MSAs in the nation, including those in New England. The OMB has now defined the New England area based on counties, creating a city- and town-based system as an alternative. We believe that adopting county-based labor market areas for the entire country except those in New England would lead to inconsistencies in our designations. Adopting county-based labor market areas for the entire country provides consistency and stability in Medicare program payment because all of the labor market areas throughout the country, including New England, would be defined using the same system (that is, counties) rather than different systems in different areas of the county, and minimizes programmatic complexity.

In addition, we have consistently employed a county-based system for New England for precisely that reason: to maintain consistency with the labor market definitions used throughout the country. Since we have never used cities and towns for defining IPF labor market areas, employing a county-based system in New England maintains that consistent practice. We note that this is consistent with the implementation of the CBSA-based designations under the IPPS for New England (69 FR 49028). Accordingly, for the IPF PPS, we are proposing to use the New England MSAs as determined under the proposed new CBSA-based labor market area definitions in defining the

proposed revised IPF PPS labor market areas.

#### ii. Metropolitan Divisions

Under OMB's new CBSA designations, a Metropolitan Division is a county or group of counties within a CBSA that contains a core population of at least 2.5 million, representing an employment center, plus adjacent counties associated with the main county or counties through commuting ties. A county qualifies as a main county if 65 percent or more of its employed residents work within the county and the ratio of the number of jobs located in the county to the number of employed residents is at least 0.75. A county qualifies as a secondary county if 50 percent or more, but less than 65 percent, of its employed residents work within the county and the ratio of the number of jobs located in the county to the number of employed residents is at least 0.75. After all the main and secondary counties are identified and grouped, each additional county that already has qualified for inclusion in the MSA falls within the Metropolitan Division associated with the main/secondary county or counties with which the county at issue has the highest employment interchange measure. Counties in a Metropolitan Division must be contiguous (65 FR 82236).

The construct of relatively large MSAs being comprised of Metropolitan Divisions is similar to the current construct of CMSAs comprised of PMSAs. As noted above, in the past, the OMB designated CMSAs as Metropolitan Areas with a population of 1 million or more and comprised of two or more PMSAs. Under the IPF PPS, we currently use the PMSAs rather than CMSAs to define labor market areas because they comprise a smaller geographic area with potentially varying labor costs due to different local economies. We believe that CMSAs may be too large of an area with a relatively large number of hospitals, to accurately reflect the local labor costs of all of the individual hospitals included in that relatively "large" area. A large market area designation increases the likelihood of including many hospitals located in areas with very different labor market conditions within the same market area designation. This variation could increase the difficulty in calculating a single wage index that would be relevant for all hospitals within the market area designation. Similarly, we believe that MSAs with a population of 2.5 million or greater may be too large of an area to accurately reflect the local labor costs of all of the

individual hospitals included in that relatively "large" area. Furthermore, as indicated above, Metropolitan Divisions represent the closest approximation to PMSAs, the building block of the current IPF PPS labor market area definitions, and therefore, would most accurately maintain our current structuring of the IPF PPS labor market areas. Therefore, as implemented under the IPFS (69 FR 49029), we are proposing to use the Metropolitan Divisions where applicable (as described below) under the proposed new CBSA-based labor market area definitions.

In addition to being comparable to the organization of the labor market areas under current MSA designations (that is, the use of PMSAs rather than CMSAs), we believe that using Metropolitan Divisions where applicable (as described below) under the IPF PPS would result in a more accurate adjustment for the variation in local labor market areas for IPFs. Specifically, if we would recognize the relatively "larger" CBSA that comprises two or more Metropolitan Divisions as an independent labor market area for purposes of the wage index, it would be too large and would include the data from too many hospitals to compute a wage index that would accurately reflect the various local labor costs of all of the individual hospitals included in that relatively "large" CBSA. As mentioned earlier, a large market area designation increases the likelihood of including many hospitals located in areas with very different labor market conditions within the same market area designation. This variation could increase the difficulty in calculating a single wage index that would be relevant for all hospitals within the market area designation. Rather, by proposing to recognize Metropolitan Divisions where applicable (as described below) under the proposed new CBSA-based labor market area definitions under the IPF PPS, we believe that in addition to more accurately maintaining the current structuring of the IPF PPS labor market areas, the local labor costs would be more accurately reflected, thereby resulting in a wage index adjustment that better reflects the variation in the local labor costs of the local economies of the IPFs located in these relatively "smaller" areas.

Below we describe where Metropolitan Divisions would be applicable under the proposed new CBSA-based labor market area definitions under the IPF PPS.

Under OMB's new CBSA-based designations, there are 11 MSAs

containing Metropolitan Divisions: Boston; Chicago; Dallas; Detroit; Los Angeles; Miami; New York; Philadelphia; San Francisco; Seattle; and Washington, DC. Although these MSAs were also CMSAs under the prior definitions, in some cases these areas have been significantly altered. Under the current IPF PPS MSA designations, Boston is a single NECMA. Under the proposed CBSA-based labor market area designations, it would be comprised of four Metropolitan Divisions. Los Angeles would go from four PMSAs under the current IPF PPS MSA designations to two Metropolitan Divisions under the proposed CBSA-based labor market area designations because two MSAs became separate MSAs. The New York CMSA would go from 15 PMSAs under the current IPF PPS MSA designations down to only four Metropolitan Divisions under the proposed CBSA-based labor market area designations. The five PMSAs in Connecticut under the current IPF PPS MSA designations would become separate MSAs under the proposed CBSA-based labor market area designations, and the number of PMSAs in New Jersey under the current IPF PPS MSA designations would go from five to two, with the consolidation of two New Jersey PMSAs (Bergen-Passaic and Jersey City) into the New York-Wayne-White Plains, NY-NJ Division, under the proposed CBSA-based labor market area designations. In San Francisco, under the proposed CBSA-based labor market area designations, there are only two Metropolitan Divisions. Currently, there are six PMSAs, some of which are now separate MSAs under the current IPF PPS labor market area designations.

Under the current IPF PPS labor market area designations, Cincinnati, Cleveland, Denver, Houston, Milwaukee, Portland, Sacramento, and San Juan are all designated as CMSAs, but would no longer be designated as CMSAs under the proposed CBSA-based labor market area designations. As noted previously, the population threshold to be designated as a CMSA under the current IPF PPS labor market area designations is 1 million. In most of these cases, counties currently in a PMSA under the current IPF PPS labor market area designations would become separate, independent MSAs under the proposed CBSA-based labor market area designations.

#### iii. Micropolitan Areas

Under OMB's new CBSA-based designations, Micropolitan Areas are essentially a third area definition consisting primarily of currently rural areas, but also include some or all of

areas that are currently designated as an urban MSA. As discussed in greater detail in the FY 2005 IPPS final rule (69 FR 49029 through 49032), how these areas are treated would have significant impacts on the calculation and application of the wage index. Specifically, whether or not Micropolitan Areas are included as part of the respective statewide rural wage indices would impact the value of statewide rural wage index of any State that contains a Micropolitan Area because a hospital's classification as urban or rural affects which hospitals' wage data are included in the statewide rural wage index. As discussed above in section IV.C.1.b. we combine all of the counties in a State outside a designated urban area together to calculate the statewide rural wage index for each State.

Including Micropolitan Areas as part of the statewide rural labor market area would result in an increase to the statewide rural wage index because hospitals located in those Micropolitan Areas typically have higher labor costs than other rural hospitals in the State. Alternatively, if Micropolitan Areas would be recognized as independent labor market areas, because there would be so few hospitals in each labor market area, the wage indices for IPFs in those areas could become relatively unstable as they would change considerably from year to year.

We currently use MSAs to define urban labor market areas and group all the hospitals in counties within each State that are not assigned to an MSA together into a statewide rural labor market area. We have used the terms "urban" and "rural" wage indexes in the past for ease of reference. However, the introduction of Micropolitan Areas by the OMB potentially complicates this terminology because these areas include many hospitals that are currently included in the statewide rural labor market areas.

We are proposing to treat Micropolitan Areas as rural labor market areas under the IPF PPS for the reasons outlined below. That is, counties that are assigned to a Micropolitan Area under the CBSA-based designations would be treated the same as other "rural" counties that are not assigned to either an MSA (Metropolitan Statistical Area) or a Micropolitan Area. Therefore, in determining an IPF's applicable wage index (based on IPPS hospital wage index data), we are proposing that an IPF in a Micropolitan Area under OMB's CBSA-based designations would be classified as "rural" and would be assigned the statewide rural wage index for the State in which it resides.

In the FY 2005 IPPS final rule (69 FR 49029 through 49032), we discuss our evaluation of the impact of treating Micropolitan Areas as part of the statewide rural labor market area instead of treating Micropolitan Areas as independent labor market areas for hospitals paid under the IPPS. As discussed in that same final rule, one of the reasons Micropolitan Areas have such a dramatic impact on the wage index is because Micropolitan Areas encompass smaller populations than MSAs. In addition, they tend to include fewer hospitals per Micropolitan Area. Currently, there are only 25 MSAs with one hospital in the MSA. However, under the new proposed CBSA-based definitions, there are 373 Micropolitan Areas with one hospital, and 49 MSAs with only one hospital.

Since Micropolitan Areas encompass smaller populations than MSAs, they tend to include fewer hospitals per Micropolitan Area, recognizing Micropolitan Areas as independent labor market areas would generally increase the potential for dramatic shifts in those areas' wage indices from one year to the next because a single hospital (or group of hospitals) could have a disproportionate effect on the wage index of the area. The large number of labor market areas with only one hospital and the increased potential for dramatic shifts in the wage indexes from 1 year to the next is a problem for several reasons. First, it creates instability in the wage index from year to year for a large number of hospitals. Second, it reduces the averaging effect (averaging effect allows for more data points to be used to calculate a representative standard of measured labor costs within a market area.) lessening some of the incentive for hospitals to operate efficiently. This incentive is inherent in a system based on the average hourly wages for a large number of hospitals, as hospitals could profit more by operating below that average. In labor market areas with a single hospital, high wage costs are passed directly into the wage index with no counterbalancing averaging with lower wages paid at nearby competing hospitals. Third, it creates an arguably inequitable system when so many hospitals have wage indexes based solely on their own wages, while other hospitals' wage indexes are based on an average hourly wage across many hospitals.

For the reasons noted above, and consistent with the treatment of these areas under the IPPS, we are proposing not to adopt Micropolitan Areas as independent labor market areas under the IPF PPS. However, we are proposing

that Micropolitan Areas, under the CBSA-based labor market area definitions, would be considered part of the statewide rural labor market area. Accordingly, we are proposing that the IPF PPS statewide rural wage index would be determined using acute-care IPPS hospital wage data (the rationale for using IPPS hospital wage data is discussed in greater detail above in section IV.C.1.d.iii of this proposed rule) from hospitals located in non-MSA areas (for example, rural areas, including Micropolitan Areas) and that statewide rural wage index would be assigned to IPFs located in those non-MSA areas.

#### e. Implementation of the Proposed Revised Labor Market Areas Under the IPF PPS

Section 124 of the BBRA, is broadly written and gives the Secretary discretion in developing and making adjustments to the IPF PPS.

When the revised labor market areas based on the OMB's new CBSA-based designations were adopted under the acute care hospital IPPS beginning on October 1, 2004, a transition to the new labor market area designations was established due to the scope and substantial implications of these new boundaries and to buffer the subsequent significant impacts it may have on payments to numerous hospitals. As discussed in the FY 2005 IPPS final rule (69 FR 49032), during FY 2005, a blend of wage indexes is calculated for those acute care IPPS hospitals experiencing a drop in their wage indexes because of the adoption of the new labor market areas.

While we recognize that, just like IPPS hospitals, some IPFs may experience decreases in their wage index as a result of the proposed labor market area changes, our analysis shows that a majority of IPFs either expect no change in wage index or an increase in wage index based on CBSA definitions. In addition, a very small number of IPFs (fewer than 3 percent) would experience a decline of 5 percent or more in the wage index based on CBSA designations. We also found that a very small number of IPFs (approximately 5 percent) would experience a change in either rural or urban designation under the CBSA-based definitions. Since a majority of IPFs would not be significantly impacted by the proposed labor market areas, we believe it is not necessary to propose a transition to the proposed new CBSA-based labor market area for the purposes of the IPF PPS wage index.

In addition, because we are in the midst of a transition to a full wage-index

adjustment under the IPF PPS, we believe that the effects on the IPF PPS wage index from the proposed changes to the IPF PPS labor market areas definitions would be mitigated. Specifically, most IPFs would be in their FY 2006 cost reporting period and therefore would be in the second year of the 3-year phase-in of the IPF PPS wage index adjustment when the revised labor market area designations would be applied. During the second year of the transition to the IPF PPS, the applicable wage index value is one-half (50 percent) of the applicable full IPF PPS wage index adjustment. Since most IPFs would be in the second year of the 3-year phase-in of the wage index adjustment, for most IPFs, the labor-related portion of the standard Federal rate is only adjusted by 50 percent of the applicable full wage index (that is, one-half wage index value). As noted above, the IPF PPS wage index adjustment is made by multiplying the labor-related share of the IPF PPS standard Federal per diem base rate by the applicable wage index value, and the proposed IPF PPS labor related-share is 75.923 percent. Consequently, for most IPFs, only 38 percent of the standard Federal per diem base rate is affected by the wage index adjustment (75.923 percent  $\times$  0.50 = 37.9615 percent), and the proposed revision to the labor market area definitions based on OMB's new CBSA-based designations would only have a minimal impact on IPF PPS payments. Therefore, because the impact of the proposed revision to the labor market area definitions would only have a minimal impact on IPF PPS payments, we do not believe it is necessary to propose a transition policy for the proposed revision to the IPF PPS labor market area definitions.

For the reasons discussed above, we are not proposing a transition under the IPF PPS from the current MSA-based labor market areas designations to the new CBSA-based labor market area designations. Rather, we are proposing under the IPF PPS to adopt the new CBSA-based labor market area definitions beginning with the July 1, 2006 IPF PPS rate year without a transition period.

As discussed below, the IPPS adopted a hold-harmless policy and an "out-commuting" adjustment. We are also not proposing a hold harmless policy or an "out-commuting" adjustment under the IPF PPS from the current MSA-based labor market areas designations to the new CBSA-based labor market area designations as discussed below. We are proposing to adopt the new CBSA-based labor market area definitions beginning with the July 1, 2006 IPF PPS rate year

without a hold harmless policy and without an "out-commuting" adjustment.

We believe that our proposed policies are appropriate for IPFs because, despite some similarities between the IPF PPS and the IPPS, there are clear distinctions between the payment systems, particularly regarding wage index issues. Where a wage index adjustment has been a stable feature of the acute care hospital IPPS since its 1983 implementation and had utilized the prior MSA-based labor market area designation for over 10 years, this is not the case for the IPF PPS, which has only been implemented since January 1, 2005.

The most significant distinction between acute care hospitals under the IPPS and IPFs under the IPF PPS, is that acute care hospitals have been paid using full wage index adjusted payments since 1983 and had used the previous IPPS MSA-based labor market area designations for over 10 years, whereas under the IPF PPS, a wage index adjustment is being phased-in over a 3-year period. As previously explained, the impact that the wage index can have on IPF PPS payments is limited at this point, since only a small percentage of the IPF PPS Federal per diem base rate is affected by the wage index (approximately 38 percent in most cases) because of the 3-year phase-in of the wage index adjustment. In contrast, a transition policy to the revised IPPS labor market area definitions under the IPPS was appropriate because there is no phase-in of a wage index adjustment under the IPPS and the full labor-related share of the IPPS standardized amount (that is, Federal rate) is affected by the IPPS wage index adjustment, which resulted in a more significant projected impact for acute care hospitals under the IPPS.

As discussed in the August 11, 2004 IPPS final rule (69 FR 49032), during FY 2005, a hold harmless policy was implemented to minimize the overall impact of hospitals that were in FY 2004 designated as urban under the MSA designations, but would become rural under the CBSA designations. In the same final rule, hospitals were afforded a 3-year hold harmless policy because the IPPS determined that acute-care hospitals that changed designations from urban to rural would be substantially impacted by the significant change in wage index. Currently, under the IPF PPS urban facilities that become rural would receive the rural facility adjustment (that is, 17 percent). As discussed in section IV.C.2 of this proposed rule, we are proposing to keep the rural adjustment at 17 percent. The

rural facility adjustment would be applied in the same way to urban facilities that would become rural under the CBSA-based definitions, if we were to adopt them. Thus, we believe that the impact on any urban facilities that become rural under the new definitions would be mitigated by the rural adjustment. Therefore, we do not believe it is appropriate or necessary to adopt a hold harmless policy for facilities that would experience a change in designation under the CBSA-based definitions.

In addition, we note that section 505 of the MMA established new section 1886(d)(13) of the Act. The new section 1886(d)(13) of the Act requires that the Secretary establish a process to make adjustments to the hospital wage index based on commuting patterns of hospital employees. We believe that this requirement for an "out-commuting" or "out-migration" adjustment applies specifically to the IPPS. Therefore, we are not proposing an adjustment for the IPF PPS.

We note that for the CBSA designations, we identified some geographic areas where there were no hospitals, and thus no hospital wage index data on which to base the calculation of the July 1, 2006 rate year IPF PPS proposed wage index. In addressing this situation, we are proposing approaches that we believe serve as proxies for hospital wage data and would provide an appropriate standard that accounts for geographic variation in labor costs.

The first situation involves rural locations in Massachusetts and Puerto Rico. We have determined that there are no rural hospitals in those locations. Since there is no reasonable proxy for more recent rural data within those areas, we are proposing to use last year's wage index value for rural Massachusetts and rural Puerto Rico. This approach is consistent with other Medicare PPSs (for example, SNF PPS and IRF PPS).

The second situation has to do with the urban area of Hinesville, GA (CBSA 25980). Under the proposed new labor market areas there are no urban hospitals within this area. We propose to use all of the urban areas within the State to serve as a reasonable proxy for the urban areas without specific hospital wage index data in determining the IPF PPS wage index. Therefore, in this proposed rule, we are calculating the urban wage index value for purposes of the wage index for these areas without urban hospital data as the average wage index for all urban areas within the State. This approach is consistent with other Medicare PPSs

(for example, SNF PPS and IRF PPS). We could not apply a similar averaging in rural areas because in the rural areas there are no State rural hospital wage data available for averaging on a State-wide basis. We solicit comments on these approaches to calculating the wage index values for areas without hospitals for RY 2007 and subsequent years.

To facilitate an understanding of the proposed policies related to the proposed change to the IPF PPS labor market areas discussed above, in the MSA/CBSA Crosswalk included as Addendum B of this proposed rule, we are providing a listing of each Social Security Administration (SSA) State and county location code; State and county name; existing MSA-based labor market area designation; MSA-based wage index value; CBSA-based labor market area; and the new CBSA-based wage index value. We are also providing in Addenda C1 and C2 the proposed wage index for urban and rural areas based on CBSA labor market areas.

#### f. Wage Index Budget Neutrality

Any proposed adjustment or update to the IPF wage index would be made in a budget neutral manner that assures that the estimated aggregated payments under this subsection in the RY beginning July 1, 2006 are not greater or less than those that would have been made in the year without such an adjustment. Therefore, we would calculate a budget-neutral wage index adjustment factor. We propose to calculate this factor using the following steps:

*Step 1:* Determine the total amount of the estimated IPF PPS payments for the implementation year using the labor-related share and wage indices from FY 2005 (based on MSAs).

*Step 2:* Calculate the total amount of estimated IPF PPS payments for RY 2007 using the proposed labor-related share and wage indices from FY 2006 (based on CBSAs).

*Step 3:* Divide the amount calculated in *Step 1* by the amount calculated in *Step 2* which yields a RY 2007 budget-neutral wage adjustment of 1.00156.

This factor would be applied in the update of the Federal per diem base rate for RY 2007.

#### 1. Proposed Adjustment for Rural Location

In the IPF PPS Final Rule (69 FR 66954), we provided a 17 percent payment adjustment for IPFs located in a rural area. This adjustment was based on the regression analysis which indicated that the per diem cost of rural facilities was 17 percent higher than

that of urban facilities after accounting for the influence of the other variables included in the regression. Many rural IPFs are small psychiatric units within small general acute care hospitals. We also stated in the IPF PPS final rule that small-scale facilities are more costly on a per diem basis because there are minimum levels of fixed costs that cannot be avoided, and they do not have the economies of size advantage.

Based on the results of our regression analysis for the final rule using the most recent complete data available (that is, FY 2002 data), we provided a payment adjustment for IPFs located in rural areas of 17 percent. In this proposed rule, we are not proposing to change this adjustment factor. In addition, we stated that we do not intend to conduct another regression analysis until we are able to analyze 1 year of IPF PPS claims and cost report data. At that time, we can compare rural and urban IPFs to determine how much more costly rural facilities are on a per diem basis under the IPF PPS. In the meantime, we are proposing to apply a 17 percent payment adjustment for IPFs located in a rural area as defined at § 412.64(b)(1)(ii)(C).

#### 2. Proposed Teaching Adjustment

In the IPF PPS final rule, we established a facility-level adjustment for IPFs that are, or are part of, teaching institutions. The teaching status adjustment accounts for the higher indirect operating costs experienced by facilities that participate in graduate medical education (GME) programs. We have received numerous requests for clarification of the IPF PPS teaching adjustment, especially with regard to comparisons with the IPPS IME adjustment that were included in the IPF PPS final rule. As a result, we are including an expanded explanation of the IPF PPS teaching status adjustment and are proposing clarifying changes to § 412.424(d)(1)(iii) regarding the teaching adjustment.

Medicare makes direct GME payments (for direct costs such as resident and teaching physician salaries, and other direct teaching costs) to all teaching hospitals including those paid under the IPPS, and those that were once paid under the TEFRA rate-of-increase limits but are now paid under other PPSs. These direct GME payments are made separately from payments for hospital operating costs and are not part of the PPSs. However, the direct GME payments do not address the higher indirect operating costs experienced by teaching hospitals. For teaching hospitals paid under the TEFRA rate-of-increase limits, Medicare did not make

separate medical education payments because payments to these hospitals were based on the hospitals' reasonable costs. Since payments under TEFRA were based on hospitals' reasonable costs, the higher indirect costs that might be associated with teaching programs would automatically have been factored into the TEFRA payments.

As previously mentioned, we conducted regression analysis of FY 2002 IPF data as the basis for the payment adjustments included in the IPF PPS final rule. In conducting the analysis, we used the resident counts reported on hospital cost reports (worksheet S-3, Part 1, line 12, column 7 for freestanding psychiatric hospitals and worksheet S-3, Part 1, line 14 (or line 14.01 for subprovider 2), column 7 for psychiatric units of acute care hospitals). That is, for the freestanding psychiatric hospitals, we used the number of residents and interns reported for the entire hospital. For the psychiatric units of acute care hospitals, we used the number of residents and interns reported for the psychiatric unit, which are reported separately on the cost report from the number reported for the rest of the hospital.

The regression analysis (with the logarithm of costs as the dependent variable) showed that the indirect teaching cost variable is significant in explaining the higher costs of IPFs that have teaching programs. We calculated the teaching adjustment based on the IPF's "teaching variable," which is one plus the ratio of the number of full-time equivalent (FTE) residents training in the IPF (subject to limitations described below) to the IPF's average daily census (ADC).

In the cost regressions conducted for the IPF PPS final rule, the logarithm of the teaching variable had a coefficient value of 0.5150. We converted this cost effect to a teaching payment adjustment by treating the regression coefficient as an exponent and raising the teaching variable to a power equal to the coefficient value. In other words, the teaching adjustment is calculated by raising the teaching variable  $(1 + \text{FTE residents}/\text{ADC})$  to the 0.5150 power. To compute the percentage increase in the IPF PPS payment attributable to the teaching adjustment (that is, the amount to be reconciled at cost report settlement), raise the teaching variable  $(1 + \text{FTE residents}/\text{ADC})$  to the 0.5150 power. For example, for an IPF with a teaching variable of 0.10 and using a coefficient value of 0.5150, the per diem payment would increase by 5.03 percent; for an IPF with a teaching variable of 0.05, the per diem payment would increase by 2.54 percent. We note

that the coefficient value of 0.5150 was based on regression analysis holding all other components of the payment system constant.

In addition, we established the teaching adjustment in a manner that limited the incentives for IPFs to add FTE residents for the purpose of increasing their teaching adjustment. We imposed a cap on the number of FTE residents that may be counted for purposes of calculating the teaching adjustment, similar to that established by sections 4621 (IME FTE cap for IPPS hospitals) and 4623 (direct GME FTE cap for all hospitals) of the BBA. We emphasize that the cap limits the number of FTE residents that teaching IPFs may count for the purposes of calculating the IPF PPS teaching adjustment, not the number of residents teaching institutions can hire or train.

The FTE resident cap is applied the same way in freestanding teaching psychiatric hospitals and in distinct part psychiatric units with GME programs. Similar to the regulations for counting FTE residents under the IPPS as described in § 412.105(f), we calculated the number of FTE residents that trained in the IPF during a "base year" and use that FTE resident number as the cap. An IPF's FTE resident cap would ultimately be determined based on the final settlement of the IPF's most recent cost report filed before November 15, 2004 (that is, the publication date of the IPF PPS final rule).

Similar to teaching hospitals under the IPPS, IPFs that first begin training residents after November 15, 2004 initially receive an FTE cap of "0". The FTE caps for teaching IPFs (whether they are new or existing IPFs) that start training residents in a new GME program (may be subsequently adjusted in accordance with the IPPS policies described in § 412.105(f)(1)(vii) and GME policies described in § 413.79(e)(1)(i) and (ii). For purposes of this section, a new medical residency training program means a medical residency that receives initial accreditation by the appropriate accrediting body or begins training residents on or after November 15, 2004. However, contrary to the policy for IME FTE resident caps under the IPPS, we do not allow IPFs to aggregate the FTE resident caps used to compute the IPF PPS teaching adjustment through affiliation agreements. We included these policies because we believe it is important to limit the total pool of resident FTE cap positions within the IPF community and avoid incentives for IPFs to add FTE residents in order to increase their payments.

Residents with less than full-time status and residents rotating through the psychiatric hospital or unit for less than a full year are counted in proportion to the time they spend in their assignment with the IPF (for example, a resident on a full-time, 3-month rotation to the IPF would be counted as 0.25 FTE for purposes of counting residents to calculate the ratio). No FTE resident time counted for purposes of the IPPS IME adjustment is counted for purposes of the teaching status adjustment for the IPF PPS.

As noted previously, the denominator used to calculate the teaching adjustment under the IPF PPS is the IPF's average daily census (ADC) from the current cost reporting period. We chose to use the ADC because it is closely related to the IPF's patient load, which affects the number of interns and residents the IPF can train. We also believe the ADC is a measure that can be defined precisely and is difficult to manipulate. Although the IPPS IME adjustment uses the hospital's number of beds as the denominator, the capital PPS (as specified at § 412.322) and the IRF PPS (as specified at § 412.624(e)(4)) both use the ADC as the denominator for the indirect medical education and teaching adjustments, respectively.

If a psychiatric hospital's or unit's FTE count of residents in a given year is higher than the FTE count in the base year (the base year being used to establish the cap), we base payments in that year on the lower number (the cap amount). This approach is consistent with the IME adjustment under the IPPS and the teaching adjustment under the IRF PPS. The IPF remains free to add FTE residents above the cap amount, but it cannot count the number of FTE residents above the cap for purposes of calculating the teaching adjustment. This means that the cap serves as an upper limit on the number of FTE residents that may be counted for purposes of calculating the teaching status adjustment. IPFs can adjust their number of FTE residents counted for purposes of calculating the teaching adjustment as long as they remain under the cap. On the other hand, if a psychiatric hospital or unit were to have fewer FTE residents in a given year than in the base year (that is, fewer residents than its FTE resident cap), teaching adjustment payments in that year would be based on the lower number (that is, the current year's FTE count of resident).

In response to inquiries about how the teaching adjustment is applied under the IPF PPS, we are proposing to add a new paragraph § 412.424(d)(1)(iii)(E) to clarify that the teaching adjustment is

made on a claim basis as an interim payment and the final payment for the claim would be made in full during the final settlement of the cost report. The difference between those interim payments and the actual teaching adjustment amount computed in the cost report would be adjusted through lump sum payments/recoupments when the cost report is filed and later settled.

As noted in section III.B.3 of this proposed rule, in reviewing the methodology used to simulate the IPF PPS payments used for the IPF PPS final rule, we discovered that the computer code incorrectly assigned non-teaching status to most teaching facilities. As a result, total IPF PPS payments were underestimated by about 1.36 percent. To resolve the issue, as discussed in section III.B.3 of this proposed rule, we are proposing to amend the Federal per diem base rate prospectively for all IPFs.

As with other adjustment factors derived through the regression analysis, we do not intend to rerun the regression analysis until we can analyze 1 year of IPF PPS claims and cost report data. Until then, we are proposing to retain the 0.5150 teaching adjustment to the Federal per diem base rate.

### 3. Proposed Cost of Living Adjustment for IPFs Located in Alaska and Hawaii

The IPF PPS includes a payment adjustment for IPFs located in Alaska and Hawaii based upon the county in which the IPF is located. As we explained in the IPF PPS final rule, the FY 2002 data demonstrated that IPFs in Alaska and Hawaii had per diem costs that were disproportionately higher than other IPFs. Other Medicare prospective payment systems (for example, IPPS and IRF PPS) have adopted a cost of living adjustment (COLA) to account for the cost differential of care furnished in Alaska and Hawaii. We analyzed the effect of applying a COLA to payments for IPFs located in Alaska and Hawaii. The results of our analysis demonstrated that a COLA for IPFs located in Alaska and Hawaii would improve payment equity for these facilities. As a result of this analysis, we provided a COLA adjustment in the IPF PPS final rule.

In general, the COLA would account for the higher costs in the IPF and eliminate the projected loss that IPFs in Alaska and Hawaii would experience absent the COLA. A COLA adjustment for IPFs located in Alaska and Hawaii is made by multiplying the non-labor share of the Federal per diem base rate by the applicable COLA factor based on the county in which the IPF is located.

Table 14 lists the specific COLA for Alaska and Hawaii IPFs. The COLA factors were obtained from the U.S.

Office of Personnel Management (OPM). The COLA factors are published on the U.S. Office of Personnel Management (OPM) website (<http://www.opm.gov/oca/cola/rates.asp>). We are proposing to adopt the COLA adjustments obtained from OPM. We propose to update the COLA factors if OPM updates them and as updated by OPM. Any change in the COLA factors would be made in one of our IPF PPS RY update documents. We are proposing to amend § 412.428 to update the COLA factors if appropriate.

TABLE 14.—PROPOSED COLA FACTORS FOR ALASKA AND HAWAII IPFS

Location	COLA
Alaska:	
All areas .....	1.25
Hawaii:	
Honolulu County .....	1.25
Hawaii County .....	1.165
Kauai County .....	1.2325
Maui County .....	1.2375
Kalawao County .....	1.2375

4. Proposed Adjustment for IPFs With a Qualifying Emergency Department (ED)

Currently, the IPF PPS includes a facility-level adjustment for IPFs with qualifying EDs. As explained in the IPF PPS final rule, we provide an adjustment to the standardized Federal per diem base rate to account for the costs associated with maintaining a full-service ED. The adjustment is intended to account for ED costs allocated to the hospital's distinct part psychiatric unit for preadmission services otherwise payable under Medicare Part B furnished to a beneficiary during the day immediately preceding the date of admission to the IPF (see § 413.40(c)) and the overhead cost of maintaining the ED. This payment is a facility-level adjustment that applies to all IPF admissions (with the one exception as described below), regardless of whether a particular patient receives preadmission services in the hospital's ED.

The ED adjustment is incorporated into the variable per diem adjustment for the first day of each stay for IPFs with a qualifying ED. That is, IPFs with a qualifying ED receive a 31 percent adjustment as the variable per diem adjustment for day 1 of each stay. If an IPF does not have a qualifying ED, it receives a 19 percent adjustment as the variable per diem adjustment for day 1 of each patient stay.

While any IPF with a qualifying ED receives the adjustment, the adjustment is paid most often to IPFs that are psychiatric units of acute care hospitals or CAHs because these providers are

more likely to have an ED that meets the definition of a qualified ED in § 412.424(d)(1)(v). We defined a qualifying ED in order to avoid providing the ED adjustment to an intake unit that is not comparable to a full-service ED with respect to the array of emergency services available or cost. We defined a qualifying ED as one that is staffed and equipped to furnish a comprehensive array of emergency services and that meets the definition of a "dedicated emergency department" as specified in § 489.24(b) and the definition of "provider-based status" as specified in § 413.65. We intended that a qualifying ED provide a comprehensive array of medical and psychiatric services.

Therefore, in order to clarify that a comprehensive array of emergency services includes medical as well as psychiatric services, we are proposing to amend § 412.424(d)(1)(V)(A).

As specified in § 489.24, a dedicated ED means "any department or facility of the hospital, regardless of whether it is located on or off the main hospital campus, that meets at least one of the following requirements:

- It is licensed by the State in which it is located under applicable State law as an emergency room or emergency department;
- It is held out to the public (by name, posted signs, advertising, or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment; or
- During the calendar year immediately preceding the calendar year in which a determination under this section is being made, based on a representative sample of patient visits that occurred during the calendar year, it provides at least one-third of all its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment."

As specified in § 413.65, provider-based status means "the relationship between a main provider and a provider-based entity or a department of a provider, remote location of a hospital, or satellite facility that complies with the provisions." Including provider-based status in the definition of a qualifying ED reflects the common ownership of the hospital and the distinct part psychiatric unit.

As discussed in the IPF PPS final rule, three steps were involved in the calculation of the ED adjustment factor.

*Step 1:* We estimated the proportion by which the ED costs of a case would increase the cost of the first day of the stay. Using the IPFs with ED admissions

in FY 2002, we divided their average ED cost per stay admitted through the ED (\$198) by their average cost per day (\$715), which equals 0.28.

*Step 2:* We adjusted the factor estimated in Step 1 to account for the fact that we would pay the higher first day adjustment for all cases in the qualifying IPFs, not just the cases admitted through the ED. Since on average, 44 percent of the cases in IPFs with ED admissions are admitted through the ED, we multiplied 0.28 by 0.44, which equals 0.12.

*Step 3:* We added the adjusted factor calculated in the previous 2 steps to the variable per diem adjustment derived from the regression equation that we used to derive our other payment adjustment factors. The first day payment factor from this regression is 1.19. Adding the 0.12, we obtained a first day variable per diem adjustment for IPFs with a qualifying ED equal to 1.31.

The ED adjustment is made on every qualifying claim except as described below. As specified in § 412.424(d)(1)(V)(B), the ED adjustment is not made where a patient is discharged from an acute care hospital or CAH and admitted to the same hospital's or CAH's psychiatric unit. An ED adjustment is not made in this case because the costs associated with ED services are reflected in the DRG payment to the acute care hospital or through the reasonable cost payment made to the CAH. As we explained in the IPF PPS final rule, if we provided the ED adjustment in these cases, the hospital would be paid twice for the overhead costs of the ED (69 FR 66960).

Therefore, when patients are discharged from an acute care hospital or CAH and admitted to the same hospital's or CAH's psychiatric unit, the IPF receives the 1.19 adjustment factor as the variable per diem adjustment for the first day of the patient's stay in the IPF. As with other adjustment factors under the IPF PPS, we do not intend to conduct a new regression analysis for this IPF PPS update. Rather, we intend to wait until we can analyze 1 year of IPF PPS claims and cost report data. Therefore, we are proposing to retain the 1.31 adjustment factor for IPFs with qualifying EDs for the rate year beginning July 1, 2006. As we indicated in the final rule, in FY 2002, one third of the IPFs admissions were through the ED. Commenters on the IPF PPS proposed rule indicated that the percentage of admissions through the ED were understated. We plan to monitor claims data to determine the number of IPF admissions admitted through the ED.

a. Proposed New Source of Admission Code To Implement the ED Adjustment

In order to ensure that the ED adjustment is not paid for patients who are discharged from an acute care hospital or CAH and admitted to the same hospital's or CAH's psychiatric unit, we directed IPFs to enter source of admission code 4 (transfers from hospital inpatient) on those claims. The source of admission code is a required field on Medicare claims and indicates the source of the patient admissions. However, as we have implemented the IPF PPS, we have realized that admission code 4 is too broad to distinguish these claims because it reflects transfers from any acute care hospital or CAH. Currently, where admission code 4 is entered on a claim, the ED adjustment is not paid, even if the patient is transferred from a different acute hospital or CAH.

In order to pay these IPF claims appropriately, CMS requested a new source of admission code from the National Uniform Billing Committee to identify transfers from the same hospital or CAH. On June 7, 2005, the National Uniform Billing Committee granted our request to establish a new source of admission code to indicate transfers from the same hospital or CAH. The new source of admission code "D" is effective April 1, 2006. We are proposing that the new code would be used by IPFs to identify IPF patients who have been transferred to the IPF from the same hospital or CAH. Claims with source of admission code "D" would not receive the ED adjustment.

b. Applicability of the ED Adjustment to IPFs in Critical Access Hospitals

The BBA created the CAH program, designed to represent a separate provider type to provide acute care services in rural areas. Generally, in order to qualify as a CAH, a hospital must be located in a rural area, provide 24-hour emergency care services, have an average length of stay of 96 hours or less, operate up to 25 beds for inpatient critical access care, be located more than 35 miles from a hospital or another CAH or more than 15 miles in mountainous terrain or only secondary roads, or be certified by the State as of December 31, 2005 as being a "necessary provider" of health care services to residents in the area.

Section 405(g) of the MMA authorizes CAHs to establish distinct part psychiatric and rehabilitation units of up to 10 beds effective for cost reporting periods beginning on or after October 1, 2004. Services in these units are paid under the payment methodology that

would apply if such services were provided in a distinct part psychiatric or rehabilitation unit of a hospital. As a result, IPFs that are distinct part units of CAHs are paid the same as if they were a distinct part unit of a hospital. Otherwise, the CAH is paid on a reasonable cost basis for inpatient critical access services.

In the IPF PPS final rule, we amended §413.70(e) to clarify that payments for services of distinct part psychiatric units in CAHs are made in accordance with the IPF PPS. In order to pay CAHs the same as other IPFs, CAHs would be subject to the 1-day preadmission services bundling provision specified in §413.40(c)(2) for patients who are admitted to the CAH's IPF. As a result, the cost of preadmission services, including ED services furnished to CAH IPF patients would be allocated to the IPF.

*D. Other Payment Adjustments and Policies*

[If you choose to comment on issues in this section, please include the caption "OTHER ADJUSTMENTS AND POLICIES" at the beginning of your comments.]

The IPF PPS includes the following payment adjustments: (1) An outlier policy to promote access to IPF care for those patients who require expensive care and to limit the financial risk of IPFs treating unusually costly patients; (2) a stop-loss provision, applicable during the transition period, to reduce financial risk to IPFs projected to experience substantial reductions in Medicare payments under the IPF PPS; (3) an interrupted stay policy to avoid overpaying stays that include a brief absence from the IPF followed by readmission to the IPF; and (4) a payment for patients who receive ECT. We are proposing to update those policies in this proposed rule. We are also proposing clarifications to the physician certification and recertification requirements in order to ensure consistent practices across IPFs. In addition, we are clarifying coverage of recreation therapy.

1. Outlier Payments

In the IPF PPS final rule, we implemented regulations at §412.424(d)(3)(i) to provide a payment adjustment for IPF stays that have extraordinarily high costs. Providing additional payments for outlier cases to IPFs that are beyond the IPF's control strongly improves the accuracy of the IPF PPS in determining resource costs at the patient and facility level because facilities receive additional

compensation over and above the adjusted Federal prospective payment amount for uniquely high-cost cases. These additional payments reduce the financial losses that would otherwise be caused by treating patients who require more costly care and, therefore, reduce the incentives to under-serve these patients.

Under the IPF PPS, outlier payments are made on a per case basis rather than on a per diem basis because it is the overall financial "gain" or "loss" of the case, and not of individual days, that determines an IPF's financial risk. In addition, because patient-level charges (from which costs are estimated) are typically aggregated for the entire IPF stay, they are not reported in a manner that would permit accurate accounting on a daily basis.

Currently, we make outlier payments for discharges in which an IPF's estimated total cost for a case exceeds a fixed dollar loss threshold amount (multiplied by the IPF's facility-level adjustments) plus the Federal per diem payment amount for the case.

In instances when the case qualifies for an outlier payment, we pay 80 percent of the difference between the estimated cost for the case and the adjusted threshold amount for days 1 through 9 of the stay (consistent with the median length of stay for IPFs in FY 2002), and 60 percent of the difference for day 10 and thereafter. We established the 80 percent and 60 percent loss sharing ratios because we were concerned that a single ratio established at 80 percent (like other Medicare hospital PPSs) might provide an incentive under the IPF per diem payment system to increase length of stay in order to receive additional payments. After establishing the loss sharing ratios, we determined the current fixed dollar loss threshold amount of \$5,700 through payment simulations designed to compute a dollar loss beyond which payments are estimated to meet the 2 percent outlier spending target.

a. Proposed Update to the Outlier Fixed Dollar Loss Threshold Amount

As indicated in section II.A of this proposed rule, in accordance with the update methodology described in §412.428(d), we are proposing to update the fixed dollar loss threshold amount used under the IPF PPS outlier policy. Based on the regression analysis and payment simulations used to develop the IPF PPS, we established a 2 percent outlier policy to make an appropriate balance between protecting IPFs from extraordinarily costly cases while ensuring the adequacy of the Federal



per diem base rate for all other cases that are not outlier cases.

We continue to believe a 2 percent outlier policy is an appropriate target percentage and are proposing to retain the 2 percent outlier policy. However, we believe it is necessary to update the fixed dollar loss threshold amount because analysis of the latest available data indicates adjusting the fixed dollar loss amount is necessary in order to maintain an outlier percentage that equals 2 percent of total estimated IPF PPS payments. We intend to continue to analyze estimated outlier payments for subsequent years using the best available data in order to maintain estimated outlier payments at 2 percent of total estimated IPF PPS payments.

We have determined that in certain sections of the IPF PPS final rule, we used the phrase "Fixed-dollar loss threshold" and, in other sections, we used the phrase "Fixed-dollar loss amount" to describe the dollar amount by which the costs of a case exceed payment in order to qualify for an outlier payment. In order to avoid confusion regarding these phrases, we are proposing to use the term "fixed-dollar loss threshold amount" when we are referring to the dollar amount by which the costs of a case exceed payment in order to qualify for an outlier payment.

As a result of this clarification, in § 412.402, we are proposing to revise the term "Fixed dollar loss threshold" to "Fixed dollar loss threshold amount." We are also proposing clarifying changes to § 412.424(d)(3)(i) and § 412.424(d)(3)(i)(A) to state that we would provide an outlier payment if an IPF's estimated total cost for a case exceeds a "fixed dollar loss threshold amount" plus the total IPF adjusted payment amount for the stay, and that it is the fixed dollar loss threshold amount that is adjusted by the IPF's facility-level adjustments.

Aside from updating the terminology "fixed dollar loss threshold amount" and making the conforming changes to the regulation text described above, we are not proposing any other changes to the outlier policy. Therefore, we would continue to adjust the fixed dollar loss threshold amount by the applicable facility-level payment adjustments and add this amount to the IPF PPS payment amount in order to determine if a case qualifies for an outlier payment. For cases that meet the threshold amount, we would pay 80 percent for days 1 through 9 and 60 percent for day 10 and thereafter.

In the IPF PPS final rule, we described the process by which we calculate the outlier fixed dollar loss

threshold amount. We are proposing to continue to use this process in this proposed rule. We begin by simulating aggregate payments with and without an outlier policy, and applying an iterative process to a fixed dollar loss amount that would result in outlier payments being equal to 2 percent of total simulated payments under the simulation. Based on this process, we are proposing \$6200 as the fixed dollar loss threshold amount in the outlier calculation in order to maintain the proposed 2 percent outlier policy.

We note that the simulation analysis used to calculate the proposed \$6200 fixed dollar loss threshold amount includes all of the proposed changes to the IPF PPS discussed in this proposed rule. As a result, for the RY beginning July 1, 2006, the final fixed dollar loss threshold amount is subject to change in the final rule depending on the policies contained in the final rule.

#### b. Proposed Statistical Accuracy of Cost-to-Charge Ratios

As stated previously, under the IPF PPS, an outlier payment is made if an IPF's cost for a stay exceeds a fixed dollar loss threshold amount. In order to establish an IPF's cost for a particular case, we multiply the IPF's reported charges on the discharge bill by their overall cost to charge ratio (CCR). This approach to determining a provider's cost is consistent with the approach used under the IPPS and other prospective payment systems. In FY 2004, we implemented changes to the IPPS outlier policy used to determine CCRs for acute care hospitals because we became aware that payment vulnerabilities resulted in inappropriate outlier payments. Under the IPPS, we established a statistical measure of accuracy for CCRs in order to ensure that aberrant CCR data did not result in inappropriate outlier payments. As we indicated in the IPF PPS final rule, because we believe the IPF outlier policy is susceptible to the same payment vulnerabilities as the IPPS, we adopted an approach to ensure the statistical accuracy of CCRs under the IPF PPS. Therefore, we adopted the following two procedures in the IPF PPS final rule:

- We calculated two national ceilings, one for IPFs located in rural areas and one for IPFs located in urban areas. We computed the ceilings by first calculating the national average and the standard deviation of the CCR for both urban and rural IPFs.

To determine the rural and urban ceilings, we multiplied each of the standard deviations by 3 and added the result to the appropriate national CCR

average (either rural or urban). The current upper threshold CCR for IPFs is 1.8853 for rural IPFs, and 1.8040 for urban IPFs, based upon MSA-based geographic designations. If an IPF's CCR is above the applicable ceiling, the ratio is considered statistically inaccurate and we assign the appropriate national (either rural or urban) median CCR to the IPF.

Additional information regarding the national median CCRs is included in the IPF PPS final rule (69 FR 66961).

- We do not apply the applicable national median CCR when an IPF's CCR falls below a floor. We made this decision because using the national median CCR in place of the provider's actual CCR would overstate the IPF's costs. We are proposing to apply the national CCRs to the following situations:

- ++ New IPFs that have not yet submitted their first Medicare cost report.

- ++ IPFs whose operating or capital CCR is in excess of 3 standard deviations above the corresponding national geometric mean (that is, above the ceiling).

- ++ Other IPFs for whom the fiscal intermediary obtains inaccurate or incomplete data with which to calculate either an operating or capital CCR or both.

The current national CCRs were estimated to be 0.7115 for rural IPFs and 0.5658 for urban IPFs and would be used in each of the three situations cited above. These estimates were based on the IPF's location (either urban or rural) using the MSA-based geographic designations. For new facilities, we are proposing to use these national ratios until the facility's actual CCR can be computed using the first tentatively settled or final settled cost report, which would then be used for the subsequent cost report period.

We are not proposing any changes to the procedures for ensuring the statistical accuracy of CCRs in RY 2007. However, we are proposing to update the national urban and rural CCRs (ceilings and medians) for IPFs for RY 2007 based on the full calendar year 2005 CCRs entered in the Provider-Specific File. In addition, we are proposing that the updated ceilings and national median CCRs would be based on CBSA-based geographic designations because the CBSAs are the geographic designations we are proposing to adopt for purposes of computing the proposed wage index adjustment to IPF payments beginning July 1, 2006. We would include the updated ceiling and national median CCRs in the final RY 2007 regulations.

In subsequent years, we are proposing to update the national urban and rural CCRs (median and ceilings) based on the previous full calendar year's Provider-Specific File. These CCRs would be announced in each year's annual notice of prospective payment rates published in the **Federal Register**. We are proposing to add a new paragraph (g) to § 412.428 to clarify that we intend to update the national urban and rural ceilings and medians as part of the annual update of the IPF PPS and to specify when the national median urban and rural CCRs would be used.

#### 1. Proposed Stop-Loss Provision

In the IPF PPS final rule, we implemented a stop-loss policy to reduce financial risk for those facilities expected to experience substantial reductions in Medicare payments during the IPF PPS transition period. This stop-loss policy guarantees that each facility receives total IPF PPS payments that are no less than 70 percent of its TEFRA payments, had the IPF PPS not been implemented.

This policy is applied to the IPF PPS portion of Medicare payments during the 3-year transition. Hence, during year 1, three-quarters of the payment were based on TEFRA and one-quarter on the IPF PPS. Under the 70 percent policy, 75 percent of total payment is TEFRA payments, and the 25 percent is IPF PPS payments, which are at least 70 percent of the TEFRA payments. The resulting 92.5 percent of TEFRA payments in year 1 is the sum of 75 percent and 25 percent times 70 percent.

In year 2, one-half of the payment will be based on TEFRA and one-half on the IPF PPS. In year 3, one-quarter of the payment will be based on TEFRA and three-quarters on the IPF PPS. In year 4 of the IPF PPS, Medicare payments are based 100 percent on the IPF PPS.

The combined effects of the transition and the stop-loss policies will be to ensure that the total estimated IPF PPS payments were no less than 92.5 percent in year 1, 85 percent in year 2, and 77.5 percent in year 3.

The 70 percent of TEFRA payment stop-loss policy will require a reduction in the Federal per diem and ECT base rates of 0.39 percent in order to make the stop-loss payments budget neutral. We estimate that about 10 percent of IPFs would receive stop-loss payments under the 70 percent policy.

We are not proposing to make any changes to the stop-loss policy.

#### 2. Patients Who Receive Electroconvulsive Therapy (ECT)

In developing the IPF PPS, we received numerous public comments

recommending that we include a payment adjustment for patients who receive ECT treatments during their IPF stay because furnishing ECT treatment, either directly or under arrangements, adds significantly to the cost of these stays. When we analyzed the FY 2002 MedPAR data, we found that ECT cases comprised about 6 percent of all cases and that almost 95 percent of ECT cases were treated in IPFs that are psychiatric units of acute care hospitals. Even among psychiatric units, ECT cases are concentrated among a relatively small number of facilities. Overall, approximately 450 facilities had cases with ECT. Among these facilities, we estimated the mean number of ECT cases per facility to be approximately 25. In addition, approximately one-half of the IPFs providing ECT had no more than 15 cases in FY 2002.

Our analysis confirmed that cases with ECT are substantially more costly than cases without ECT. We found that on a per case basis, ECT cases are approximately twice as expensive as non-ECT cases (\$16,287 compared to \$7,684). Most of this difference is due to variation in length of stay (20.5 days for ECT cases compared to 11.6 days for non-ECT cases). In addition, the ancillary costs per case for ECT cases are \$2,740 higher than those for non-ECT cases.

Although we are able to determine the cost of stays with ECT, we are unable to develop an ECT cost per treatment using the FY 2002 IPF claims data because the claims do not include the number of treatments. As a result, in the IPF PPS final rule, we established the following methodology for calculating the IPF PPS ECT payment adjustment.

We established an ECT base rate using the pre-scaled and pre-adjusted median hospital cost for CPT procedure code 90870 used for payment under hospital outpatient PPS (OPPS), based on hospital claims data. The median cost for all OPPS services are posted after publication of the OPPS proposed rule at the following address: <http://www.cms.hhs.gov/hospitaloutpatientPPS>. We used unadjusted hospital claims data under the OPPS, that is, the pre-scaled and pre-adjusted median hospital cost per treatment, to establish the ECT base rate because we did not want the ECT payment under the IPF PPS to be affected by factors that are relevant to OPPS but not specifically applicable to IPFs. The median cost (\$311.88) was then standardized and adjusted for budget neutrality, resulting in an ECT payment adjustment of \$247.96 per treatment. The ECT base rate is adjusted for wage and COLA differences in the

same manner that we adjust the Federal per diem base rate.

In order to receive the payment adjustment, IPFs must indicate on their claims the revenue code for ECT (901), along with the total number of units (ECT treatments) provided to the patient during their IPF stay. In addition, IPFs must include the ICD-9-CM procedure code for ECT (94.27) and the date of the last ECT treatment the patient received.

As we stated in the IPF PPS final rule, although we established the ECT adjustment as a distinct payment under the IPF PPS, our preferred approach would be to include a patient level adjustment as a component of the model (for example, determined through the regression analyses) to account for the higher costs associated with ECT (69 FR 66951). Although our analysis will continue, we do not intend to redo the regression analysis until we are able to analyze 1 year of IPF PPS claims and cost report data. However, we believe the data currently being submitted by IPFs may permit development of an IPF-specific ECT base rate, rather than using hospital outpatient claims data.

It is important to note that since ECT treatment is a specialized procedure, not all providers are equipped to provide the treatment. Therefore, many patients who need ECT treatment during their IPF stay must be referred to other providers to receive the ECT treatments, and then return to the IPF. In accordance with § 412.404(d)(3), in these cases where the IPF is not able to furnish necessary treatment directly, the IPF would furnish ECT under arrangements with another provider. While a patient is an inpatient of the IPF, the IPF is responsible for all services furnished, including those furnished under arrangements by another provider. As a result, the IPF claim for these cases should reflect the services furnished under arrangements by other providers.

Therefore, in accordance with the update methodology specified in § 412.428(f), we are proposing to update the ECT base rate using the pre-scaled pre-adjusted hospital median cost for ECT used for the CY 2006 update of the OPPS. The median cost would then be standardized, adjusted for budget neutrality, and adjusted for wage and COLA differences in the same manner that we adjust the per diem rate.

We are proposing to pay the median cost for an ECT treatment, posted as part of the calendar year (CY) 2006 OPPS update, which is based on CY 2004 outpatient hospital claims. The median cost is \$324.44. After applying the standardization factor and the wage index budget neutrality factor (as

described in section III.C.1.f. of this proposed rule), the adjusted proposed ECT payment for RY 2007 is \$268.21.

We would monitor this area to ensure that the increased payments for ECT do not lead to changes in the frequency of utilization by reviewing the CY 2005 MedPAR claims data.

### 3. Physician Certification and Recertification Requirements

Since the publication of the IPF PPS final rule, we have received inquiries related to physician certification and recertification. It appears that some psychiatric units in acute care hospitals have been following the timeframes that are applicable to the acute care hospital of which they are a part (as specified in § 424.13) rather than those that apply to psychiatric hospitals (as specified in § 424.14).

To eliminate the confusion that we believe may be caused by the titles of § 424.13 and § 424.14, to ensure consistency in compliance of the requirements among all IPFs, we are proposing to revise the title of § 424.14 from "Requirements for inpatient services of psychiatric hospitals" to "Requirements for inpatient services of inpatient psychiatric facilities." We are proposing that for the purposes of payment under the IPF PPS, all IPFs would follow the physician certification and recertification requirements as specified in § 424.14.

In the IPF proposed rule published on November 28, 2003 (68 FR 66920), we proposed to—(1) amend § 424.14 to state that in recertifying a patient's need for continued inpatient care in an IPF, a physician must indicate that the patient continues to need, on a daily basis, inpatient psychiatric care (furnished directly by or requiring the supervision of IPF personnel) or other professional services that, as a practical matter, can be provided only on an inpatient basis; and (2) revise § 424.14(d) to require that a physician recertify a patient's continued need for inpatient psychiatric care on the 10th day following admission to the IPF rather than the 18th day following admission to the IPF (68 FR 66939).

However, in the IPF PPS final rule, we did not include the proposed physician recertification requirement changes because most of the public comments we received on this issue did not support the proposed changes and indicated that there are inconsistencies in the timeframes currently required for IPFs that warranted additional analysis. Instead, we stated that we would continue to require that a physician recertify a patient's continued need for

inpatient psychiatric care on the 18th day following admission to the IPF.

Since publication of the final rule, we have received additional inquiries related to the physician certification and recertification timeframes that currently apply to IPFs. As noted above, it appears that some psychiatric units in acute care hospitals have been following the timeframes that are applicable to the acute care hospital of which they are a part (as specified in § 424.13) rather than those that apply to psychiatric hospitals (as specified in § 424.14). Section 424.13(d) requires the initial certification no later than as of the 12th day of hospitalization and the first recertification is required no later than as of the 18th day of hospitalization. Section § 424.14(d) requires certification at the time of admission or as soon thereafter as is reasonable and practicable and the first recertification is required as of the 18th day of hospitalization.

We are proposing that, for purposes of payment under the IPF PPS, all IPFs (distinct part units of acute care hospitals and CAHs and psychiatric hospitals) would meet the following physician certification and recertification timeframes. We would revise § 424.14(d) to provide that the initial physician certification would be required at the time of admission or as soon thereafter as is reasonable and practicable and the first recertification would be required as of the 12th day of hospitalization. Subsequent recertifications would be required at intervals established by the hospital's UR committee (on a case-by-case basis if desired), but no less frequently than every 30 days. We chose the 12th day because it is more in line with the average LOS and it is current practice for certification in psychiatric units.

We have also received inquiries from Fiscal Intermediaries requesting guidance on the content requirement of physician certifications at § 424.14(c), relating to the medical necessity of continued inpatient psychiatric care. As a result, we are proposing to add language to clarify that for purposes of payment under the IPF PPS, the physician would also recertify that the patient continues to need, on a daily basis, active treatment furnished directly by or requiring the supervision of inpatient psychiatric facility personnel.

### 4. Provision of Therapeutic Recreation in IPFs

Before the implementation of the IPPS payment methodology, Medicare coverage guidelines gave specific recognition to therapeutic recreation in

inpatient psychiatric hospitals. The guidelines in § 3102.1.A of the Medicare Intermediary Manual, Part 3 (MIM-3), and in § 212.1 of the Medicare Hospital Manual (which now appear in the CMS Internet Online Manual at Pub. 100-02, Chapter 2, §§ 20.1ff.) specifically identify therapeutic recreation as one of the services that can constitute "active treatment" in this setting when they are—

- Provided under an individualized treatment or diagnostic plan;
- Reasonably expected to improve the patient's condition or for the purpose of diagnosis; and
- Supervised and evaluated by a physician.

However, these guidelines refer to therapeutic recreation in terms of being an "adjunctive" therapy, indicating that even in this setting, it would not independently serve as a patient's sole or primary form of therapeutic treatment, but rather, would be furnished in support of (but subordinate to) some other, primary form of therapy.

When the IPPS was developed in 1983, to the extent that therapeutic recreation and other services had been furnished during the IPPS base period, the bundled IPPS payment for that setting would reflect these costs. However, during the IPPS rulemaking process, we received public comments stating "\* \* \* concern that the cost-saving incentives of the prospective payment system would lead hospitals paid under the system to stop providing recreational therapy services." In response, in the January 3, 1984 IPPS final rule (49 FR 242) we indicated that implementation of the IPPS would not, in fact, prohibit the provision of recreational therapy services, and that "\* \* \* these services will continue to be covered to the same extent they always have been under existing Medicare policies".

In implementing the IPPS regulations, we included criteria for identifying certain types of institutions (for example, psychiatric hospitals) that would be excluded from the IPPS and, thus, would continue to be paid under some other methodology. The regulations also introduced criteria for identifying an IPPS-excluded inpatient psychiatric unit housed within a larger acute-care hospital that would itself be subject to the IPPS. One of these identifying criteria at 42 CFR 405.471(c)(4)(ii)(B) (later recodified at 42 CFR 412.27(b)) was the provision, through the use of qualified personnel, of a number of specified types of services, including psychological services, social work services,

psychiatric nursing, occupational therapy, and recreational therapy.

As we explained in the IPPS interim final rule published on September 1, 1983 (48 FR 39758), the regulations designated these particular services because their provision “\* \* \* is typical of units which treat patients whose characteristics are like those in psychiatric hospitals. Consequently, the provision of these services is an identifier of such a patient population”. We note that the designation of these particular services in this context did not serve to define the scope of their coverage under Medicare, nor to mandate their provision in this setting, but merely to identify them as being characteristic of the type of psychiatric unit that would qualify for exclusion from the IPPS.

At the same time the IPPS was being developed, a parallel evolution was taking place in the certification requirements that facilities must meet in order to participate in the Medicare program: A shift from primarily “process-oriented” requirements to more “outcome-oriented” requirements, which focus more on direct indicators of the quality of care actually being furnished to the facility’s patients (as reflected in the presence of positive results and the absence of negative ones), and less on the specific “process” through which the facility achieves the desired outcome.

In order to participate in the Medicare program, psychiatric hospitals not only had to meet the conditions of participation (COPs) that apply to general, acute-care hospitals, but additionally had to meet special conditions related to medical records and staffing. Consistent with the recognition of therapeutic recreation as constituting active treatment in this one particular setting (as discussed above), the original COPs for psychiatric hospitals at 42 CFR 405.1038(g) mandated the presence of qualified therapists, assistants, or aides “\* \* \* sufficient in number to provide comprehensive therapeutic activities, including at least occupational, recreational and physical therapy, as needed, to assure that appropriate treatment is rendered for each patient, and to establish and maintain a therapeutic milieu.” Furthermore, 42 CFR 405.1038(g)(3) further specified that “recreational or activity therapy services are available under the direct supervision of a member of the staff who has demonstrated competence in therapeutic recreation programs,” and §§ 405.1038(g)(4) and (5) went on to prescribe additional standards regarding therapy assistants or aides and overall

staffing for recreational and activity therapy.

However, when the special medical record and staffing COPs for psychiatric hospitals were subsequently recodified at 42 CFR 482.62(g), the specific references to recreation therapy were deleted and replaced with a more general requirement to provide a therapeutic activities program. In response to public comments that recommended us to restore the deleted requirements, we indicated that we believe that the deleted requirements concerning therapeutic activities were overly and unnecessarily prescriptive and that the hospital should have the flexibility to determine which activities are most appropriate to its patient population and to determine the criteria to be met by employees providing these services. (see the IPPS PPS rule published on June 17, 1986 (51 FR 22032)).

When the 1986 COP changes applicable to psychiatric hospitals were made, we inadvertently retained specific references to recreation therapy in § 412.27. Since the intent of § 412.27(b) is to identify services provided in psychiatric units that are characteristic of services furnished in psychiatric hospitals, we believe it is no longer appropriate to include references to specific therapies in § 412.27. In order to have consistent requirements among IPFs, we are proposing to remove recreational therapy from § 412.27(b).

Although we are proposing to remove the specific reference to recreation therapy, we want to emphasize that recreation therapy is, and would continue to be, an accepted therapeutic intervention in psychiatric treatment. In addition, we believe the IPF PPS base rate which was developed using FY 2002 data, reflects the provision of recreation therapy.

##### 5. Same Day Transfers

Currently, when a transfer, discharge, or death occurs on the same day as an admission to an IPF, the IPF PPS PRICER does not recognize any covered IPF days and the IPF claims are suspended. Based on review of a limited sample of the IPF and subsequent IPPS claims, it appears that many of these patients are first seen in a hospital’s ED, are admitted to the hospital’s psychiatric unit and, later the same day, determined to be too medically compromised to be managed in the psychiatric unit. This scenario may occur because the patient presents at the ED and is admitted to the psychiatric unit in the middle of the night, and when the patient’s admission to the unit is reviewed by a psychiatrist the next

morning, the physician determines that the patient should be discharged for acute care. In other cases, a patient may have been admitted to a freestanding psychiatric hospital based on the information furnished by an ED of an acute care hospital. However, after admission, the psychiatric hospital staff evaluates the patient and determines that the patient has medical needs that they are not staffed or equipped to meet.

The Provider Reimbursement Manual addresses the same day transfer issue from the perspective of counting Medicare days for the purpose of Medicare cost reporting. Section 2205 indicates that only full patient days may be used to apportion inpatient routine care service costs and that a day begins at midnight and ends 24 hours later. However, section 2205.1 explains how to count a day if the day of admission and the day of discharge are the same. Section 2205.1 indicates that when a patient is admitted and then transferred from one participating provider to another before midnight of the same day, a day (except for utilization purposes) is counted at both providers. A day of Medicare utilization is charged only for the admission to the second provider. This distinction is important for psychiatric admissions because IPF stays are subject to the 190-day lifetime limit on inpatient psychiatric care.

Section 1812(b) of the Act and 42 CFR 409.62 indicate that payment is not available for inpatient psychiatric hospital services furnished beyond the 190-day lifetime limit. Thus, Medicare coverage of IPF services, specifically IPF services furnished in freestanding psychiatric hospitals is limited to 190 days. In consideration of the limit on coverage of IPF services, where there is a same day transfer between Medicare participating providers, we only count the second admission for utilization purposes. Therefore, the initial admission to the IPF does not count against a beneficiary’s lifetime psychiatric services limit.

We have some concerns regarding same day transfers from an IPF. Under TEFRA, a hospital receives its cost up to the hospital’s TEFRA limit. The TEFRA limit is based on the hospital’s average cost per discharge in a base period. When an admission and discharge occur on the same day, the hospital’s cost is unlikely to exceed the TEFRA limit, so the hospital receives its cost for the day. These same day transfers also improve the hospital’s payment under TEFRA by slightly reducing its cost per discharge. We are also concerned that when the transfer occurs in the same hospital, this practice circumvents bundling rules

under the IPPS, in that it unbundles the ED charges from the IPPS claim and allocates the ED costs to the psychiatric unit even though the patient may have been inappropriately admitted to the unit.

Based on the review of IPF PPS claims we conducted, it did not appear that the admissions to the IPF were medically reasonable and necessary. However, we believe it is important to base a decision regarding coverage of these days on a comprehensive review of the claims. Therefore, we are not proposing a change in payment policy in this proposed rule. However, we are considering several alternative methods for addressing same day transfers under the IPF PPS which are described below. Any change to treatment of same day transfers would be made prospectively.

We could treat these days as covered days under the IPF PPS. However, under the IPF PPS, a 19 percent adjustment to the base rate is applied to day 1 of the stay to reflect the additional administrative and clinical costs associated with admission and the day 1 adjustment is increased to 31 percent when the IPF has a qualifying ED. The IPF may also receive, for example, a teaching adjustment or rural adjustment, for these partial days of care. Several of the claims in our analysis indicate a stay of 2 hours. We are concerned that this approach would overpay IPFs and encourage inappropriate admissions and transfers.

Another option would be to make no PPS payment, but continue making TEFRA payments during the IPF PPS transition period. For example, for cost reporting periods beginning in 2006, IPFs will receive a blended payment consisting of 50 percent PPS and 50 percent TEFRA. Therefore, under this approach we would allow some payment for these days for cost reporting periods in 2006 and 2007, but once the IPF PPS transition period is over, the IPFs would receive no payment for these days. We think this approach would encourage changes in admission practices in order to avoid the need to transfer patients. However, once the IPF PPS transition is over, there would be no payment mechanism to pay IPFs for stays in which there is a circumstance, not reasonably foreseeable by the admitting IPF such as a serious change in health status on the day of admission.

We could treat these same day transfer cases as covered days under the IPF PPS but limit payment to the Federal per diem base rate or some other payment amount, for example, half the Federal per diem base rate. This approach would limit payment to IPFs

in order to provide an incentive for IPFs to make medical clearance determinations as early in the IPF stay as possible. However, we are concerned that this approach would not lead to changes in admission practices to avoid inappropriate admissions and the need for subsequent transfers.

It is important to note that the cost for these days was included in the cost reports used to develop the IPF PPS, and, as a result, the average cost per day that was used to establish the Federal per diem base rate is higher than it would otherwise have been had those days not been included.

We specifically request public comment from IPFs on this issue to help us to develop a payment policy that pays IPFs appropriately for these days and provides an incentive to avoid same day transfers wherever possible.

#### V. Provisions of the Proposed Rule

[If you choose to comment on issues in this section, please include the caption "PROVISIONS" at the beginning of your comments.]

We are proposing to make revisions to the regulation in order to implement the proposed prospective payment for IPFs for discharges occurring during the RY beginning July 1, 2006. As part of the update, we are proposing to incorporate OMB's revised definitions for MSAs and its new definitions of Micropolitan Statistical Areas and Core-Based Statistical Areas. In addition, we are proposing the following—

- Update payments for IPF facilities using a market basket reflecting the operating and capital cost structures for the RPL market basket.
- Develop cost weights for benefits, contract labor, and blood and blood products using the FY 2002-based IPPS market.
- Provide weights and proxies for the FY 2002-based RPL market basket.
- Indicate the methodology for the capital portion of the FY 2002-based RPL market basket.
- Update the outlier threshold amount to maintain total outlier payments at 2 percent of total estimated payments.
- Use source code "D" to identify IPF patients who have been transferred to the IPF from the same hospital or CAH.
- Retain the 17 percent adjustment for IPFs located in rural areas, the 1.31 adjustment for IPFs with a qualifying ED, the 0.5150 teaching adjustment to the Federal per diem base rate, and the DRG adjustment factor currently being paid to IPFs for discharges occurring during RY 2007.
- Update the payment rate for ECT.

- Update the DRG listing and comorbidity categories to reflect the ICD-9-CM revisions effective October 1, 2005.

In addition to discussing these general issues in the IPF PPS 2007 RY, we also proposed making the following specific revisions to the existing text of the regulations. Specifically, we are proposing to make conforming changes in 42 CFR part 412 and 424 as discussed throughout this preamble.

In § 412.27, we are proposing to revise paragraph (b) to remove the reference to recreational therapy.

In § 412.402, we are proposing to revise the heading of "Fixed dollar loss threshold" to "Fixed dollar loss threshold amount" and revise the definitions of "Fixed dollar loss threshold amount", "Qualifying emergency department", "Rural area" and "Urban area." For consistency, we are proposing to make conforming changes to these terminologies wherever they appear in the regulations text.

In § 412.424, we are also proposing to add paragraph (d)(1)(iii)(E) to clarify that the teaching adjustment is made on a claim basis as an interim payment and the final payment in full is made during the final settlement of the cost report. For clarity, we are proposing to revise paragraph (d)(2) introductory text. The current language in (d)(2)(iii) would become the introductory text for paragraph (d)(2) and paragraph (d)(2)(iii) would be removed. In addition, we are proposing to revise § 412.424(d)(3)(i)(A) to clarify that an outlier payment is made if an IPF's estimated total cost for a case exceeds a fixed dollar loss threshold amount plus the Federal payment amount for the case.

In § 412.426(a), we are proposing to correct the cross reference to the Federal per diem payment amount. We incorrectly referenced the Federal per diem base rate at § 424.424(c). The correct cross reference to the Federal per diem payment amount is § 424.424(d).

In § 412.428, we are proposing to revise paragraph (b) to specify that for discharges occurring on or after January 1, 2005 but before July 1, 2006 the rate of increase factor for the Federal portion of the payment is based on the FY 1997-based excluded hospital with capital market basket and for discharges occurring on or after July 1, 2006, the rate of increase factor for the Federal portion of the payment is based on the FY 2002-based RPL market basket.

In addition, we are proposing to add a new paragraph (g) to state that we would update the national urban and rural cost to charge ratio median and ceiling. Paragraph (1) through (3) would

specify the types of IPFs in which to apply the national cost to charge ratio. Furthermore, we are proposing to add a new paragraph (h) to update the cost of living adjustment factors if appropriate.

In § 424.14, we are proposing to revise the title to read, "Requirements for inpatient services of inpatient psychiatric facilities," to ensure consistency in compliance with the requirements among all IPFs. We are proposing to add a new paragraph (c)(3) to clarify for purposes of payment under the IPF PPS, that the physician would also recertify that the patient continues to need, on a daily basis, active inpatient psychiatric care (furnished directly by or requiring the supervision of inpatient psychiatric facility personnel) or other professional services that can only be provided on an inpatient basis.

In addition, we are revising paragraph (d)(2) to state that the first recertification is required as of the 12th day of hospitalization. Subsequent recertifications are required at intervals established by the UR committee (on a case-by-case basis if it so chooses), but no less frequently than every 30 days.

#### **VI. Collection of Information Requirement**

[If you choose to comment on issues in this section, please include the caption "INFORMATION COLLECTION" at the beginning of your comments.]

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.

#### **VII. Regulatory Impact Analysis**

[If you choose to comment on issues in this section, please include the caption "IMPACT" at the beginning of your comments.]

##### *A. Overall Impact*

We have examined the impact of this proposed 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 (UMRA) (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year).

Based on the impact analysis, we estimate the expenditures from the IPF PPS implementation year to the 2007 IPF PPS RY will be increased by \$180 million. The updates to the IPF labor-related share and wage indices are made in a budget neutral manner and thus have no effect on estimated costs to the Medicare program. Therefore, the estimated increased cost to the Medicare program is the result of a combination of the updated IPF market baskets, which is offset by the transition blend and the revision of the standardization factor.

CMS notes that aspects of the transition, including the stop-loss policy and the transition to the 50/50 percent blend in the 2007 IPF PPS RY and the transition to the 75/25 percent blend in the 2008 IPF PPS RY, were included in the 2004 final rule and are thus not incremental to this rulemaking. Nevertheless, it is essential to analyze the impact of the transition blend in order to calculate the increase in cost to the Medicare program.

The impact of the transition blend is an approximately .2 percent (about \$10 million) decrease in overall payments for the 2007 IPF PPS RY and the distribution of that impact is summarized in Table 15. Therefore, the impact attributable to the policy changes proposed in this rulemaking, primarily the market basket update and the standardization correction, is approximately \$180 million in the 2007 IPF PPS RY.

Since costs to the Medicare program are estimated to be greater than \$100 million, this proposed rule is considered a major economic rule, as defined in 5 U.S.C. 40(2).

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 governmental jurisdictions. Most IPFs and most other providers and suppliers are considered small entities, either by nonprofit status or by having revenues of \$6 million to \$29 million in any 1 year. (For details, see the Small Business Administration's regulation that set forth size standards for health care industries at 65 FR 69432.)

HHS considers that a substantial number of entities are affected if the rule impacts more than 5 percent of the

total number of small entities as it does in this rule. We included all freestanding psychiatric hospitals (79 are non-profit hospitals) in the analysis since their total revenues do not exceed the \$29 million threshold. We also included psychiatric units of small hospitals, that is, those hospitals with fewer than 100 beds. We did not include psychiatric units within larger hospitals in the analysis because we believe this proposed rule would not significantly impact total revenues of the entire hospital that supports the unit. We have provided the following RFA analysis in section B to emphasize that, although the proposed rule would impact a substantial number of IPFs that were identified as small entities, we do not believe it would have a significant economic impact. Based on the analysis of the 1063 psychiatric facilities that were classified as small entities as described above, we estimate the combined impact of the IPF PPS will be a 4.6-percent increase in payments in RY 2007 relative to their payments in the implementation year of the IPF PPS. Based on the information available, we believe that Medicare payments may constitute a small portion of governmental IPF's revenue stream. We have prepared the impact analysis in section VI.B.2 to describe the impact of the proposed rule in order to provide a factual basis for our conclusions regarding small business impact.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a proposed 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. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we previously defined a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). However, under the new labor market definitions that we are proposing to adopt, we would no longer employ NECMAs to define urban areas in New England. Therefore, for purposes of this analysis, we now define a small rural hospital as a hospital with fewer than 100 beds that is located outside of an MSA. We have determined that this proposed rule would have a substantial impact on hospitals classified as located in rural areas. As discussed earlier in this preamble, we are proposing to continue to provide a payment adjustment of 17 percent for IPFs

located in rural areas. In addition, we have established a 3-year transition to the new system to allow IPFs an opportunity to adjust to the new system. Therefore, the impacts shown in Table 15 below reflect the adjustments that are designed to minimize or eliminate any potentially significant negative impact that the IPF PPS may otherwise have on small rural IPFs.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any proposed rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$120 million. This proposed rule would not mandate any requirements for State, local, or tribal governments, nor would it affect private sector costs.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

We have reviewed this proposed rule under the criteria set forth in Executive Order 13132 and have determined that the proposed rule would not have any substantial impact on the rights, roles, and responsibilities of State, local, or tribal governments.

#### *B. Anticipated Effects of the Proposed Rule*

We discuss below the impact of this proposed rule on the Federal Medicare budget and on IPFs.

##### 1. Budgetary Impact

As discussed in detail in the IPF PPS final rule and summarized in section III.B. of this proposed rule, we applied a budget neutrality factor to the Federal per diem and ECT base rates to ensure that total payments under the IPF PPS in the implementation period would equal the amount that would have been paid if the IPF PPS had not been implemented. In addition, as discussed in section IV.C.1 of this proposed rule, we are proposing to adopt the new CBSAs and labor market share in a budget neutral manner by applying a wage index budget neutrality factor to

the Federal per diem and ECT base rates. Thus, the budgetary impact to the Medicare program by the update of the IPF PPS will be the combination of the proposed market basket updates (see section III.C of this proposed rule), the proposed revision of the standardization factor (see section III.B.3 of this proposed rule), and the planned update of the payment blend discussed below.

##### 2. Impacts on Providers

To understand the impact of the changes to the IPF PPS discussed in this proposed rule on providers, it is necessary to compare estimated payments under the IPF PPS rates and factors for the 2007 IPF rate year to estimated payments under the IPF PPS rates and factors for the IPF PPS implementation year. The estimated payments for the IPF implementation year are a blend of: 75 percent of the facility-specific TEFRA payment and 25 percent of the IPF PPS payment with stop loss payment. The estimated payments for the 2007 IPF rate year are a blend of: 50 percent of the facility-specific TEFRA payment and 50 percent of the IPF PPS payment with stop loss payment. We determined the percent change of estimated 2007 IPF PPS rate year payments to estimated IPF PPS implementation year payments for each category of IPFs. In addition, for each category of IPFs, we have included the estimated percent change in payments resulting from the revision of the standardization factor (as discussed in section III.B.3 of this proposed rule, the ratio of estimated total TEFRA payments to estimated total PPS payments in the implementation year was overestimated and therefore needed to be reduced. We are proposing to apply the revised standardization factor prospectively to the Federal per diem base rate and ECT amount), the wage index changes for the 2007 IPF PPS rate year, the proposed market basket update to IPF PPS payments, and the transition blend for the 2007 rate year of the IPF PPS payment and the facility-specific TEFRA payment.

To illustrate the impacts of the proposed RY 2007 changes, our analysis begins with an implementation year baseline simulation model based on FY 2002 IPF payments inflated to 2005 with market baskets; the estimated outlier payments in 2005; the estimated stop-

loss payments in 2005; the MSA designations for IPFs based on OMB's MSA definitions before June 2003; the 2005 MSA wage index; the implementation year labor-market share; and the implementation year percentage amount of the rural adjustment. During the simulation, the outlier payment is maintained at the target of 2 percent of total PPS payments.

Each of the following proposed changes is added incrementally to this baseline model in order for us to isolate the effects of each change:

- IPF PPS payments adjusted by the revised standardization factor.
- The new CBSAs based on new geographic area definitions announced by OMB in June 2003 and the RY 2007 proposed budget-neutral labor-related share and wage index adjustment.
- A blended market basket update of 4.7 percent resulting in an update to the hospital-specific TEFRA target amount and an update to the IPF PPS base rates as discussed below.

++ As discussed in section III.C.4 of this proposed rule and in the IPPS final rule published August 12, 2005 (70 FR 47707), we established an update factor of 3.8 percent effective for cost reporting periods beginning on or after October 1, 2005 using the 2002-based excluded hospital market basket. The 3.8 percent update is applied to the IPF's target cost per discharge established under TEFRA for cost reporting periods beginning on or after October 1, 2005. However, since the midpoints of the 2007 rate year and the IPF PPS implementation period are 15 months apart, the TEFRA payment increase is projected to be 4.8 percent.

++ An update to the Federal per diem base rate of 4.5 percent based on the 2002-based RPL market basket (see section III.C.1.b of this proposed rule). The market basket update is based on a 15-month time period (from the midpoint of the IPF PPS implementation period to the midpoint of the 2007 rate year).

- The transition to 50 percent IPF PPS payment and 50 percent facility-specific TEFRA payment.

Our final comparison illustrates the percent change in payments from the IPF PPS implementation year (that is, January 1, 2005 to June 30, 2006) to RY 2007 (that is, July 1, 2006 to June 30, 2007).

TABLE 15.—PROJECTED IMPACTS

Facility by type	Number of facilities	Standardization factor correction	CBSA wage index and labor share	Market basket	Transition blend	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)
All Facilities .....	1,806	-0.3%	0.0%	4.7%	-0.2%	4.2%
By Type of Ownership:						
Psychiatric Hospitals.						
Government .....	178	-0.4%	0.0%	4.7%	11.0%	15.7%
Non-profit .....	79	-0.3%	0.1%	4.7%	1.6%	6.1%
For-profit .....	150	-0.4%	0.1%	4.7%	4.3%	8.9%
Psychiatric Units .....	1,399	-0.3%	0.0%	4.7%	-1.8%	2.5%
Rural .....	384	-0.3%	-0.2%	4.7%	-1.1%	3.0%
Urban .....	1,422	-0.3%	0.0%	4.7%	-0.1%	4.3%
By Urban or Rural Classification:						
Urban by Facility Type.						
Psychiatric Hospitals.						
Government .....	144	-0.4%	0.1%	4.7%	10.8%	15.6%
Non-profit .....	73	-0.3%	0.1%	4.7%	1.7%	6.2%
For-profit .....	143	-0.4%	0.1%	4.7%	4.4%	9.0%
Psychiatric Units .....	1,062	-0.3%	0.0%	4.7%	-1.7%	2.6%
Rural by Facility Type.						
Psychiatric Hospitals.						
Government .....	34	-0.5%	-0.3%	4.7%	11.8%	16.1%
Non-profit .....	6	-0.3%	0.3%	4.7%	-0.7%	3.9%
For-profit .....	7	-0.2%	-0.1%	4.7%	-1.8%	2.4%
Psychiatric Units .....	337	-0.3%	-0.2%	4.7%	-2.2%	1.8%
By Teaching Status:						
Non-teaching .....	1,537	-0.3%	0.0%	4.7%	-0.3%	4.0%
Less than 10% interns and residents to beds .....	148	-0.3%	0.0%	4.7%	0.4%	4.8%
10% to 30% interns and residents to beds .....	72	-0.3%	-0.1%	4.7%	0.4%	4.6%
More than 30% interns and residents to beds .....	49	-0.3%	0.1%	4.7%	-0.1%	4.4%
By Region:						
New England .....	126	-0.3%	0.0%	4.7%	-0.5%	3.9%
Mid-Atlantic .....	306	-0.4%	0.1%	4.7%	2.8%	7.3%
South Atlantic .....	238	-0.3%	-0.1%	4.7%	0.2%	4.5%
East North Central .....	325	-0.3%	-0.1%	4.7%	-1.5%	2.8%
East South Central .....	159	-0.3%	0.0%	4.7%	-0.2%	4.2%
West North Central .....	169	-0.3%	-0.2%	4.7%	-1.1%	3.1%
West South Central .....	237	-0.3%	-0.1%	4.7%	-2.7%	1.6%
Mountain .....	83	-0.3%	0.0%	4.7%	-0.4%	4.0%
Pacific .....	156	-0.3%	0.3%	4.7%	-0.6%	4.1%
By Bed Size:						
Psychiatric Hospitals.						
Under 12 beds .....	26	-0.1%	0.1%	4.7%	-3.8%	0.8%
12 to 25 beds .....	46	-0.2%	-0.1%	4.7%	0.3%	4.7%
25 to 50 beds .....	91	-0.4%	0.2%	4.7%	4.3%	8.9%
50 to 75 beds .....	82	-0.4%	0.1%	4.7%	3.8%	8.4%
Over 75 beds .....	162	-0.4%	0.0%	4.7%	8.5%	13.1%
Psychiatric Units.						
Under 12 beds .....	600	-0.2%	0.0%	4.7%	-4.5%	-0.2%
12 to 25 beds .....	474	-0.3%	0.0%	4.7%	-1.9%	2.4%
25 to 50 beds .....	228	-0.3%	0.0%	4.7%	-0.6%	3.7%
50 to 75 beds .....	58	-0.3%	0.0%	4.7%	0.1%	4.4%
Over 75 beds .....	39	-0.3%	-0.1%	4.7%	1.2%	5.5%

3. Results

Table 15 above displays the results of our analysis. The table groups IPFs into the categories listed below based on characteristics provided in the Online Survey and Certification and Reporting (OSCAR) file and the 2002 cost report data from HCRIS:

- Facility Type
- Location
- Teaching Status Adjustment

- Census Region
- Size

The top row of the table shows the overall impact on the 1,806 IPFs included in the analysis.

In column 3, we present the effects of the revised standardization factor (refer to section III.B.3 of this proposed rule for a discussion of this revision). This is defined to be the comparison of the simulated implementation year payment

under the revised budget neutral factor to the simulated implementation year payment under the original budget neutral factor. In aggregate, the proposed revision would result in a 0.3 percent decrease in overall payments to IPFs. There are small distributional effects among different categories of IPFs. For example, rural government psychiatric hospitals would receive the largest decrease of 0.5 percent while



rural for-profit psychiatric hospitals would receive a 0.2 percent decrease. Also psychiatric hospitals with over 75 beds would receive a decrease of 0.4 percent while psychiatric hospitals with fewer than 12 beds would receive the smallest decrease of 0.1 percent.

In column 4, we present the effects of the budget-neutral update to the labor-related share and the wage index adjustment under the new CBSA geographic area definitions announced by OMB in June 2003. This is a comparison of the simulated implementation year payment under revised budget neutral factor and labor-related share and wage index under CBSA classification to the simulated implementation year payment under revised budget neutral factor and labor-related share and wage index under current MSA classification. There is no change in aggregate payments to IPFs as indicated in the first row of column 4. There would, however, be small distributional effects among different categories of IPFs. For example, rural IPFs would experience a 0.2 percent decrease in payments while urban IPFs would experience no change in payments. Rural government hospitals would receive the largest decrease of 0.3 percent while rural non-profit hospitals would receive the largest increase of 0.3 percent.

In column 5, we present the effects of the proposed market basket update to the IPF PPS payments by applying the TEFRA and PPS updates to payments under revised budget neutral factor and labor-related share and wage index under CBSA classification. In the aggregate the proposed update would result in a 4.7 percent increase in overall payments to IPFs. This 4.7 percent reflects the current blend of the 4.8 percent update for IPF TEFRA payments and the 4.5 percent update for the IPF PPS payments.

In column 6, we present the effects of the payment change in transition blend percentages to transition year 2 (TEFRA Rate Percentage = 50 percent, IPF PPS Federal Rate Percentage = 50 percent) from transition year 1 (TEFRA Rate Percentage = 75 percent, IPF PPS Federal Rate Percentage = 25 percent) of the IPF PPS under revised budget neutral factor, labor-related share and wage index under CBSA classification, and TEFRA and PPS updates to RY 2007. The overall aggregate effect, across all hospital groups, would be a 0.2 percent decrease in payments to IPFs. There are distributional effects of these changes among different categories of IPFs. The largest increases would be among government psychiatric hospitals, with rural government

hospitals receiving an 11.8 percent increase and urban government hospitals receiving a 10.8 percent increase. Alternatively, psychiatric hospitals and units with fewer than 12 beds would receive the largest decreases of 3.8 percent and 4.5 percent respectively.

Column 7 compares our estimates of proposed changes reflected in this proposed rule for RY 2007, to our estimates of payments in the implementation year (without these proposed changes). This column reflects all RY 2007 proposed changes relative to the implementation year, shown in columns 3 through 6. The average increase for all IPFs is approximately 4.2 percent. This increase includes the effects of the market basket updates resulting in a 4.7 percent increase in total RY 2007 payments. It also includes a 0.3 percent decrease in RY 2007 payments for the standardization factor revision and a 0.2 percent decrease in RY 2007 payments for the transition blend.

Overall, the largest payment increase would be among government IPFs. Urban government psychiatric hospitals would receive a 15.6 percent increase and rural government psychiatric hospitals would receive a 16.1 percent increase. Psychiatric hospitals with fewer than 12 beds would receive a 0.8 percent increase and psychiatric units with fewer than 12 beds would receive a 0.2 percent decrease.

4. Effect on the Medicare Program

Based on actuarial projections resulting from our experience with other PPSs, we estimate that Medicare spending (total Medicare program payments) for IPF services over the next 5 years would be as follows:

TABLE 16.—ESTIMATED PAYMENTS

Rate year	Dollars in millions
July 1, 2006 to June 30, 2007 .....	\$4,257
July 1, 2007 to June 30, 2008 .....	4,382
July 1, 2008 to June 30, 2009 .....	4,559
July 1, 2009 to June 30, 2010 .....	4,762
July 1, 2010 to June 30, 2011 .....	4,979

These estimates are based on the current estimate of increases in the excluded hospital with capital market basket as follows:

- 3.6 percent for RY 2007;
- 3.5 percent for RY 2008;
- 3.1 percent for RY 2009;

- 2.6 percent for RY 2010; and
- 3.0 percent for RY 2011.

We estimate that there would be a change in fee-for-service Medicare beneficiary enrollment as follows:

- - 2.3 percent in RY 2007;
- - 1.0 percent in RY 2008;
- 0.3 percent in RY 2009;
- 0.3 percent in RY 2010; and
- 0.6 percent in RY 2011.

In the implementation year we estimated aggregate payments under the IPF PPS to equal the estimated aggregate payments that would be made if the IPF PPS were not implemented. Our methodology for estimating payments for purposes of the budget-neutrality calculations uses the best available data.

We will evaluate the accuracy of the assumptions used to compute the budget-neutrality calculation in the implementation year. We intend to analyze claims and cost report data from the implementation year of the IPF PPS to determine whether the factors used to develop the Federal per diem base rate are not significantly different from the actual results experienced in that year. We are planning to compare payments under the final IPF PPS (which relies on an estimate of cost-based TEFRA payments using historical data from a base year and assumptions that trend the data to the initial implementation period) to estimated cost-based TEFRA payments based on actual data from the first year of the IPF PPS. If we find that an adjustment is necessary, the percent difference (either positive or negative) would be applied prospectively to the established prospective payment rates to ensure the rates accurately reflect the payment levels intended by the statute.

Section 124 of Public Law 106-113 provides the Secretary broad authority to make an adjustment. We intend to perform this analysis within the first 5 years of the implementation of the IPF PPS.

5. Effect on Beneficiaries

Under the IPF PPS, IPFs would receive payment based on the average resources consumed by patients for each day. We do not expect changes in the quality of care or access to services for Medicare beneficiaries under the IPF PPS. In fact, we believe that access to IPF services would be enhanced due to the patient and facility level adjustment factors, all of which are intended to adequately reimburse IPFs for expensive cases. Finally, the stop-loss policy is intended to assist IPFs during the transition. In addition, we expect that paying prospectively for IPF services would enhance the efficiency of the Medicare program.

6. Computer Hardware and Software

We do not anticipate that IPFs would incur additional systems operating costs in order to effectively participate in the IPF PPS. We believe that IPFs and CAHs possess the computer hardware capability to handle the billing requirements under the IPF PPS. Our belief is based on indications that approximately 99 percent of hospital inpatient claims are submitted

electronically. In addition, we are not adopting significant changes in claims processing (see section IV.C of this proposed rule).

C. Accounting Statement

As required by OMB Circular A-4 (available at <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>), in Table 17 below, we have prepared an accounting statement

showing the classification of the expenditures associated with the provisions of this proposed rule. This table provides our best estimate of the increase in Medicare payments under the IPF PPS as a result of the changes presented in this proposed rule based on the data for 1,806 IPFs in our database. All expenditures are classified as transfers to Medicare providers (that is, IPFs).

TABLE 17.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2006 IPF PPS RY TO THE 2007 IPF PPS RY

(In millions)

Category	Transfers
Annualized Monetized Transfers .....	\$180.
From Whom To Whom? .....	Federal Government To IPFs Medicare Providers.

D. Alternatives Considered

We considered the following alternatives in developing the update to the IPF PPS:

One option we considered was incorporating a transition from MSA-based labor market definitions to CBSA-based labor market definitions for the purpose of applying the area wage index. As stated in section IV.C.1.e of this proposed rule, we are not adopting a transition policy here because IPFs are already in a transition from reasonable cost based reimbursement to IPF PPS payments. In addition, as evident in Table 15 above, the wage index change does not appear to have a large impact on IPFs.

We also considered increasing our outlier percentage so that outlier payments would be projected to be 3 percent (or higher) of total PPS payments. However, this approach would not target the truly costly cases. Instead, implementing such a policy would have the effect of lowering the fixed dollar loss amount, therefore spreading outlier payments across more IPFs. In addition, the Federal per diem base rate would have to be reduced by another percentage point.

It is also worth noting that in this proposed rule, we used the best available complete data set (that is, FY 2002 claims and cost report data) to assess the impact of the various policy changes. As previously stated, we won't know the true impact of the wage index changes, the transition blend period, or the market basket increases until we are able to analyze 1 year of IPF PPS claims and cost report data.

We considered alternative policies in order to reduce financial risk to facilities in the event that they experience substantial reductions in

Medicare payments during the period of transition to the IPF PPS. As discussed previously in this proposed rule, we have adopted a provision that would guarantee each facility an average payment per case under the IPF PPS that is estimated to be no less than a minimum proportion of its average payment per case under TEFRA. We analyzed the impact on losses if we were to make a payment adjustment to ensure that the minimum IPF PPS per case payment to an IPF is at least 70 percent of its TEFRA payment.

The stop-loss adjustment is applied to the IPF PPS portion of Medicare payments during the transition. For example, during year 2 of the 3-year transition period, half of the payment is based on TEFRA, and half of the payment is based on the Federal rate. We apply the stop-loss adjustment to the portion of the IPF's payments during the transition based on the Federal rate. We estimate that the combined effects of the transition and the stop-loss policies will ensure that per case payments relative to pre-IPF PPS TEFRA per case payments are no less than 92.5 percent in year 1, 85 percent in year 2, and 77.5 percent in year 3. We estimate that about 10 percent of IPFs would receive additional payments under the stop-loss policy.

The 70 percent of TEFRA stop-loss policy required a reduction in the per diem rate to make the stop-loss policy budget neutral during the implementation year. As a result, in the IPF PPS final rule, we made a reduction to the Federal per diem base rate of 0.4 percent in order to maintain budget neutrality.

In the IPF PPS final rule, we considered an 80 percent stop-loss policy as well as a 70 percent policy. In

order to target the stop-loss policy to the IPFs that experience the greatest impact relative to current payments and to limit the size of the reduction to the Federal per diem base rate, we adopted the 70 percent policy. In developing this proposed rule, we again considered an 80 percent stop-loss policy for RY 2007. Adopting an 80 percent policy would require a reduction in the Federal per diem base rate of over 2.5 percent, and we estimate that about 29 percent of IPFs would receive additional payments. We chose to stay with the 70 percent policy for the same reasons discussed in the IPF PPS final rule. Specifically, the 70 percent stop-loss policy targets the IPFs that experience the greatest impact relative to current payments, and it limits the size of the reduction to the Federal per diem base rate.

In accordance with the provisions of Executive Order 12866, this rule was previously reviewed by OMB.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

**PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR HOSPITAL SERVICES**

1. The authority citation for part 412 is revised to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), Sec. 124 of Pub. L. 106–113, 113 Stat. 1515, and Sec. 405 of Pub. L. of 108–173, 117 Stat. 2266.

2. Amend § 412.27 by revising paragraph (b) to read as follows:

**§ 412.27 Excluded psychiatric units: Additional requirements.**

\* \* \* \* \*

(b) Furnish, through the use of qualified personnel, psychological services, social work services, psychiatric nursing, and occupational therapy.

\* \* \* \* \*

3. Section 412.402 is amended by—

A. Republishing the introductory text.

B. Revising the heading of “Fixed dollar loss threshold,” to read “Fixed dollar loss threshold amount.”

C. Revising the definition of “Fixed dollar loss threshold amount,”

“Qualifying emergency department,”

“Rural area,” and “Urban area.”

The revisions read as follows:

**§ 412.402 Definitions.**

As used in this subpart—

\* \* \* \* \*

*Fixed dollar loss threshold amount* means a dollar amount which, when added to the Federal payment amount for case, the estimated costs of a case must exceed in order for the case to qualify for an outlier payment.

\* \* \* \* \*

*Qualifying emergency department* means an emergency department that is staffed and equipped to furnish a comprehensive array of emergency services and meeting the definitions of a dedicated emergency department as specified in § 489.24(b) of this chapter and the definition of “provider-based status” as specified in § 413.65 of this chapter.

*Rural area* means for cost reporting periods beginning January 1, 2005, with respect to discharges occurring during the period covered by such cost reports but before July 1, 2006, an area as defined in § 412.62(f)(1)(iii). For discharges occurring on or after July 1, 2006, rural area means an area as defined in § 412.64(b)(1)(ii)(C).

*Urban area* means for cost reporting periods beginning on or after January 1, 2005, with respect to discharges occurring during the period covered by such cost reports but before July 1, 2006, an area as defined in § 412.62(f)(1)(ii). For discharges occurring on or after July

1, 2006, urban area means an area as defined in § 412.64(b)(1)(ii)(A) and § 412.64(b)(1)(ii)(B).

4. Section 412.424 is amended by—

A. Revising paragraph (d)(1)(iii).

B. Republishing the heading of paragraph (d)(1)(v).

C. Revising paragraph (d)(1)(v)(A).

D. Adding paragraph (d)(2) introductory text.

E. Removing and reserving paragraph (d)(2)(iii).

F. Revising paragraphs (d)(3)(i) introductory text and (d)(3)(i)(A).

The revisions and additions read as follows:

**§ 412.424 Methodology for calculating the Federal per diem payment amount.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iii) *Teaching adjustment.* CMS adjusts the Federal per diem base rate by a factor to account for indirect teaching costs.

(A) An inpatient psychiatric facility’s teaching adjustment is based on the ratio of the number of full-time equivalent residents training in the inpatient psychiatric facility divided by the facility’s average daily census.

(B) Residents with less than full-time status and residents rotating through the inpatient psychiatric facility for less than a full year will be counted in proportion to the time they spend in the inpatient psychiatric facility.

(C) Except as described in paragraph (d)(1)(iii)(D) of this section, the actual number of current year full-time equivalent residents used in calculating the teaching adjustment is limited to the number of full-time equivalent residents in the inpatient psychiatric facility’s most recently filed cost report filed with its fiscal intermediary before November 15, 2004 (base year).

(D) If the inpatient psychiatric facility first begins training residents in a new approved graduate medical education program after November 15, 2004, the number of full-time equivalent residents determined under paragraph (d)(1)(iii)(C) of this section may be adjusted using the method described in § 413.79(e)(1)(i) and (ii) of this chapter.

(E) The teaching adjustment is made on a claim basis as an interim payment, and the final payment in full for the claim is made during the final settlement of the cost report.

\* \* \* \* \*

(v) *Adjustment for IPF with qualifying emergency departments.* (A) CMS adjusts the Federal per diem base rate to account for the costs associated with maintaining a qualifying emergency department. A qualifying emergency

department is staffed and equipped to furnish a comprehensive array of emergency services (medical and psychiatric) and meets the requirements of § 489.24(b) and § 413.65 of this chapter.

(2) *Patient-level adjustments.* The inpatient psychiatric facility must identify a principal psychiatric diagnosis as specified in § 412.27(a) for each patient. CMS adjusts the Federal per diem base rate by a factor to account for the diagnosis-related group assignment associated with the principal diagnosis, as specified by CMS.

\* \* \* \* \*

(3) *Other adjustments.* (i) *Outlier payments.* CMS provides an outlier payment if an inpatient psychiatric facility’s estimated total cost for a case exceeds a fixed dollar loss threshold amount for an inpatient psychiatric facility as defined in § 412.402 plus the Federal payment amount for the case.

(A) The fixed dollar loss threshold amount is adjusted for the inpatient psychiatric facility’s adjustments for wage area, teaching, rural locations, and cost of living adjustment for facilities located in Alaska and Hawaii.

\* \* \* \* \*

**§ 412.426 [Amended]**

5. In § 412.426, paragraph (a) introductory text is amended by removing the reference “§ 412.424(c)” and adding the reference “§ 412.424(d)” in its place.

6. Section 412.428 is amended by—

A. Republishing the introductory text.

B. Revising paragraph (b) and (d).

C. Adding a new paragraph (g).

D. Adding a new paragraph (h).

The revision and additions reads as follows:

**§ 412.428 Publication of updates to the inpatient psychiatric facility prospective payment system.**

CMS will publish annually in the **Federal Register** information pertaining to updates to the inpatient psychiatric facility prospective payment system. This information includes:

\* \* \* \* \*

(b)(1) For discharges occurring on or after January 1, 2005 but before July 1, 2006, the rate of increase factor, described in § 412.424(a)(2)(iii), for the Federal portion of the inpatient psychiatric facility’s payment is based on the excluded hospital with capital market basket under the update methodology described in section 1886(b)(3)(B)(ii) of the Act for each year.

(2) For discharges occurring on or after July 1, 2006, the rate of increase factor for the Federal portion of the

inpatient psychiatric facility's payment is based on the Rehabilitation, Psychiatric, and Long-Term Care (RPL) market basket.

(3) For discharges occurring on or after January 1, 2005 but before July 1, 2006, the rate of increase factor, described in § 412.424(a)(2)(iii), for the reasonable cost portion of the inpatient psychiatric facility's payment is based on the 1997-based excluded hospital market basket under the updated methodology described in section 1886(b)(3)(B)(ii) of the Act for each year.

(4) For discharges occurring on or after July 1, 2006, the rate of increase factor for the reasonable cost portion of the inpatient psychiatric facility's payment is based on the 2002-based excluded hospital market basket.

\* \* \* \* \*

(d) Updates to the fixed dollar loss threshold amount in order to maintain the appropriate outlier percentage.

\* \* \* \* \*

(g) Update the national urban and rural cost to charge ratio median and ceilings. CMS will apply the national cost to charge ratio to—

(1) New inpatient psychiatric facilities that have not submitted their first Medicare cost report.

(2) Inpatient psychiatric facilities whose operating or capital cost to

charge ratio is in excess of 3 standard deviations above the corresponding national geometric mean.

(3) Other inpatient psychiatric facilities for which the fiscal intermediary obtains inaccurate or incomplete data with which to calculate either an operating or capital cost to charge ratio or both.

(h) Update the cost of living adjustment factor if appropriate.

**PART 424—CONDITIONS FOR MEDICARE PAYMENT**

1. The authority citation for part 424 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 424.14 is amended by—

- A. Revising the heading.
- B. Adding a new paragraph (c)(3).
- C. Revising paragraph (d)(2).

The addition and revisions read as follows:

**§ 424.14 Requirements for inpatient services of inpatient psychiatric facilities.**

\* \* \* \* \*

(c) \* \* \*

(3) The patient continues to need, on a daily basis, active inpatient psychiatric care (furnished directly by or requiring the supervision of inpatient

psychiatric facility personnel) or other professional services that can only be provided on an inpatient basis.

(d) \* \* \*

(2) The first recertification is required as of the 12th day of hospitalization. Subsequent recertifications are required at intervals established by the UR committee (on a case-by-case basis if it so chooses), but no less frequently than every 30 days.

\* \* \* \* \*

(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: November 3, 2005.

**Mark B. McClellan,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: January 13, 2006.

**Michael O. Leavitt,**

*Secretary.*

**Note:** The following addenda will not appear in the Code of Federal Regulations.

**Addendum A—Rate and Adjustment Factors**

**PER DIEM RATE**

Federal Per Diem Base Rate .....	\$594.66
Labor Share (0.75923) .....	\$451.48
Non-Labor Share (0.24077) .....	\$143.18

**FIXED DOLLAR LOSS THRESHOLD AMOUNT**

\$6200

**FACILITY ADJUSTMENTS**

Rural Adjustment Factor .....	1.17.
Teaching Adjustment Factor .....	0.5150.
Wage Index .....	Pre-reclass Hospital Wage Index (FY2006).

**COST OF LIVING ADJUSTMENTS (COLAS)**

Alaska .....	1.25
Hawaii .....	
Honolulu County .....	1.25
Hawaii County .....	1.165
Kauai County .....	1.2325
Maui County .....	1.2375
Kalawao County .....	1.2375

**PATIENT ADJUSTMENTS**

ECT—Per Treatment .....	\$268.21
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VARIABLE PER DIEM ADJUSTMENTS

	Adjustment Factor
Day 1—Facility Without a 24/7 Full-service Emergency Department .....	1.19
Day 1—Facility With a 24/7 Full-service Emergency Department .....	1.31
Day 2 .....	1.12
Day 3 .....	1.08
Day 4 .....	1.05
Day 5 .....	1.04
Day 6 .....	1.02
Day 7 .....	1.01
Day 8 .....	1.01
Day 9 .....	1.00
Day 10 .....	1.00
Day 11 .....	0.99
Day 12 .....	0.99
Day 13 .....	0.99
Day 14 .....	0.99
Day 15 .....	0.98
Day 16 .....	0.97
Day 17 .....	0.97
Day 18 .....	0.96
Day 19 .....	0.95
Day 20 .....	0.95
Day 21 .....	0.95
After Day 21 .....	0.92

AGE ADJUSTMENTS

Age (in years)	Adjustment Factor
Under 45 .....	1.00
45 and under 50 .....	1.01
50 and under 55 .....	1.02
55 and under 60 .....	1.04
60 and under 65 .....	1.07
65 and under 70 .....	1.10
70 and under 75 .....	1.13
75 and under 80 .....	1.15
80 and over .....	1.17

DRG ADJUSTMENTS

DRG	DRG Definition	DRG Adjustment Factor
DRG 424	Procedure with principal diagnosis of mental illness .....	1.22
DRG 425	Acute adjustment reaction .....	1.05
DRG 426	Depressive neurosis .....	0.99
DRG 427	Neurosis, except depressive .....	1.02
DRG 428	Disorders of personality .....	1.02
DRG 429	Organic disturbances .....	1.03
DRG 430	Psychosis .....	1.00
DRG 431	Childhood disorders .....	0.99
DRG 432	Other mental disorders .....	0.92
DRG 433	Alcohol/Drug use Leave against Medical Advice (LAMA) .....	0.97
DRG 521	Alcohol/Drug use with comorbid conditions .....	1.02
DRG 522	Alcohol/Drug use without comorbid conditions .....	0.98
DRG 523	Alcohol/Drug use without rehabilitation .....	0.88
DRG 12	Degenerative nervous system disorders .....	1.05
DRG 23	Non-traumatic stupor & coma .....	1.07

COMORBIDITY ADJUSTMENTS

Comorbidity	Adjustment Factor
Developmental Disabilities .....	1.04
Coagulation Factor Deficit .....	1.13
Tracheostomy .....	1.06

COMORBIDITY ADJUSTMENTS—Continued

Comorbidity	Adjustment Factor
Eating and Conduct Disorders .....	1.12
Infectious Diseases .....	1.07
Renal Failure, Acute .....	1.11
Renal Failure, Chronic .....	1.11
Oncology Treatment .....	1.07
Uncontrolled Diabetes Mellitus .....	1.05
Severe Protein Malnutrition .....	1.13
Drug/Alcohol Induced Mental Disorders .....	1.03
Cardiac Conditions .....	1.11
Gangrene .....	1.10
Chronic Obstructive Pulmonary Disease .....	1.12
Artificial Openings - Digestive & Urinary .....	1.08
Musculoskeletal & Connective Tissue Diseases .....	1.09
Poisoning .....	1.11

Addendum B—RY 2007 IPF PPS Wage Index Table

SSA State/County Code	County name	MSA Number	MSA Urban/Rural	2006 MSA-based WI	CBSA Number	CBSA Urban/Rural	2006 CBSA-based WI
01000	Autauga County, Alabama	5240	Urban	0.8618	33860	Urban	0.8618
01010	Baldwin County, Alabama	5160	Urban	0.7861	99901	Rural	0.7446
01020	Barbour County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01030	Bibb County, Alabama	01	Rural	0.7432	13820	Urban	0.8959
01040	Blount County, Alabama	1000	Urban	0.9000	13820	Urban	0.8959
01050	Bullock County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01060	Butler County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01070	Calhoun County, Alabama	0450	Urban	0.7682	11500	Urban	0.7682
01080	Chambers County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01090	Cherokee County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01100	Chilton County, Alabama	01	Rural	0.7432	13820	Urban	0.8959
01110	Choctaw County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01120	Clarke County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01130	Clay County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01140	Cleburne County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01150	Coffee County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01160	Colbert County, Alabama	2650	Urban	0.8272	22520	Urban	0.8272
01170	Conecuh County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01180	Coosa County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01190	Covington County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01200	Crenshaw County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01210	Cullman County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01220	Dale County, Alabama	2180	Urban	0.7701	99901	Rural	0.7446
01230	Dallas County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01240	De Kalb County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01250	Elmore County, Alabama	5240	Urban	0.8618	33860	Urban	0.8618
01260	Escambia County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01270	Etowah County, Alabama	2880	Urban	0.7938	23460	Urban	0.7938
01280	Fayette County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01290	Franklin County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01300	Geneva County, Alabama	01	Rural	0.7432	20020	Urban	0.7721
01310	Greene County, Alabama	01	Rural	0.7432	46220	Urban	0.8645
01320	Hale County, Alabama	01	Rural	0.7432	46220	Urban	0.8645
01330	Henry County, Alabama	01	Rural	0.7432	20020	Urban	0.7721
01340	Houston County, Alabama	2180	Urban	0.7701	20020	Urban	0.7721
01350	Jackson County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01360	Jefferson County, Alabama	1000	Urban	0.9000	13820	Urban	0.8959
01370	Lamar County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01380	Lauderdale County, Alabama	2650	Urban	0.8272	22520	Urban	0.8272
01390	Lawrence County, Alabama	2030	Urban	0.8469	19460	Urban	0.8469
01400	Lee County, Alabama	0580	Urban	0.8100	12220	Urban	0.8100
01410	Limestone County, Alabama	3440	Urban	0.9146	26620	Urban	0.9146
01420	Lowndes County, Alabama	01	Rural	0.7432	33860	Urban	0.8618
01430	Macon County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01440	Madison County, Alabama	3440	Urban	0.9146	26620	Urban	0.9146
01450	Marengo County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01460	Marion County, Alabama	01	Rural	0.7432	99901	Rural	0.7446

SSA State/County Code	County name	MSA Number	MSA Urban/Rural	2006 MSA-based WI	CBSA Number	CBSA Urban/Rural	2006 CBSA-based WI
01470	Marshall County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01480	Mobile County, Alabama	5160	Urban	0.7861	33660	Urban	0.7891
01490	Monroe County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01500	Montgomery County, Alabama	5240	Urban	0.8618	33860	Urban	0.8618
01510	Morgan County, Alabama	2030	Urban	0.8469	19460	Urban	0.8469
01520	Perry County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01530	Pickens County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01540	Pike County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01550	Randolph County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01560	Russell County, Alabama	1800	Urban	0.8560	17980	Urban	0.8560
01570	St Clair County, Alabama	1000	Urban	0.9000	13820	Urban	0.8959
01580	Shelby County, Alabama	1000	Urban	0.9000	13820	Urban	0.8959
01590	Sumter County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01600	Talladega County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01610	Tallapoosa County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01620	Tuscaloosa County, Alabama	8600	Urban	0.8764	46220	Urban	0.8645
01630	Walker County, Alabama	01	Rural	0.7432	13820	Urban	0.8959
01640	Washington County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01650	Wilcox County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
01660	Winston County, Alabama	01	Rural	0.7432	99901	Rural	0.7446
02013	Aleutians County East, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02016	Aleutians County West, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02020	Anchorage County, Alaska	0380	Urban	1.1784	11260	Urban	1.1895
02030	Angoon County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02040	Barrow-North Slope County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02050	Bethel County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02060	Bristol Bay Borough County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02068	Denali County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02070	Bristol Bay County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02080	Cordova-Mc Carthy County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02090	Fairbanks County, Alaska	02	Rural	1.1888	21820	Urban	1.1408
02100	Haines County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02110	Juneau County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02120	Kenai-Cook Inlet County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02122	Kenai Peninsula Borough, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02130	Ketchikan County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02140	Kobuk County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02150	Kodiak County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02160	Kuskokwin County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02164	Lake and Peninsula Borough, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02170	Matanuska County, Alaska	02	Rural	1.1888	11260	Urban	1.1895
02180	Nome County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02185	North Slope Borough, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02188	Northwest Arctic Borough, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02190	Outer Ketchikan County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02200	Prince Of Wales County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02201	Prince of Wales-Outer Ketchikan Census Area, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02210	Seward County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02220	Sitka County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02230	Skagway-Yakutat County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02231	Skagway-Yakutat-Angoon Census Area, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02232	Skagway-Hoonah-Angoon Census Area, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02240	Southeast Fairbanks County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02250	Upper Yukon County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02260	Valdez-Chitna-Whitier County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02261	Valdex-Cordove Census Area, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02270	Wade Hampton County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02280	Wrangell-Petersburg County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02282	Yakutat Borough, Alaska	02	Rural	1.1888	99902	Rural	1.1977
02290	Yukon-Koyukuk County, Alaska	02	Rural	1.1888	99902	Rural	1.1977
03000	Apache County, Arizona	03	Rural	0.9045	99903	Rural	0.8768
03010	Cochise County, Arizona	03	Rural	0.9045	99903	Rural	0.8768
03020	Coconino County, Arizona	2620	Urban	1.1845	22380	Urban	1.2092
03030	Gila County, Arizona	03	Rural	0.9045	99903	Rural	0.8768
03040	Graham County, Arizona	03	Rural	0.9045	99903	Rural	0.8768
03050	Greenlee County, Arizona	03	Rural	0.9045	99903	Rural	0.8768
03055	La Paz County, Arizona	03	Rural	0.9045	99903	Rural	0.8768
03060	Maricopa County, Arizona	6200	Urban	1.0127	38060	Urban	1.0127
03070	Mohave County, Arizona	4120	Urban	1.1155	99903	Rural	0.8768
03080	Navajo County, Arizona	03	Rural	0.9045	99903	Rural	0.8768
03090	Pima County, Arizona	8520	Urban	0.9007	46060	Urban	0.9007

SSA State/ County Code	County name	MSA Number	MSA Urban/ Rural	2006 MSA- based WI	CBSA Number	CBSA Urban/ Rural	2006 CBSA- based WI
03100	Pinal County, Arizona	6200	Urban	1.0127	38060	Urban	1.0127
03110	Santa Cruz County, Arizona	03	Rural	0.9045	99903	Rural	0.8768
03120	Yavapai County, Arizona	03	Rural	0.9045	39140	Urban	0.9869
03130	Yuma County, Arizona	9360	Urban	0.9126	49740	Urban	0.9126
04000	Arkansas County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04010	Ashley County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04020	Baxter County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04030	Benton County, Arkansas	2580	Urban	0.8661	22220	Urban	0.8661
04040	Boone County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04050	Bradley County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04060	Calhoun County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04070	Carroll County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04080	Chicot County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04090	Clark County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04100	Clay County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04110	Cleburne County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04120	Cleveland County, Arkansas	04	Rural	0.7744	38220	Urban	0.8680
04130	Columbia County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04140	Conway County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04150	Craighead County, Arkansas	3700	Urban	0.7911	27860	Urban	0.7911
04160	Crawford County, Arkansas	2720	Urban	0.8246	22900	Urban	0.8230
04170	Crittenden County, Arkansas	4920	Urban	0.9416	32820	Urban	0.9397
04180	Cross County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04190	Dallas County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04200	Desha County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04210	Drew County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04220	Faulkner County, Arkansas	4400	Urban	0.8747	30780	Urban	0.8747
04230	Franklin County, Arkansas	04	Rural	0.7744	22900	Urban	0.8230
04240	Fulton County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04250	Garland County, Arkansas	04	Rural	0.7744	26300	Urban	0.9005
04260	Grant County, Arkansas	04	Rural	0.7744	30780	Urban	0.8747
04270	Greene County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04280	Hempstead County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04290	Hot Spring County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04300	Howard County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04310	Independence County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04320	Izard County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04330	Jackson County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04340	Jefferson County, Arkansas	6240	Urban	0.8680	38220	Urban	0.8680
04350	Johnson County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04360	Lafayette County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04370	Lawrence County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04380	Lee County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04390	Lincoln County, Arkansas	04	Rural	0.7744	38220	Urban	0.8680
04400	Little River County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04410	Logan County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04420	Lonoke County, Arkansas	4400	Urban	0.8747	30780	Urban	0.8747
04430	Madison County, Arkansas	04	Rural	0.7744	22220	Urban	0.8661
04440	Marion County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04450	Miller County, Arkansas	8360	Urban	0.8283	45500	Urban	0.8283
04460	Mississippi County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04470	Monroe County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04480	Montgomery County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04490	Nevada County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04500	Newton County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04510	Ouachita County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04520	Perry County, Arkansas	04	Rural	0.7744	30780	Urban	0.8747
04530	Phillips County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04540	Pike County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04550	Poinsett County, Arkansas	04	Rural	0.7744	27860	Urban	0.7911
04560	Polk County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04570	Pope County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04580	Prairie County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04590	Pulaski County, Arkansas	4400	Urban	0.8747	30780	Urban	0.8747
04600	Randolph County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04610	St Francis County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04620	Saline County, Arkansas	4400	Urban	0.8747	30780	Urban	0.8747
04630	Scott County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04640	Searcy County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04650	Sebastian County, Arkansas	2720	Urban	0.8246	22900	Urban	0.8230
04660	Sevier County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466



SSA State/County Code	County name	MSA Number	MSA Urban/Rural	2006 MSA-based WI	CBSA Number	CBSA Urban/Rural	2006 CBSA-based WI
04670	Sharp County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04680	Stone County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04690	Union County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04700	Van Buren County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04710	Washington County, Arkansas	2580	Urban	0.8661	22220	Urban	0.8661
04720	White County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04730	Woodruff County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
04740	Yell County, Arkansas	04	Rural	0.7744	99904	Rural	0.7466
05000	Alameda County, California	5775	Urban	1.5346	36084	Urban	1.5346
05010	Alpine County, California	05	Rural	1.0775	99905	Rural	1.1054
05020	Amador County, California	05	Rural	1.0775	99905	Rural	1.1054
05030	Butte County, California	1620	Urban	1.0511	17020	Urban	1.0511
05040	Calaveras County, California	05	Rural	1.0775	99905	Rural	1.1054
05050	Colusa County, California	05	Rural	1.0775	99905	Rural	1.1054
05060	Contra Costa County, California	5775	Urban	1.5346	36084	Urban	1.5346
05070	Del Norte County, California	05	Rural	1.0775	99905	Rural	1.1054
05080	Eldorado County, California	6920	Urban	1.3143	40900	Urban	1.2969
05090	Fresno County, California	2840	Urban	1.0428	23420	Urban	1.0538
05100	Glenn County, California	05	Rural	1.0775	99905	Rural	1.1054
05110	Humboldt County, California	05	Rural	1.0775	99905	Rural	1.1054
05120	Imperial County, California	05	Rural	1.0775	20940	Urban	0.8906
05130	Inyo County, California	05	Rural	1.0775	99905	Rural	1.1054
05140	Kern County, California	0680	Urban	1.0470	12540	Urban	1.0470
05150	Kings County, California	05	Rural	1.0775	25260	Urban	1.0036
05160	Lake County, California	05	Rural	1.0775	99905	Rural	1.1054
05170	Lassen County, California	05	Rural	1.0775	99905	Rural	1.1054
05200	Los Angeles County, California	4480	Urban	1.1783	31084	Urban	1.1783
05210	Los Angeles County, California	4480	Urban	1.1783	31084	Urban	1.1783
05300	Madera County, California	2840	Urban	1.0428	31460	Urban	0.8713
05310	Marin County, California	7360	Urban	1.4994	41884	Urban	1.4994
05320	Mariposa County, California	05	Rural	1.0775	99905	Rural	1.1054
05330	Mendocino County, California	05	Rural	1.0775	99905	Rural	1.1054
05340	Merced County, California	4940	Urban	1.1109	32900	Urban	1.1109
05350	Modoc County, California	05	Rural	1.0775	99905	Rural	1.1054
05360	Mono County, California	05	Rural	1.0775	99905	Rural	1.1054
05370	Monterey County, California	7120	Urban	1.4128	41500	Urban	1.4128
05380	Napa County, California	8720	Urban	1.3983	34900	Urban	1.2643
05390	Nevada County, California	05	Rural	1.0775	99905	Rural	1.1054
05400	Orange County, California	5945	Urban	1.1559	42044	Urban	1.1559
05410	Placer County, California	6920	Urban	1.3143	40900	Urban	1.2969
05420	Plumas County, California	05	Rural	1.0775	99905	Rural	1.1054
05430	Riverside County, California	6780	Urban	1.1027	40140	Urban	1.1027
05440	Sacramento County, California	6920	Urban	1.3143	40900	Urban	1.2969
05450	San Benito County, California	05	Rural	1.0775	41940	Urban	1.5099
05460	San Bernardino County, California	6780	Urban	1.1027	40140	Urban	1.1027
05470	San Diego County, California	7320	Urban	1.1413	41740	Urban	1.1413
05480	San Francisco County, California	7360	Urban	1.4994	41884	Urban	1.4994
05490	San Joaquin County, California	8120	Urban	1.1307	44700	Urban	1.1307
05500	San Luis Obispo County, California	7460	Urban	1.1349	42020	Urban	1.1349
05510	San Mateo County, California	7360	Urban	1.4994	41884	Urban	1.4994
05520	Santa Barbara County, California	7480	Urban	1.1694	42060	Urban	1.1694
05530	Santa Clara County, California	7400	Urban	1.5118	41940	Urban	1.5099
05540	Santa Cruz County, California	7485	Urban	1.5166	42100	Urban	1.5166
05550	Shasta County, California	6690	Urban	1.2203	39820	Urban	1.2203
05560	Sierra County, California	05	Rural	1.0775	99905	Rural	1.1054
05570	Siskiyou County, California	05	Rural	1.0775	99905	Rural	1.1054
05580	Solano County, California	8720	Urban	1.3983	46700	Urban	1.4936
05590	Sonoma County, California	7500	Urban	1.3493	42220	Urban	1.3493
05600	Stanislaus County, California	5170	Urban	1.1885	33700	Urban	1.1885
05610	Sutter County, California	9340	Urban	1.0921	49700	Urban	1.0921
05620	Tehama County, California	05	Rural	1.0775	99905	Rural	1.1054
05630	Trinity County, California	05	Rural	1.0775	99905	Rural	1.1054
05640	Tulare County, California	8780	Urban	1.0123	47300	Urban	1.0123
05650	Tuolumne County, California	05	Rural	1.0775	99905	Rural	1.1054
05660	Ventura County, California	8735	Urban	1.1622	37100	Urban	1.1622
05670	Yolo County, California	9270	Urban	0.9950	40900	Urban	1.2969
05680	Yuba County, California	9340	Urban	1.0921	49700	Urban	1.0921
06000	Adams County, Colorado	2080	Urban	1.0723	19740	Urban	1.0723
06010	Alamosa County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06020	Arapahoe County, Colorado	2080	Urban	1.0723	19740	Urban	1.0723
06030	Archuleta County, Colorado	06	Rural	0.9380	99906	Rural	0.9380

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06040	Baca County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06050	Bent County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06060	Boulder County, Colorado	1125	Urban	0.9734	14500	Urban	0.9734
06070	Chaffee County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06080	Cheyenne County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06090	Clear Creek County, Colorado	06	Rural	0.9380	19740	Urban	1.0723
06100	Conejos County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06110	Costilla County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06120	Crowley County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06130	Custer County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06140	Delta County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06150	Denver County, Colorado	2080	Urban	1.0723	19740	Urban	1.0723
06160	Dolores County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06170	Douglas County, Colorado	2080	Urban	1.0723	19740	Urban	1.0723
06180	Eagle County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06190	Elbert County, Colorado	06	Rural	0.9380	19740	Urban	1.0723
06200	El Paso County, Colorado	1720	Urban	0.9468	17820	Urban	0.9468
06210	Fremont County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06220	Garfield County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06230	Gilpin County, Colorado	06	Rural	0.9380	19740	Urban	1.0723
06240	Grand County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06250	Gunnison County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06260	Hinsdale County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06270	Huerfano County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06280	Jackson County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06290	Jefferson County, Colorado	2080	Urban	1.0723	19740	Urban	1.0723
06300	Kiowa County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06310	Kit Carson County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06320	Lake County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06330	La Plata County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06340	Larimer County, Colorado	2670	Urban	1.0122	22660	Urban	1.0122
06350	Las Animas County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06360	Lincoln County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06370	Logan County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06380	Mesa County, Colorado	2995	Urban	0.9550	24300	Urban	0.9550
06390	Mineral County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06400	Moffat County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06410	Montezuma County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06420	Montrose County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06430	Morgan County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06440	Otero County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06450	Ouray County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06460	Park County, Colorado	06	Rural	0.9380	19740	Urban	1.0723
06470	Phillips County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06480	Pitkin County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06490	Prowers County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06500	Pueblo County, Colorado	6560	Urban	0.8623	39380	Urban	0.8623
06510	Rio Blanco County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06520	Rio Grande County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06530	Routt County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06540	Saguache County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06550	San Juan County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06560	San Miguel County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06570	Sedgwick County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06580	Summit County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06590	Teller County, Colorado	06	Rural	0.9380	17820	Urban	0.9468
06600	Washington County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06610	Weld County, Colorado	3060	Urban	0.9570	24540	Urban	0.9570
06620	Yuma County, Colorado	06	Rural	0.9380	99906	Rural	0.9380
06630	Broomfield County, Colorado	2080	Urban	1.0723	19740	Urban	1.0723
07000	Fairfield County, Connecticut	5483	Urban	1.2196	14860	Urban	1.2592
07010	Hartford County, Connecticut	3283	Urban	1.1073	25540	Urban	1.1073
07020	Litchfield County, Connecticut	3283	Urban	1.1073	25540	Urban	1.1073
07030	Middlesex County, Connecticut	3283	Urban	1.1073	25540	Urban	1.1073
07040	New Haven County, Connecticut	5483	Urban	1.2196	35300	Urban	1.1887
07050	New London County, Connecticut	5523	Urban	1.1345	35980	Urban	1.1345
07060	Tolland County, Connecticut	3283	Urban	1.1073	25540	Urban	1.1073
07070	Windham County, Connecticut	07	Rural	1.1730	99907	Rural	1.1730
08000	Kent County, Delaware	2190	Urban	0.9776	20100	Urban	0.9776
08010	New Castle County, Delaware	9160	Urban	1.0527	48864	Urban	1.0471
08020	Sussex County, Delaware	08	Rural	0.9579	99908	Rural	0.9579

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09000	Washington DC County, Dist Of Col	8840	Urban	1.0976	47894	Urban	1.0926
10000	Alachua County, Florida	2900	Urban	0.9388	23540	Urban	0.9388
10010	Baker County, Florida	10	Rural	0.8677	27260	Urban	0.9290
10020	Bay County, Florida	6015	Urban	0.8005	37460	Urban	0.8005
10030	Bradford County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10040	Brevard County, Florida	4900	Urban	0.9839	37340	Urban	0.9839
10050	Broward County, Florida	2680	Urban	1.0432	22744	Urban	1.0432
10060	Calhoun County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10070	Charlotte County, Florida	6580	Urban	0.9255	39460	Urban	0.9255
10080	Citrus County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10090	Clay County, Florida	3600	Urban	0.9299	27260	Urban	0.9290
10100	Collier County, Florida	5345	Urban	1.0139	34940	Urban	1.0139
10110	Columbia County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10120	Dade County, Florida	5000	Urban	0.9750	33124	Urban	0.9750
10130	De Soto County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10140	Dixie County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10150	Duval County, Florida	3600	Urban	0.9299	27260	Urban	0.9290
10160	Escambia County, Florida	6080	Urban	0.8096	37860	Urban	0.8096
10170	Flagler County, Florida	2020	Urban	0.9325	99910	Rural	0.8568
10180	Franklin County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10190	Gadsden County, Florida	8240	Urban	0.8688	45220	Urban	0.8688
10200	Gilchrist County, Florida	10	Rural	0.8677	23540	Urban	0.9388
10210	Glades County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10220	Gulf County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10230	Hamilton County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10240	Hardee County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10250	Hendry County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10260	Hernando County, Florida	8280	Urban	0.9233	45300	Urban	0.9233
10270	Highlands County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10280	Hillsborough County, Florida	8280	Urban	0.9233	45300	Urban	0.9233
10290	Holmes County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10300	Indian River County, Florida	10	Rural	0.8677	46940	Urban	0.9434
10310	Jackson County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10320	Jefferson County, Florida	10	Rural	0.8677	45220	Urban	0.8688
10330	Lafayette County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10340	Lake County, Florida	5960	Urban	0.9464	36740	Urban	0.9464
10350	Lee County, Florida	2700	Urban	0.9356	15980	Urban	0.9356
10360	Leon County, Florida	8240	Urban	0.8688	45220	Urban	0.8688
10370	Levy County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10380	Liberty County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10390	Madison County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10400	Manatee County, Florida	7510	Urban	0.9639	42260	Urban	0.9639
10410	Marion County, Florida	5790	Urban	0.8925	36100	Urban	0.8925
10420	Martin County, Florida	2710	Urban	1.0123	38940	Urban	1.0123
10430	Monroe County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10440	Nassau County, Florida	3600	Urban	0.9299	27260	Urban	0.9290
10450	Okaloosa County, Florida	2750	Urban	0.8872	23020	Urban	0.8872
10460	Okeechobee County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10470	Orange County, Florida	5960	Urban	0.9464	36740	Urban	0.9464
10480	Osceola County, Florida	5960	Urban	0.9464	36740	Urban	0.9464
10490	Palm Beach County, Florida	8960	Urban	1.0067	48424	Urban	1.0067
10500	Pasco County, Florida	8280	Urban	0.9233	45300	Urban	0.9233
10510	Pinellas County, Florida	8280	Urban	0.9233	45300	Urban	0.9233
10520	Polk County, Florida	3980	Urban	0.8912	29460	Urban	0.8912
10530	Putnam County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10540	Johns County, Florida	3600	Urban	0.9299	27260	Urban	0.9290
10550	St Lucie County, Florida	2710	Urban	1.0123	38940	Urban	1.0123
10560	Santa Rosa County, Florida	6080	Urban	0.8096	37860	Urban	0.8096
10570	Sarasota County, Florida	7510	Urban	0.9639	42260	Urban	0.9639
10580	Seminole County, Florida	5960	Urban	0.9464	36740	Urban	0.9464
10590	Sumter County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10600	Suwannee County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10610	Taylor County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10620	Union County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10630	Volusia County, Florida	2020	Urban	0.9325	19660	Urban	0.9299
10640	Wakulla County, Florida	10	Rural	0.8677	45220	Urban	0.8688
10650	Walton County, Florida	10	Rural	0.8677	99910	Rural	0.8568
10660	Washington County, Florida	10	Rural	0.8677	99910	Rural	0.8568
11000	Appling County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11010	Atkinson County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11011	Bacon County, Georgia	11	Rural	0.8166	99911	Rural	0.7662

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11020	Baker County, Georgia	11	Rural	0.8166	10500	Urban	0.8628
11030	Baldwin County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11040	Banks County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11050	Barrow County, Georgia	0520	Urban	0.9793	12060	Urban	0.9793
11060	Bartow County, Georgia	0520	Urban	0.9793	12060	Urban	0.9793
11070	Ben Hill County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11080	Berrien County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11090	Bibb County, Georgia	4680	Urban	0.9277	31420	Urban	0.9443
11100	Bleckley County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11110	Brantley County, Georgia	11	Rural	0.8166	15260	Urban	0.9311
11120	Brooks County, Georgia	11	Rural	0.8166	46660	Urban	0.8866
11130	Bryan County, Georgia	7520	Urban	0.9461	42340	Urban	0.9461
11140	Bulloch County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11150	Burke County, Georgia	11	Rural	0.8166	12260	Urban	0.9748
11160	Butts County, Georgia	11	Rural	0.8166	12060	Urban	0.9793
11161	Calhoun County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11170	Camden County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11180	Candler County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11190	Carroll County, Georgia	0520	Urban	0.9793	12060	Urban	0.9793
11200	Catoosa County, Georgia	1560	Urban	0.9088	16860	Urban	0.9088
11210	Charlton County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11220	Chatham County, Georgia	7520	Urban	0.9461	42340	Urban	0.9461
11230	Chattahoochee County, Georgia	1800	Urban	0.8560	17980	Urban	0.8560
11240	Chattooga County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11250	Cherokee County, Georgia	0520	Urban	0.9793	12060	Urban	0.9793
11260	Clarke County, Georgia	0500	Urban	0.9855	12020	Urban	0.9855
11270	Clay County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11280	Clayton County, Georgia	0520	Urban	0.9793	12060	Urban	0.9793
11281	Clinch County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11290	Cobb County, Georgia	0520	Urban	0.9793	12060	Urban	0.9793
11291	Coffee County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11300	Colquitt County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11310	Columbia County, Georgia	0600	Urban	0.9808	12260	Urban	0.9748
11311	Cook County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11320	Coweta County, Georgia	0520	Urban	0.9793	12060	Urban	0.9793
11330	Crawford County, Georgia	11	Rural	0.8166	31420	Urban	0.9443
11340	Crisp County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11341	Dade County, Georgia	1560	Urban	0.9088	16860	Urban	0.9088
11350	Dawson County, Georgia	11	Rural	0.8166	12060	Urban	0.9793
11360	Decatur County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11370	De Kalb County, Georgia	0520	Urban	0.9793	12060	Urban	0.9793
11380	Dodge County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11381	Dooly County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11390	Dougherty County, Georgia	0120	Urban	0.8628	10500	Urban	0.8628
11400	Douglas County, Georgia	0520	Urban	0.9793	12060	Urban	0.9793
11410	Early County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11420	Echols County, Georgia	11	Rural	0.8166	46660	Urban	0.8866
11421	Effingham County, Georgia	7520	Urban	0.9461	42340	Urban	0.9461
11430	Elbert County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11440	Emanuel County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11441	Evans County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11450	Fannin County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11451	Fayette County, Georgia	0520	Urban	0.9793	12060	Urban	0.9793
11460	Floyd County, Georgia	11	Rural	0.8166	40660	Urban	0.9414
11461	Forsyth County, Georgia	0520	Urban	0.9793	12060	Urban	0.9793
11462	Franklin County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11470	Fulton County, Georgia	0520	Urban	0.9793	12060	Urban	0.9793
11471	Gilmer County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11480	Glascocock County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11490	Glynn County, Georgia	11	Rural	0.8166	15260	Urban	0.9311
11500	Gordon County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11510	Grady County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11520	Greene County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11530	Gwinnett County, Georgia	0520	Urban	0.9793	12060	Urban	0.9793
11540	Habersham County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11550	Hall County, Georgia	11	Rural	0.8166	23580	Urban	0.8874
11560	Hancock County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11570	Haralson County, Georgia	11	Rural	0.8166	12060	Urban	0.9793
11580	Harris County, Georgia	1800	Urban	0.8560	17980	Urban	0.8560
11581	Hart County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11590	Heard County, Georgia	11	Rural	0.8166	12060	Urban	0.9793

SSA State/ County Code	County name	MSA Number	MSA Urban/ Rural	2006 MSA-based WI	CBSA Number	CBSA Urban/ Rural	2006 CBSA-based WI
11591	Henry County, Georgia	0520	Urban	0.9793	12060	Urban	0.9793
11600	Houston County, Georgia	4680	Urban	0.9277	47580	Urban	0.8645
11601	Irwin County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11610	Jackson County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11611	Jasper County, Georgia	11	Rural	0.8166	12060	Urban	0.9793
11612	Jeff Davis County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11620	Jefferson County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11630	Jenkins County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11640	Johnson County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11650	Jones County, Georgia	4680	Urban	0.9277	31420	Urban	0.9443
11651	Lamar County, Georgia	11	Rural	0.8166	12060	Urban	0.9793
11652	Lanier County, Georgia	11	Rural	0.8166	46660	Urban	0.8866
11660	Laurens County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11670	Lee County, Georgia	0120	Urban	0.8628	10500	Urban	0.8628
11680	Liberty County, Georgia	11	Rural	0.8166	25980	Urban	1 0.9198
11690	Lincoln County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11691	Long County, Georgia	11	Rural	0.8166	25980	Urban	1 0.9198
11700	Lowndes County, Georgia	11	Rural	0.8166	46660	Urban	0.8866
11701	Lumpkin County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11702	Mc Duffie County, Georgia	0600	Urban	0.9808	12260	Urban	0.9748
11703	Mc Intosh County, Georgia	11	Rural	0.8166	15260	Urban	0.9311
11710	Macon County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11720	Madison County, Georgia	0500	Urban	0.9855	12020	Urban	0.9855
11730	Marion County, Georgia	11	Rural	0.8166	17980	Urban	0.8560
11740	Meriwether County, Georgia	11	Rural	0.8166	12060	Urban	0.9793
11741	Miller County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11750	Mitchell County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11760	Monroe County, Georgia	11	Rural	0.8166	31420	Urban	0.9443
11770	Montgomery County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11771	Morgan County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11772	Murray County, Georgia	11	Rural	0.8166	19140	Urban	0.9079
11780	Muscogee County, Georgia	1800	Urban	0.8560	17980	Urban	0.8560
11790	Newton County, Georgia	0520	Urban	0.9793	12060	Urban	0.9793
11800	Oconee County, Georgia	0500	Urban	0.9855	12020	Urban	0.9855
11801	Oglethorpe County, Georgia	11	Rural	0.8166	12020	Urban	0.9855
11810	Paulding County, Georgia	0520	Urban	0.9793	12060	Urban	0.9793
11811	Peach County, Georgia	4680	Urban	0.9277	99911	Rural	0.7662
11812	Pickens County, Georgia	0520	Urban	0.9793	12060	Urban	0.9793
11820	Pierce County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11821	Pike County, Georgia	11	Rural	0.8166	12060	Urban	0.9793
11830	Polk County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11831	Pulaski County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11832	Putnam County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11833	Quitman County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11834	Rabun County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11835	Randolph County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11840	Richmond County, Georgia	0600	Urban	0.9808	12260	Urban	0.9748
11841	Rockdale County, Georgia	0520	Urban	0.9793	12060	Urban	0.9793
11842	Schley County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11850	Screven County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11851	Seminole County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11860	Spalding County, Georgia	0520	Urban	0.9793	12060	Urban	0.9793
11861	Stephens County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11862	Stewart County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11870	Sumter County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11880	Talbot County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11881	Taliaferro County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11882	Tattnall County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11883	Taylor County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11884	Telfair County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11885	Terrell County, Georgia	11	Rural	0.8166	10500	Urban	0.8628
11890	Thomas County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11900	Tift County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11901	Toombs County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11902	Towns County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11903	Treutlen County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11910	Troup County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11911	Turner County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11912	Twiggs County, Georgia	4680	Urban	0.9277	31420	Urban	0.9443
11913	Union County, Georgia	11	Rural	0.8166	99911	Rural	0.7662
11920	Upson County, Georgia	11	Rural	0.8166	99911	Rural	0.7662

SSA State/County Code	County name	MSA Number	MSA Urban/Rural	2006 MSA-based WI	CBSA Number	CBSA Urban/Rural	2006 CBSA-based WI
11921	Walker County, Georgia	1560	Urban	.09088	16860	Urban	0.9088
11930	Walton County, Georgia	0520	Urban	.09793	12060	Urban	0.9793
11940	Ware County, Georgia	11	Rural	.08166	99911	Rural	0.7662
11941	Warren County, Georgia	11	Rural	.08166	99911	Rural	0.7662
11950	Washington County, Georgia	11	Rural	.08166	99911	Rural	0.7662
11960	Wayne County, Georgia	11	Rural	.08166	99911	Rural	0.7662
11961	Webster County, Georgia	11	Rural	.08166	99911	Rural	0.7662
11962	Wheeler County, Georgia	11	Rural	.08166	99911	Rural	0.7662
11963	White County, Georgia	11	Rural	.08166	99911	Rural	0.7662
11970	Whitfield County, Georgia	11	Rural	.08166	19140	Urban	0.9079
11971	Wilcox County, Georgia	11	Rural	.08166	99911	Rural	0.7662
11972	Wilkes County, Georgia	11	Rural	.08166	99911	Rural	0.7662
11973	Wilkinson County, Georgia	11	Rural	.08166	99911	Rural	0.7662
11980	Worth County, Georgia	11	Rural	.08166	10500	Urban	0.8628
12005	Kalawao County, Hawaii	12	Rural	1.0551	99912	Rural	1.0551
12010	Hawaii County, Hawaii	12	Rural	1.0551	99912	Rural	1.0551
12020	Honolulu County, Hawaii	3320	Urban	1.1214	26180	Urban	1.1214
12040	Kauai County, Hawaii	12	Rural	1.0551	99912	Rural	1.0551
12050	Maui County, Hawaii	12	Rural	1.0551	99912	Rural	1.0551
13000	Ada County, Idaho	1080	Urban	0.9052	14260	Urban	0.9052
13010	Adams County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13020	Bannock County, Idaho	6340	Urban	0.9351	38540	Urban	0.9351
13030	Bear Lake County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13040	Benewah County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13050	Bingham County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13060	Blaine County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13070	Boise County, Idaho	13	Rural	0.9097	14260	Urban	0.9052
13080	Bonner County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13090	Bonneville County, Idaho	13	Rural	0.9097	26820	Urban	0.9420
13100	Boundary County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13110	Butte County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13120	Camas County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13130	Canyon County, Idaho	1080	Urban	0.9052	14260	Urban	0.9052
13140	Caribou County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13150	Cassia County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13160	Clark County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13170	Clearwater County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13180	Custer County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13190	Elmore County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13200	Franklin County, Idaho	13	Rural	0.9097	30860	Urban	0.9164
13210	Fremont County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13220	Gem County, Idaho	13	Rural	0.9097	14260	Urban	0.9052
13230	Gooding County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13240	Idaho County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13250	Jefferson County, Idaho	13	Rural	0.9097	26820	Urban	0.9420
13260	Jerome County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13270	Kootenai County, Idaho	13	Rural	0.9097	17660	Urban	0.9647
13280	Latah County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13290	Lemhi County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13300	Lewis County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13310	Lincoln County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13320	Madison County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13330	Minidoka County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13340	Nez Perce County, Idaho	13	Rural	0.9097	30300	Urban	0.9886
13350	Oneida County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13360	Owyhee County, Idaho	13	Rural	0.9097	14260	Urban	0.9052
13370	Payette County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13380	Power County, Idaho	13	Rural	0.9097	38540	Urban	0.9351
13390	Shoshone County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13400	Teton County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13410	Twin Falls County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13420	Valley County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
13430	Washington County, Idaho	13	Rural	0.9097	99913	Rural	0.8037
14000	Adams County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14010	Alexander County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14020	Bond County, Illinois	14	Rural	0.8301	41180	Urban	0.8954
14030	Boone County, Illinois	6880	Urban	0.9984	40420	Urban	0.9984
14040	Brown County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14050	Bureau County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14060	Calhoun County, Illinois	14	Rural	0.8301	41180	Urban	0.8954
14070	Carroll County, Illinois	14	Rural	0.8301	99914	Rural	0.8271

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14080	Cass County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14090	Champaign County, Illinois	1400	Urban	0.9594	16580	Urban	0.9594
14100	Christian County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14110	Clark County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14120	Clay County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14130	Clinton County, Illinois	7040	Urban	0.8962	41180	Urban	0.8954
14140	Coles County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14141	Cook County, Illinois	1600	Urban	1.0783	16974	Urban	1.0790
14150	Crawford County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14160	Cumberland County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14170	De Kalb County, Illinois	1600	Urban	1.0783	16974	Urban	1.0790
14180	De Witt County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14190	Douglas County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14250	Du Page County, Illinois	1600	Urban	1.0783	16974	Urban	1.0790
14310	Edgar County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14320	Edwards County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14330	Effingham County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14340	Fayette County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14350	Ford County, Illinois	14	Rural	0.8301	16580	Urban	0.9594
14360	Franklin County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14370	Fulton County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14380	Gallatin County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14390	Greene County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14400	Grundy County, Illinois	1600	Urban	1.0783	16974	Urban	1.0790
14410	Hamilton County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14420	Hancock County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14421	Hardin County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14440	Henderson County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14450	Henry County, Illinois	1960	Urban	0.8724	19340	Urban	0.8724
14460	Iroquois County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14470	Jackson County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14480	Jasper County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14490	Jefferson County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14500	Jersey County, Illinois	7040	Urban	0.8962	41180	Urban	0.8954
14510	Jo Daviess County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14520	Johnson County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14530	Kane County, Illinois	1600	Urban	1.0783	16974	Urban	1.0790
14540	Kankakee County, Illinois	3740	Urban	1.0721	28100	Urban	1.0721
14550	Kendall County, Illinois	1600	Urban	1.0783	16974	Urban	1.0790
14560	Knox County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14570	Lake County, Illinois	1600	Urban	1.0783	29404	Urban	1.0429
14580	La Salle County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14590	Lawrence County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14600	Lee County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14610	Livingston County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14620	Logan County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14630	Mc Donough County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14640	Mc Henry County, Illinois	1600	Urban	1.0783	16974	Urban	1.0790
14650	Mclean County, Illinois	1040	Urban	0.9075	14060	Urban	0.9075
14660	Macon County, Illinois	2040	Urban	0.8067	19500	Urban	0.8067
14670	Macoupin County, Illinois	14	Rural	0.8301	41180	Urban	0.8954
14680	Madison County, Illinois	7040	Urban	0.8962	41180	Urban	0.8954
14690	Marion County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14700	Marshall County, Illinois	14	Rural	0.8301	37900	Urban	0.8870
14710	Mason County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14720	Massac County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14730	Menard County, Illinois	7880	Urban	0.8792	44100	Urban	0.8792
14740	Mercer County, Illinois	14	Rural	0.8301	19340	Urban	0.8724
14750	Monroe County, Illinois	7040	Urban	0.8962	41180	Urban	0.8954
14760	Montgomery County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14770	Morgan County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14780	Moultrie County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14790	Ogle County, Illinois	6880	Urban	0.9984	99914	Rural	0.8271
14800	Peoria County, Illinois	6120	Urban	0.8870	37900	Urban	0.8870
14810	Perry County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14820	Piatt County, Illinois	14	Rural	0.8301	16580	Urban	0.9594
14830	Pike County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14831	Pope County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14850	Pulaski County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14860	Putnam County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14870	Randolph County, Illinois	14	Rural	0.8301	99914	Rural	0.8271

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14880	Richland County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14890	Rock Island County, Illinois	1960	Urban	0.8724	19340	Urban	0.8724
14900	St Clair County, Illinois	7040	Urban	0.8962	41180	Urban	0.8954
14910	Saline County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14920	Sangamon County, Illinois	7880	Urban	0.8792	44100	Urban	0.8792
14921	Schuyler County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14940	Scott County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14950	Shelby County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14960	Stark County, Illinois	14	Rural	0.8301	37900	Urban	0.8870
14970	Stephenson County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14980	Tazewell County, Illinois	6120	Urban	0.8870	37900	Urban	0.8870
14981	Union County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14982	Vermilion County, Illinois	14	Rural	0.8301	19180	Urban	0.9028
14983	Wabash County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14984	Warren County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14985	Washington County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14986	Wayne County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14987	White County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14988	Whiteside County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14989	Will County, Illinois	1600	Urban	1.0783	16974	Urban	1.0790
14990	Williamson County, Illinois	14	Rural	0.8301	99914	Rural	0.8271
14991	Winnebago County, Illinois	6880	Urban	0.9984	40420	Urban	0.9984
14992	Woodford County, Illinois	6120	Urban	0.8870	37900	Urban	0.8870
15000	Adams County, Indiana	2760	Urban	0.9706	99915	Rural	0.8624
15010	Allen County, Indiana	2760	Urban	0.9706	23060	Urban	0.9793
15020	Bartholomew County, Indiana	15	Rural	0.8739	18020	Urban	0.9588
15030	Benton County, Indiana	15	Rural	0.8739	29140	Urban	0.8736
15040	Blackford County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15050	Boone County, Indiana	3480	Urban	0.9865	26900	Urban	0.9920
15060	Brown County, Indiana	15	Rural	0.8739	26900	Urban	0.9920
15070	Carroll County, Indiana	15	Rural	0.8739	29140	Urban	0.8736
15080	Cass County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15090	Clark County, Indiana	4520	Urban	0.9293	31140	Urban	0.9251
15100	Clay County, Indiana	8320	Urban	0.8337	45460	Urban	0.8304
15110	Clinton County, Indiana	3920	Urban	0.8736	99915	Rural	0.8624
15120	Crawford County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15130	Daviess County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15140	Dearborn County, Indiana	1640	Urban	0.9734	17140	Urban	0.9615
15150	Decatur County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15160	De Kalb County, Indiana	2760	Urban	0.9706	99915	Rural	0.8624
15170	Delaware County, Indiana	5280	Urban	0.8930	34620	Urban	0.8930
15180	Dubois County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15190	Elkhart County, Indiana	2330	Urban	0.9627	21140	Urban	0.9627
15200	Fayette County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15210	Floyd County, Indiana	4520	Urban	0.9293	31140	Urban	0.9251
15220	Fountain County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15230	Franklin County, Indiana	15	Rural	0.8739	17140	Urban	0.9615
15240	Fulton County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15250	Gibson County, Indiana	15	Rural	0.8739	21780	Urban	0.8713
15260	Grant County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15270	Greene County, Indiana	15	Rural	0.8739	14020	Urban	0.8447
15280	Hamilton County, Indiana	3480	Urban	0.9865	26900	Urban	0.9920
15290	Hancock County, Indiana	3480	Urban	0.9865	26900	Urban	0.9920
15300	Harrison County, Indiana	4520	Urban	0.9293	31140	Urban	0.9251
15310	Hendricks County, Indiana	3480	Urban	0.9865	26900	Urban	0.9920
15320	Henry County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15330	Howard County, Indiana	3850	Urban	0.9508	29020	Urban	0.9508
15340	Huntington County, Indiana	2760	Urban	0.9706	99915	Rural	0.8624
15350	Jackson County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15360	Jasper County, Indiana	15	Rural	0.8739	23844	Urban	0.9395
15370	Jay County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15380	Jefferson County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15390	Jennings County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15400	Johnson County, Indiana	3480	Urban	0.9865	26900	Urban	0.9920
15410	Knox County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15420	Kosciusko County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15430	Lagrange County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15440	Lake County, Indiana	2960	Urban	0.9395	23844	Urban	0.9395
15450	La Porte County, Indiana	15	Rural	0.8739	33140	Urban	0.9399
15460	Lawrence County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15470	Madison County, Indiana	3480	Urban	0.9865	11300	Urban	0.8586



SSA State/County Code	County name	MSA Number	MSA Urban/Rural	2006 MSA-based WI	CBSA Number	CBSA Urban/Rural	2006 CBSA-based WI
15480	Marion County, Indiana	3480	Urban	0.9865	26900	Urban	0.9920
15490	Marshall County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15500	Martin County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15510	Miami County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15520	Monroe County, Indiana	1020	Urban	0.8447	14020	Urban	0.8447
15530	Montgomery County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15540	Morgan County, Indiana	3480	Urban	0.9865	26900	Urban	0.9920
15550	Newton County, Indiana	15	Rural	0.8739	23844	Urban	0.9395
15560	Noble County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15570	Ohio County, Indiana	1640	Urban	0.9734	17140	Urban	0.9615
15580	Orange County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15590	Owen County, Indiana	15	Rural	0.8739	14020	Urban	0.8447
15600	Parke County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15610	Perry County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15620	Pike County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15630	Porter County, Indiana	2960	Urban	0.9395	23844	Urban	0.9395
15640	Posey County, Indiana	2440	Urban	0.8713	21780	Urban	0.8713
15650	Pulaski County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15660	Putnam County, Indiana	15	Rural	0.8739	26900	Urban	0.9920
15670	Randolph County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15680	Ripley County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15690	Rush County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15700	St Joseph County, Indiana	7800	Urban	0.9788	43780	Urban	0.9788
15710	Scott County, Indiana	4520	Urban	0.9293	99915	Rural	0.8624
15720	Shelby County, Indiana	3480	Urban	0.9865	26900	Urban	0.9920
15730	Spencer County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15740	Starke County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15750	Steuben County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15760	Sullivan County, Indiana	15	Rural	0.8739	45460	Urban	0.8304
15770	Switzerland County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15780	Tippecanoe County, Indiana	3920	Urban	0.8736	29140	Urban	0.8736
15790	Tipton County, Indiana	3850	Urban	0.9508	29020	Urban	0.9508
15800	Union County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15810	Vanderburgh County, Indiana	2440	Urban	0.8713	21780	Urban	0.8713
15820	Vermillion County, Indiana	8320	Urban	0.8337	45460	Urban	0.8304
15830	Vigo County, Indiana	8320	Urban	0.8337	45460	Urban	0.8304
15840	Wabash County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15850	Warren County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15860	Warrick County, Indiana	2440	Urban	0.8713	21780	Urban	0.8713
15870	Washington County, Indiana	15	Rural	0.8739	31140	Urban	0.9251
15880	Wayne County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15890	Wells County, Indiana	2760	Urban	0.9706	23060	Urban	0.9793
15900	White County, Indiana	15	Rural	0.8739	99915	Rural	0.8624
15910	Whitley County, Indiana	2760	Urban	0.9706	23060	Urban	0.9793
16000	Adair County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16010	Adams County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16020	Allamakee County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16030	Appanoose County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16040	Audubon County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16050	Benton County, Iowa	16	Rural	0.8594	16300	Urban	0.8825
16060	Black Hawk County, Iowa	8920	Urban	0.8557	47940	Urban	0.8557
16070	Boone County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16080	Bremer County, Iowa	16	Rural	0.8594	47940	Urban	0.8557
16090	Buchanan County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16100	Buena Vista County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16110	Butler County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16120	Calhoun County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16130	Carroll County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16140	Cass County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16150	Cedar County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16160	Cerro Gordo County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16170	Cherokee County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16180	Chickasaw County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16190	Clarke County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16200	Clay County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16210	Clayton County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16220	Clinton County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16230	Crawford County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16240	Dallas County, Iowa	2120	Urban	0.9669	19780	Urban	0.9669
16250	Davis County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16260	Decatur County, Iowa	16	Rural	0.8594	99916	Rural	0.8509

SSA State/ County Code	County name	MSA Number	MSA Urban/ Rural	2006 MSA- based WI	CBSA Number	CBSA Urban/ Rural	2006 CBSA- based WI
16270	Delaware County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16280	Des Moines County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16290	Dickinson County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16300	Dubuque County, Iowa	2200	Urban	0.9024	20220	Urban	0.9024
16310	Emmet County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16320	Fayette County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16330	Floyd County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16340	Franklin County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16350	Fremont County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16360	Greene County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16370	Grundy County, Iowa	16	Rural	0.8594	47940	Urban	0.8557
16380	Guthrie County, Iowa	16	Rural	0.8594	19780	Urban	0.9669
16390	Hamilton County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16400	Hancock County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16410	Hardin County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16420	Harrison County, Iowa	16	Rural	0.8594	36540	Urban	0.9560
16430	Henry County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16440	Howard County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16450	Humboldt County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16460	Ida County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16470	Iowa County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16480	Jackson County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16490	Jasper County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16500	Jefferson County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16510	Johnson County, Iowa	3500	Urban	0.9747	26980	Urban	0.9747
16520	Jones County, Iowa	16	Rural	0.8594	16300	Urban	0.8825
16530	Keokuk County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16540	Kossuth County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16550	Lee County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16560	Linn County, Iowa	1360	Urban	0.8825	16300	Urban	0.8825
16570	Louisa County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16580	Lucas County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16590	Lyon County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16600	Madison County, Iowa	16	Rural	0.8594	19780	Urban	0.9669
16610	Mahaska County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16620	Marion County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16630	Marshall County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16640	Mills County, Iowa	16	Rural	0.8594	36540	Urban	0.9560
16650	Mitchell County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16660	Monona County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16670	Monroe County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16680	Montgomery County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16690	Muscatine County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16700	O'Brien County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16710	Osceola County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16720	Page County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16730	Palo Alto County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16740	Plymouth County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16750	Pocahontas County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16760	Polk County, Iowa	2120	Urban	0.9669	19780	Urban	0.9669
16770	Pottawattamie County, Iowa	5920	Urban	0.9560	36540	Urban	0.9560
16780	Poweshiek County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16790	Ringgold County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16800	Sac County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16810	Scott County, Iowa	1960	Urban	0.8724	19340	Urban	0.8724
16820	Shelby County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16830	Sioux County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16840	Story County, Iowa	16	Rural	0.8594	11180	Urban	0.9536
16850	Tama County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16860	Taylor County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16870	Union County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16880	Van Buren County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16890	Wapello County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16900	Warren County, Iowa	2120	Urban	0.9669	19780	Urban	0.9669
16910	Washington County, Iowa	16	Rural	0.8594	26980	Urban	0.9747
16920	Wayne County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16930	Webster County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16940	Winnebago County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16950	Winneshiek County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
16960	Woodbury County, Iowa	7720	Urban	0.9416	43580	Urban	0.9381
16970	Worth County, Iowa	16	Rural	0.8594	99916	Rural	0.8509

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16980	Wright County, Iowa	16	Rural	0.8594	99916	Rural	0.8509
17000	Allen County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17010	Anderson County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17020	Atchison County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17030	Barber County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17040	Barton County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17050	Bourbon County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17060	Brown County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17070	Butler County, Kansas	9040	Urban	0.9175	48620	Urban	0.9153
17080	Chase County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17090	Chautauqua County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17100	Cherokee County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17110	Cheyenne County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17120	Clark County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17130	Clay County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17140	Cloud County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17150	Coffey County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17160	Comanche County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17170	Cowley County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17180	Crawford County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17190	Decatur County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17200	Dickinson County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17210	Doniphan County, Kansas	17	Rural	0.8040	41140	Urban	0.9519
17220	Douglas County, Kansas	4150	Urban	0.8537	29940	Urban	0.8537
17230	Edwards County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17240	Elk County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17250	Ellis County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17260	Ellsworth County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17270	Finney County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17280	Ford County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17290	Franklin County, Kansas	17	Rural	0.8040	28140	Urban	0.9476
17300	Geary County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17310	Gove County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17320	Graham County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17330	Grant County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17340	Gray County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17350	Greeley County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17360	Greenwood County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17370	Hamilton County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17380	Harper County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17390	Harvey County, Kansas	9040	Urban	0.9175	48620	Urban	0.9153
17391	Haskell County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17410	Hodgeman County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17420	Jackson County, Kansas	17	Rural	0.8040	45820	Urban	0.8920
17430	Jefferson County, Kansas	17	Rural	0.8040	45820	Urban	0.8920
17440	Jewell County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17450	Johnson County, Kansas	3760	Urban	0.9490	28140	Urban	0.9476
17451	Kearny County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17470	Kingman County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17480	Kiowa County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17490	Labette County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17500	Lane County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17510	Leavenworth County, Kansas	3760	Urban	0.9490	28140	Urban	0.9476
17520	Lincoln County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17530	Linn County, Kansas	17	Rural	0.8040	28140	Urban	0.9476
17540	Logan County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17550	Lyon County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17560	Mc Pherson County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17570	Marion County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17580	Marshall County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17590	Meade County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17600	Miami County, Kansas	3760	Urban	0.9490	28140	Urban	0.9476
17610	Mitchell County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17620	Montgomery County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17630	Morris County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17640	Morton County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17650	Nemaha County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17660	Neosho County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17670	Ness County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17680	Norton County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17690	Osage County, Kansas	17	Rural	0.8040	45820	Urban	0.8920

SSA State/County Code	County name	MSA Number	MSA Urban/Rural	2006 MSA-based WI	CBSA Number	CBSA Urban/Rural	2006 CBSA-based WI
17700	Osborne County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17710	Ottawa County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17720	Pawnee County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17730	Phillips County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17740	Pottawatomie County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17750	Pratt County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17760	Rawlins County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17770	Reno County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17780	Republic County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17790	Rice County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17800	Riley County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17810	Rooks County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17820	Rush County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17830	Russell County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17840	Saline County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17841	Scott County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17860	Sedgwick County, Kansas	9040	Urban	0.9175	48620	Urban	0.9153
17870	Seward County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17880	Shawnee County, Kansas	8440	Urban	0.8920	45820	Urban	0.8920
17890	Sheridan County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17900	Sherman County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17910	Smith County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17920	Stafford County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17921	Stanton County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17940	Stevens County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17950	Sumner County, Kansas	17	Rural	0.8040	48620	Urban	0.9153
17960	Thomas County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17970	Trego County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17980	Wabaunsee County, Kansas	17	Rural	0.8040	45820	Urban	0.8920
17981	Wallace County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17982	Washington County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17983	Wichita County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17984	Wilson County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17985	Woodson County, Kansas	17	Rural	0.8040	99917	Rural	0.8035
17986	Wyandotte County, Kansas	3760	Urban	0.9490	28140	Urban	0.9476
18000	Adair County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18010	Allen County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18020	Anderson County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18030	Ballard County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18040	Barren County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18050	Bath County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18060	Bell County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18070	Boone County, Kentucky	1640	Urban	0.9734	17140	Urban	0.9615
18080	Bourbon County, Kentucky	4280	Urban	0.8988	30460	Urban	0.9075
18090	Boyd County, Kentucky	3400	Urban	0.9477	26580	Urban	0.9477
18100	Boyle County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18110	Bracken County, Kentucky	18	Rural	0.7858	17140	Urban	0.9615
18120	Breathitt County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18130	Breckinridge County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18140	Bullitt County, Kentucky	4520	Urban	0.9293	31140	Urban	0.9251
18150	Butler County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18160	Caldwell County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18170	Calloway County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18180	Campbell County, Kentucky	1640	Urban	0.9734	17140	Urban	0.9615
18190	Carlisle County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18191	Carroll County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18210	Carter County, Kentucky	3400	Urban	0.9477	99918	Rural	0.7766
18220	Casey County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18230	Christian County, Kentucky	1660	Urban	0.8284	17300	Urban	0.8284
18240	Clark County, Kentucky	4280	Urban	0.8988	30460	Urban	0.9075
18250	Clay County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18260	Clinton County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18270	Crittenden County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18271	Cumberland County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18290	Daviess County, Kentucky	5990	Urban	0.8780	36980	Urban	0.8780
18291	Edmonson County, Kentucky	18	Rural	0.7858	14540	Urban	0.8211
18310	Elliott County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18320	Estill County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18330	Fayette County, Kentucky	4280	Urban	0.8988	30460	Urban	0.9075
18340	Fleming County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18350	Floyd County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766

SSA State/County Code	County name	MSA Number	MSA Urban/Rural	2006 MSA-based WI	CBSA Number	CBSA Urban/Rural	2006 CBSA-based WI
18360	Franklin County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18361	Fulton County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18362	Gallatin County, Kentucky	1640	Urban	0.9734	17140	Urban	0.9615
18390	Garrard County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18400	Grant County, Kentucky	1640	Urban	0.9734	17140	Urban	0.9615
18410	Graves County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18420	Grayson County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18421	Green County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18440	Greenup County, Kentucky	3400	Urban	0.9477	26580	Urban	0.9477
18450	Hancock County, Kentucky	18	Rural	0.7858	36980	Urban	0.8780
18460	Hardin County, Kentucky	18	Rural	0.7858	21060	Urban	0.8802
18470	Harlan County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18480	Harrison County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18490	Hart County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18500	Henderson County, Kentucky	2440	Urban	0.8713	21780	Urban	0.8713
18510	Henry County, Kentucky	18	Rural	0.7858	31140	Urban	0.9251
18511	Hickman County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18530	Hopkins County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18540	Jackson County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18550	Jefferson County, Kentucky	4520	Urban	0.9293	31140	Urban	0.9251
18560	Jessamine County, Kentucky	4280	Urban	0.8988	30460	Urban	0.9075
18570	Johnson County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18580	Kenton County, Kentucky	1640	Urban	0.9734	17140	Urban	0.9615
18590	Knott County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18600	Knox County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18610	Larue County, Kentucky	18	Rural	0.7858	21060	Urban	0.8802
18620	Laurel County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18630	Lawrence County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18640	Lee County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18650	Leslie County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18660	Letcher County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18670	Lewis County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18680	Lincoln County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18690	Livingston County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18700	Logan County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18710	Lyon County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18720	Mc Cracken County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18730	Mc Creary County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18740	Mc Lean County, Kentucky	18	Rural	0.7858	36980	Urban	0.8780
18750	Madison County, Kentucky	4280	Urban	0.8988	99918	Rural	0.7766
18760	Magoffin County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18770	Marion County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18780	Marshall County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18790	Martin County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18800	Mason County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18801	Meade County, Kentucky	18	Rural	0.7858	31140	Urban	0.9251
18802	Menifee County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18830	Mercer County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18831	Metcalfe County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18850	Monroe County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18860	Montgomery County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18861	Morgan County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18880	Muhlenberg County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18890	Nelson County, Kentucky	18	Rural	0.7858	31140	Urban	0.9251
18900	Nicholas County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18910	Ohio County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18920	Oldham County, Kentucky	4520	Urban	0.9293	31140	Urban	0.9251
18930	Owen County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18931	Owsley County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18932	Pendleton County, Kentucky	1640	Urban	0.9734	17140	Urban	0.9615
18960	Perry County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18970	Pike County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18971	Powell County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18972	Pulaski County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18973	Robertson County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18974	Rockcastle County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18975	Rowan County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18976	Russell County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18977	Scott County, Kentucky	4280	Urban	0.8988	30460	Urban	0.9075
18978	Shelby County, Kentucky	18	Rural	0.7858	31140	Urban	0.9251
18979	Simpson County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766

SSA State/ County Code	County name	MSA Number	MSA Urban/ Rural	2006 MSA- based WI	CBSA Number	CBSA Urban/ Rural	2006 CBSA- based WI
18980	Spencer County, Kentucky	18	Rural	0.7858	31140	Urban	0.9251
18981	Taylor County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18982	Todd County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18983	Trigg County, Kentucky	18	Rural	0.7858	17300	Urban	0.8284
18984	Trimble County, Kentucky	18	Rural	0.7858	31140	Urban	0.9251
18985	Union County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18986	Warren County, Kentucky	18	Rural	0.7858	14540	Urban	0.8211
18987	Washington County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18988	Wayne County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18989	Webster County, Kentucky	18	Rural	0.7858	21780	Urban	0.8713
18990	Whitley County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18991	Wolfe County, Kentucky	18	Rural	0.7858	99918	Rural	0.7766
18992	Woodford County, Kentucky	4280	Urban	0.8988	30460	Urban	0.9075
19000	Acadia County, Louisiana	3880	Urban	0.8251	99919	Rural	0.7411
19010	Allen County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19020	Ascension County, Louisiana	0760	Urban	0.8643	12940	Urban	0.8593
19030	Assumption County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19040	Avoyelles County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19050	Beauregard County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19060	Bienville County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19070	Bossier County, Louisiana	7680	Urban	0.8737	43340	Urban	0.8760
19080	Caddo County, Louisiana	7680	Urban	0.8737	43340	Urban	0.8760
19090	Calcasieu County, Louisiana	3960	Urban	0.7858	29340	Urban	0.7833
19100	Caldwell County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19110	Cameron County, Louisiana	19	Rural	0.7340	29340	Urban	0.7833
19120	Catahoula County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19130	Claiborne County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19140	Concordia County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19150	De Soto County, Louisiana	19	Rural	0.7340	43340	Urban	0.8760
19160	East Baton Rouge County, Louisiana	0760	Urban	0.8643	12940	Urban	0.8593
19170	East Carroll County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19180	East Feliciana County, Louisiana	19	Rural	0.7340	12940	Urban	0.8593
19190	Evangeline County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19200	Franklin County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19210	Grant County, Louisiana	19	Rural	0.7340	10780	Urban	0.8033
19220	Iberia County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19230	Iberville County, Louisiana	19	Rural	0.7340	12940	Urban	0.8593
19240	Jackson County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19250	Jefferson County, Louisiana	5560	Urban	0.8995	35380	Urban	0.8995
19260	Jefferson Davis County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19270	Lafayette County, Louisiana	3880	Urban	0.8251	29180	Urban	0.8428
19280	Lafourche County, Louisiana	3350	Urban	0.7894	26380	Urban	0.7894
19290	La Salle County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19300	Lincoln County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19310	Livingston County, Louisiana	0760	Urban	0.8643	12940	Urban	0.8593
19320	Madison County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19330	Morehouse County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19340	Natchitoches County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19350	Orleans County, Louisiana	5560	Urban	0.8995	35380	Urban	0.8995
19360	Ouachita County, Louisiana	5200	Urban	0.8044	33740	Urban	0.8031
19370	Plaquemines County, Louisiana	5560	Urban	0.8995	35380	Urban	0.8995
19380	Pointe Coupee County, Louisiana	19	Rural	0.7340	12940	Urban	0.8593
19390	Rapides County, Louisiana	0220	Urban	0.8033	10780	Urban	0.8033
19400	Red River County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19410	Richland County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19420	Sabine County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19430	St Bernard County, Louisiana	5560	Urban	0.8995	35380	Urban	0.8995
19440	St Charles County, Louisiana	5560	Urban	0.8995	35380	Urban	0.8995
19450	St Helena County, Louisiana	19	Rural	0.7340	12940	Urban	0.8593
19460	St James County, Louisiana	5560	Urban	0.8995	99919	Rural	0.7411
19470	St John Baptist County, Louisiana	5560	Urban	0.8995	35380	Urban	0.8995
19480	St Landry County, Louisiana	3880	Urban	0.8251	99919	Rural	0.7411
19490	St Martin County, Louisiana	3880	Urban	0.8251	29180	Urban	0.8428
19500	St Mary County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19510	St Tammany County, Louisiana	5560	Urban	0.8995	35380	Urban	0.8995
19520	Tangipahoa County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19530	Tensas County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19540	Terrebonne County, Louisiana	3350	Urban	0.7894	26380	Urban	0.7894
19550	Union County, Louisiana	19	Rural	0.7340	33740	Urban	0.8031
19560	Vermilion County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19570	Vernon County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411

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19580	Washington County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19590	Webster County, Louisiana	7680	Urban	0.8737	99919	Rural	0.7411
19600	West Baton Rouge County, Louisiana	0760	Urban	0.8643	12940	Urban	0.8593
19610	West Carroll County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
19620	West Feliciana County, Louisiana	19	Rural	0.7340	12940	Urban	0.8593
19630	Winn County, Louisiana	19	Rural	0.7340	99919	Rural	0.7411
20000	Androscoggin County, Maine	4243	Urban	0.9331	30340	Urban	0.9331
20010	Aroostook County, Maine	20	Rural	0.8843	99920	Rural	0.8843
20020	Cumberland County, Maine	6403	Urban	1.0382	38860	Urban	1.0382
20030	Franklin County, Maine	20	Rural	0.8843	99920	Rural	0.8843
20040	Hancock County, Maine	20	Rural	0.8843	99920	Rural	0.8843
20050	Kennebec County, Maine	20	Rural	0.8843	99920	Rural	0.8843
20060	Knox County, Maine	20	Rural	0.8843	99920	Rural	0.8843
20070	Lincoln County, Maine	20	Rural	0.8843	99920	Rural	0.8843
20080	Oxford County, Maine	20	Rural	0.8843	99920	Rural	0.8843
20090	Penobscot County, Maine	0733	Urban	0.9993	12620	Urban	0.9993
20100	Piscataquis County, Maine	20	Rural	0.8843	99920	Rural	0.8843
20110	Sagadahoc County, Maine	6403	Urban	1.0382	38860	Urban	1.0382
20120	Somerset County, Maine	20	Rural	0.8843	99920	Rural	0.8843
20130	Waldo County, Maine	20	Rural	0.8843	99920	Rural	0.8843
20140	Washington County, Maine	20	Rural	0.8843	99920	Rural	0.8843
20150	York County, Maine	6403	Urban	1.0382	38860	Urban	1.0382
21000	Allegany County, Maryland	1900	Urban	0.9317	19060	Urban	0.9317
21010	Anne Arundel County, Maryland	0720	Urban	0.9897	12580	Urban	0.9897
21020	Baltimore County, Maryland	0720	Urban	0.9897	12580	Urban	0.9897
21030	Baltimore City County, Maryland	0720	Urban	0.9897	12580	Urban	0.9897
21040	Calvert County, Maryland	8840	Urban	1.0976	47894	Urban	1.0926
21050	Caroline County, Maryland	21	Rural	0.9230	99921	Rural	0.9353
21060	Carroll County, Maryland	0720	Urban	0.9897	12580	Urban	0.9897
21070	Cecil County, Maryland	9160	Urban	1.0527	48864	Urban	1.0471
21080	Charles County, Maryland	8840	Urban	1.0976	47894	Urban	1.0926
21090	Dorchester County, Maryland	21	Rural	0.9230	99921	Rural	0.9353
21100	Frederick County, Maryland	8840	Urban	1.0976	13644	Urban	1.1483
21110	Garrett County, Maryland	21	Rural	0.9230	99921	Rural	0.9353
21120	Harford County, Maryland	0720	Urban	0.9897	12580	Urban	0.9897
21130	Howard County, Maryland	0720	Urban	0.9897	12580	Urban	0.9897
21140	Kent County, Maryland	21	Rural	0.9230	99921	Rural	0.9353
21150	Montgomery County, Maryland	8840	Urban	1.0976	13644	Urban	1.1483
21160	Prince Georges County, Maryland	8840	Urban	1.0976	47894	Urban	1.0926
21170	Queen Annes County, Maryland	0720	Urban	0.9897	12580	Urban	0.9897
21180	St Marys County, Maryland	21	Rural	0.9230	99921	Rural	0.9353
21190	Somerset County, Maryland	21	Rural	0.9230	41540	Urban	0.9064
21200	Talbot County, Maryland	21	Rural	0.9230	99921	Rural	0.9353
21210	Washington County, Maryland	3180	Urban	0.9869	25180	Urban	0.9489
21220	Wicomico County, Maryland	21	Rural	0.9230	41540	Urban	0.9064
21230	Worcester County, Maryland	21	Rural	0.9230	99921	Rural	0.9353
22000	Barnstable County, Massachusetts	0743	Urban	1.2600	12700	Urban	1.2600
22010	Berkshire County, Massachusetts	6323	Urban	1.0181	38340	Urban	1.0181
22020	Bristol County, Massachusetts	1123	Urban	1.1178	39300	Urban	1.0966
22030	Dukes County, Massachusetts	22	Rural	1.0216	99922	Rural	1.0216
22040	Essex County, Massachusetts	1123	Urban	1.1178	21604	Urban	1.0538
22060	Franklin County, Massachusetts	22	Rural	1.0216	44140	Urban	1.0248
22070	Hampden County, Massachusetts	8003	Urban	1.0263	44140	Urban	1.0248
22080	Hampshire County, Massachusetts	8003	Urban	1.0263	44140	Urban	1.0248
22090	Middlesex County, Massachusetts	1123	Urban	1.1178	15764	Urban	1.1172
22120	Nantucket County, Massachusetts	22	Rural	1.0216	99922	Rural	1.0216
22130	Norfolk County, Massachusetts	1123	Urban	1.1178	14484	Urban	1.1558
22150	Plymouth County, Massachusetts	1123	Urban	1.1178	14484	Urban	1.1558
22160	Suffolk County, Massachusetts	1123	Urban	1.1178	14484	Urban	1.1558
22170	Worcester County, Massachusetts	1123	Urban	1.1178	49340	Urban	1.1028
23000	Alcona County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23010	Alger County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23020	Allegan County, Michigan	3000	Urban	0.9445	99923	Rural	0.8895
23030	Alpena County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23040	Antrim County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23050	Arenac County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23060	Baraga County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23070	Barry County, Michigan	23	Rural	0.8824	24340	Urban	0.9390
23080	Bay County, Michigan	6960	Urban	0.9241	13020	Urban	0.9343
23090	Benzie County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23100	Berrien County, Michigan	0870	Urban	0.8879	35660	Urban	0.8879

SSA State/ County Code	County name	MSA Number	MSA Urban/ Rural	2006 MSA- based WI	CBSA Number	CBSA Urban/ Rural	2006 CBSA- based WI
23110	Branch County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23120	Calhoun County, Michigan	3720	Urban	1.0143	12980	Urban	0.9508
23130	Cass County, Michigan	23	Rural	0.8824	43780	Urban	0.9788
23140	Charlevoix County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23150	Cheboygan County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23160	Chippewa County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23170	Clare County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23180	Clinton County, Michigan	4040	Urban	0.9794	29620	Urban	0.9794
23190	Crawford County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23200	Delta County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23210	Dickinson County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23220	Eaton County, Michigan	4040	Urban	0.9794	29620	Urban	0.9794
23230	Emmet County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23240	Genesee County, Michigan	2640	Urban	1.0655	22420	Urban	1.0655
23250	Gladwin County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23260	Gogebic County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23270	Grand Traverse County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23280	Gratiot County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23290	Hillsdale County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23300	Houghton County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23310	Huron County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23320	Ingham County, Michigan	4040	Urban	0.9794	29620	Urban	0.9794
23330	Ionia County, Michigan	23	Rural	0.8824	24340	Urban	0.9390
23340	Iosco County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23350	Iron County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23360	Isabella County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23370	Jackson County, Michigan	3520	Urban	0.9304	27100	Urban	0.9304
23380	Kalamazoo County, Michigan	3720	Urban	1.0143	28020	Urban	1.0381
23390	Kalkaska County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23400	Kent County, Michigan	3000	Urban	0.9445	24340	Urban	0.9390
23410	Keweenaw County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23420	Lake County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23430	Lapeer County, Michigan	2160	Urban	1.0147	47644	Urban	0.9871
23440	Leelanau County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23450	Lenawee County, Michigan	0440	Urban	1.0707	99923	Rural	0.8895
23460	Livingston County, Michigan	0440	Urban	1.0707	47644	Urban	0.9871
23470	Luce County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23480	Mackinac County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23490	Macomb County, Michigan	2160	Urban	1.0147	47644	Urban	0.9871
23500	Manistee County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23510	Marquette County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23520	Mason County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23530	Mecosta County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23540	Menominee County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23550	Midland County, Michigan	6960	Urban	0.9241	99923	Rural	0.8895
23560	Missaukee County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23570	Monroe County, Michigan	2160	Urban	1.0147	33780	Urban	0.9468
23580	Montcalm County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23590	Montmorency County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23600	Muskegon County, Michigan	3000	Urban	0.9445	34740	Urban	0.9664
23610	Newaygo County, Michigan	23	Rural	0.8824	24340	Urban	0.9390
23620	Oakland County, Michigan	2160	Urban	1.0147	47644	Urban	0.9871
23630	Oceana County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23640	Ogemaw County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23650	Ontonagon County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23660	Osceola County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23670	Oscoda County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23680	Otsego County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23690	Ottawa County, Michigan	3000	Urban	0.9445	26100	Urban	0.9055
23700	Presque Isle County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23710	Roscommon County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23720	Saginaw County, Michigan	6960	Urban	0.9241	40980	Urban	0.9088
23730	St Clair County, Michigan	2160	Urban	1.0147	47644	Urban	0.9871
23740	St Joseph County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23750	Sanilac County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23760	Schoolcraft County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23770	Shiawassee County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23780	Tuscola County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
23790	Van Buren County, Michigan	3720	Urban	1.0143	28020	Urban	1.0381
23800	Washtenaw County, Michigan	0440	Urban	1.0707	11460	Urban	1.0859
23810	Wayne County, Michigan	2160	Urban	1.0147	19804	Urban	1.0424



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23830	Wexford County, Michigan	23	Rural	0.8824	99923	Rural	0.8895
24000	Aitkin County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24010	Anoka County, Minnesota	5120	Urban	1.1075	33460	Urban	1.1075
24020	Becker County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24030	Beltrami County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24040	Benton County, Minnesota	6980	Urban	0.9965	41060	Urban	0.9965
24050	Big Stone County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24060	Blue Earth County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24070	Brown County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24080	Carlton County, Minnesota	24	Rural	0.9132	20260	Urban	1.0213
24090	Carver County, Minnesota	5120	Urban	1.1075	33460	Urban	1.1075
24100	Cass County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24110	Chippewa County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24120	Chisago County, Minnesota	5120	Urban	1.1075	33460	Urban	1.1075
24130	Clay County, Minnesota	2520	Urban	0.8486	22020	Urban	0.8486
24140	Clearwater County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24150	Cook County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24160	Cottonwood County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24170	Crow Wing County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24180	Dakota County, Minnesota	5120	Urban	1.1075	33460	Urban	1.1075
24190	Dodge County, Minnesota	24	Rural	0.9132	40340	Urban	1.1131
24200	Douglas County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24210	Faribault County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24220	Fillmore County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24230	Freeborn County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24240	Goodhue County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24250	Grant County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24260	Hennepin County, Minnesota	5120	Urban	1.1075	33460	Urban	1.1075
24270	Houston County, Minnesota	3870	Urban	0.9564	29100	Urban	0.9564
24280	Hubbard County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24290	Isanti County, Minnesota	5120	Urban	1.1075	33460	Urban	1.1075
24300	Itasca County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24310	Jackson County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24320	Kanabec County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24330	Kandiyohi County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24340	Kittson County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24350	Koochiching County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24360	Lac Qui Parle County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24370	Lake County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24380	Lake Of Woods County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24390	Le Sueur County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24400	Lincoln County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24410	Lyon County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24420	Mc Leod County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24430	Mahnomen County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24440	Marshall County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24450	Martin County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24460	Meeker County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24470	Mille Lacs County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24480	Morrison County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24490	Mower County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24500	Murray County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24510	Nicollet County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24520	Nobles County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24530	Norman County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24540	Olmsted County, Minnesota	6820	Urban	1.1131	40340	Urban	1.1131
24550	Otter Tail County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24560	Pennington County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24570	Pine County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24580	Pipestone County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24590	Polk County, Minnesota	2985	Urban	0.7901	24220	Urban	0.7901
24600	Pope County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24610	Ramsey County, Minnesota	5120	Urban	1.1075	33460	Urban	1.1075
24620	Red Lake County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24630	Redwood County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24640	Renville County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24650	Rice County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24660	Rock County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24670	Roseau County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24680	St Louis County, Minnesota	2240	Urban	1.0213	20260	Urban	1.0213
24690	Scott County, Minnesota	5120	Urban	1.1075	33460	Urban	1.1075

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24700	Sherburne County, Minnesota	5120	Urban	1.1075	33460	Urban	1.1075
24710	Sibley County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24720	Stearns County, Minnesota	6980	Urban	0.9965	41060	Urban	0.9965
24730	Steele County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24740	Stevens County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24750	Swift County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24760	Todd County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24770	Traverse County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24780	Wabasha County, Minnesota	24	Rural	0.9132	40340	Urban	1.1131
24790	Wadena County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24800	Waseca County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24810	Washington County, Minnesota	5120	Urban	1.1075	33460	Urban	1.1075
24820	Watonwan County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24830	Wilkin County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24840	Winona County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
24850	Wright County, Minnesota	5120	Urban	1.1075	33460	Urban	1.1075
24860	Yellow Medicine County, Minnesota	24	Rural	0.9132	99924	Rural	0.9132
25000	Adams County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25010	Alcorn County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25020	Amite County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25030	Attala County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25040	Benton County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25050	Bolivar County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25060	Calhoun County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25070	Carroll County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25080	Chickasaw County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25090	Choctaw County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25100	Claiborne County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25110	Clarke County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25120	Clay County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25130	Coahoma County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25140	Copiah County, Mississippi	25	Rural	0.7634	27140	Urban	0.8311
25150	Covington County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25160	Desoto County, Mississippi	4920	Urban	0.9416	32820	Urban	0.9397
25170	Forrest County, Mississippi	3285	Urban	0.7601	25620	Urban	0.7601
25180	Franklin County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25190	George County, Mississippi	25	Rural	0.7634	37700	Urban	0.8156
25200	Greene County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25210	Grenada County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25220	Hancock County, Mississippi	0920	Urban	0.8706	25060	Urban	0.8929
25230	Harrison County, Mississippi	0920	Urban	0.8706	25060	Urban	0.8929
25240	Hinds County, Mississippi	3560	Urban	0.8382	27140	Urban	0.8311
25250	Holmes County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25260	Humphreys County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25270	Issaquena County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25280	Itawamba County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25290	Jackson County, Mississippi	0920	Urban	0.8706	37700	Urban	0.8156
25300	Jasper County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25310	Jefferson County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25320	Jefferson Davis County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25330	Jones County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25340	Kemper County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25350	Lafayette County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25360	Lamar County, Mississippi	3285	Urban	0.7601	25620	Urban	0.7601
25370	Lauderdale County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25380	Lawrence County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25390	Leake County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25400	Lee County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25410	Leflore County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25420	Lincoln County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25430	Lowndes County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25440	Madison County, Mississippi	3560	Urban	0.8382	27140	Urban	0.8311
25450	Marion County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25460	Marshall County, Mississippi	25	Rural	0.7634	32820	Urban	0.9397
25470	Monroe County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25480	Montgomery County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25490	Neshoba County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25500	Newton County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25510	Noxubee County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25520	Oktibbeha County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25530	Panola County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674

SSA State/ County Code	County name	MSA Number	MSA Urban/ Rural	2006 MSA- based WI	CBSA Number	CBSA Urban/ Rural	2006 CBSA- based WI
25540	Pearl River County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25550	Perry County, Mississippi	25	Rural	0.7634	25620	Urban	0.7601
25560	Pike County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25570	Pontotoc County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25580	Prentiss County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25590	Quitman County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25600	Rankin County, Mississippi	3560	Urban	0.8382	27140	Urban	0.8311
25610	Scott County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25620	Sharkey County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25630	Simpson County, Mississippi	25	Rural	0.7634	27140	Urban	0.8311
25640	Smith County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25650	Stone County, Mississippi	25	Rural	0.7634	25060	Urban	0.8929
25660	Sunflower County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25670	Tallahatchie County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25680	Tate County, Mississippi	25	Rural	0.7634	32820	Urban	0.9397
25690	Tippah County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25700	Tishomingo County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25710	Tunica County, Mississippi	25	Rural	0.7634	32820	Urban	0.9397
25720	Union County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25730	Walthall County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25740	Warren County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25750	Washington County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25760	Wayne County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25770	Webster County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25780	Wilkinson County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25790	Winston County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25800	Yalobusha County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
25810	Yazoo County, Mississippi	25	Rural	0.7634	99925	Rural	0.7674
26000	Adair County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26010	Andrew County, Missouri	7000	Urban	0.9519	41140	Urban	0.9519
26020	Atchison County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26030	Audrain County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26040	Barry County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26050	Barton County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26060	Bates County, Missouri	26	Rural	0.7959	28140	Urban	0.9476
26070	Benton County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26080	Bollinger County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26090	Boone County, Missouri	1740	Urban	0.8345	17860	Urban	0.8345
26100	Buchanan County, Missouri	7000	Urban	0.9519	41140	Urban	0.9519
26110	Butler County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26120	Caldwell County, Missouri	26	Rural	0.7959	28140	Urban	0.9476
26130	Callaway County, Missouri	26	Rural	0.7959	27620	Urban	0.8387
26140	Camden County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26150	Cape Girardeau County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26160	Carroll County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26170	Carter County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26180	Cass County, Missouri	3760	Urban	0.9490	28140	Urban	0.9476
26190	Cedar County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26200	Chariton County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26210	Christian County, Missouri	7920	Urban	0.8250	44180	Urban	0.8237
26220	Clark County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26230	Clay County, Missouri	3760	Urban	0.9490	28140	Urban	0.9476
26240	Clinton County, Missouri	3760	Urban	0.9490	28140	Urban	0.9476
26250	Cole County, Missouri	26	Rural	0.7959	27620	Urban	0.8387
26260	Cooper County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26270	Crawford County, Missouri	26	Rural	0.7959	41180	Urban	0.8954
26280	Dade County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26290	Dallas County, Missouri	26	Rural	0.7959	44180	Urban	0.8237
26300	Daviess County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26310	De Kalb County, Missouri	26	Rural	0.7959	41140	Urban	0.9519
26320	Dent County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26330	Douglas County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26340	Dunklin County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26350	Franklin County, Missouri	7040	Urban	0.8962	41180	Urban	0.8954
26360	Gasconade County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26370	Gentry County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26380	Greene County, Missouri	7920	Urban	0.8250	44180	Urban	0.8237
26390	Grundy County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26400	Harrison County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26410	Henry County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26411	Hickory County, Missouri	26	Rural	0.7959	99926	Rural	0.7900

SSA State/ County Code	County name	MSA Number	MSA Urban/ Rural	2006 MSA- based WI	CBSA Number	CBSA Urban/ Rural	2006 CBSA- based WI
26412	Holt County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26440	Howard County, Missouri	26	Rural	0.7959	17860	Urban	0.8345
26450	Howell County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26460	Iron County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26470	Jackson County, Missouri	3760	Urban	0.9490	28140	Urban	0.9476
26480	Jasper County, Missouri	3710	Urban	0.8582	27900	Urban	0.8582
26490	Jefferson County, Missouri	7040	Urban	0.8962	41180	Urban	0.8954
26500	Johnson County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26510	Knox County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26520	Laclede County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26530	Lafayette County, Missouri	3760	Urban	0.9490	28140	Urban	0.9476
26540	Lawrence County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26541	Lewis County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26560	Lincoln County, Missouri	7040	Urban	0.8962	41180	Urban	0.8954
26570	Linn County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26580	Livingston County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26590	Mc Donald County, Missouri	26	Rural	0.7959	22220	Urban	0.8661
26600	Macon County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26601	Madison County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26620	Maries County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26630	Marion County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26631	Mercer County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26650	Miller County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26660	Mississippi County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26670	Moniteau County, Missouri	26	Rural	0.7959	27620	Urban	0.8387
26680	Monroe County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26690	Montgomery County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26700	Morgan County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26710	New Madrid County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26720	Newton County, Missouri	3710	Urban	0.8582	27900	Urban	0.8582
26730	Nodaway County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26740	Oregon County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26750	Osage County, Missouri	26	Rural	0.7959	27620	Urban	0.8387
26751	Ozark County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26770	Pemiscot County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26780	Perry County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26790	Pettis County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26800	Phelps County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26810	Pike County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26820	Platte County, Missouri	3760	Urban	0.9490	28140	Urban	0.9476
26821	Polk County, Missouri	26	Rural	0.7959	44180	Urban	0.8237
26840	Pulaski County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26850	Putnam County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26860	Ralls County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26870	Randolph County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26880	Ray County, Missouri	3760	Urban	0.9490	28140	Urban	0.9476
26881	Reynolds County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26900	Ripley County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26910	St Charles County, Missouri	7040	Urban	0.8962	41180	Urban	0.8954
26911	St Clair County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26930	St Francois County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26940	St Louis County, Missouri	7040	Urban	0.8962	41180	Urban	0.8954
26950	St Louis City County, Missouri	7040	Urban	0.8962	41180	Urban	0.8954
26960	Ste Genevieve County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26970	Saline County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26980	Schuyler County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26981	Scotland County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26982	Scott County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26983	Shannon County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26984	Shelby County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26985	Stoddard County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26986	Stone County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26987	Sullivan County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26988	Taney County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26989	Texas County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26990	Vernon County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26991	Warren County, Missouri	7040	Urban	0.8962	41180	Urban	0.8954
26992	Washington County, Missouri	26	Rural	0.7959	41180	Urban	0.8954
26993	Wayne County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
26994	Webster County, Missouri	7920	Urban	0.8250	44180	Urban	0.8237
26995	Worth County, Missouri	26	Rural	0.7959	99926	Rural	0.7900

SSA State/ County Code	County name	MSA Number	MSA Urban/ Rural	2006 MSA- based WI	CBSA Number	CBSA Urban/ Rural	2006 CBSA- based WI
26996	Wright County, Missouri	26	Rural	0.7959	99926	Rural	0.7900
27000	Beaverhead County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27010	Big Horn County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27020	Blaine County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27030	Broadwater County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27040	Carbon County, Montana	27	Rural	0.8762	13740	Urban	0.8834
27050	Carter County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27060	Cascade County, Montana	3040	Urban	0.9052	24500	Urban	0.9052
27070	Chouteau County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27080	Custer County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27090	Daniels County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27100	Dawson County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27110	Deer Lodge County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27113	Yellowstone National Park, Montana	27	Rural	0.8762	99927	Rural	0.8762
27120	Fallon County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27130	Fergus County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27140	Flathead County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27150	Gallatin County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27160	Garfield County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27170	Glacier County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27180	Golden Valley County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27190	Granite County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27200	Hill County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27210	Jefferson County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27220	Judith Basin County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27230	Lake County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27240	Lewis And Clark County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27250	Liberty County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27260	Lincoln County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27270	Mc Cone County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27280	Madison County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27290	Meagher County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27300	Mineral County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27310	Missoula County, Montana	5140	Urban	0.9473	33540	Urban	0.9473
27320	Musselshell County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27330	Park County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27340	Petroleum County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27350	Phillips County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27360	Pondera County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27370	Powder River County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27380	Powell County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27390	Prairie County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27400	Ravalli County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27410	Richland County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27420	Roosevelt County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27430	Rosebud County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27440	Sanders County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27450	Sheridan County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27460	Silver Bow County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27470	Stillwater County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27480	Sweet Grass County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27490	Teton County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27500	Toole County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27510	Treasure County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27520	Valley County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27530	Wheatland County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27540	Wibaux County, Montana	27	Rural	0.8762	99927	Rural	0.8762
27550	Yellowstone County, Montana	0880	Urban	0.8834	13740	Urban	0.8834
28000	Adams County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28010	Antelope County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28020	Arthur County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28030	Banner County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28040	Blaine County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28050	Boone County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28060	Box Butte County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28070	Boyd County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28080	Brown County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28090	Buffalo County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28100	Burt County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28110	Butler County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28120	Cass County, Nebraska	5920	Urban	0.9560	36540	Urban	0.9560

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28130	Cedar County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28140	Chase County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28150	Cherry County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28160	Cheyenne County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28170	Clay County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28180	Colfax County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28190	Cuming County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28200	Custer County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28210	Dakota County, Nebraska	7720	Urban	0.9416	43580	Urban	0.9381
28220	Dawes County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28230	Dawson County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28240	Deuel County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28250	Dixon County, Nebraska	28	Rural	0.8657	43580	Urban	0.9381
28260	Dodge County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28270	Douglas County, Nebraska	5920	Urban	0.9560	36540	Urban	0.9560
28280	Dundy County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28290	Fillmore County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28300	Franklin County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28310	Frontier County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28320	Furnas County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28330	Gage County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28340	Garden County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28350	Garfield County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28360	Gosper County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28370	Grant County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28380	Greeley County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28390	Hall County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28400	Hamilton County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28410	Harlan County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28420	Hayes County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28430	Hitchcock County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28440	Holt County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28450	Hooker County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28460	Howard County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28470	Jefferson County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28480	Johnson County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28490	Kearney County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28500	Keith County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28510	Keya Paha County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28520	Kimball County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28530	Knox County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28540	Lancaster County, Nebraska	4360	Urban	1.0214	30700	Urban	1.0214
28550	Lincoln County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28560	Logan County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28570	Loup County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28580	Mc Pherson County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28590	Madison County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28600	Merrick County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28610	Morrill County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28620	Nance County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28630	Nemaha County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28640	Nuckolls County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28650	Otoe County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28660	Pawnee County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28670	Perkins County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28680	Phelps County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28690	Pierce County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28700	Platte County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28710	Polk County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28720	Redwillow County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28730	Richardson County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28740	Rock County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28750	Saline County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28760	Sarpy County, Nebraska	5920	Urban	0.9560	36540	Urban	0.9560
28770	Saunders County, Nebraska	28	Rural	0.8657	36540	Urban	0.9560
28780	Scotts Bluff County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28790	Seward County, Nebraska	28	Rural	0.8657	30700	Urban	1.0214
28800	Sheridan County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28810	Sherman County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28820	Sioux County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28830	Stanton County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657

SSA State/County Code	County name	MSA Number	MSA Urban/Rural	2006 MSA-based WI	CBSA Number	CBSA Urban/Rural	2006 CBSA-based WI
28840	Thayer County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28850	Thomas County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28860	Thurston County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28870	Valley County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28880	Washington County, Nebraska	5920	Urban	0.9560	36540	Urban	0.9560
28890	Wayne County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28900	Webster County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28910	Wheeler County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
28920	York County, Nebraska	28	Rural	0.8657	99928	Rural	0.8657
29000	Churchill County, Nevada	29	Rural	0.9687	99929	Rural	0.9065
29010	Clark County, Nevada	4120	Urban	1.1155	29820	Urban	1.1437
29020	Douglas County, Nevada	29	Rural	0.9687	99929	Rural	0.9065
29030	Elko County, Nevada	29	Rural	0.9687	99929	Rural	0.9065
29040	Esmeralda County, Nevada	29	Rural	0.9687	99929	Rural	0.9065
29050	Eureka County, Nevada	29	Rural	0.9687	99929	Rural	0.9065
29060	Humboldt County, Nevada	29	Rural	0.9687	99929	Rural	0.9065
29070	Lander County, Nevada	29	Rural	0.9687	99929	Rural	0.9065
29080	Lincoln County, Nevada	29	Rural	0.9687	99929	Rural	0.9065
29090	Lyon County, Nevada	29	Rural	0.9687	99929	Rural	0.9065
29100	Mineral County, Nevada	29	Rural	0.9687	99929	Rural	0.9065
29110	Nye County, Nevada	4120	Urban	1.1155	99929	Rural	0.9065
29120	Carson City County, Nevada	29	Rural	0.9687	16180	Urban	1.0234
29130	Pershing County, Nevada	29	Rural	0.9687	99929	Rural	0.9065
29140	Storey County, Nevada	29	Rural	0.9687	39900	Urban	1.0982
29150	Washoe County, Nevada	6720	Urban	1.0982	39900	Urban	1.0982
29160	White Pine County, Nevada	29	Rural	0.9687	99929	Rural	0.9065
30000	Belknap County, New Hampshire	30	Rural	1.0817	99930	Rural	1.0817
30010	Carroll County, New Hampshire	30	Rural	1.0817	99930	Rural	1.0817
30020	Cheshire County, New Hampshire	30	Rural	1.0817	99930	Rural	1.0817
30030	Coos County, New Hampshire	30	Rural	1.0817	99930	Rural	1.0817
30040	Grafton County, New Hampshire	30	Rural	1.0817	99930	Rural	1.0817
30050	Hillsboro County, New Hampshire	1123	Urban	1.1178	31700	Urban	1.0354
30060	Merrimack County, New Hampshire	1123	Urban	1.1178	31700	Urban	1.0354
30070	Rockingham County, New Hampshire	1123	Urban	1.1178	40484	Urban	1.0374
30080	Strafford County, New Hampshire	1123	Urban	1.1178	40484	Urban	1.0374
30090	Sullivan County, New Hampshire	30	Rural	1.0817	99930	Rural	1.0817
31000	Atlantic County, New Jersey	0560	Urban	1.1496	12100	Urban	1.1615
31100	Bergen County, New Jersey	0875	Urban	1.1651	35644	Urban	1.3188
31150	Burlington County, New Jersey	6160	Urban	1.0922	15804	Urban	1.0517
31160	Camden County, New Jersey	6160	Urban	1.0922	15804	Urban	1.0517
31180	Cape May County, New Jersey	0560	Urban	1.1496	36140	Urban	1.1011
31190	Cumberland County, New Jersey	8760	Urban	0.9827	47220	Urban	0.9827
31200	Essex County, New Jersey	5640	Urban	1.1834	35084	Urban	1.1883
31220	Gloucester County, New Jersey	6160	Urban	1.0922	15804	Urban	1.0517
31230	Hudson County, New Jersey	3640	Urban	1.1338	35644	Urban	1.3188
31250	Hunterdon County, New Jersey	5015	Urban	1.1167	35084	Urban	1.1883
31260	Mercer County, New Jersey	8480	Urban	1.0834	45940	Urban	1.0834
31270	Middlesex County, New Jersey	5015	Urban	1.1167	20764	Urban	1.1249
31290	Monmouth County, New Jersey	5190	Urban	1.1260	20764	Urban	1.1249
31300	Morris County, New Jersey	5640	Urban	1.1834	35084	Urban	1.1883
31310	Ocean County, New Jersey	5190	Urban	1.1260	20764	Urban	1.1249
31320	Passaic County, New Jersey	0875	Urban	1.1651	35644	Urban	1.3188
31340	Salem County, New Jersey	6160	Urban	1.0922	48864	Urban	1.0471
31350	Somerset County, New Jersey	5015	Urban	1.1167	20764	Urban	1.1249
31360	Sussex County, New Jersey	5640	Urban	1.1834	35084	Urban	1.1883
31370	Union County, New Jersey	5640	Urban	1.1834	35084	Urban	1.1883
31390	Warren County, New Jersey	5640	Urban	1.1834	10900	Urban	0.9818
32000	Bernalillo County, New Mexico	0200	Urban	0.9684	10740	Urban	0.9684
32010	Catron County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32020	Chaves County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32025	Cibola County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32030	Colfax County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32040	Curry County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32050	De Baca County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32060	Dona Ana County, New Mexico	4100	Urban	0.8467	29740	Urban	0.8467
32070	Eddy County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32080	Grant County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32090	Guadalupe County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32100	Harding County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32110	Hidalgo County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32120	Lea County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635

SSA State/County Code	County name	MSA Number	MSA Urban/Rural	2006 MSA-based WI	CBSA Number	CBSA Urban/Rural	2006 CBSA-based WI
32130	Lincoln County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32131	Los Alamos County, New Mexico	7490	Urban	1.0748	99932	Rural	0.8635
32140	Luna County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32150	Mc Kinley County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32160	Mora County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32170	Otero County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32180	Quay County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32190	Rio Arriba County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32200	Roosevelt County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32210	Sandoval County, New Mexico	0200	Urban	0.9684	10740	Urban	0.9684
32220	San Juan County, New Mexico	32	Rural	0.8563	22140	Urban	0.8509
32230	San Miguel County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32240	Santa Fe County, New Mexico	7490	Urban	1.0748	42140	Urban	1.0920
32250	Sierra County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32260	Socorro County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32270	Taos County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32280	Torrance County, New Mexico	32	Rural	0.8563	10740	Urban	0.9684
32290	Union County, New Mexico	32	Rural	0.8563	99932	Rural	0.8635
32300	Valencia County, New Mexico	0200	Urban	0.9684	10740	Urban	0.9684
33000	Albany County, New York	0160	Urban	0.8559	10580	Urban	0.8589
33010	Allegany County, New York	33	Rural	0.8395	99933	Rural	0.8154
33020	Bronx County, New York	5600	Urban	1.3464	35644	Urban	1.3188
33030	Broome County, New York	0960	Urban	0.8562	13780	Urban	0.8562
33040	Cattaraugus County, New York	33	Rural	0.8395	99933	Rural	0.8154
33050	Cayuga County, New York	8160	Urban	0.9492	99933	Rural	0.8154
33060	Chautauqua County, New York	3610	Urban	0.7544	99933	Rural	0.8154
33070	Chemung County, New York	2335	Urban	0.8250	21300	Urban	0.8250
33080	Chenango County, New York	33	Rural	0.8395	99933	Rural	0.8154
33090	Clinton County, New York	33	Rural	0.8395	99933	Rural	0.8154
33200	Columbia County, New York	33	Rural	0.8395	99933	Rural	0.8154
33210	Cortland County, New York	33	Rural	0.8395	99933	Rural	0.8154
33220	Delaware County, New York	33	Rural	0.8395	99933	Rural	0.8154
33230	Dutchess County, New York	2281	Urban	1.0475	39100	Urban	1.0891
33240	Erie County, New York	1280	Urban	0.9511	15380	Urban	0.9511
33260	Essex County, New York	33	Rural	0.8395	99933	Rural	0.8154
33270	Franklin County, New York	33	Rural	0.8395	99933	Rural	0.8154
33280	Fulton County, New York	33	Rural	0.8395	99933	Rural	0.8154
33290	Genesee County, New York	6840	Urban	0.9049	99933	Rural	0.8154
33300	Greene County, New York	33	Rural	0.8395	99933	Rural	0.8154
33310	Hamilton County, New York	33	Rural	0.8395	99933	Rural	0.8154
33320	Herkimer County, New York	8680	Urban	0.8358	46540	Urban	0.8358
33330	Jefferson County, New York	33	Rural	0.8395	99933	Rural	0.8154
33331	Kings County, New York	5600	Urban	1.3464	35644	Urban	1.3188
33340	Lewis County, New York	33	Rural	0.8395	99933	Rural	0.8154
33350	Livingston County, New York	6840	Urban	0.9049	40380	Urban	0.9121
33360	Madison County, New York	8160	Urban	0.9492	45060	Urban	0.9574
33370	Monroe County, New York	6840	Urban	0.9049	40380	Urban	0.9121
33380	Montgomery County, New York	0160	Urban	0.8559	99933	Rural	0.8154
33400	Nassau County, New York	5380	Urban	1.2719	35004	Urban	1.2719
33420	New York County, New York	5600	Urban	1.3464	35644	Urban	1.3188
33500	Niagara County, New York	1280	Urban	0.9511	15380	Urban	0.9511
33510	Oneida County, New York	8680	Urban	0.8358	46540	Urban	0.8358
33520	Onondaga County, New York	8160	Urban	0.9492	45060	Urban	0.9574
33530	Ontario County, New York	6840	Urban	0.9049	40380	Urban	0.9121
33540	Orange County, New York	5660	Urban	1.1207	39100	Urban	1.0891
33550	Orleans County, New York	6840	Urban	0.9049	40380	Urban	0.9121
33560	Oswego County, New York	8160	Urban	0.9492	45060	Urban	0.9574
33570	Otsego County, New York	33	Rural	0.8395	99933	Rural	0.8154
33580	Putnam County, New York	5600	Urban	1.3464	35644	Urban	1.3188
33590	Queens County, New York	5600	Urban	1.3464	35644	Urban	1.3188
33600	Rensselaer County, New York	0160	Urban	0.8559	10580	Urban	0.8589
33610	Richmond County, New York	5600	Urban	1.3464	35644	Urban	1.3188
33620	Rockland County, New York	5600	Urban	1.3464	35644	Urban	1.3188
33630	St Lawrence County, New York	33	Rural	0.8395	99933	Rural	0.8154
33640	Saratoga County, New York	0160	Urban	0.8559	10580	Urban	0.8589
33650	Schenectady County, New York	0160	Urban	0.8559	10580	Urban	0.8589
33660	Schoharie County, New York	0160	Urban	0.8559	10580	Urban	0.8589
33670	Schuyler County, New York	33	Rural	0.8395	99933	Rural	0.8154
33680	Seneca County, New York	33	Rural	0.8395	99933	Rural	0.8154
33690	Steuben County, New York	33	Rural	0.8395	99933	Rural	0.8154
33700	Suffolk County, New York	5380	Urban	1.2719	35004	Urban	1.2719



SSA State/County Code	County name	MSA Number	MSA Urban/Rural	2006 MSA-based WI	CBSA Number	CBSA Urban/Rural	2006 CBSA-based WI
33710	Sullivan County, New York	33	Rural	0.8395	99933	Rural	0.8154
33720	Tioga County, New York	0960	Urban	0.8562	13780	Urban	0.8562
33730	Tompkins County, New York	33	Rural	0.8395	27060	Urban	0.9793
33740	Ulster County, New York	33	Rural	0.8395	28740	Urban	0.9255
33750	Warren County, New York	2975	Urban	0.8559	24020	Urban	0.8559
33760	Washington County, New York	2975	Urban	0.8559	24020	Urban	0.8559
33770	Wayne County, New York	6840	Urban	0.9049	40380	Urban	0.9121
33800	Westchester County, New York	5600	Urban	1.3464	35644	Urban	1.3188
33900	Wyoming County, New York	33	Rural	0.8395	99933	Rural	0.8154
33910	Yates County, New York	33	Rural	0.8395	99933	Rural	0.8154
34000	Alamance County, N Carolina	3120	Urban	0.9018	15500	Urban	0.8905
34010	Alexander County, N Carolina	3290	Urban	0.8921	25860	Urban	0.8921
34020	Alleghany County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34030	Anson County, N Carolina	34	Rural	0.8462	16740	Urban	0.9750
34040	Ashe County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34050	Avery County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34060	Beaufort County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34070	Bertie County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34080	Bladen County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34090	Brunswick County, N Carolina	9200	Urban	0.9582	48900	Urban	0.9582
34100	Buncombe County, N Carolina	0480	Urban	0.9737	11700	Urban	0.9285
34110	Burke County, N Carolina	3290	Urban	0.8921	25860	Urban	0.8921
34120	Cabarrus County, N Carolina	1520	Urban	0.9715	16740	Urban	0.9750
34130	Caldwell County, N Carolina	3290	Urban	0.8921	25860	Urban	0.8921
34140	Camden County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34150	Carteret County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34160	Caswell County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34170	Catawba County, N Carolina	3290	Urban	0.8921	25860	Urban	0.8921
34180	Chatham County, N Carolina	6640	Urban	1.0034	20500	Urban	1.0244
34190	Cherokee County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34200	Chowan County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34210	Clay County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34220	Cleveland County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34230	Columbus County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34240	Craven County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34250	Cumberland County, N Carolina	2560	Urban	0.9416	22180	Urban	0.9416
34251	Currituck County, N Carolina	5720	Urban	0.8799	47260	Urban	0.8799
34270	Dare County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34280	Davidson County, N Carolina	3120	Urban	0.9018	99934	Rural	0.8540
34290	Davie County, N Carolina	3120	Urban	0.9018	49180	Urban	0.8944
34300	Duplin County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34310	Durham County, N Carolina	6640	Urban	1.0034	20500	Urban	1.0244
34320	Edgecombe County, N Carolina	6895	Urban	0.8915	40580	Urban	0.8915
34330	Forsyth County, N Carolina	3120	Urban	0.9018	49180	Urban	0.8944
34340	Franklin County, N Carolina	6640	Urban	1.0034	39580	Urban	0.9691
34350	Gaston County, N Carolina	1520	Urban	0.9715	16740	Urban	0.9750
34360	Gates County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34370	Graham County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34380	Granville County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34390	Greene County, N Carolina	34	Rural	0.8462	24780	Urban	0.9425
34400	Guilford County, N Carolina	3120	Urban	0.9018	24660	Urban	0.9104
34410	Halifax County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34420	Harnett County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34430	Haywood County, N Carolina	34	Rural	0.8462	11700	Urban	0.9285
34440	Henderson County, N Carolina	34	Rural	0.8462	11700	Urban	0.9285
34450	Hertford County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34460	Hoke County, N Carolina	34	Rural	0.8462	22180	Urban	0.9416
34470	Hyde County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34480	Iredell County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34490	Jackson County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34500	Johnston County, N Carolina	6640	Urban	1.0034	39580	Urban	0.9691
34510	Jones County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34520	Lee County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34530	Lenoir County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34540	Lincoln County, N Carolina	1520	Urban	0.9715	99934	Rural	0.8540
34550	Mc Dowell County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34560	Macon County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34570	Madison County, N Carolina	0480	Urban	0.9737	11700	Urban	0.9285
34580	Martin County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34590	Mecklenburg County, N Carolina	1520	Urban	0.9715	16740	Urban	0.9750
34600	Mitchell County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540

SSA State/County Code	County name	MSA Number	MSA Urban/Rural	2006 MSA-based WI	CBSA Number	CBSA Urban/Rural	2006 CBSA-based WI
34610	Montgomery County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34620	Moore County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34630	Nash County, N Carolina	6895	Urban	0.8915	40580	Urban	0.8915
34640	New Hanover County, N Carolina	9200	Urban	0.9582	48900	Urban	0.9582
34650	Northampton County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34660	Onslow County, N Carolina	3605	Urban	0.8236	27340	Urban	0.8236
34670	Orange County, N Carolina	6640	Urban	1.0034	20500	Urban	1.0244
34680	Pamlico County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34690	Pasquotank County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34700	Pender County, N Carolina	34	Rural	0.8462	48900	Urban	0.9582
34710	Perquimans County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34720	Person County, N Carolina	34	Rural	0.8462	20500	Urban	1.0244
34730	Pitt County, N Carolina	3150	Urban	0.9425	24780	Urban	0.9425
34740	Polk County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34750	Randolph County, N Carolina	3120	Urban	0.9018	24660	Urban	0.9104
34760	Richmond County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34770	Robeson County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34780	Rockingham County, N Carolina	34	Rural	0.8462	24660	Urban	0.9104
34790	Rowan County, N Carolina	1520	Urban	0.9715	99934	Rural	0.8540
34800	Rutherford County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34810	Sampson County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34820	Scotland County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34830	Stanly County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34840	Stokes County, N Carolina	3120	Urban	0.9018	49180	Urban	0.8944
34850	Surry County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34860	Swain County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34870	Transylvania County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34880	Tyrrell County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34890	Union County, N Carolina	1520	Urban	0.9715	16740	Urban	0.9750
34900	Vance County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34910	Wake County, N Carolina	6640	Urban	1.0034	39580	Urban	0.9691
34920	Warren County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34930	Washington County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34940	Watauga County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34950	Wayne County, N Carolina	2980	Urban	0.8775	24140	Urban	0.8775
34960	Wilkes County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34970	Wilson County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
34980	Yadkin County, N Carolina	3120	Urban	0.9018	49180	Urban	0.8944
34981	Yancey County, N Carolina	34	Rural	0.8462	99934	Rural	0.8540
35000	Adams County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35010	Barnes County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35020	Benson County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35030	Billings County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35040	Bottineau County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35050	Bowman County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35060	Burke County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35070	Burleigh County, N Dakota	1010	Urban	0.7574	13900	Urban	0.7574
35080	Cass County, N Dakota	2520	Urban	0.8486	22020	Urban	0.8486
35090	Cavalier County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35100	Dickey County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35110	Divide County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35120	Dunn County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35130	Eddy County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35140	Emmons County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35150	Foster County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35160	Golden Valley County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35170	Grand Forks County, N Dakota	2985	Urban	0.7901	24220	Urban	0.7901
35180	Grant County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35190	Griggs County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35200	Hettinger County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35210	Kidder County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35220	La Moure County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35230	Logan County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35240	Mc Henry County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35250	Mc Intosh County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35260	Mc Kenzie County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35270	Mc Lean County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35280	Mercer County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35290	Morton County, N Dakota	1010	Urban	0.7574	13900	Urban	0.7574
35300	Mountrail County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35310	Nelson County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261

SSA State/ County Code	County name	MSA Number	MSA Urban/ Rural	2006 MSA- based WI	CBSA Number	CBSA Urban/ Rural	2006 CBSA- based WI
35320	Oliver County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35330	Pembina County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35340	Pierce County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35350	Ramsey County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35360	Ransom County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35370	Renville County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35380	Richland County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35390	Rolette County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35400	Sargent County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35410	Sheridan County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35420	Sioux County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35430	Slope County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35440	Stark County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35450	Steele County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35460	Stutsman County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35470	Towner County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35480	Traill County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35490	Walsh County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35500	Ward County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35510	Wells County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
35520	Williams County, N Dakota	35	Rural	0.7261	99935	Rural	0.7261
36000	Adams County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36010	Allen County, Ohio	4320	Urban	0.9119	30620	Urban	0.9225
36020	Ashland County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36030	Ashtabula County, Ohio	1680	Urban	0.9183	99936	Rural	0.8826
36040	Athens County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36050	Auglaize County, Ohio	4320	Urban	0.9119	99936	Rural	0.8826
36060	Belmont County, Ohio	9000	Urban	0.7161	48540	Urban	0.7161
36070	Brown County, Ohio	1640	Urban	0.9734	17140	Urban	0.9615
36080	Butler County, Ohio	3200	Urban	0.8951	17140	Urban	0.9615
36090	Carroll County, Ohio	1320	Urban	0.8935	15940	Urban	0.8935
36100	Champaign County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36110	Clark County, Ohio	2000	Urban	0.8980	44220	Urban	0.8396
36120	Clermont County, Ohio	1640	Urban	0.9734	17140	Urban	0.9615
36130	Clinton County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36140	Columbiana County, Ohio	9320	Urban	0.8848	99936	Rural	0.8826
36150	Coshocton County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36160	Crawford County, Ohio	4800	Urban	0.9891	99936	Rural	0.8826
36170	Cuyahoga County, Ohio	1680	Urban	0.9183	17460	Urban	0.9213
36190	Darke County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36200	Defiance County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36210	Delaware County, Ohio	1840	Urban	0.9874	18140	Urban	0.9860
36220	Erie County, Ohio	36	Rural	0.8921	41780	Urban	0.9019
36230	Fairfield County, Ohio	1840	Urban	0.9874	18140	Urban	0.9860
36240	Fayette County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36250	Franklin County, Ohio	1840	Urban	0.9874	18140	Urban	0.9860
36260	Fulton County, Ohio	8400	Urban	0.9574	45780	Urban	0.9574
36270	Gallia County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36280	Geauga County, Ohio	1680	Urban	0.9183	17460	Urban	0.9213
36290	Greene County, Ohio	2000	Urban	0.8980	19380	Urban	0.9064
36300	Guernsey County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36310	Hamilton County, Ohio	1640	Urban	0.9734	17140	Urban	0.9615
36330	Hancock County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36340	Hardin County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36350	Harrison County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36360	Henry County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36370	Highland County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36380	Hocking County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36390	Holmes County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36400	Huron County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36410	Jackson County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36420	Jefferson County, Ohio	8080	Urban	0.7819	48260	Urban	0.7819
36430	Knox County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36440	Lake County, Ohio	1680	Urban	0.9183	17460	Urban	0.9213
36450	Lawrence County, Ohio	3400	Urban	0.9477	26580	Urban	0.9477
36460	Licking County, Ohio	1840	Urban	0.9874	18140	Urban	0.9860
36470	Logan County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36480	Lorain County, Ohio	1680	Urban	0.9183	17460	Urban	0.9213
36490	Lucas County, Ohio	8400	Urban	0.9574	45780	Urban	0.9574
36500	Madison County, Ohio	1840	Urban	0.9874	18140	Urban	0.9860
36510	Mahoning County, Ohio	9320	Urban	0.8848	49660	Urban	0.8603

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36520	Marion County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36530	Medina County, Ohio	1680	Urban	0.9183	17460	Urban	0.9213
36540	Meigs County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36550	Mercer County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36560	Miami County, Ohio	2000	Urban	0.8980	19380	Urban	0.9064
36570	Monroe County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36580	Montgomery County, Ohio	2000	Urban	0.8980	19380	Urban	0.9064
36590	Morgan County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36600	Morrow County, Ohio	36	Rural	0.8921	18140	Urban	0.9860
36610	Muskingum County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36620	Noble County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36630	Ottawa County, Ohio	36	Rural	0.8921	45780	Urban	0.9574
36640	Paulding County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36650	Perry County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36660	Pickaway County, Ohio	1840	Urban	0.9874	18140	Urban	0.9860
36670	Pike County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36680	Portage County, Ohio	0080	Urban	0.8982	10420	Urban	0.8982
36690	Preble County, Ohio	36	Rural	0.8921	19380	Urban	0.9064
36700	Putnam County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36710	Richland County, Ohio	4800	Urban	0.9891	31900	Urban	0.9891
36720	Ross County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36730	Sandusky County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36740	Scioto County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36750	Seneca County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36760	Shelby County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36770	Stark County, Ohio	1320	Urban	0.8935	15940	Urban	0.8935
36780	Summit County, Ohio	0080	Urban	0.8982	10420	Urban	0.8982
36790	Trumbull County, Ohio	9320	Urban	0.8848	49660	Urban	0.8603
36800	Tuscarawas County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36810	Union County, Ohio	36	Rural	0.8921	18140	Urban	0.9860
36820	Van Wert County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36830	Vinton County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36840	Warren County, Ohio	1640	Urban	0.9734	17140	Urban	0.9615
36850	Washington County, Ohio	6020	Urban	0.8270	37620	Urban	0.8270
36860	Wayne County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36870	Williams County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
36880	Wood County, Ohio	8400	Urban	0.9574	45780	Urban	0.9574
36890	Wyandot County, Ohio	36	Rural	0.8921	99936	Rural	0.8826
37000	Adair County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37010	Alfalfa County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37020	Atoka County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37030	Beaver County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37040	Beckham County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37050	Blaine County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37060	Bryan County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37070	Caddo County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37080	Canadian County, Oklahoma	5880	Urban	0.9025	36420	Urban	0.9031
37090	Carter County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37100	Cherokee County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37110	Choctaw County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37120	Cimarron County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37130	Cleveland County, Oklahoma	5880	Urban	0.9025	36420	Urban	0.9031
37140	Coal County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37150	Comanche County, Oklahoma	4200	Urban	0.7872	30020	Urban	0.7872
37160	Cotton County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37170	Craig County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37180	Creek County, Oklahoma	8560	Urban	0.8587	46140	Urban	0.8543
37190	Custer County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37200	Delaware County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37210	Dewey County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37220	Ellis County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37230	Garfield County, Oklahoma	2340	Urban	0.8666	99937	Rural	0.7581
37240	Garvin County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37250	Grady County, Oklahoma	37	Rural	0.7442	36420	Urban	0.9031
37260	Grant County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37270	Greer County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37280	Harmon County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37290	Harper County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37300	Haskell County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37310	Hughes County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37320	Jackson County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581

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37330	Jefferson County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37340	Johnston County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37350	Kay County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37360	Kingfisher County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37370	Kiowa County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37380	Latimer County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37390	Le Flore County, Oklahoma	37	Rural	0.7442	22900	Urban	0.8230
37400	Lincoln County, Oklahoma	37	Rural	0.7442	36420	Urban	0.9031
37410	Logan County, Oklahoma	5880	Urban	0.9025	36420	Urban	0.9031
37420	Love County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37430	Mc Clain County, Oklahoma	5880	Urban	0.9025	36420	Urban	0.9031
37440	Mc Curtain County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37450	Mc Intosh County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37460	Major County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37470	Marshall County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37480	Mayes County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37490	Murray County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37500	Muskogee County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37510	Noble County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37520	Nowata County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37530	Okfuskee County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37540	Oklahoma County, Oklahoma	5880	Urban	0.9025	36420	Urban	0.9031
37550	Okmulgee County, Oklahoma	37	Rural	0.7442	46140	Urban	0.8543
37560	Osage County, Oklahoma	8560	Urban	0.8587	46140	Urban	0.8543
37570	Ottawa County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37580	Pawnee County, Oklahoma	37	Rural	0.7442	46140	Urban	0.8543
37590	Payne County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37600	Pittsburg County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37610	Pontotoc County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37620	Pottawatomie County, Oklahoma	5880	Urban	0.9025	99937	Rural	0.7581
37630	Pushmataha County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37640	Roger Mills County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37650	Rogers County, Oklahoma	8560	Urban	0.8587	46140	Urban	0.8543
37660	Seminole County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37670	Sequoyah County, Oklahoma	2720	Urban	0.8246	22900	Urban	0.8230
37680	Stephens County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37690	Texas County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37700	Tillman County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37710	Tulsa County, Oklahoma	8560	Urban	0.8587	46140	Urban	0.8543
37720	Wagoner County, Oklahoma	8560	Urban	0.8587	46140	Urban	0.8543
37730	Washington County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37740	Washita County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37750	Woods County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
37760	Woodward County, Oklahoma	37	Rural	0.7442	99937	Rural	0.7581
38000	Baker County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38010	Benton County, Oregon	1890	Urban	1.0729	18700	Urban	1.0729
38020	Clackamas County, Oregon	6440	Urban	1.1266	38900	Urban	1.1266
38030	Clatsop County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38040	Columbia County, Oregon	6440	Urban	1.1266	38900	Urban	1.1266
38050	Coos County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38060	Crook County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38070	Curry County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38080	Deschutes County, Oregon	38	Rural	1.0052	13460	Urban	1.0786
38090	Douglas County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38100	Gilliam County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38110	Grant County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38120	Harney County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38130	Hood River County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38140	Jackson County, Oregon	4890	Urban	1.0225	32780	Urban	1.0225
38150	Jefferson County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38160	Josephine County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38170	Klamath County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38180	Lake County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38190	Lane County, Oregon	2400	Urban	1.0818	21660	Urban	1.0818
38200	Lincoln County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38210	Linn County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38220	Malheur County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38230	Marion County, Oregon	7080	Urban	1.0442	41420	Urban	1.0442
38240	Morrow County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38250	Multnomah County, Oregon	6440	Urban	1.1266	38900	Urban	1.1266
38260	Polk County, Oregon	7080	Urban	1.0442	41420	Urban	1.0442

SSA State/ County Code	County name	MSA Number	MSA Urban/ Rural	2006 MSA- based WI	CBSA Number	CBSA Urban/ Rural	2006 CBSA- based WI
38270	Sherman County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38280	Tillamook County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38290	Umatilla County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38300	Union County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38310	Wallowa County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38320	Wasco County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38330	Washington County, Oregon	6440	Urban	1.1266	38900	Urban	1.1266
38340	Wheeler County, Oregon	38	Rural	1.0052	99938	Rural	0.9826
38350	Yamhill County, Oregon	6440	Urban	1.1266	38900	Urban	1.1266
39000	Adams County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39010	Allegheny County, Pennsylvania	6280	Urban	0.8860	38300	Urban	0.8845
39070	Armstrong County, Pennsylvania	39	Rural	0.8319	38300	Urban	0.8845
39080	Beaver County, Pennsylvania	6280	Urban	0.8860	38300	Urban	0.8845
39100	Bedford County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39110	Berks County, Pennsylvania	6680	Urban	0.9686	39740	Urban	0.9686
39120	Blair County, Pennsylvania	0280	Urban	0.8944	11020	Urban	0.8944
39130	Bradford County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39140	Bucks County, Pennsylvania	6160	Urban	1.0922	37964	Urban	1.1038
39150	Butler County, Pennsylvania	6280	Urban	0.8860	38300	Urban	0.8845
39160	Cambria County, Pennsylvania	3680	Urban	0.8086	27780	Urban	0.8354
39180	Cameron County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39190	Carbon County, Pennsylvania	0240	Urban	0.9845	10900	Urban	0.9818
39200	Centre County, Pennsylvania	8050	Urban	0.8356	44300	Urban	0.8356
39210	Chester County, Pennsylvania	6160	Urban	1.0922	37964	Urban	1.1038
39220	Clarion County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39230	Clearfield County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39240	Clinton County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39250	Columbia County, Pennsylvania	7560	Urban	0.8524	99939	Rural	0.8291
39260	Crawford County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39270	Cumberland County, Pennsylvania	3240	Urban	0.9233	25420	Urban	0.9313
39280	Dauphin County, Pennsylvania	3240	Urban	0.9233	25420	Urban	0.9313
39290	Delaware County, Pennsylvania	6160	Urban	1.0922	37964	Urban	1.1038
39310	Elk County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39320	Erie County, Pennsylvania	2360	Urban	0.8737	21500	Urban	0.8737
39330	Fayette County, Pennsylvania	6280	Urban	0.8860	38300	Urban	0.8845
39340	Forest County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39350	Franklin County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39360	Fulton County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39370	Greene County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39380	Huntingdon County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39390	Indiana County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39400	Jefferson County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39410	Juniata County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39420	Lackawanna County, Pennsylvania	7560	Urban	0.8524	42540	Urban	0.8540
39440	Lancaster County, Pennsylvania	4000	Urban	0.9694	29540	Urban	0.9694
39450	Lawrence County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39460	Lebanon County, Pennsylvania	3240	Urban	0.9233	30140	Urban	0.8459
39470	Lehigh County, Pennsylvania	0240	Urban	0.9845	10900	Urban	0.9818
39480	Luzerne County, Pennsylvania	7560	Urban	0.8524	42540	Urban	0.8540
39510	Lycoming County, Pennsylvania	9140	Urban	0.8364	48700	Urban	0.8364
39520	Mc Kean County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39530	Mercer County, Pennsylvania	7610	Urban	0.7793	49660	Urban	0.8603
39540	Mifflin County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39550	Monroe County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39560	Montgomery County, Pennsylvania	6160	Urban	1.0922	37964	Urban	1.1038
39580	Montour County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39590	Northampton County, Pennsylvania	0240	Urban	0.9845	10900	Urban	0.9818
39600	Northumberland County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39610	Perry County, Pennsylvania	3240	Urban	0.9233	25420	Urban	0.9313
39620	Philadelphia County, Pennsylvania	6160	Urban	1.0922	37964	Urban	1.1038
39630	Pike County, Pennsylvania	5660	Urban	1.1207	35084	Urban	1.1883
39640	Potter County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39650	Schuylkill County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39670	Snyder County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39680	Somerset County, Pennsylvania	3680	Urban	0.8086	99939	Rural	0.8291
39690	Sullivan County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39700	Susquehanna County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39710	Tioga County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39720	Union County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39730	Venango County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39740	Warren County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291

SSA State/ County Code	County name	MSA Number	MSA Urban/ Rural	2006 MSA- based WI	CBSA Number	CBSA Urban/ Rural	2006 CBSA- based WI
39750	Washington County, Pennsylvania	6280	Urban	0.8860	38300	Urban	0.8845
39760	Wayne County, Pennsylvania	39	Rural	0.8319	99939	Rural	0.8291
39770	Westmoreland County, Pennsylvania	6280	Urban	0.8860	38300	Urban	0.8845
39790	Wyoming County, Pennsylvania	7560	Urban	0.8524	42540	Urban	0.8540
39800	York County, Pennsylvania	9280	Urban	0.9347	49620	Urban	0.9347
40010	Adjuntas County, Puerto Rico	40	Rural	0.3604	99940	Rural	0.4047
40020	Aguada County, Puerto Rico	0060	Urban	0.4876	10380	Urban	0.4738
40030	Aguadilla County, Puerto Rico	0060	Urban	0.4876	10380	Urban	0.4738
40040	Aguas Buenas County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40050	Aibonito County, Puerto Rico	40	Rural	0.3604	41980	Urban	0.4621
40060	Anasco County, Puerto Rico	4840	Urban	0.4243	10380	Urban	0.4738
40070	Arecibo County, Puerto Rico	0470	Urban	0.4112	41980	Urban	0.4621
40080	Arroyo County, Puerto Rico	40	Rural	0.3604	25020	Urban	0.3181
40090	Barceloneta County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40100	Barranquitas County, Puerto Rico	40	Rural	0.3604	41980	Urban	0.4621
40110	Bayamon County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40120	Cabo Rojo County, Puerto Rico	4840	Urban	0.4243	41900	Urban	0.4650
40130	Caguas County, Puerto Rico	1310	Urban	0.4120	41980	Urban	0.4621
40140	Camuy County, Puerto Rico	0470	Urban	0.4112	41980	Urban	0.4621
40145	Canovanas County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40150	Carolina County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40160	Catano County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40170	Cayey County, Puerto Rico	1310	Urban	0.4120	41980	Urban	0.4621
40180	Ceiba County, Puerto Rico	7440	Urban	0.4752	21940	Urban	0.4153
40190	Ciales County, Puerto Rico	40	Rural	0.3604	41980	Urban	0.4621
40200	Cidra County, Puerto Rico	1310	Urban	0.4120	41980	Urban	0.4621
40210	Coamo County, Puerto Rico	40	Rural	0.3604	99940	Rural	0.4047
40220	Comerio County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40230	Corozal County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40240	Culebra County, Puerto Rico	40	Rural	0.3604	99940	Rural	0.4047
40250	Dorado County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40260	Fajardo County, Puerto Rico	7440	Urban	0.4752	21940	Urban	0.4153
40265	Florida County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40270	Guanica County, Puerto Rico	40	Rural	0.3604	49500	Urban	0.4408
40280	Guayama County, Puerto Rico	40	Rural	0.3604	25020	Urban	0.3181
40290	Guayanilla County, Puerto Rico	6360	Urban	0.4881	49500	Urban	0.4408
40300	Guaynabo County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40310	Gurabo County, Puerto Rico	1310	Urban	0.4120	41980	Urban	0.4621
40320	Hatillo County, Puerto Rico	0470	Urban	0.4112	41980	Urban	0.4621
40330	Hormigueros County, Puerto Rico	4840	Urban	0.4243	32420	Urban	0.4020
40340	Humacao County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40350	Isabela County, Puerto Rico	40	Rural	0.3604	10380	Urban	0.4738
40360	Jayuya County, Puerto Rico	40	Rural	0.3604	99940	Rural	0.4047
40370	Juana Diaz County, Puerto Rico	6360	Urban	0.4881	38660	Urban	0.4939
40380	Juncos County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40390	Lajas County, Puerto Rico	40	Rural	0.3604	41900	Urban	0.4650
40400	Lares County, Puerto Rico	40	Rural	0.3604	10380	Urban	0.4738
40410	Las Marias County, Puerto Rico	40	Rural	0.3604	99940	Rural	0.4047
40420	Las Piedras County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40430	Loiza County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40440	Luquillo County, Puerto Rico	7440	Urban	0.4752	21940	Urban	0.4153
40450	Manati County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40460	Maricao County, Puerto Rico	40	Rural	0.3604	99940	Rural	0.4047
40470	Maunabo County, Puerto Rico	40	Rural	0.3604	41980	Urban	0.4621
40480	Mayaguez County, Puerto Rico	4840	Urban	0.4243	32420	Urban	0.4020
40490	Moca County, Puerto Rico	0060	Urban	0.4876	10380	Urban	0.4738
40500	Morovis County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40510	Naguabo County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40520	Naranjito County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40530	Orocovis County, Puerto Rico	40	Rural	0.3604	41980	Urban	0.4621
40540	Patillas County, Puerto Rico	40	Rural	0.3604	25020	Urban	0.3181
40550	Penuelas County, Puerto Rico	6360	Urban	0.4881	49500	Urban	0.4408
40560	Ponce County, Puerto Rico	6360	Urban	0.4881	38660	Urban	0.4939
40570	Quebradillas County, Puerto Rico	40	Rural	0.3604	41980	Urban	0.4621
40580	Rincon County, Puerto Rico	40	Rural	0.3604	10380	Urban	0.4738
40590	Rio Grande County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40610	Sabana Grande County, Puerto Rico	4840	Urban	0.4243	41900	Urban	0.4650
40620	Salinas County, Puerto Rico	40	Rural	0.3604	99940	Rural	0.4047
40630	San German County, Puerto Rico	4840	Urban	0.4243	41900	Urban	0.4650
40640	San Juan County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40650	San Lorenzo County, Puerto Rico	1310	Urban	0.4120	41980	Urban	0.4621

SSA State/County Code	County name	MSA Number	MSA Urban/Rural	2006 MSA-based WI	CBSA Number	CBSA Urban/Rural	2006 CBSA-based WI
40660	San Sebastian County, Puerto Rico	40	Rural	0.3604	10380	Urban	0.4738
40670	Santa Isabel County, Puerto Rico	40	Rural	0.3604	99940	Rural	0.4047
40680	Toa Alta County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40690	Toa Baja County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40700	Trujillo Alto County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40710	Utua County, Puerto Rico	40	Rural	0.3604	99940	Rural	0.4047
40720	Vega Alta County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40730	Vega Baja County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40740	Vieques County, Puerto Rico	40	Rural	0.3604	99940	Rural	0.4047
40750	Villalba County, Puerto Rico	6360	Urban	0.4881	38660	Urban	0.4939
40760	Yabucoa County, Puerto Rico	7440	Urban	0.4752	41980	Urban	0.4621
40770	Yauco County, Puerto Rico	6360	Urban	0.4881	49500	Urban	0.4408
41000	Bristol County, Rhode Island	6483	Urban	1.1058	39300	Urban	1.0966
41010	Kent County, Rhode Island	6483	Urban	1.1058	39300	Urban	1.0966
41020	Newport County, Rhode Island	6483	Urban	1.1058	39300	Urban	1.0966
41030	Providence County, Rhode Island	6483	Urban	1.1058	39300	Urban	1.0966
41050	Washington County, Rhode Island	6483	Urban	1.1058	39300	Urban	1.0966
42000	Abbeville County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42010	Aiken County, S Carolina	0600	Urban	0.9808	12260	Urban	0.9748
42020	Allendale County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42030	Anderson County, S Carolina	3160	Urban	0.9615	11340	Urban	0.8997
42040	Bamberg County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42050	Barnwell County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42060	Beaufort County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42070	Berkeley County, S Carolina	1440	Urban	0.9245	16700	Urban	0.9245
42080	Calhoun County, S Carolina	42	Rural	0.8631	17900	Urban	0.9057
42090	Charleston County, S Carolina	1440	Urban	0.9245	16700	Urban	0.9245
42100	Cherokee County, S Carolina	3160	Urban	0.9615	99942	Rural	0.8638
42110	Chester County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42120	Chesterfield County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42130	Clarendon County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42140	Colleton County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42150	Darlington County, S Carolina	42	Rural	0.8631	22500	Urban	0.8947
42160	Dillon County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42170	Dorchester County, S Carolina	1440	Urban	0.9245	16700	Urban	0.9245
42180	Edgefield County, S Carolina	0600	Urban	0.9808	12260	Urban	0.9748
42190	Fairfield County, S Carolina	42	Rural	0.8631	17900	Urban	0.9057
42200	Florence County, S Carolina	2655	Urban	0.9042	22500	Urban	0.8947
42210	Georgetown County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42220	Greenville County, S Carolina	3160	Urban	0.9615	24860	Urban	1.0027
42230	Greenwood County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42240	Hampton County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42250	Horry County, S Carolina	5330	Urban	0.8934	34820	Urban	0.8934
42260	Jasper County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42270	Kershaw County, S Carolina	42	Rural	0.8631	17900	Urban	0.9057
42280	Lancaster County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42290	Laurens County, S Carolina	42	Rural	0.8631	24860	Urban	1.0027
42300	Lee County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42310	Lexington County, S Carolina	1760	Urban	0.9082	17900	Urban	0.9057
42320	Mc Cormick County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42330	Marion County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42340	Marlboro County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42350	Newberry County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42360	Oconee County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42370	Orangeburg County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42380	Pickens County, S Carolina	3160	Urban	0.9615	24860	Urban	1.0027
42390	Richland County, S Carolina	1760	Urban	0.9082	17900	Urban	0.9057
42400	Saluda County, S Carolina	42	Rural	0.8631	17900	Urban	0.9057
42410	Spartanburg County, S Carolina	3160	Urban	0.9615	43900	Urban	0.9172
42420	Sumter County, S Carolina	8140	Urban	0.8377	44940	Urban	0.8377
42430	Union County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42440	Williamsburg County, S Carolina	42	Rural	0.8631	99942	Rural	0.8638
42450	York County, S Carolina	1520	Urban	0.9715	16740	Urban	0.9750
43010	Aurora County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43020	Beadle County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43030	Bennett County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43040	Bon Homme County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43050	Brookings County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43060	Brown County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43070	Brule County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43080	Buffalo County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560



SSA State/ County Code	County name	MSA Number	MSA Urban/ Rural	2006 MSA- based WI	CBSA Number	CBSA Urban/ Rural	2006 CBSA- based WI
43090	Butte County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43100	Campbell County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43110	Charles Mix County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43120	Clark County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43130	Clay County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43140	Codington County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43150	Corson County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43160	Custer County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43170	Davison County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43180	Day County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43190	Deuel County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43200	Dewey County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43210	Douglas County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43220	Edmunds County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43230	Fall River County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43240	Faulk County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43250	Grant County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43260	Gregory County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43270	Haakon County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43280	Hamlin County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43290	Hand County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43300	Hanson County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43310	Harding County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43320	Hughes County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43330	Hutchinson County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43340	Hyde County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43350	Jackson County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43360	Jerauld County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43370	Jones County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43380	Kingsbury County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43390	Lake County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43400	Lawrence County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43410	Lincoln County, S Dakota	7760	Urban	0.9635	43620	Urban	0.9635
43420	Lyman County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43430	Mc Cook County, S Dakota	43	Rural	0.8551	43620	Urban	0.9635
43440	Mc Pherson County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43450	Marshall County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43460	Meade County, S Dakota	43	Rural	0.8551	39660	Urban	0.8987
43470	Mellette County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43480	Miner County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43490	Minnehaha County, S Dakota	7760	Urban	0.9635	43620	Urban	0.9635
43500	Moody County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43510	Pennington County, S Dakota	6660	Urban	0.8987	39660	Urban	0.8987
43520	Perkins County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43530	Potter County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43540	Roberts County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43550	Sanborn County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43560	Shannon County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43570	Spink County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43580	Stanley County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43590	Sully County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43600	Todd County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43610	Tripp County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43620	Turner County, S Dakota	43	Rural	0.8551	43620	Urban	0.9635
43630	Union County, S Dakota	43	Rural	0.8551	43580	Urban	0.9381
43640	Walworth County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43650	Washabaugh County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43670	Yankton County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
43680	Ziebach County, S Dakota	43	Rural	0.8551	99943	Rural	0.8560
44000	Anderson County, Tennessee	3840	Urban	0.8397	28940	Urban	0.8441
44010	Bedford County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44020	Benton County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44030	Bledsoe County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44040	Blount County, Tennessee	3840	Urban	0.8397	28940	Urban	0.8441
44050	Bradley County, Tennessee	44	Rural	0.7935	17420	Urban	0.8139
44060	Campbell County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44070	Cannon County, Tennessee	44	Rural	0.7935	34980	Urban	0.9790
44080	Carroll County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44090	Carter County, Tennessee	3660	Urban	0.8007	27740	Urban	0.7937
44100	Cheatham County, Tennessee	5360	Urban	0.9808	34980	Urban	0.9790
44110	Chester County, Tennessee	3580	Urban	0.8964	27180	Urban	0.8964

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44120	Claiborne County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44130	Clay County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44140	Cocke County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44150	Coffee County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44160	Crockett County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44170	Cumberland County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44180	Davidson County, Tennessee	5360	Urban	0.9808	34980	Urban	0.9790
44190	Decatur County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44200	De Kalb County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44210	Dickson County, Tennessee	5360	Urban	0.9808	34980	Urban	0.9790
44220	Dyer County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44230	Fayette County, Tennessee	4920	Urban	0.9416	32820	Urban	0.9397
44240	Fentress County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44250	Franklin County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44260	Gibson County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44270	Giles County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44280	Grainger County, Tennessee	44	Rural	0.7935	34100	Urban	0.7961
44290	Greene County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44300	Grundy County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44310	Hamblen County, Tennessee	44	Rural	0.7935	34100	Urban	0.7961
44320	Hamilton County, Tennessee	1560	Urban	0.9088	16860	Urban	0.9088
44330	Hancock County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44340	Hardeman County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44350	Hardin County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44360	Hawkins County, Tennessee	3660	Urban	0.8007	28700	Urban	0.8054
44370	Haywood County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44380	Henderson County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44390	Henry County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44400	Hickman County, Tennessee	44	Rural	0.7935	34980	Urban	0.9790
44410	Houston County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44420	Humphreys County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44430	Jackson County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44440	Jefferson County, Tennessee	44	Rural	0.7935	34100	Urban	0.7961
44450	Johnson County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44460	Knox County, Tennessee	3840	Urban	0.8397	28940	Urban	0.8441
44470	Lake County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44480	Lauderdale County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44490	Lawrence County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44500	Lewis County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44510	Lincoln County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44520	Loudon County, Tennessee	3840	Urban	0.8397	28940	Urban	0.8441
44530	Mc Minn County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44540	Mc Nairy County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44550	Macon County, Tennessee	44	Rural	0.7935	34980	Urban	0.9790
44560	Madison County, Tennessee	3580	Urban	0.8964	27180	Urban	0.8964
44570	Marion County, Tennessee	1560	Urban	0.9088	16860	Urban	0.9088
44580	Marshall County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44590	Maury County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44600	Meigs County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44610	Monroe County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44620	Montgomery County, Tennessee	1660	Urban	0.8284	17300	Urban	0.8284
44630	Moore County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44640	Morgan County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44650	Obion County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44660	Overton County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44670	Perry County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44680	Pickett County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44690	Polk County, Tennessee	44	Rural	0.7935	17420	Urban	0.8139
44700	Putnam County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44710	Rhea County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44720	Roane County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44730	Robertson County, Tennessee	5360	Urban	0.9808	34980	Urban	0.9790
44740	Rutherford County, Tennessee	5360	Urban	0.9808	34980	Urban	0.9790
44750	Scott County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44760	Sequatchie County, Tennessee	44	Rural	0.7935	16860	Urban	0.9088
44770	Sevier County, Tennessee	3840	Urban	0.8397	99944	Rural	0.7895
44780	Shelby County, Tennessee	4920	Urban	0.9416	32820	Urban	0.9397
44790	Smith County, Tennessee	44	Rural	0.7935	34980	Urban	0.9790
44800	Stewart County, Tennessee	44	Rural	0.7935	17300	Urban	0.8284
44810	Sullivan County, Tennessee	3660	Urban	0.8007	28700	Urban	0.8054
44820	Sumner County, Tennessee	5360	Urban	0.9808	34980	Urban	0.9790

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44830	Tipton County, Tennessee	4920	Urban	0.9416	32820	Urban	0.9397
44840	Trousdale County, Tennessee	44	Rural	0.7935	34980	Urban	0.9790
44850	Unicoi County, Tennessee	3660	Urban	0.8007	27740	Urban	0.7937
44860	Union County, Tennessee	3840	Urban	0.8397	28940	Urban	0.8441
44870	Van Buren County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44880	Warren County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44890	Washington County, Tennessee	3660	Urban	0.8007	27740	Urban	0.7937
44900	Wayne County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44910	Weakley County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44920	White County, Tennessee	44	Rural	0.7935	99944	Rural	0.7895
44930	Williamson County, Tennessee	5360	Urban	0.9808	34980	Urban	0.9790
44940	Wilson County, Tennessee	5360	Urban	0.9808	34980	Urban	0.9790
45000	Anderson County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45010	Andrews County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45020	Angelina County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45030	Aransas County, Texas	45	Rural	0.7931	18580	Urban	0.8550
45040	Archer County, Texas	9080	Urban	0.8365	48660	Urban	0.8285
45050	Armstrong County, Texas	45	Rural	0.7931	11100	Urban	0.9156
45060	Atascosa County, Texas	45	Rural	0.7931	41700	Urban	0.8980
45070	Austin County, Texas	45	Rural	0.7931	26420	Urban	0.9996
45080	Bailey County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45090	Bandera County, Texas	45	Rural	0.7931	41700	Urban	0.8980
45100	Bastrop County, Texas	0640	Urban	0.9437	12420	Urban	0.9437
45110	Baylor County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45113	Bee County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45120	Bell County, Texas	3810	Urban	0.8526	28660	Urban	0.8526
45130	Bexar County, Texas	7240	Urban	0.8984	41700	Urban	0.8980
45140	Blanco County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45150	Borden County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45160	Bosque County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45170	Bowie County, Texas	8360	Urban	0.8283	45500	Urban	0.8283
45180	Brazoria County, Texas	1145	Urban	0.8563	26420	Urban	0.9996
45190	Brazos County, Texas	1260	Urban	0.8900	17780	Urban	0.8900
45200	Brewster County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45201	Briscoe County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45210	Brooks County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45220	Brown County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45221	Burleson County, Texas	45	Rural	0.7931	17780	Urban	0.8900
45222	Burnet County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45223	Caldwell County, Texas	0640	Urban	0.9437	12420	Urban	0.9437
45224	Calhoun County, Texas	45	Rural	0.7931	47020	Urban	0.8160
45230	Callahan County, Texas	45	Rural	0.7931	10180	Urban	0.7896
45240	Cameron County, Texas	1240	Urban	0.9804	15180	Urban	0.9804
45250	Camp County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45251	Carson County, Texas	45	Rural	0.7931	11100	Urban	0.9156
45260	Cass County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45270	Castro County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45280	Chambers County, Texas	3360	Urban	1.0091	26420	Urban	0.9996
45281	Cherokee County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45290	Childress County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45291	Clay County, Texas	45	Rural	0.7931	48660	Urban	0.8285
45292	Cochran County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45300	Coke County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45301	Coleman County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45310	Collin County, Texas	1920	Urban	1.0205	19124	Urban	1.0228
45311	Collingsworth County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45312	Colorado County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45320	Comal County, Texas	7240	Urban	0.8984	41700	Urban	0.8980
45321	Comanche County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45330	Concho County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45340	Cooke County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45341	Coryell County, Texas	3810	Urban	0.8526	28660	Urban	0.8526
45350	Cottle County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45360	Crane County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45361	Crockett County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45362	Crosby County, Texas	45	Rural	0.7931	31180	Urban	0.8783
45370	Culberson County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45380	Dallam County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45390	Dallas County, Texas	1920	Urban	1.0205	19124	Urban	1.0228
45391	Dawson County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45392	Deaf Smith County, Texas	45	Rural	0.7931	99945	Rural	0.8003

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45400	Delta County, Texas	45	Rural	0.7931	19124	Urban	1.0228
45410	Denton County, Texas	1920	Urban	1.0205	19124	Urban	1.0228
45420	De Witt County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45421	Dickens County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45430	Dimmit County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45431	Donley County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45440	Duval County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45450	Eastland County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45451	Ector County, Texas	5800	Urban	0.9741	36220	Urban	0.9884
45460	Edwards County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45470	Ellis County, Texas	1920	Urban	1.0205	19124	Urban	1.0228
45480	El Paso County, Texas	2320	Urban	0.8977	21340	Urban	0.8977
45490	Erath County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45500	Falls County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45510	Fannin County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45511	Fayette County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45520	Fisher County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45521	Floyd County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45522	Foard County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45530	Fort Bend County, Texas	3360	Urban	1.0091	26420	Urban	0.9996
45531	Franklin County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45540	Freestone County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45541	Frio County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45542	Gaines County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45550	Galveston County, Texas	2920	Urban	0.9635	26420	Urban	0.9996
45551	Garza County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45552	Gillespie County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45560	Glasscock County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45561	Goliad County, Texas	45	Rural	0.7931	47020	Urban	0.8160
45562	Gonzales County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45563	Gray County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45564	Grayson County, Texas	7640	Urban	0.9507	43300	Urban	0.9507
45570	Gregg County, Texas	4420	Urban	0.8888	30980	Urban	0.8730
45580	Grimes County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45581	Guadalupe County, Texas	7240	Urban	0.8984	41700	Urban	0.8980
45582	Hale County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45583	Hall County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45590	Hamilton County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45591	Hansford County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45592	Hardeman County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45600	Hardin County, Texas	0840	Urban	0.8412	13140	Urban	0.8412
45610	Harris County, Texas	3360	Urban	1.0091	26420	Urban	0.9996
45620	Harrison County, Texas	4420	Urban	0.8888	99945	Rural	0.8003
45621	Hartley County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45630	Haskell County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45631	Hays County, Texas	0640	Urban	0.9437	12420	Urban	0.9437
45632	Hemphill County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45640	Henderson County, Texas	1920	Urban	1.0205	99945	Rural	0.8003
45650	Hidalgo County, Texas	4880	Urban	0.8934	32580	Urban	0.8934
45651	Hill County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45652	Hockley County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45653	Hood County, Texas	2800	Urban	0.9522	99945	Rural	0.8003
45654	Hopkins County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45660	Houston County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45661	Howard County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45662	Hudspeth County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45670	Hunt County, Texas	1920	Urban	1.0205	19124	Urban	1.0228
45671	Hutchinson County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45672	Irion County, Texas	45	Rural	0.7931	41660	Urban	0.8271
45680	Jack County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45681	Jackson County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45690	Jasper County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45691	Jeff Davis County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45700	Jefferson County, Texas	0840	Urban	0.8412	13140	Urban	0.8412
45710	Jim Hogg County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45711	Jim Wells County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45720	Johnson County, Texas	2800	Urban	0.9522	23104	Urban	0.9486
45721	Jones County, Texas	45	Rural	0.7931	10180	Urban	0.7896
45722	Karnes County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45730	Kaufman County, Texas	1920	Urban	1.0205	19124	Urban	1.0228
45731	Kendall County, Texas	45	Rural	0.7931	41700	Urban	0.8980

SSA State/County Code	County name	MSA Number	MSA Urban/Rural	2006 MSA-based WI	CBSA Number	CBSA Urban/Rural	2006 CBSA-based WI
45732	Kenedy County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45733	Kent County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45734	Kerr County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45740	Kimble County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45741	King County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45742	Kinney County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45743	Kleberg County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45744	Knox County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45750	Lamar County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45751	Lamb County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45752	Lampasas County, Texas	45	Rural	0.7931	28660	Urban	0.8526
45753	La Salle County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45754	Lavaca County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45755	Lee County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45756	Leon County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45757	Liberty County, Texas	3360	Urban	1.0091	26420	Urban	0.9996
45758	Limestone County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45759	Lipscomb County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45760	Live Oak County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45761	Llano County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45762	Loving County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45770	Lubbock County, Texas	4600	Urban	0.8783	31180	Urban	0.8783
45771	Lynn County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45772	Mc Culloch County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45780	Mc Lennan County, Texas	8800	Urban	0.8518	47380	Urban	0.8518
45781	Mc Mullen County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45782	Madison County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45783	Marion County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45784	Martin County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45785	Mason County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45790	Matagorda County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45791	Maverick County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45792	Medina County, Texas	45	Rural	0.7931	41700	Urban	0.8980
45793	Menard County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45794	Midland County, Texas	5800	Urban	0.9741	33260	Urban	0.9514
45795	Milam County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45796	Mills County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45797	Mitchell County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45800	Montague County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45801	Montgomery County, Texas	3360	Urban	1.0091	26420	Urban	0.9996
45802	Moore County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45803	Morris County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45804	Motley County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45810	Nacogdoches County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45820	Navarro County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45821	Newton County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45822	Nolan County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45830	Nueces County, Texas	1880	Urban	0.8550	18580	Urban	0.8550
45831	Ochiltree County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45832	Oldham County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45840	Orange County, Texas	0840	Urban	0.8412	13140	Urban	0.8412
45841	Palo Pinto County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45842	Panola County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45843	Parker County, Texas	2800	Urban	0.9522	23104	Urban	0.9486
45844	Parmer County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45845	Pecos County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45850	Polk County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45860	Potter County, Texas	0320	Urban	0.9156	11100	Urban	0.9156
45861	Presidio County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45870	Rains County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45871	Randall County, Texas	0320	Urban	0.9156	11100	Urban	0.9156
45872	Reagan County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45873	Real County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45874	Red River County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45875	Reeves County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45876	Refugio County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45877	Roberts County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45878	Robertson County, Texas	45	Rural	0.7931	17780	Urban	0.8900
45879	Rockwall County, Texas	1920	Urban	1.0205	19124	Urban	1.0228
45880	Runnels County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45881	Rusk County, Texas	45	Rural	0.7931	30980	Urban	0.8730

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45882	Sabine County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45883	San Augustine County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45884	San Jacinto County, Texas	45	Rural	0.7931	26420	Urban	0.9996
45885	San Patricio County, Texas	1880	Urban	0.8550	18580	Urban	0.8550
45886	San Saba County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45887	Schleicher County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45888	Scurry County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45889	Shackelford County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45890	Shelby County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45891	Sherman County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45892	Smith County, Texas	8640	Urban	0.9168	46340	Urban	0.9168
45893	Somervell County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45900	Starr County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45901	Stephens County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45902	Sterling County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45903	Stonewall County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45904	Sutton County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45905	Swisher County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45910	Tarrant County, Texas	2800	Urban	0.9522	23104	Urban	0.9486
45911	Taylor County, Texas	0040	Urban	0.8054	10180	Urban	0.7896
45912	Terrell County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45913	Terry County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45920	Throckmorton County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45921	Titus County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45930	Tom Green County, Texas	7200	Urban	0.8271	41660	Urban	0.8271
45940	Travis County, Texas	0640	Urban	0.9437	12420	Urban	0.9437
45941	Trinity County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45942	Tyler County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45943	Upshur County, Texas	4420	Urban	0.8888	30980	Urban	0.8730
45944	Upton County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45945	Uvalde County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45946	Val Verde County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45947	Van Zandt County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45948	Victoria County, Texas	8750	Urban	0.8160	47020	Urban	0.8160
45949	Walker County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45950	Waller County, Texas	3360	Urban	1.0091	26420	Urban	0.9996
45951	Ward County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45952	Washington County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45953	Webb County, Texas	4080	Urban	0.8068	29700	Urban	0.8068
45954	Wharton County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45955	Wheeler County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45960	Wichita County, Texas	9080	Urban	0.8365	48660	Urban	0.8285
45961	Wilbarger County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45962	Willacy County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45970	Williamson County, Texas	0640	Urban	0.9437	12420	Urban	0.9437
45971	Wilson County, Texas	7240	Urban	0.8984	41700	Urban	0.8980
45972	Winkler County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45973	Wise County, Texas	45	Rural	0.7931	23104	Urban	0.9486
45974	Wood County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45980	Yoakum County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45981	Young County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45982	Zapata County, Texas	45	Rural	0.7931	99945	Rural	0.8003
45983	Zavala County, Texas	45	Rural	0.7931	99945	Rural	0.8003
46000	Beaver County, Utah	46	Rural	0.8762	99946	Rural	0.8118
46010	Box Elder County, Utah	46	Rural	0.8762	99946	Rural	0.8118
46020	Cache County, Utah	46	Rural	0.8762	30860	Urban	0.9164
46030	Carbon County, Utah	46	Rural	0.8762	99946	Rural	0.8118
46040	Daggett County, Utah	46	Rural	0.8762	99946	Rural	0.8118
46050	Davis County, Utah	7160	Urban	0.9340	36260	Urban	0.9029
46060	Duchesne County, Utah	46	Rural	0.8762	99946	Rural	0.8118
46070	Emery County, Utah	46	Rural	0.8762	99946	Rural	0.8118
46080	Garfield County, Utah	46	Rural	0.8762	99946	Rural	0.8118
46090	Grand County, Utah	46	Rural	0.8762	99946	Rural	0.8118
46100	Iron County, Utah	46	Rural	0.8762	99946	Rural	0.8118
46110	Juab County, Utah	46	Rural	0.8762	39340	Urban	0.9500
46120	Kane County, Utah	2620	Urban	1.1845	99946	Rural	0.8118
46130	Millard County, Utah	46	Rural	0.8762	99946	Rural	0.8118
46140	Morgan County, Utah	46	Rural	0.8762	36260	Urban	0.9029
46150	Piute County, Utah	46	Rural	0.8762	99946	Rural	0.8118
46160	Rich County, Utah	46	Rural	0.8762	99946	Rural	0.8118
46170	Salt Lake County, Utah	7160	Urban	0.9340	41620	Urban	0.9421

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46180	San Juan County, Utah	46	Rural	0.8762	99946	Rural	0.8118
46190	Sanpete County, Utah	46	Rural	0.8762	99946	Rural	0.8118
46200	Sevier County, Utah	46	Rural	0.8762	99946	Rural	0.8118
46210	Summit County, Utah	46	Rural	0.8762	41620	Urban	0.9421
46220	Tooele County, Utah	46	Rural	0.8762	41620	Urban	0.9421
46230	Uintah County, Utah	46	Rural	0.8762	99946	Rural	0.8118
46240	Utah County, Utah	6520	Urban	0.9500	39340	Urban	0.9500
46250	Wasatch County, Utah	46	Rural	0.8762	99946	Rural	0.8118
46260	Washington County, Utah	46	Rural	0.8762	41100	Urban	0.9392
46270	Wayne County, Utah	46	Rural	0.8762	99946	Rural	0.8118
46280	Weber County, Utah	7160	Urban	0.9340	36260	Urban	0.9029
47000	Addison County, Vermont	47	Rural	0.9830	99947	Rural	0.9830
47010	Bennington County, Vermont	47	Rural	0.9830	99947	Rural	0.9830
47020	Caledonia County, Vermont	47	Rural	0.9830	99947	Rural	0.9830
47030	Chittenden County, Vermont	1303	Urban	0.9410	15540	Urban	0.9410
47040	Essex County, Vermont	47	Rural	0.9830	99947	Rural	0.9830
47050	Franklin County, Vermont	1303	Urban	0.9410	15540	Urban	0.9410
47060	Grand Isle County, Vermont	1303	Urban	0.9410	15540	Urban	0.9410
47070	Lamoille County, Vermont	47	Rural	0.9830	99947	Rural	0.9830
47080	Orange County, Vermont	47	Rural	0.9830	99947	Rural	0.9830
47090	Orleans County, Vermont	47	Rural	0.9830	99947	Rural	0.9830
47100	Rutland County, Vermont	47	Rural	0.9830	99947	Rural	0.9830
47110	Washington County, Vermont	47	Rural	0.9830	99947	Rural	0.9830
47120	Windham County, Vermont	47	Rural	0.9830	99947	Rural	0.9830
47130	Windsor County, Vermont	47	Rural	0.9830	99947	Rural	0.9830
48010	St Croix County, Virgin Islands	48	Rural	0.7615	99948	Rural	0.7615
48020	St Thomas-John County, Virgin Islands	48	Rural	0.7615	99948	Rural	0.7615
49000	Accomack County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49010	Albemarle County, Virginia	1540	Urban	1.0187	16820	Urban	1.0187
49011	Alexandria City County, Virginia	8840	Urban	1.0976	47894	Urban	1.0926
49020	Alleghany County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49030	Amelia County, Virginia	49	Rural	0.8417	40060	Urban	0.9328
49040	Amherst County, Virginia	4640	Urban	0.8691	31340	Urban	0.8691
49050	Appomattox County, Virginia	49	Rural	0.8417	31340	Urban	0.8691
49060	Arlington County, Virginia	8840	Urban	1.0976	47894	Urban	1.0926
49070	Augusta County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49080	Bath County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49088	Bedford City County, Virginia	4640	Urban	0.8691	31340	Urban	0.8691
49090	Bedford County, Virginia	4640	Urban	0.8691	31340	Urban	0.8691
49100	Bland County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49110	Botetourt County, Virginia	6800	Urban	0.8387	40220	Urban	0.8374
49111	Bristol City County, Virginia	3660	Urban	0.8007	28700	Urban	0.8054
49120	Brunswick County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49130	Buchanan County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49140	Buckingham County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49141	Buena Vista City County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49150	Campbell County, Virginia	4640	Urban	0.8691	31340	Urban	0.8691
49160	Caroline County, Virginia	49	Rural	0.8417	40060	Urban	0.9328
49170	Carroll County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49180	Charles City County, Virginia	6760	Urban	0.9328	40060	Urban	0.9328
49190	Charlotte County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49191	Charlottesville City County, Virginia	1540	Urban	1.0187	16820	Urban	1.0187
49194	Chesapeake County, Virginia	5720	Urban	0.8799	47260	Urban	0.8799
49200	Chesterfield County, Virginia	6760	Urban	0.9328	40060	Urban	0.9328
49210	Clarke County, Virginia	8840	Urban	1.0976	47894	Urban	1.0926
49211	Clifton Forge City County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49212	Colonial Heights County, Virginia	6760	Urban	0.9328	40060	Urban	0.9328
49213	Covington City County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49220	Craig County, Virginia	49	Rural	0.8417	40220	Urban	0.8374
49230	Culpeper County, Virginia	8840	Urban	1.0976	99949	Rural	0.8013
49240	Cumberland County, Virginia	49	Rural	0.8417	40060	Urban	0.9328
49241	Danville City County, Virginia	1950	Urban	0.8489	19260	Urban	0.8489
49250	Dickenson County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49260	Dinniddie County, Virginia	6760	Urban	0.9328	40060	Urban	0.9328
49270	Emporia County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49280	Essex County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49288	Fairfax City County, Virginia	8840	Urban	1.0976	47894	Urban	1.0926
49290	Fairfax County, Virginia	8840	Urban	1.0976	47894	Urban	1.0926
49291	Falls Church City County, Virginia	8840	Urban	1.0976	47894	Urban	1.0926
49300	Fauquier County, Virginia	8840	Urban	1.0976	47894	Urban	1.0926
49310	Floyd County, Virginia	49	Rural	0.8417	99949	Rural	0.8013

SSA State/County Code	County name	MSA Number	MSA Urban/Rural	2006 MSA-based WI	CBSA Number	CBSA Urban/Rural	2006 CBSA-based WI
49320	Fluvanna County, Virginia	1540	Urban	1.0187	16820	Urban	1.0187
49328	Franklin City County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49330	Franklin County, Virginia	49	Rural	0.8417	40220	Urban	0.8374
49340	Frederick County, Virginia	49	Rural	0.8417	49020	Urban	1.0214
49342	Fredericksburg City County, Virginia	8840	Urban	1.0976	47894	Urban	1.0926
49343	Galax City County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49350	Giles County, Virginia	49	Rural	0.8417	13980	Urban	0.7954
49360	Gloucester County, Virginia	5720	Urban	0.8799	47260	Urban	0.8799
49370	Goochland County, Virginia	6760	Urban	0.9328	40060	Urban	0.9328
49380	Grayson County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49390	Greene County, Virginia	1540	Urban	1.0187	16820	Urban	1.0187
49400	Greensville County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49410	Halifax County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49411	Hampton City County, Virginia	5720	Urban	0.8799	47260	Urban	0.8799
49420	Hanover County, Virginia	6760	Urban	0.9328	40060	Urban	0.9328
49421	Harrisonburg City County, Virginia	49	Rural	0.8417	25500	Urban	0.9088
49430	Henrico County, Virginia	6760	Urban	0.9328	40060	Urban	0.9328
49440	Henry County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49450	Highland County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49451	Hopewell City County, Virginia	6760	Urban	0.9328	40060	Urban	0.9328
49460	Isle Of Wight County, Virginia	5720	Urban	0.8799	47260	Urban	0.8799
49470	James City Co County, Virginia	5720	Urban	0.8799	47260	Urban	0.8799
49480	King And Queen County, Virginia	49	Rural	0.8417	40060	Urban	0.9328
49490	King George County, Virginia	8840	Urban	1.0976	99949	Rural	0.8013
49500	King William County, Virginia	49	Rural	0.8417	40060	Urban	0.9328
49510	Lancaster County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49520	Lee County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49522	Lexington County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49530	Loudoun County, Virginia	8840	Urban	1.0976	47894	Urban	1.0926
49540	Louisa County, Virginia	49	Rural	0.8417	40060	Urban	0.9328
49550	Lunenburg County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49551	Lynchburg City County, Virginia	4640	Urban	0.8691	31340	Urban	0.8691
49560	Madison County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49561	Martinsville City County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49563	Manassas City County, Virginia	8840	Urban	1.0976	47894	Urban	1.0926
49565	Manassas Park City County, Virginia	8840	Urban	1.0976	47894	Urban	1.0926
49570	Mathews County, Virginia	5720	Urban	0.8799	47260	Urban	0.8799
49580	Mecklenburg County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49590	Middlesex County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49600	Montgomery County, Virginia	49	Rural	0.8417	13980	Urban	0.7954
49610	Nansemond County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49620	Nelson County, Virginia	49	Rural	0.8417	16820	Urban	1.0187
49621	New Kent County, Virginia	6760	Urban	0.9328	40060	Urban	0.9328
49622	Newport News City County, Virginia	5720	Urban	0.8799	47260	Urban	0.8799
49641	Norfolk City County, Virginia	5720	Urban	0.8799	47260	Urban	0.8799
49650	Northampton County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49660	Northumberland County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49661	Norton City County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49670	Nottoway County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49680	Orange County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49690	Page County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49700	Patrick County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49701	Petersburg City County, Virginia	6760	Urban	0.9328	40060	Urban	0.9328
49710	Pittsylvania County, Virginia	1950	Urban	0.8489	19260	Urban	0.8489
49711	Portsmouth City County, Virginia	5720	Urban	0.8799	47260	Urban	0.8799
49712	Poquoson City County, Virginia	5720	Urban	0.8799	47260	Urban	0.8799
49720	Powhatan County, Virginia	6760	Urban	0.9328	40060	Urban	0.9328
49730	Prince Edward County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49740	Prince George County, Virginia	6760	Urban	0.9328	40060	Urban	0.9328
49750	Prince William County, Virginia	8840	Urban	1.0976	47894	Urban	1.0926
49770	Pulaski County, Virginia	49	Rural	0.8417	13980	Urban	0.7954
49771	Radford City County, Virginia	49	Rural	0.8417	13980	Urban	0.7954
49780	Rappahannock County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49790	Richmond County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49791	Richmond City County, Virginia	6760	Urban	0.9328	40060	Urban	0.9328
49800	Roanoke County, Virginia	6800	Urban	0.8387	40220	Urban	0.8374
49801	Roanoke City County, Virginia	6800	Urban	0.8387	40220	Urban	0.8374
49810	Rockbridge County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49820	Rockingham County, Virginia	49	Rural	0.8417	25500	Urban	0.9088
49830	Russell County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49838	Salem County, Virginia	6800	Urban	0.8387	40220	Urban	0.8374



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49840	Scott County, Virginia	3660	Urban	0.8007	28700	Urban	0.8054
49850	Shenandoah County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49860	Smyth County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49867	South Boston City County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49870	Southampton County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49880	Spotsylvania County, Virginia	8840	Urban	1.0976	47894	Urban	1.0926
49890	Stafford County, Virginia	8840	Urban	1.0976	47894	Urban	1.0926
49891	Staunton City County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49892	Suffolk City County, Virginia	5720	Urban	0.8799	47260	Urban	0.8799
49900	Surry County, Virginia	49	Rural	0.8417	47260	Urban	0.8799
49910	Sussex County, Virginia	49	Rural	0.8417	40060	Urban	0.9328
49920	Tazewell County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49921	Virginia Beach City County, Virginia	5720	Urban	0.8799	47260	Urban	0.8799
49930	Warren County, Virginia	8840	Urban	1.0976	47894	Urban	1.0926
49950	Washington County, Virginia	3660	Urban	0.8007	28700	Urban	0.8054
49951	Waynesboro City County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49960	Westmoreland County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49961	Williamsburg City County, Virginia	5720	Urban	0.8799	47260	Urban	0.8799
49962	Winchester City County, Virginia	49	Rural	0.8417	49020	Urban	1.0214
49970	Wise County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49980	Wythe County, Virginia	49	Rural	0.8417	99949	Rural	0.8013
49981	York County, Virginia	5720	Urban	0.8799	47260	Urban	0.8799
50000	Adams County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50010	Asotin County, Washington	50	Rural	1.0217	30300	Urban	0.9886
50020	Benton County, Washington	6740	Urban	1.0619	28420	Urban	1.0619
50030	Chelan County, Washington	50	Rural	1.0217	48300	Urban	1.0070
50040	Clallam County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50050	Clark County, Washington	6440	Urban	1.1266	38900	Urban	1.1266
50060	Columbia County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50070	Cowlitz County, Washington	50	Rural	1.0217	31020	Urban	0.9579
50080	Douglas County, Washington	50	Rural	1.0217	48300	Urban	1.0070
50090	Ferry County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50100	Franklin County, Washington	6740	Urban	1.0619	28420	Urban	1.0619
50110	Garfield County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50120	Grant County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50130	Grays Harbor County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50140	Island County, Washington	7600	Urban	1.1567	99950	Rural	1.0510
50150	Jefferson County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50160	King County, Washington	7600	Urban	1.1567	42644	Urban	1.1577
50170	Kitsap County, Washington	1150	Urban	1.0675	14740	Urban	1.0675
50180	Kittitas County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50190	Klickitat County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50200	Lewis County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50210	Lincoln County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50220	Mason County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50230	Okanogan County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50240	Pacific County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50250	Pend Oreille County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50260	Pierce County, Washington	8200	Urban	1.0742	45104	Urban	1.0742
50270	San Juan County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50280	Skagit County, Washington	50	Rural	1.0217	34580	Urban	1.0454
50290	Skamania County, Washington	50	Rural	1.0217	38900	Urban	1.1266
50300	Snohomish County, Washington	7600	Urban	1.1567	42644	Urban	1.1577
50310	Spokane County, Washington	7840	Urban	1.0905	44060	Urban	1.0905
50320	Stevens County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50330	Thurston County, Washington	5910	Urban	1.0927	36500	Urban	1.0927
50340	Wahkiakum County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50350	Walla Walla County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50360	Whatcom County, Washington	0860	Urban	1.1731	13380	Urban	1.1731
50370	Whitman County, Washington	50	Rural	1.0217	99950	Rural	1.0510
50380	Yakima County, Washington	9260	Urban	1.0155	49420	Urban	1.0155
51000	Barbour County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51010	Berkeley County, W Virginia	8840	Urban	1.0976	25180	Urban	0.9489
51020	Boone County, W Virginia	51	Rural	0.7900	16620	Urban	0.8445
51030	Braxton County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51040	Brooke County, W Virginia	8080	Urban	0.7819	48260	Urban	0.7819
51050	Cabell County, W Virginia	3400	Urban	0.9477	26580	Urban	0.9477
51060	Calhoun County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51070	Clay County, W Virginia	51	Rural	0.7900	16620	Urban	0.8445
51080	Doddridge County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51090	Fayette County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717

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51100	Gilmer County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51110	Grant County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51120	Greenbrier County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51130	Hampshire County, W Virginia	51	Rural	0.7900	49020	Urban	1.0214
51140	Hancock County, W Virginia	8080	Urban	0.7819	48260	Urban	0.7819
51150	Hardy County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51160	Harrison County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51170	Jackson County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51180	Jefferson County, W Virginia	8840	Urban	1.0976	47894	Urban	1.0926
51190	Kanawha County, W Virginia	1480	Urban	0.8445	16620	Urban	0.8445
51200	Lewis County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51210	Lincoln County, W Virginia	51	Rural	0.7900	16620	Urban	0.8445
51220	Logan County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51230	Mc Dowell County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51240	Marion County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51250	Marshall County, W Virginia	9000	Urban	0.7161	48540	Urban	0.7161
51260	Mason County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51270	Mercer County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51280	Mineral County, W Virginia	1900	Urban	0.9317	19060	Urban	0.9317
51290	Mingo County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51300	Monongalia County, W Virginia	51	Rural	0.7900	34060	Urban	0.8420
51310	Monroe County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51320	Morgan County, W Virginia	51	Rural	0.7900	25180	Urban	0.9489
51330	Nicholas County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51340	Ohio County, W Virginia	9000	Urban	0.7161	48540	Urban	0.7161
51350	Pendleton County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51360	Pleasants County, W Virginia	51	Rural	0.7900	37620	Urban	0.8270
51370	Pocahontas County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51380	Preston County, W Virginia	51	Rural	0.7900	34060	Urban	0.8420
51390	Putnam County, W Virginia	1480	Urban	0.8445	16620	Urban	0.8445
51400	Raleigh County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51410	Randolph County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51420	Ritchie County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51430	Roane County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51440	Summers County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51450	Taylor County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51460	Tucker County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51470	Tyler County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51480	Upshur County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51490	Wayne County, W Virginia	3400	Urban	0.9477	26580	Urban	0.9477
51500	Webster County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51510	Wetzel County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
51520	Wirt County, W Virginia	51	Rural	0.7900	37620	Urban	0.8270
51530	Wood County, W Virginia	6020	Urban	0.8270	37620	Urban	0.8270
51540	Wyoming County, W Virginia	51	Rural	0.7900	99951	Rural	0.7717
52000	Adams County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52010	Ashland County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52020	Barron County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52030	Bayfield County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52040	Brown County, Wisconsin	3080	Urban	0.9483	24580	Urban	0.9483
52050	Buffalo County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52060	Burnett County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52070	Calumet County, Wisconsin	0460	Urban	0.9239	11540	Urban	0.9288
52080	Chippewa County, Wisconsin	2290	Urban	0.9201	20740	Urban	0.9201
52090	Clark County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52100	Columbia County, Wisconsin	52	Rural	0.9478	31540	Urban	1.0659
52110	Crawford County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52120	Dane County, Wisconsin	4720	Urban	1.0754	31540	Urban	1.0659
52130	Dodge County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52140	Door County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52150	Douglas County, Wisconsin	2240	Urban	1.0213	20260	Urban	1.0213
52160	Dunn County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52170	Eau Claire County, Wisconsin	2290	Urban	0.9201	20740	Urban	0.9201
52180	Florence County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52190	Fond Du Lac County, Wisconsin	52	Rural	0.9478	22540	Urban	0.9640
52200	Forest County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52210	Grant County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52220	Green County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52230	Green Lake County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52240	Iowa County, Wisconsin	52	Rural	0.9478	31540	Urban	1.0659
52250	Iron County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509

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52260	Jackson County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52270	Jefferson County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52280	Juneau County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52290	Kenosha County, Wisconsin	3800	Urban	0.9760	29404	Urban	1.0429
52300	Kewaunee County, Wisconsin	52	Rural	0.9478	24580	Urban	0.9483
52310	La Crosse County, Wisconsin	3870	Urban	0.9564	29100	Urban	0.9564
52320	Lafayette County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52330	Langlade County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52340	Lincoln County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52350	Manitowoc County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52360	Marathon County, Wisconsin	8940	Urban	0.9590	48140	Urban	0.9590
52370	Marinette County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52380	Marquette County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52381	Menominee County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52390	Milwaukee County, Wisconsin	5080	Urban	1.0146	33340	Urban	1.0146
52400	Monroe County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52410	Oconto County, Wisconsin	52	Rural	0.9478	24580	Urban	0.9483
52420	Oneida County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52430	Outagamie County, Wisconsin	0460	Urban	0.9239	11540	Urban	0.9288
52440	Ozaukee County, Wisconsin	5080	Urban	1.0146	33340	Urban	1.0146
52450	Pepin County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52460	Pierce County, Wisconsin	5120	Urban	1.1075	33460	Urban	1.1075
52470	Polk County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52480	Portage County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52490	Price County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52500	Racine County, Wisconsin	6600	Urban	0.8997	39540	Urban	0.8997
52510	Richland County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52520	Rock County, Wisconsin	3620	Urban	0.9538	27500	Urban	0.9538
52530	Rusk County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52540	St Croix County, Wisconsin	5120	Urban	1.1075	33460	Urban	1.1075
52550	Sauk County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52560	Sawyer County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52570	Shawano County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52580	Sheboygan County, Wisconsin	7620	Urban	0.8911	43100	Urban	0.8911
52590	Taylor County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52600	Trempealeau County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52610	Vernon County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52620	Vilas County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52630	Walworth County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52640	Washburn County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52650	Washington County, Wisconsin	5080	Urban	1.0146	33340	Urban	1.0146
52660	Waukesha County, Wisconsin	5080	Urban	1.0146	33340	Urban	1.0146
52670	Waupaca County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52680	Waushara County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
52690	Winnebago County, Wisconsin	0460	Urban	0.9239	36780	Urban	0.9183
52700	Wood County, Wisconsin	52	Rural	0.9478	99952	Rural	0.9509
53000	Albany County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
53010	Big Horn County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
53020	Campbell County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
53030	Carbon County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
53040	Converse County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
53050	Crook County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
53060	Fremont County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
53070	Goshen County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
53080	Hot Springs County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
53090	Johnson County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
53100	Laramie County, Wyoming	1580	Urban	0.8775	16940	Urban	0.8775
53110	Lincoln County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
53120	Natrona County, Wyoming	1350	Urban	0.9026	16220	Urban	0.9026
53130	Niobrara County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
53140	Park County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
53150	Platte County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
53160	Sheridan County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
53170	Sublette County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
53180	Sweetwater County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
53190	Teton County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
53200	Uinta County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
53210	Washakie County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
53220	Weston County, Wyoming	53	Rural	0.9257	99953	Rural	0.9257
65010	Agana County, Guam	65	Rural	0.9611	99965	Rural	0.9611
65020	Agana Heights County, Guam	65	Rural	0.9611	99965	Rural	0.9611

SSA State/County Code	County name	MSA Number	MSA Urban/Rural	2006 MSA-based WI	CBSA Number	CBSA Urban/Rural	2006 CBSA-based WI
65030 .....	Agat County, Guam .....	65	Rural .....	0.9611	99965	Rural .....	0.9611
65040 .....	Asan County, Guam .....	65	Rural .....	0.9611	99965	Rural .....	0.9611
65050 .....	Barrigada County, Guam .....	65	Rural .....	0.9611	99965	Rural .....	0.9611
65060 .....	Chalan Pago County, Guam .....	65	Rural .....	0.9611	99965	Rural .....	0.9611
65070 .....	Dededo County, Guam .....	65	Rural .....	0.9611	99965	Rural .....	0.9611
65080 .....	Inarajan County, Guam .....	65	Rural .....	0.9611	99965	Rural .....	0.9611
65090 .....	Maite County, Guam .....	65	Rural .....	0.9611	99965	Rural .....	0.9611
65100 .....	Mangilao County, Guam .....	65	Rural .....	0.9611	99965	Rural .....	0.9611
65110 .....	Merizo County, Guam .....	65	Rural .....	0.9611	99965	Rural .....	0.9611
65120 .....	Mongmong County, Guam .....	65	Rural .....	0.9611	99965	Rural .....	0.9611
65130 .....	Ordot County, Guam .....	65	Rural .....	0.9611	99965	Rural .....	0.9611
65140 .....	Piti County, Guam .....	65	Rural .....	0.9611	99965	Rural .....	0.9611
65150 .....	Santa Rita County, Guam .....	65	Rural .....	0.9611	99965	Rural .....	0.9611
65160 .....	Sinajana County, Guam .....	65	Rural .....	0.9611	99965	Rural .....	0.9611
65170 .....	Talofof County, Guam .....	65	Rural .....	0.9611	99965	Rural .....	0.9611
65180 .....	Tamuning County, Guam .....	65	Rural .....	0.9611	99965	Rural .....	0.9611
65190 .....	Toto County, Guam .....	65	Rural .....	0.9611	99965	Rural .....	0.9611
65200 .....	Umatac County, Guam .....	65	Rural .....	0.9611	99965	Rural .....	0.9611
65210 .....	Yigo County, Guam .....	65	Rural .....	0.9611	99965	Rural .....	0.9611
65220 .....	Yona County, Guam .....	65	Rural .....	0.9611	99965	Rural .....	0.9611

\*Transition wage index value should be used with the CBSA urban/rural designation for rate calculation purposes.

<sup>1</sup>At this time, there are no hospitals located in these CBSA-based urban areas on which to base a wage index. Therefore, the transition wage index value is based on the average transition wage index for all urban areas within the state.

**Addendum C—Wage Index Tables**

In this addendum, we provide the tables referred to throughout the

preamble to this proposed rule. Tables 1 and 2 below provide the proposed

CBSA-based wage index values for urban and rural providers.

**Table 1-- Proposed Wage Index For Urban Areas Based On CBSA Labor Market Areas**

<b>CBSA Code</b>	<b>Urban Area (Constituent Counties)</b>	<b>Wage Index</b>
10180	Abilene, TX Callahan County, TX Jones County, TX Taylor County, TX	0.7896
10380	Aguadilla-Isabela-San Sebastián, PR Aguada Municipio, PR Aguadilla Municipio, PR Añasco Municipio, PR Isabela Municipio, PR Lares Municipio, PR Moca Municipio, PR Rincón Municipio, PR San Sebastián Municipio, PR	0.4738
10420	Akron, OH Portage County, OH Summit County, OH	0.8982
10500	Albany, GA Baker County, GA Dougherty County, GA Lee County, GA Terrell County, GA Worth County, GA	0.8628

CBSA Code	Urban Area (Constituent Counties)	Wage Index
10580	Albany-Schenectady-Troy, NY Albany County, NY Rensselaer County, NY Saratoga County, NY Schenectady County, NY Schoharie County, NY	0.8589
10740	Albuquerque, NM Bernalillo County, NM Sandoval County, NM Torrance County, NM Valencia County, NM	0.9684
10780	Alexandria, LA Grant Parish, LA Rapides Parish, LA	0.8033
10900	Allentown-Bethlehem-Easton, PA-NJ Warren County, NJ Carbon County, PA Lehigh County, PA Northampton County, PA	0.9818
11020	Altoona, PA Blair County, PA	0.8944
11100	Amarillo, TX Armstrong County, TX Carson County, TX Potter County, TX Randall County, TX	0.9156
11180	Ames, IA Story County, IA	0.9536
11260	Anchorage, AK Anchorage Municipality, AK Matanuska-Susitna Borough, AK	1.1895
11300	Anderson, IN Madison County, IN	0.8586

CBSA Code	Urban Area (Constituent Counties)	Wage Index
11340	Anderson, SC Anderson County, SC	0.8997
11460	Ann Arbor, MI Washtenaw County, MI	1.0859
11500	Anniston-Oxford, AL Calhoun County, AL	0.7682
11540	Appleton, WI Calumet County, WI Outagamie County, WI	0.9288
11700	Asheville, NC Buncombe County, NC Haywood County, NC Henderson County, NC Madison County, NC	0.9285
12020	Athens-Clarke County, GA Clarke County, GA Madison County, GA Oconee County, GA Oglethorpe County, GA	0.9855

CBSA Code	Urban Area (Constituent Counties)	Wage Index
12060	Atlanta-Sandy Springs-Marietta, GA Barrow County, GA Bartow County, GA Butts County, GA Carroll County, GA Cherokee County, GA Clayton County, GA Cobb County, GA Coweta County, GA Dawson County, GA DeKalb County, GA Douglas County, GA Fayette County, GA Forsyth County, GA Fulton County, GA Gwinnett County, GA Haralson County, GA Heard County, GA Henry County, GA Jasper County, GA Lamar County, GA Meriwether County, GA Newton County, GA Paulding County, GA Pickens County, GA Pike County, GA Rockdale County, GA Spalding County, GA Walton County, GA	0.9793
12100	Atlantic City, NJ Atlantic County, NJ	1.1615
12220	Auburn-Opelika, AL Lee County, AL	0.8100



CBSA Code	Urban Area (Constituent Counties)	Wage Index
12260	Augusta-Richmond County, GA-SC Burke County, GA Columbia County, GA McDuffie County, GA Richmond County, GA Aiken County, SC Edgefield County, SC	0.9748
12420	Austin-Round Rock, TX Bastrop County, TX Caldwell County, TX Hays County, TX Travis County, TX Williamson County, TX	0.9437
12540	Bakersfield, CA Kern County, CA	1.0470
12580	Baltimore-Towson, MD Anne Arundel County, MD Baltimore County, MD Carroll County, MD Harford County, MD Howard County, MD Queen Anne's County, MD Baltimore City, MD	0.9897
12620	Bangor, ME Penobscot County, ME	0.9993
12700	Barnstable Town, MA Barnstable County, MA	1.2600

CBSA Code	Urban Area (Constituent Counties)	Wage Index
12940	Baton Rouge, LA Ascension Parish, LA East Baton Rouge Parish, LA East Feliciana Parish, LA Iberville Parish, LA Livingston Parish, LA Pointe Coupee Parish, LA St. Helena Parish, LA West Baton Rouge Parish, LA West Feliciana Parish, LA	0.8593
12980	Battle Creek, MI Calhoun County, MI	0.9508
13020	Bay City, MI Bay County, MI	0.9343
13140	Beaumont-Port Arthur, TX Hardin County, TX Jefferson County, TX Orange County, TX	0.8412
13380	Bellingham, WA Whatcom County, WA	1.1731
13460	Bend, OR Deschutes County, OR	1.0786
13644	Bethesda-Gaithersburg-Frederick, MD Frederick County, MD Montgomery County, MD	1.1483
13740	Billings, MT Carbon County, MT Yellowstone County, MT	0.8834
13780	Binghamton, NY Broome County, NY Tioga County, NY	0.8562

CBSA Code	Urban Area (Constituent Counties)	Wage Index
13820	Birmingham-Hoover, AL Bibb County, AL Blount County, AL Chilton County, AL Jefferson County, AL St. Clair County, AL Shelby County, AL Walker County, AL	0.8959
13900	Bismarck, ND Burleigh County, ND Morton County, ND	0.7574
13980	Blacksburg-Christiansburg-Radford, VA Giles County, VA Montgomery County, VA Pulaski County, VA Radford City, VA	0.7954
14020	Bloomington, IN Greene County, IN Monroe County, IN Owen County, IN	0.8447
14060	Bloomington-Normal, IL McLean County, IL	0.9075
14260	Boise City-Nampa, ID Ada County, ID Boise County, ID Canyon County, ID Gem County, ID Owyhee County, ID	0.9052
14484	Boston-Quincy, MA Norfolk County, MA Plymouth County, MA Suffolk County, MA	1.1558
14500	Boulder, CO Boulder County, CO	0.9734

CBSA Code	Urban Area (Constituent Counties)	Wage Index
14540	Bowling Green, KY Edmonson County, KY Warren County, KY	0.8211
14740	Bremerton-Silverdale, WA Kitsap County, WA	1.0675
14860	Bridgeport-Stamford-Norwalk, CT Fairfield County, CT	1.2592
15180	Brownsville-Harlingen, TX Cameron County, TX	0.9804
15260	Brunswick, GA Brantley County, GA Glynn County, GA McIntosh County, GA	0.9311
15380	Buffalo-Niagara Falls, NY Erie County, NY Niagara County, NY	0.9511
15500	Burlington, NC Alamance County, NC	0.8905
15540	Burlington-South Burlington, VT Chittenden County, VT Franklin County, VT Grand Isle County, VT	0.9410
15764	Cambridge-Newton-Framingham, MA Middlesex County, MA	1.1172
15804	Camden, NJ Burlington County, NJ Camden County, NJ Gloucester County, NJ	1.0517
15940	Canton-Massillon, OH Carroll County, OH Stark County, OH	0.8935
15980	Cape Coral-Fort Myers, FL Lee County, FL	0.9356

CBSA Code	Urban Area (Constituent Counties)	Wage Index
16180	Carson City, NV Carson City, NV	1.0234
16220	Casper, WY Natrona County, WY	0.9026
16300	Cedar Rapids, IA Benton County, IA Jones County, IA Linn County, IA	0.8825
16580	Champaign-Urbana, IL Champaign County, IL Ford County, IL Piatt County, IL	0.9594
16620	Charleston, WV Boone County, WV Clay County, WV Kanawha County, WV Lincoln County, WV Putnam County, WV	0.8445
16700	Charleston-North Charleston, SC Berkeley County, SC Charleston County, SC Dorchester County, SC	0.9245
16740	Charlotte-Gastonia-Concord, NC-SC Anson County, NC Cabarrus County, NC Gaston County, NC Mecklenburg County, NC Union County, NC York County, SC	0.9750

CBSA Code	Urban Area (Constituent Counties)	Wage Index
16820	Charlottesville, VA Albemarle County, VA Fluvanna County, VA Greene County, VA Nelson County, VA Charlottesville City, VA	1.0187
16860	Chattanooga, TN-GA Catoosa County, GA Dade County, GA Walker County, GA Hamilton County, TN Marion County, TN Sequatchie County, TN	0.9088
16940	Cheyenne, WY Laramie County, WY	0.8775
16974	Chicago-Naperville-Joliet, IL Cook County, IL DeKalb County, IL DuPage County, IL Grundy County, IL Kane County, IL Kendall County, IL McHenry County, IL Will County, IL	1.0790
17020	Chico, CA Butte County, CA	1.0511

CBSA Code	Urban Area (Constituent Counties)	Wage Index
17140	Cincinnati-Middletown, OH-KY-IN Dearborn County, IN Franklin County, IN Ohio County, IN Boone County, KY Bracken County, KY Campbell County, KY Gallatin County, KY Grant County, KY Kenton County, KY Pendleton County, KY Brown County, OH Butler County, OH Clermont County, OH Hamilton County, OH Warren County, OH	0.9615
17300	Clarksville, TN-KY Christian County, KY Trigg County, KY Montgomery County, TN Stewart County, TN	0.8284
17420	Cleveland, TN Bradley County, TN Polk County, TN	0.8139
17460	Cleveland-Elyria-Mentor, OH Cuyahoga County, OH Geauga County, OH Lake County, OH Lorain County, OH Medina County, OH	0.9213
17660	Coeur d'Alene, ID Kootenai County, ID	0.9647

CBSA Code	Urban Area (Constituent Counties)	Wage Index
17780	College Station-Bryan, TX Brazos County, TX Burleson County, TX Robertson County, TX	0.8900
17820	Colorado Springs, CO El Paso County, CO Teller County, CO	0.9468
17860	Columbia, MO Boone County, MO Howard County, MO	0.8345
17900	Columbia, SC Calhoun County, SC Fairfield County, SC Kershaw County, SC Lexington County, SC Richland County, SC Saluda County, SC	0.9057
17980	Columbus, GA-AL Russell County, AL Chattahoochee County, GA Harris County, GA Marion County, GA Muscogee County, GA	0.8560
18020	Columbus, IN Bartholomew County, IN	0.9588
18140	Columbus, OH Delaware County, OH Fairfield County, OH Franklin County, OH Licking County, OH Madison County, OH Morrow County, OH Pickaway County, OH Union County, OH	0.9860



CBSA Code	Urban Area (Constituent Counties)	Wage Index
18580	Corpus Christi, TX Aransas County, TX Nueces County, TX San Patricio County, TX	0.8550
18700	Corvallis, OR Benton County, OR	1.0729
19060	Cumberland, MD-WV Allegany County, MD Mineral County, WV	0.9317
19124	Dallas-Plano-Irving, TX Collin County, TX Dallas County, TX Delta County, TX Denton County, TX Ellis County, TX Hunt County, TX Kaufman County, TX Rockwall County, TX	1.0228
19140	Dalton, GA Murray County, GA Whitfield County, GA	0.9079
19180	Danville, IL Vermilion County, IL	0.9028
19260	Danville, VA Pittsylvania County, VA Danville City, VA	0.8489
19340	Davenport-Moline-Rock Island, IA-IL Henry County, IL Mercer County, IL Rock Island County, IL Scott County, IA	0.8724

CBSA Code	Urban Area (Constituent Counties)	Wage Index
19380	Dayton, OH Greene County, OH Miami County, OH Montgomery County, OH Preble County, OH	0.9064
19460	Decatur, AL Lawrence County, AL Morgan County, AL	0.8469
19500	Decatur, IL Macon County, IL	0.8067
19660	Deltona-Daytona Beach-Ormond Beach, FL Volusia County, FL	0.9299
19740	Denver-Aurora, CO Adams County, CO Arapahoe County, CO Broomfield County, CO Clear Creek County, CO Denver County, CO Douglas County, CO Elbert County, CO Gilpin County, CO Jefferson County, CO Park County, CO	1.0723
19780	Des Moines, IA Dallas County, IA Guthrie County, IA Madison County, IA Polk County, IA Warren County, IA	0.9669
19804	Detroit-Livonia-Dearborn, MI Wayne County, MI	1.0424
20020	Dothan, AL Geneva County, AL Henry County, AL Houston County, AL	0.7721

CBSA Code	Urban Area (Constituent Counties)	Wage Index
20100	Dover, DE Kent County, DE	0.9776
20220	Dubuque, IA Dubuque County, IA	0.9024
20260	Duluth, MN-WI Carlton County, MN St. Louis County, MN Douglas County, WI	1.0213
20500	Durham, NC Chatham County, NC Durham County, NC Orange County, NC Person County, NC	1.0244
20740	Eau Claire, WI Chippewa County, WI Eau Claire County, WI	0.9201
20764	Edison, NJ Middlesex County, NJ Monmouth County, NJ Ocean County, NJ Somerset County, NJ	1.1249
20940	El Centro, CA Imperial County, CA	0.8906
21060	Elizabethtown, KY Hardin County, KY Larue County, KY	0.8802
21140	Elkhart-Goshen, IN Elkhart County, IN	0.9627
21300	Elmira, NY Chemung County, NY	0.8250
21340	El Paso, TX El Paso County, TX	0.8977
21500	Erie, PA Erie County, PA	0.8737

CBSA Code	Urban Area (Constituent Counties)	Wage Index
21604	Essex County, MA Essex County, MA	1.0538
21660	Eugene-Springfield, OR Lane County, OR	1.0818
21780	Evansville, IN-KY Gibson County, IN Posey County, IN Vanderburgh County, IN Warrick County, IN Henderson County, KY Webster County, KY	0.8713
21820	Fairbanks, AK Fairbanks North Star Borough, AK	1.1408
21940	Fajardo, PR Ceiba Municipio, PR Fajardo Municipio, PR Luquillo Municipio, PR	0.4153
22020	Fargo, ND-MN Cass County, ND Clay County, MN	0.8486
22140	Farmington, NM San Juan County, NM	0.8509
22180	Fayetteville, NC Cumberland County, NC Hoke County, NC	0.9416
22220	Fayetteville-Springdale-Rogers, AR-MO Benton County, AR Madison County, AR Washington County, AR McDonald County, MO	0.8661
22380	Flagstaff, AZ Coconino County, AZ	1.2092
22420	Flint, MI Genesee County, MI	1.0655

CBSA Code	Urban Area (Constituent Counties)	Wage Index
22500	Florence, SC Darlington County, SC Florence County, SC	0.8947
22520	Florence-Muscle Shoals, AL Colbert County, AL Lauderdale County, AL	0.8272
22540	Fond du Lac, WI Fond du Lac County, WI	0.9640
22660	Fort Collins-Loveland, CO Larimer County, CO	1.0122
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Broward County, FL	1.0432
22900	Fort Smith, AR-OK Crawford County, AR Franklin County, AR Sebastian County, AR Le Flore County, OK Sequoyah County, OK	0.8230
23020	Fort Walton Beach-Crestview-Destin, FL Okaloosa County, FL	0.8872
23060	Fort Wayne, IN Allen County, IN Wells County, IN Whitley County, IN	0.9793
23104	Fort Worth-Arlington, TX Johnson County, TX Parker County, TX Tarrant County, TX Wise County, TX	0.9486
23420	Fresno, CA Fresno County, CA	1.0538
23460	Gadsden, AL Etowah County, AL	0.7938

CBSA Code	Urban Area (Constituent Counties)	Wage Index
23540	Gainesville, FL Alachua County, FL Gilchrist County, FL	0.9388
23580	Gainesville, GA Hall County, GA	0.8874
23844	Gary, IN Jasper County, IN Lake County, IN Newton County, IN Porter County, IN	0.9395
24020	Glens Falls, NY Warren County, NY Washington County, NY	0.8559
24140	Goldsboro, NC Wayne County, NC	0.8775
24220	Grand Forks, ND-MN Polk County, MN Grand Forks County, ND	0.7901
24300	Grand Junction, CO Mesa County, CO	0.9550
24340	Grand Rapids-Wyoming, MI Barry County, MI Ionia County, MI Kent County, MI Newaygo County, MI	0.9390
24500	Great Falls, MT Cascade County, MT	0.9052
24540	Greeley, CO Weld County, CO	0.9570
24580	Green Bay, WI Brown County, WI Kewaunee County, WI Oconto County, WI	0.9483

CBSA Code	Urban Area (Constituent Counties)	Wage Index
24660	Greensboro-High Point, NC Guilford County, NC Randolph County, NC Rockingham County, NC	0.9104
24780	Greenville, NC Greene County, NC Pitt County, NC	0.9425
24860	Greenville, SC Greenville County, SC Laurens County, SC Pickens County, SC	1.0027
25020	Guayama, PR Arroyo Municipio, PR Guayama Municipio, PR Patillas Municipio, PR	0.3181
25060	Gulfport-Biloxi, MS Hancock County, MS Harrison County, MS Stone County, MS	0.8929
25180	Hagerstown-Martinsburg, MD-WV Washington County, MD Berkeley County, WV Morgan County, WV	0.9489
25260	Hanford-Corcoran, CA Kings County, CA	1.0036
25420	Harrisburg-Carlisle, PA Cumberland County, PA Dauphin County, PA Perry County, PA	0.9313
25500	Harrisonburg, VA Rockingham County, VA Harrisonburg City, VA	0.9088

CBSA Code	Urban Area (Constituent Counties)	Wage Index
25540	Hartford-West Hartford-East Hartford, CT Hartford County, CT Litchfield County, CT Middlesex County, CT Tolland County, CT	1.1073
25620	Hattiesburg, MS Forrest County, MS Lamar County, MS Perry County, MS	0.7601
25860	Hickory-Lenoir-Morganton, NC Alexander County, NC Burke County, NC Caldwell County, NC Catawba County, NC	0.8921
25980	Hinesville-Fort Stewart, GA <sup>1</sup> Liberty County, GA Long County, GA	0.9198
26100	Holland-Grand Haven, MI Ottawa County, MI	0.9055
26180	Honolulu, HI Honolulu County, HI	1.1214
26300	Hot Springs, AR Garland County, AR	0.9005
26380	Houma-Bayou Cane-Thibodaux, LA Lafourche Parish, LA Terrebonne Parish, LA	0.7894



CBSA Code	Urban Area (Constituent Counties)	Wage Index
26420	Houston-Sugar Land-Baytown, TX Austin County, TX Brazoria County, TX Chambers County, TX Fort Bend County, TX Galveston County, TX Harris County, TX Liberty County, TX Montgomery County, TX San Jacinto County, TX Waller County, TX	0.9996
26580	Huntington-Ashland, WV-KY-OH Boyd County, KY Greenup County, KY Lawrence County, OH Cabell County, WV Wayne County, WV	0.9477
26620	Huntsville, AL Limestone County, AL Madison County, AL	0.9146
26820	Idaho Falls, ID Bonneville County, ID Jefferson County, ID	0.9420
26900	Indianapolis, IN Boone County, IN Brown County, IN Hamilton County, IN Hancock County, IN Hendricks County, IN Johnson County, IN Marion County, IN Morgan County, IN Putnam County, IN Shelby County, IN	0.9920

CBSA Code	Urban Area (Constituent Counties)	Wage Index
26980	Iowa City, IA Johnson County, IA Washington County, IA	0.9747
27060	Ithaca, NY Tompkins County, NY	0.9793
27100	Jackson, MI Jackson County, MI	0.9304
27140	Jackson, MS Cochise County, MS Hinds County, MS Madison County, MS Rankin County, MS Simpson County, MS	0.8311
27180	Jackson, TN Chester County, TN Madison County, TN	0.8964
27260	Jacksonville, FL Baker County, FL Clay County, FL Duval County, FL Nassau County, FL St. Johns County, FL	0.9290
27340	Jacksonville, NC Onslow County, NC	0.8236
27500	Janesville, WI Rock County, WI	0.9538
27620	Jefferson City, MO Callaway County, MO Cole County, MO Moniteau County, MO Osage County, MO	0.8387

CBSA Code	Urban Area (Constituent Counties)	Wage Index
27740	Johnson City, TN Carter County, TN Unicoi County, TN Washington County, TN	0.7937
27780	Johnstown, PA Cambria County, PA	0.8354
27860	Jonesboro, AR Craighead County, AR Poinsett County, AR	0.7911
27900	Joplin, MO Jasper County, MO Newton County, MO	0.8582
28020	Kalamazoo-Portage, MI Kalamazoo County, MI Van Buren County, MI	1.0381
28100	Kankakee-Bradley, IL Kankakee County, IL	1.0721
28140	Kansas City, MO-KS Franklin County, KS Johnson County, KS Leavenworth County, KS Linn County, KS Miami County, KS Wyandotte County, KS Bates County, MO Caldwell County, MO Cass County, MO Clay County, MO Clinton County, MO Jackson County, MO Lafayette County, MO Platte County, MO Ray County, MO	0.9476

CBSA Code	Urban Area (Constituent Counties)	Wage Index
28420	Kennewick-Richland-Pasco, WA Benton County, WA Franklin County, WA	1.0619
28660	Killeen-Temple-Fort Hood, TX Bell County, TX Coryell County, TX Lampasas County, TX	0.8526
28700	Kingsport-Bristol-Bristol, TN-VA Hawkins County, TN Sullivan County, TN Bristol City, VA Scott County, VA Washington County, VA	0.8054
28740	Kingston, NY Ulster County, NY	0.9255
28940	Knoxville, TN Anderson County, TN Blount County, TN Knox County, TN Loudon County, TN Union County, TN	0.8441
29020	Kokomo, IN Howard County, IN Tipton County, IN	0.9508
29100	La Crosse, WI-MN Houston County, MN La Crosse County, WI	0.9564
29140	Lafayette, IN Benton County, IN Carroll County, IN Tippecanoe County, IN	0.8736
29180	Lafayette, LA Lafayette Parish, LA St. Martin Parish, LA	0.8428

CBSA Code	Urban Area (Constituent Counties)	Wage Index
29340	Lake Charles, LA Calcasieu Parish, LA Cameron Parish, LA	0.7833
29404	Lake County-Kenosha County, IL-WI Lake County, IL Kenosha County, WI	1.0429
29460	Lakeland, FL Polk County, FL	0.8912
29540	Lancaster, PA Lancaster County, PA	0.9694
29620	Lansing-East Lansing, MI Clinton County, MI Eaton County, MI Ingham County, MI	0.9794
29700	Laredo, TX Webb County, TX	0.8068
29740	Las Cruces, NM Dona Ana County, NM	0.8467
29820	Las Vegas-Paradise, NV Clark County, NV	1.1437
29940	Lawrence, KS Douglas County, KS	0.8537
30020	Lawton, OK Comanche County, OK	0.7872
30140	Lebanon, PA Lebanon County, PA	0.8459
30300	Lewiston, ID-WA Nez Perce County, ID Asotin County, WA	0.9886
30340	Lewiston-Auburn, ME Androscoggin County, ME	0.9331

CBSA Code	Urban Area (Constituent Counties)	Wage Index
30460	Lexington-Fayette, KY Bourbon County, KY Clark County, KY Fayette County, KY Jessamine County, KY Scott County, KY Woodford County, KY	0.9075
30620	Lima, OH Allen County, OH	0.9225
30700	Lincoln, NE Lancaster County, NE Seward County, NE	1.0214
30780	Little Rock-North Little Rock, AR Faulkner County, AR Grant County, AR Lonoke County, AR Perry County, AR Pulaski County, AR Saline County, AR	0.8747
30860	Logan, UT-ID Franklin County, ID Cache County, UT	0.9164
30980	Longview, TX Gregg County, TX Rusk County, TX Upshur County, TX	0.8730
31020	Longview, WA Cowlitz County, WA	0.9579
31084	Los Angeles-Long Beach-Glendale, CA Los Angeles County, CA	1.1783

CBSA Code	Urban Area (Constituent Counties)	Wage Index
31140	Louisville, KY-IN Clark County, IN Floyd County, IN Harrison County, IN Washington County, IN Bullitt County, KY Henry County, KY Jefferson County, KY Meade County, KY Nelson County, KY Oldham County, KY Shelby County, KY Spencer County, KY Trimble County, KY	0.9251
31180	Lubbock, TX Crosby County, TX Lubbock County, TX	0.8783
31340	Lynchburg, VA Amherst County, VA Appomattox County, VA Bedford County, VA Campbell County, VA Bedford City, VA Lynchburg City, VA	0.8691
31420	Macon, GA Bibb County, GA Crawford County, GA Jones County, GA Monroe County, GA Twiggs County, GA	0.9443
31460	Madera, CA Madera County, CA	0.8713

CBSA Code	Urban Area (Constituent Counties)	Wage Index
31540	Madison, WI Columbia County, WI Dane County, WI Iowa County, WI	1.0659
31700	Manchester-Nashua, NH Hillsborough County, NH Merrimack County, NH	1.0354
31900	Mansfield, OH Richland County, OH	0.9891
32420	Mayagüez, PR Hormigueros Municipio, PR Mayagüez Municipio, PR	0.4020
32580	McAllen-Edinburg-Mission, TX Hidalgo County, TX	0.8934
32780	Medford, OR Jackson County, OR	1.0225
32820	Memphis, TN-MS-AR Crittenden County, AR DeSoto County, MS Marshall County, MS Tate County, MS Tunica County, MS Fayette County, TN Shelby County, TN Tipton County, TN	0.9397
32900	Merced, CA Merced County, CA	1.1109
33124	Miami-Miami Beach-Kendall, FL Miami-Dade County, FL	0.9750
33140	Michigan City-La Porte, IN LaPorte County, IN	0.9399
33260	Midland, TX Midland County, TX	0.9514



CBSA Code	Urban Area (Constituent Counties)	Wage Index
33340	Milwaukee-Waukesha-West Allis, WI Milwaukee County, WI Ozaukee County, WI Washington County, WI Waukesha County, WI	1.0146
33460	Minneapolis-St. Paul-Bloomington, MN-WI Anoka County, MN Carver County, MN Chisago County, MN Dakota County, MN Hennepin County, MN Isanti County, MN Ramsey County, MN Scott County, MN Sherburne County, MN Washington County, MN Wright County, MN Pierce County, WI St. Croix County, WI	1.1075
33540	Missoula, MT Missoula County, MT	0.9473
33660	Mobile, AL Mobile County, AL	0.7891
33700	Modesto, CA Stanislaus County, CA	1.1885
33740	Monroe, LA Ouachita Parish, LA Union Parish, LA	0.8031
33780	Monroe, MI Monroe County, MI	0.9468
33860	Montgomery, AL Autauga County, AL Elmore County, AL Lowndes County, AL Montgomery County, AL	0.8618

CBSA Code	Urban Area (Constituent Counties)	Wage Index
34060	Morgantown, WV Monongalia County, WV Preston County, WV	0.8420
34100	Morristown, TN Grainger County, TN Hamblen County, TN Jefferson County, TN	0.7961
34580	Mount Vernon-Anacortes, WA Skagit County, WA	1.0454
34620	Muncie, IN Delaware County, IN	0.8930
34740	Muskegon-Norton Shores, MI Muskegon County, MI	0.9664
34820	Myrtle Beach-Conway-North Myrtle Beach, SC Horry County, SC	0.8934
34900	Napa, CA Napa County, CA	1.2643
34940	Naples-Marco Island, FL Collier County, FL	1.0139
34980	Nashville-Davidson--Murfreesboro, TN Cannon County, TN Cheatham County, TN Davidson County, TN Dickson County, TN Hickman County, TN Macon County, TN Robertson County, TN Rutherford County, TN Smith County, TN Sumner County, TN Trousdale County, TN Williamson County, TN Wilson County, TN	0.9790

CBSA Code	Urban Area (Constituent Counties)	Wage Index
35004	Nassau-Suffolk, NY Nassau County, NY Suffolk County, NY	1.2719
35084	Newark-Union, NJ-PA Essex County, NJ Hunterdon County, NJ Morris County, NJ Sussex County, NJ Union County, NJ Pike County, PA	1.1883
35300	New Haven-Milford, CT New Haven County, CT	1.1887
35380	New Orleans-Metairie-Kenner, LA Jefferson Parish, LA Orleans Parish, LA Plaquemines Parish, LA St. Bernard Parish, LA St. Charles Parish, LA St. John the Baptist Parish, LA St. Tammany Parish, LA	0.8995
35644	New York-White Plains-Wayne, NY-NJ Bergen County, NJ Hudson County, NJ Passaic County, NJ Bronx County, NY Kings County, NY New York County, NY Putnam County, NY Queens County, NY Richmond County, NY Rockland County, NY Westchester County, NY	1.3188
35660	Niles-Benton Harbor, MI Berrien County, MI	0.8879

CBSA Code	Urban Area (Constituent Counties)	Wage Index
35980	Norwich-New London, CT New London County, CT	1.1345
36084	Oakland-Fremont-Hayward, CA Alameda County, CA Contra Costa County, CA	1.5346
36100	Ocala, FL Marion County, FL	0.8925
36140	Ocean City, NJ Cape May County, NJ	1.1011
36220	Odessa, TX Ector County, TX	0.9884
36260	Ogden-Clearfield, UT Davis County, UT Morgan County, UT Weber County, UT	0.9029
36420	Oklahoma City, OK Canadian County, OK Cleveland County, OK Grady County, OK Lincoln County, OK Logan County, OK McClain County, OK Oklahoma County, OK	0.9031
36500	Olympia, WA Thurston County, WA	1.0927
36540	Omaha-Council Bluffs, NE-IA Harrison County, IA Mills County, IA Pottawattamie County, IA Cass County, NE Douglas County, NE Sarpy County, NE Saunders County, NE Washington County, NE	0.9560

CBSA Code	Urban Area (Constituent Counties)	Wage Index
36740	Orlando-Kissimmee, FL Lake County, FL Orange County, FL Osceola County, FL Seminole County, FL	0.9464
36780	Oshkosh-Neenah, WI Winnebago County, WI	0.9183
36980	Owensboro, KY Davies County, KY Hancock County, KY McLean County, KY	0.8780
37100	Oxnard-Thousand Oaks-Ventura, CA Ventura County, CA	1.1622
37340	Palm Bay-Melbourne-Titusville, FL Brevard County, FL	0.9839
37460	Panama City-Lynn Haven, FL Bay County, FL	0.8005
37620	Parkersburg-Marietta-Vienna, WV-OH Washington County, OH Pleasants County, WV Wirt County, WV Wood County, WV	0.8270
37700	Pascagoula, MS George County, MS Jackson County, MS	0.8156
37860	Pensacola-Ferry Pass-Brent, FL Escambia County, FL Santa Rosa County, FL	0.8096
37900	Peoria, IL Marshall County, IL Peoria County, IL Stark County, IL Tazewell County, IL Woodford County, IL	0.8870

CBSA Code	Urban Area (Constituent Counties)	Wage Index
37964	Philadelphia, PA Bucks County, PA Chester County, PA Delaware County, PA Montgomery County, PA Philadelphia County, PA	1.1038
38060	Phoenix-Mesa-Scottsdale, AZ Maricopa County, AZ Pinal County, AZ	1.0127
38220	Pine Bluff, AR Cleveland County, AR Jefferson County, AR Lincoln County, AR	0.8680
38300	Pittsburgh, PA Allegheny County, PA Armstrong County, PA Beaver County, PA Butler County, PA Fayette County, PA Washington County, PA Westmoreland County, PA	0.8845
38340	Pittsfield, MA Berkshire County, MA	1.0181
38540	Pocatello, ID Bannock County, ID Power County, ID	0.9351
38660	Ponce, PR Juana Díaz Municipio, PR Ponce Municipio, PR Villalba Municipio, PR	0.4939
38860	Portland-South Portland-Biddeford, ME Cumberland County, ME Sagadahoc County, ME York County, ME	1.0382

CBSA Code	Urban Area (Constituent Counties)	Wage Index
38900	Portland-Vancouver-Beaverton, OR-WA Clackamas County, OR Columbia County, OR Multnomah County, OR Washington County, OR Yamhill County, OR Clark County, WA Skamania County, WA	1.1266
38940	Port St. Lucie-Fort Pierce, FL Martin County, FL St. Lucie County, FL	1.0123
39100	Poughkeepsie-Newburgh-Middletown, NY Dutchess County, NY Orange County, NY	1.0891
39140	Prescott, AZ Yavapai County, AZ	0.9869
39300	Providence-New Bedford-Fall River, RI-MA Bristol County, MA Bristol County, RI Kent County, RI Newport County, RI Providence County, RI Washington County, RI	1.0966
39340	Provo-Orem, UT Juab County, UT Utah County, UT	0.9500
39380	Pueblo, CO Pueblo County, CO	0.8623
39460	Punta Gorda, FL Charlotte County, FL	0.9255
39540	Racine, WI Racine County, WI	0.8997

CBSA Code	Urban Area (Constituent Counties)	Wage Index
39580	Raleigh-Cary, NC Franklin County, NC Johnston County, NC Wake County, NC	0.9691
39660	Rapid City, SD Meade County, SD Pennington County, SD	0.8987
39740	Reading, PA Berks County, PA	0.9686
39820	Redding, CA Shasta County, CA	1.2203
39900	Reno-Sparks, NV Storey County, NV Washoe County, NV	1.0982
40060	Richmond, VA Amelia County, VA Caroline County, VA Charles City County, VA Chesterfield County, VA Cumberland County, VA Dinwiddie County, VA Goochland County, VA Hanover County, VA Henrico County, VA King and Queen County, VA King William County, VA Louisa County, VA New Kent County, VA Powhatan County, VA Prince George County, VA Sussex County, VA Colonial Heights City, VA Hopewell City, VA Petersburg City, VA Richmond City, VA	0.9328



CBSA Code	Urban Area (Constituent Counties)	Wage Index
40140	Riverside-San Bernardino-Ontario, CA Riverside County, CA San Bernardino County, CA	1.1027
40220	Roanoke, VA Botetourt County, VA Craig County, VA Franklin County, VA Roanoke County, VA Roanoke City, VA Salem City, VA	0.8374
40340	Rochester, MN Dodge County, MN Olmsted County, MN Wabasha County, MN	1.1131
40380	Rochester, NY Livingston County, NY Monroe County, NY Ontario County, NY Orleans County, NY Wayne County, NY	0.9121
40420	Rockford, IL Boone County, IL Winnebago County, IL	0.9984
40484	Rockingham County-Strafford County, NH Rockingham County, NH Strafford County, NH	1.0374
40580	Rocky Mount, NC Edgecombe County, NC Nash County, NC	0.8915
40660	Rome, GA Floyd County, GA	0.9414

CBSA Code	Urban Area (Constituent Counties)	Wage Index
40900	Sacramento--Arden-Arcade--Roseville, CA El Dorado County, CA Placer County, CA Sacramento County, CA Yolo County, CA	1.2969
40980	Saginaw-Saginaw Township North, MI Saginaw County, MI	0.9088
41060	St. Cloud, MN Benton County, MN Stearns County, MN	0.9965
41100	St. George, UT Washington County, UT	0.9392
41140	St. Joseph, MO-KS Doniphan County, KS Andrew County, MO Buchanan County, MO DeKalb County, MO	0.9519
41180	St. Louis, MO-IL Bond County, IL Calhoun County, IL Clinton County, IL Jersey County, IL Macoupin County, IL Madison County, IL Monroe County, IL St. Clair County, IL Crawford County, MO Franklin County, MO Jefferson County, MO Lincoln County, MO St. Charles County, MO St. Louis County, MO Warren County, MO Washington County, MO St. Louis City, MO	0.8954

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41420	Salem, OR Marion County, OR Polk County, OR	1.0442
41500	Salinas, CA Monterey County, CA	1.4128
41540	Salisbury, MD Somerset County, MD Wicomico County, MD	0.9064
41620	Salt Lake City, UT Salt Lake County, UT Summit County, UT Tooele County, UT	0.9421
41660	San Angelo, TX Irion County, TX Tom Green County, TX	0.8271
41700	San Antonio, TX Atascosa County, TX Bandera County, TX Bexar County, TX Comal County, TX Guadalupe County, TX Kendall County, TX Medina County, TX Wilson County, TX	0.8980
41740	San Diego-Carlsbad-San Marcos, CA San Diego County, CA	1.1413
41780	Sandusky, OH Erie County, OH	0.9019
41884	San Francisco-San Mateo-Redwood City, CA Marin County, CA San Francisco County, CA San Mateo County, CA	1.4994

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41900	San Germán-Cabo Rojo, PR Cabo Rojo Municipio, PR Lajas Municipio, PR Sabana Grande Municipio, PR San Germán Municipio, PR	0.4650
41940	San Jose-Sunnyvale-Santa Clara, CA San Benito County, CA Santa Clara County, CA	1.5099

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41980	San Juan-Caguas-Guaynabo, PR Aguas Buenas Municipio, PR Aibonito Municipio, PR Arecibo Municipio, PR Barceloneta Municipio, PR Barranquitas Municipio, PR Bayamón Municipio, PR Caguas Municipio, PR Camuy Municipio, PR Canóvanas Municipio, PR Carolina Municipio, PR Cataño Municipio, PR Cayey Municipio, PR Ciales Municipio, PR Cidra Municipio, PR Comerío Municipio, PR Corozal Municipio, PR Dorado Municipio, PR Florida Municipio, PR Guaynabo Municipio, PR Gurabo Municipio, PR Hatillo Municipio, PR Humacao Municipio, PR Juncos Municipio, PR Las Piedras Municipio, PR Loíza Municipio, PR Manatí Municipio, PR Maunabo Municipio, PR Morovis Municipio, PR Naguabo Municipio, PR Naranjito Municipio, PR Orocovis Municipio, PR Quebradillas Municipio, PR Río Grande Municipio, PR San Juan Municipio, PR San Lorenzo Municipio, PR Toa Alta Municipio, PR Toa Baja Municipio, PR Trujillo Alto Municipio, PR Vega Alta Municipio, PR Vega Baja Municipio, PR Yabucoa Municipio, PR	0.4621

CBSA Code	Urban Area (Constituent Counties)	Wage Index
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA	1.1349
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA	1.1559
42060	Santa Barbara-Santa Maria, CA Santa Barbara County, CA	1.1694
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA	1.5166
42140	Santa Fe, NM Santa Fe County, NM	1.0920
42220	Santa Rosa-Petaluma, CA Sonoma County, CA	1.3493
42260	Sarasota-Bradenton-Venice, FL Manatee County, FL Sarasota County, FL	0.9639
42340	Savannah, GA Bryan County, GA Chatham County, GA Effingham County, GA	0.9461
42540	Scranton--Wilkes-Barre, PA Lackawanna County, PA Luzerne County, PA Wyoming County, PA	0.8540
42644	Seattle-Bellevue-Everett, WA King County, WA Snohomish County, WA	1.1577
43100	Sheboygan, WI Sheboygan County, WI	0.8911
43300	Sherman-Denison, TX Grayson County, TX	0.9507
43340	Shreveport-Bossier City, LA Bossier Parish, LA Caddo Parish, LA De Soto Parish, LA	0.8760

CBSA Code	Urban Area (Constituent Counties)	Wage Index
43580	Sioux City, IA-NE-SD Woodbury County, IA Dakota County, NE Dixon County, NE Union County, SD	0.9381
43620	Sioux Falls, SD Lincoln County, SD McCook County, SD Minnehaha County, SD Turner County, SD	0.9635
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN Cass County, MI	0.9788
43900	Spartanburg, SC Spartanburg County, SC	0.9172
44060	Spokane, WA Spokane County, WA	1.0905
44100	Springfield, IL Menard County, IL Sangamon County, IL	0.8792
44140	Springfield, MA Franklin County, MA Hampden County, MA Hampshire County, MA	1.0248
44180	Springfield, MO Christian County, MO Dallas County, MO Greene County, MO Polk County, MO Webster County, MO	0.8237
44220	Springfield, OH Clark County, OH	0.8396
44300	State College, PA Centre County, PA	0.8356

CBSA Code	Urban Area (Constituent Counties)	Wage Index
44700	Stockton, CA San Joaquin County, CA	1.1307
44940	Sumter, SC Sumter County, SC	0.8377
45060	Syracuse, NY Madison County, NY Onondaga County, NY Oswego County, NY	0.9574
45104	Tacoma, WA Pierce County, WA	1.0742
45220	Tallahassee, FL Gadsden County, FL Jefferson County, FL Leon County, FL Wakulla County, FL	0.8688
45300	Tampa-St. Petersburg-Clearwater, FL Hernando County, FL Hillsborough County, FL Pasco County, FL Pinellas County, FL	0.9233
45460	Terre Haute, IN Clay County, IN Sullivan County, IN Vermillion County, IN Vigo County, IN	0.8304
45500	Texarkana, TX-Texarkana, AR Miller County, AR Bowie County, TX	0.8283
45780	Toledo, OH Fulton County, OH Lucas County, OH Ottawa County, OH Wood County, OH	0.9574



CBSA Code	Urban Area (Constituent Counties)	Wage Index
45820	Topeka, KS Jackson County, KS Jefferson County, KS Osage County, KS Shawnee County, KS Wabaunsee County, KS	0.8920
45940	Trenton-Ewing, NJ Mercer County, NJ	1.0834
46060	Tucson, AZ Pima County, AZ	0.9007
46140	Tulsa, OK Creek County, OK Okmulgee County, OK Osage County, OK Pawnee County, OK Rogers County, OK Tulsa County, OK Wagoner County, OK	0.8543
46220	Tuscaloosa, AL Greene County, AL Hale County, AL Tuscaloosa County, AL	0.8645
46340	Tyler, TX Smith County, TX	0.9168
46540	Utica-Rome, NY Herkimer County, NY Oneida County, NY	0.8358
46660	Valdosta, GA Brooks County, GA Echols County, GA Lanier County, GA Lowndes County, GA	0.8866
46700	Vallejo-Fairfield, CA Solano County, CA	1.4936

CBSA Code	Urban Area (Constituent Counties)	Wage Index
46940	Vero Beach, FL Indian River County, FL	0.9434
47020	Victoria, TX Calhoun County, TX Goliad County, TX Victoria County, TX	0.8160
47220	Vineland-Millville-Bridgeton, NJ Cumberland County, NJ	0.9827
47260	Virginia Beach-Norfolk-Newport News, VA-NC Currituck County, NC Gloucester County, VA Isle of Wight County, VA James City County, VA Mathews County, VA Surry County, VA York County, VA Chesapeake City, VA Hampton City, VA Newport News City, VA Norfolk City, VA Poquoson City, VA Portsmouth City, VA Suffolk City, VA Virginia Beach City, VA Williamsburg City, VA	0.8799
47300	Visalia-Porterville, CA Tulare County, CA	1.0123
47380	Waco, TX McLennan County, TX	0.8518
47580	Warner Robins, GA Houston County, GA	0.8645

CBSA Code	Urban Area (Constituent Counties)	Wage Index
47644	Warren-Farmington Hills-Troy, MI Lapeer County, MI Livingston County, MI Macomb County, MI Oakland County, MI St. Clair County, MI	0.9871
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV District of Columbia, DC Calvert County, MD Charles County, MD Prince George's County, MD Arlington County, VA Clarke County, VA Fairfax County, VA Fauquier County, VA Loudoun County, VA Prince William County, VA Spotsylvania County, VA Stafford County, VA Warren County, VA Alexandria City, VA Fairfax City, VA Falls Church City, VA Fredericksburg City, VA Manassas City, VA Manassas Park City, VA Jefferson County, WV	1.0926
47940	Waterloo-Cedar Falls, IA Black Hawk County, IA Bremer County, IA Grundy County, IA	0.8557
48140	Wausau, WI Marathon County, WI	0.9590

CBSA Code	Urban Area (Constituent Counties)	Wage Index
48260	Weirton-Steubenville, WV-OH Jefferson County, OH Brooke County, WV Hancock County, WV	0.7819
48300	Wenatchee, WA Chelan County, WA Douglas County, WA	1.0070
48424	West Palm Beach-Boca Raton-Boynton Beach, FL Palm Beach County, FL	1.0067
48540	Wheeling, WV-OH Belmont County, OH Marshall County, WV Ohio County, WV	0.7161
48620	Wichita, KS Butler County, KS Harvey County, KS Sedgwick County, KS Sumner County, KS	0.9153
48660	Wichita Falls, TX Archer County, TX Clay County, TX Wichita County, TX	0.8285
48700	Williamsport, PA Lycoming County, PA	0.8364
48864	Wilmington, DE-MD-NJ New Castle County, DE Cecil County, MD Salem County, NJ	1.0471
48900	Wilmington, NC Brunswick County, NC New Hanover County, NC Pender County, NC	0.9582

CBSA Code	Urban Area (Constituent Counties)	Wage Index
49020	Winchester, VA-WV Frederick County, VA Winchester City, VA Hampshire County, WV	1.0214
49180	Winston-Salem, NC Davie County, NC Forsyth County, NC Stokes County, NC Yadkin County, NC	0.8944
49340	Worcester, MA Worcester County, MA	1.1028
49420	Yakima, WA Yakima County, WA	1.0155
49500	Yauco, PR Guánica Municipio, PR Guayanilla Municipio, PR Peñuelas Municipio, PR Yauco Municipio, PR	0.4408
49620	York-Hanover, PA York County, PA	0.9347
49660	Youngstown-Warren-Boardman, OH-PA Mahoning County, OH Trumbull County, OH Mercer County, PA	0.8603
49700	Yuba City, CA Sutter County, CA Yuba County, CA	1.0921
49740	Yuma, AZ Yuma County, AZ	0.9126

<sup>1</sup> At this time, there are no hospitals located in this urban area on which to base a wage index. Therefore, the urban wage index value is based on the average wage index for all urban areas within the state.

TABLE 2.—PROPOSED WAGE INDEX  
BASED ON CBSA LABOR MARKET  
AREAS FOR RURAL AREAS

CBSA Code	Nonurban Area	Wage Index
01 .....	Alabama .....	0.7446
02 .....	Alaska .....	1.1977
03 .....	Arizona .....	0.8768
04 .....	Arkansas .....	0.7466
05 .....	California .....	1.1054
06 .....	Colorado .....	0.9380
07 .....	Connecticut .....	1.1730
08 .....	Delaware .....	0.9579
10 .....	Florida .....	0.8568
11 .....	Georgia .....	0.7662
12 .....	Hawaii .....	1.0551
13 .....	Idaho .....	0.8037
14 .....	Illinois .....	0.8271
15 .....	Indiana .....	0.8624
16 .....	Iowa .....	0.8509
17 .....	Kansas .....	0.8035
18 .....	Kentucky .....	0.7766
19 .....	Louisiana .....	0.7411
20 .....	Maine .....	0.8843
21 .....	Maryland .....	0.9353
22 .....	Massachusetts .....	1.0216
23 .....	Michigan .....	0.8895

TABLE 2.—PROPOSED WAGE INDEX  
BASED ON CBSA LABOR MARKET  
AREAS FOR RURAL AREAS—Continued

CBSA Code	Nonurban Area	Wage Index
24 .....	Minnesota .....	0.9132
25 .....	Mississippi .....	0.7674
26 .....	Missouri .....	0.7900
27 .....	Montana .....	0.8762
28 .....	Nebraska .....	0.8657
29 .....	Nevada .....	0.9065
30 .....	New Hampshire .....	1.0817
31 .....	New Jersey <sup>1</sup> .....	
32 .....	New Mexico .....	0.8635
33 .....	New York .....	0.8154
34 .....	North Carolina .....	0.8540
35 .....	North Dakota .....	0.7261
36 .....	Ohio .....	0.8826
37 .....	Oklahoma .....	0.7581
38 .....	Oregon .....	0.9826
39 .....	Pennsylvania .....	0.8291
40 .....	Puerto Rico <sup>1</sup> .....	0.4047
41 .....	Rhode Island <sup>1</sup> .....	
42 .....	South Carolina .....	0.8638
43 .....	South Dakota .....	0.8560
44 .....	Tennessee .....	0.7895

TABLE 2.—PROPOSED WAGE INDEX  
BASED ON CBSA LABOR MARKET  
AREAS FOR RURAL AREAS—Continued

CBSA Code	Nonurban Area	Wage Index
45 .....	Texas .....	0.8003
46 .....	Utah .....	0.8118
47 .....	Vermont .....	0.9830
48 .....	Virgin Islands .....	0.7615
49 .....	Virginia .....	0.8013
50 .....	Washington .....	1.0510
51 .....	West Virginia .....	0.7717
52 .....	Wisconsin .....	0.9509
53 .....	Wyoming .....	0.9257
65 .....	Guam .....	0.9611

<sup>1</sup>All counties within the State are classified as urban, with the exception of Massachusetts and Puerto Rico. Massachusetts and Puerto Rico have areas designated as rural, however, no short-term, acute care hospitals are located in the area(s) for FY 2006. Because more recent data is not available for those areas, we are using last year's wage index value.

[FR Doc. 06-488 Filed 1-13-06; 4:01 pm]

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<b>7 Parts:</b>			
1-26	(869-056-00009-0)	44.00	Jan. 1, 2005
27-52	(869-056-00010-3)	49.00	Jan. 1, 2005
53-209	(869-056-00011-1)	37.00	Jan. 1, 2005
210-299	(869-056-00012-0)	62.00	Jan. 1, 2005
300-399	(869-056-00013-8)	46.00	Jan. 1, 2005
400-699	(869-056-00014-6)	42.00	Jan. 1, 2005
700-899	(869-056-00015-4)	43.00	Jan. 1, 2005
900-999	(869-056-00016-2)	60.00	Jan. 1, 2005
1000-1199	(869-056-00017-1)	22.00	Jan. 1, 2005
1200-1599	(869-056-00018-9)	61.00	Jan. 1, 2005
1600-1899	(869-056-00019-7)	64.00	Jan. 1, 2005
1900-1939	(869-056-00020-1)	31.00	Jan. 1, 2005
1940-1949	(869-056-00021-9)	50.00	Jan. 1, 2005
1950-1999	(869-056-00022-7)	46.00	Jan. 1, 2005
2000-End	(869-056-00023-5)	50.00	Jan. 1, 2005
8	(869-056-00024-3)	63.00	Jan. 1, 2005
<b>9 Parts:</b>			
1-199	(869-056-00025-1)	61.00	Jan. 1, 2005
200-End	(869-056-00026-0)	58.00	Jan. 1, 2005
<b>10 Parts:</b>			
1-50	(869-056-00027-8)	61.00	Jan. 1, 2005
51-199	(869-056-00028-6)	58.00	Jan. 1, 2005
200-499	(869-056-00029-4)	46.00	Jan. 1, 2005
500-End	(869-056-00030-8)	62.00	Jan. 1, 2005
11	(869-056-00031-6)	41.00	Jan. 1, 2005
<b>12 Parts:</b>			
1-199	(869-056-00032-4)	34.00	Jan. 1, 2005
200-219	(869-056-00033-2)	37.00	Jan. 1, 2005
220-299	(869-056-00034-1)	61.00	Jan. 1, 2005
300-499	(869-056-00035-9)	47.00	Jan. 1, 2005
500-599	(869-056-00036-7)	39.00	Jan. 1, 2005
600-899	(869-056-00037-5)	56.00	Jan. 1, 2005

Title	Stock Number	Price	Revision Date
900-End	(869-056-00038-3)	50.00	Jan. 1, 2005
13	(869-056-00039-1)	55.00	Jan. 1, 2005
<b>14 Parts:</b>			
1-59	(869-056-00040-5)	63.00	Jan. 1, 2005
60-139	(869-056-00041-3)	61.00	Jan. 1, 2005
140-199	(869-056-00042-1)	30.00	Jan. 1, 2005
200-1199	(869-056-00043-0)	50.00	Jan. 1, 2005
1200-End	(869-056-00044-8)	45.00	Jan. 1, 2005
<b>15 Parts:</b>			
0-299	(869-056-00045-6)	40.00	Jan. 1, 2005
300-799	(869-056-00046-4)	60.00	Jan. 1, 2005
800-End	(869-056-00047-2)	42.00	Jan. 1, 2005
<b>16 Parts:</b>			
0-999	(869-056-00048-1)	50.00	Jan. 1, 2005
1000-End	(869-056-00049-9)	60.00	Jan. 1, 2005
<b>17 Parts:</b>			
1-199	(869-056-00051-1)	50.00	Apr. 1, 2005
200-239	(869-056-00052-9)	58.00	Apr. 1, 2005
240-End	(869-056-00053-7)	62.00	Apr. 1, 2005
<b>18 Parts:</b>			
1-399	(869-056-00054-5)	62.00	Apr. 1, 2005
400-End	(869-056-00055-3)	26.00	Apr. 1, 2005
<b>19 Parts:</b>			
1-140	(869-056-00056-1)	61.00	Apr. 1, 2005
141-199	(869-056-00057-0)	58.00	Apr. 1, 2005
200-End	(869-056-00058-8)	31.00	Apr. 1, 2005
<b>20 Parts:</b>			
1-399	(869-056-00059-6)	50.00	Apr. 1, 2005
400-499	(869-056-00060-0)	64.00	Apr. 1, 2005
500-End	(869-056-00061-8)	63.00	Apr. 1, 2005
<b>21 Parts:</b>			
1-99	(869-056-00062-6)	42.00	Apr. 1, 2005
100-169	(869-056-00063-4)	49.00	Apr. 1, 2005
170-199	(869-056-00064-2)	50.00	Apr. 1, 2005
200-299	(869-056-00065-1)	17.00	Apr. 1, 2005
300-499	(869-056-00066-9)	31.00	Apr. 1, 2005
500-599	(869-056-00067-7)	47.00	Apr. 1, 2005
600-799	(869-056-00068-5)	15.00	Apr. 1, 2005
800-1299	(869-056-00069-3)	58.00	Apr. 1, 2005
1300-End	(869-056-00070-7)	24.00	Apr. 1, 2005
<b>22 Parts:</b>			
1-299	(869-056-00071-5)	63.00	Apr. 1, 2005
300-End	(869-056-00072-3)	45.00	Apr. 1, 2005
23	(869-056-00073-1)	45.00	Apr. 1, 2005
<b>24 Parts:</b>			
0-199	(869-056-00074-0)	60.00	Apr. 1, 2005
200-499	(869-056-00074-0)	50.00	Apr. 1, 2005
500-699	(869-056-00076-6)	30.00	Apr. 1, 2005
700-1699	(869-056-00077-4)	61.00	Apr. 1, 2005
1700-End	(869-056-00078-2)	30.00	Apr. 1, 2005
25	(869-056-00079-1)	63.00	Apr. 1, 2005
<b>26 Parts:</b>			
§§ 1.0-1.160	(869-056-00080-4)	49.00	Apr. 1, 2005
§§ 1.61-1.169	(869-056-00081-2)	63.00	Apr. 1, 2005
§§ 1.170-1.300	(869-056-00082-1)	60.00	Apr. 1, 2005
§§ 1.301-1.400	(869-056-00083-9)	46.00	Apr. 1, 2005
§§ 1.401-1.440	(869-056-00084-7)	62.00	Apr. 1, 2005
§§ 1.441-1.500	(869-056-00085-5)	57.00	Apr. 1, 2005
§§ 1.501-1.640	(869-056-00086-3)	49.00	Apr. 1, 2005
§§ 1.641-1.850	(869-056-00087-1)	60.00	Apr. 1, 2005
§§ 1.851-1.907	(869-056-00088-0)	61.00	Apr. 1, 2005
§§ 1.908-1.1000	(869-056-00089-8)	60.00	Apr. 1, 2005
§§ 1.1001-1.1400	(869-056-00090-1)	61.00	Apr. 1, 2005
§§ 1.1401-1.1550	(869-056-00091-0)	55.00	Apr. 1, 2005
§§ 1.1551-End	(869-056-00092-8)	55.00	Apr. 1, 2005
2-29	(869-056-00093-6)	60.00	Apr. 1, 2005
30-39	(869-056-00094-4)	41.00	Apr. 1, 2005
40-49	(869-056-00095-2)	28.00	Apr. 1, 2005
50-299	(869-056-00096-1)	41.00	Apr. 1, 2005

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
300-499	(869-056-00097-9)	61.00	Apr. 1, 2005	63 (63.6580-63.8830)	(869-056-00150-9)	32.00	July 1, 2005
500-599	(869-056-00098-7)	12.00	<sup>5</sup> Apr. 1, 2005	63 (63.8980-End)	(869-056-00151-7)	35.00	<sup>7</sup> July 1, 2005
600-End	(869-056-00099-5)	17.00	Apr. 1, 2005	64-71	(869-056-00152-5)	29.00	July 1, 2005
<b>27 Parts:</b>				72-80	(869-056-00153-5)	62.00	July 1, 2005
1-199	(869-056-00100-2)	64.00	Apr. 1, 2005	81-85	(869-056-00154-1)	60.00	July 1, 2005
200-End	(869-056-00101-1)	21.00	Apr. 1, 2005	86 (86.1-86.599-99)	(869-056-00155-0)	58.00	July 1, 2005
<b>28 Parts:</b>				86 (86.600-1-End)	(869-056-00156-8)	50.00	July 1, 2005
0-42	(869-056-00102-9)	61.00	July 1, 2005	87-99	(869-056-00157-6)	60.00	July 1, 2005
43-End	(869-056-00103-7)	60.00	July 1, 2005	100-135	(869-056-00158-4)	45.00	July 1, 2005
<b>29 Parts:</b>				136-149	(869-056-00159-2)	61.00	July 1, 2005
0-99	(869-056-00104-5)	50.00	July 1, 2005	150-189	(869-056-00160-6)	50.00	July 1, 2005
100-499	(869-056-00105-3)	23.00	July 1, 2005	190-259	(869-056-00161-4)	39.00	July 1, 2005
500-899	(869-056-00106-1)	61.00	July 1, 2005	260-265	(869-056-00162-2)	50.00	July 1, 2005
900-1899	(869-056-00107-0)	36.00	<sup>7</sup> July 1, 2005	266-299	(869-056-00163-1)	50.00	July 1, 2005
1900-1910 (§§ 1900 to 1910.999)	(869-056-00108-8)	61.00	July 1, 2005	300-399	(869-056-00164-9)	42.00	July 1, 2005
1910 (§§ 1910.1000 to end)	(869-056-00109-6)	58.00	July 1, 2005	400-424	(869-056-00165-7)	56.00	<sup>8</sup> July 1, 2005
1911-1925	(869-056-00110-0)	30.00	July 1, 2005	425-699	(869-056-00166-5)	61.00	July 1, 2005
1926	(869-056-00111-8)	50.00	July 1, 2005	700-789	(869-056-00167-3)	61.00	July 1, 2005
1927-End	(869-056-00112-6)	62.00	July 1, 2005	790-End	(869-056-00168-1)	61.00	July 1, 2005
<b>30 Parts:</b>				<b>41 Chapters:</b>			
1-199	(869-056-00113-4)	57.00	July 1, 2005	1, 1-1 to 1-10		13.00	<sup>3</sup> July 1, 1984
200-699	(869-056-00114-2)	50.00	July 1, 2005	1, 1-11 to Appendix, 2 (2 Reserved)		13.00	<sup>3</sup> July 1, 1984
700-End	(869-056-00115-1)	58.00	July 1, 2005	3-6		14.00	<sup>3</sup> July 1, 1984
<b>31 Parts:</b>				7		6.00	<sup>3</sup> July 1, 1984
0-199	(869-056-00116-9)	41.00	July 1, 2005	8		4.50	<sup>3</sup> July 1, 1984
200-499	(869-056-00117-7)	33.00	July 1, 2005	9		13.00	<sup>3</sup> July 1, 1984
500-End	(869-056-00118-5)	33.00	July 1, 2005	10-17		9.50	<sup>3</sup> July 1, 1984
<b>32 Parts:</b>				18, Vol. I, Parts 1-5		13.00	<sup>3</sup> July 1, 1984
1-39, Vol. I		15.00	<sup>2</sup> July 1, 1984	18, Vol. II, Parts 6-19		13.00	<sup>3</sup> July 1, 1984
1-39, Vol. II		19.00	<sup>2</sup> July 1, 1984	18, Vol. III, Parts 20-52		13.00	<sup>3</sup> July 1, 1984
1-39, Vol. III		18.00	<sup>2</sup> July 1, 1984	19-100		13.00	<sup>3</sup> July 1, 1984
1-190	(869-056-00119-3)	61.00	July 1, 2005	1-100	(869-056-00169-0)	24.00	July 1, 2005
191-399	(869-056-00120-7)	63.00	July 1, 2005	101	(869-056-00170-3)	21.00	July 1, 2005
400-629	(869-056-00121-5)	50.00	July 1, 2005	102-200	(869-056-00171-1)	56.00	July 1, 2005
630-699	(869-056-00122-3)	37.00	July 1, 2005	201-End	(869-056-00172-0)	24.00	July 1, 2005
700-799	(869-056-00123-1)	46.00	July 1, 2005	<b>42 Parts:</b>			
800-End	(869-056-00124-0)	47.00	July 1, 2005	1-399	(869-056-00173-8)	61.00	Oct. 1, 2005
<b>33 Parts:</b>				400-429	(869-056-00174-6)	63.00	Oct. 1, 2005
1-124	(869-056-00125-8)	57.00	July 1, 2005	430-End	(869-056-00175-4)	64.00	Oct. 1, 2005
125-199	(869-056-00126-6)	61.00	July 1, 2005	<b>43 Parts:</b>			
200-End	(869-056-00127-4)	57.00	July 1, 2005	1-999	(869-056-00176-2)	56.00	Oct. 1, 2005
<b>34 Parts:</b>				1000-end	(869-052-00175-9)	62.00	Oct. 1, 2004
1-299	(869-056-00128-2)	50.00	July 1, 2005	<b>44</b>	(869-056-00178-9)	50.00	Oct. 1, 2005
300-399	(869-056-00129-1)	40.00	<sup>7</sup> July 1, 2005	<b>45 Parts:</b>			
400-End & 35	(869-056-00130-4)	61.00	July 1, 2005	1-199	(869-056-00179-7)	60.00	Oct. 1, 2005
<b>36 Parts:</b>				200-499	(869-056-00180-1)	34.00	Oct. 1, 2005
1-199	(869-056-00131-2)	37.00	July 1, 2005	500-1199	(869-056-00171-9)	56.00	Oct. 1, 2005
200-299	(869-056-00132-1)	37.00	July 1, 2005	1200-End	(869-056-00182-7)	61.00	Oct. 1, 2005
300-End	(869-056-00133-9)	61.00	July 1, 2005	<b>46 Parts:</b>			
<b>37</b>	(869-056-00134-7)	58.00	July 1, 2005	1-40	(869-056-00183-5)	46.00	Oct. 1, 2005
<b>38 Parts:</b>				41-69	(869-056-00184-3)	39.00	<sup>9</sup> Oct. 1, 2005
0-17	(869-056-00135-5)	60.00	July 1, 2005	70-89	(869-056-00185-1)	14.00	<sup>9</sup> Oct. 1, 2005
18-End	(869-056-00136-3)	62.00	July 1, 2005	90-139	(869-056-00186-0)	44.00	Oct. 1, 2005
<b>39</b>	(869-056-00139-1)	42.00	July 1, 2005	140-155	(869-056-00187-8)	25.00	Oct. 1, 2005
<b>40 Parts:</b>				156-165	(869-056-00188-6)	34.00	<sup>9</sup> Oct. 1, 2005
1-49	(869-056-00138-0)	60.00	July 1, 2005	166-199	(869-056-00189-4)	46.00	Oct. 1, 2005
50-51	(869-056-00139-8)	45.00	July 1, 2005	200-499	(869-056-00190-8)	40.00	Oct. 1, 2005
52 (52.01-52.1018)	(869-056-00140-1)	60.00	July 1, 2005	500-End	(869-056-00191-6)	25.00	Oct. 1, 2005
52 (52.1019-End)	(869-056-00141-0)	61.00	July 1, 2005	<b>47 Parts:</b>			
53-59	(869-056-00142-8)	31.00	July 1, 2005	0-19	(869-056-00192-4)	61.00	Oct. 1, 2005
60 (60.1-End)	(869-056-00143-6)	58.00	July 1, 2005	20-39	(869-056-00193-2)	46.00	Oct. 1, 2005
60 (Apps)	(869-056-00144-4)	57.00	July 1, 2005	40-69	(869-056-00194-1)	40.00	Oct. 1, 2005
61-62	(869-056-00145-2)	45.00	July 1, 2005	*70-79	(869-056-00195-9)	61.00	Oct. 1, 2005
63 (63.1-63.599)	(869-056-00146-1)	58.00	July 1, 2005	80-End	(869-056-00196-7)	61.00	Oct. 1, 2005
63 (63.600-63.1199)	(869-056-00147-9)	50.00	July 1, 2005	<b>48 Chapters:</b>			
63 (63.1200-63.1439)	(869-056-00148-7)	50.00	July 1, 2005	1 (Parts 1-51)	(869-056-00197-5)	63.00	Oct. 1, 2005
63 (63.1440-63.6175)	(869-056-00149-5)	32.00	July 1, 2005	1 (Parts 52-99)	(869-056-00198-3)	49.00	Oct. 1, 2005
				2 (Parts 201-299)	(869-056-00199-1)	50.00	Oct. 1, 2005
				3-6	(869-056-00200-9)	34.00	Oct. 1, 2005
				7-14	(869-056-00201-7)	56.00	Oct. 1, 2005
				15-28	(869-056-00202-5)	47.00	Oct. 1, 2005

Title	Stock Number	Price	Revision Date
29-End .....	(869-056-00203-3) .....	47.00	Oct. 1, 2005
<b>49 Parts:</b>			
1-99 .....	(869-056-00204-1) .....	60.00	Oct. 1, 2005
100-185 .....	(869-052-00203-8) .....	63.00	Oct. 1, 2004
186-199 .....	(869-056-00206-8) .....	23.00	Oct. 1, 2005
200-299 .....	(869-056-00207-6) .....	32.00	Oct. 1, 2005
300-399 .....	(869-056-00208-4) .....	32.00	Oct. 1, 2005
400-599 .....	(869-056-00209-2) .....	64.00	Oct. 1, 2005
600-999 .....	(869-056-00210-6) .....	19.00	Oct. 1, 2005
1000-1199 .....	(869-056-00211-4) .....	28.00	Oct. 1, 2005
1200-End .....	(869-056-00212-2) .....	34.00	Oct. 1, 2005
<b>50 Parts:</b>			
1-16 .....	(869-056-00213-1) .....	11.00	Oct. 1, 2005
17.1-17.95 .....	(869-052-00211-9) .....	64.00	Oct. 1, 2004
17.96-17.99(h) .....	(869-056-00215-7) .....	61.00	Oct. 1, 2005
17.99(i)-end and 17.100-end .....	(869-056-00217-3) .....	47.00	Oct. 1, 2005
18-199 .....	(869-056-00218-1) .....	50.00	Oct. 1, 2005
200-599 .....	(869-056-00218-1) .....	45.00	Oct. 1, 2005
600-End .....	(869-052-00216-0) .....	62.00	Oct. 1, 2004
<b>CFR Index and Findings</b>			
Aids .....	(869-056-00050-2) .....	62.00	Jan. 1, 2005
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<sup>1</sup> Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

<sup>2</sup> The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

<sup>3</sup> The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

<sup>4</sup> No amendments to this volume were promulgated during the period January 1, 2004, through January 1, 2005. The CFR volume issued as of January 1, 2004 should be retained.

<sup>5</sup> No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2005. The CFR volume issued as of April 1, 2000 should be retained.

<sup>6</sup> No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.

<sup>7</sup> No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

<sup>8</sup> No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

<sup>9</sup> No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.