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WHEN: Tuesday, May 8, 2007
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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SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN Number 3245 AF49

Business Loan Program; Lender Examination and Review Fees

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule implements a recent amendment to the Small Business Act authorizing the Small Business Administration (SBA) to assess fees to Lenders participating in SBA's 7(a) loan guarantee program (Lenders) to cover the costs of examinations, reviews, and other Lender oversight activities. The rule describes the methodology for fee assessment. Lenders will pay the actual costs to SBA of the on-site examinations and reviews, and will be allocated off-site review/monitoring costs based on each Lender's proportionate share of loan dollars that SBA has guaranteed in the SBA portfolio. The rule also describes the billing and payment processes.

DATES: This rule is effective June 4, 2007.

FOR FURTHER INFORMATION CONTACT: Bryan Hooper, Director, Office of Lender Oversight, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, (202) 205–3049.

SUPPLEMENTARY INFORMATION:

I. Background Information

Section 7(a) of the Small Business Act, 15 U.S.C. 636(a), authorizes SBA to guarantee loans made by Lenders to eligible small businesses. Currently, there are nearly 5,000 Lenders authorized to make such SBA guaranteed loans that have outstanding 7(a) loans. SBA conducts off-site reviews/monitoring and on-site exams/reviews of these Lenders to ensure they are processing loans in accordance with prescribed standards and to minimize losses. Section 5(b)(14) of the Small Business Act (15 U.S.C. 634(b)(14)), authorizes SBA to require these Lenders to pay fees to cover "the costs of [the] examinations, reviews, and other Lender oversight activities." Congress granted SBA this new fee authority under section 131 of Division K of Public Law 108–447, enacted December 8, 2004. Examination and review costs primarily consist of contractor charges for assistance with (i) on-site examinations; (ii) on-site reviews; and (iii) off-site reviews/monitoring activities.

On September 5, 2006, SBA published a proposed rule seeking comments by October 5, 2006 on its proposal implementing SBA's statutory exam/review fee authority. 71 FR 52296. SBA published a subsequent notice extending the comment period for the proposed Lender review fee to November 9, 2006. 71 FR 59411. The primary purpose of the fee is to cover the costs that SBA currently absorbs for on-site Lender examinations and reviews and off-site review and monitoring activities. On-site and off-site review and monitoring activities are performed to ensure that Lenders are processing, servicing, and liquidating loans in accordance with prescribed SBA standards. By ensuring that Lenders are performing their SBA-required responsibilities in accordance with prescribed standards, SBA reduces the costs of the 7(a) program and its risk of losses from the program.

Under this rule, Lenders will be charged fees for two distinct oversight activities performed by SBA with the assistance of contractors. First, Lenders receiving an on-site review or examination by SBA's review and examination contractors will be charged for the contractors' actual review or examination cost. This cost will be charged to the Lender by SBA after completion of the review or examination for payment according to the terms of the invoice. SBA plans to review only those Lenders with a total outstanding 7(a) portfolio of more than $10 million in SBA guaranteed dollars, although it reserves the right to review Lenders with smaller portfolios if SBA determines in its discretion that circumstances warrant. Second, all Lenders will be charged a fee for contractor costs associated with SBA's off-site review/monitoring activities. The fee will be based upon each Lender's pro-rata share of the total outstanding 7(a) portfolio, measured by SBA guaranteed dollars. Each Lender's off-site review fee will be determined using that Lender's outstanding guaranteed dollars, relative to that of SBA's outstanding guaranteed portfolio, as of September 30 of each year. Guaranteed dollars outstanding includes guarantees of both loans held by the Lender and loans sold into the secondary market, securitized, or for which a Lender has sold a participating interest. It also includes loans that have been purchased by SBA but have not yet been charged-off. SBA may waive the off-site review/monitoring fee when SBA determines that it is not cost effective to collect the fee. Currently, SBA expects to waive the off-site review/monitoring fee for Lenders with a fee of less than $200.

The rule also authorizes SBA to charge a fee to cover the costs of the additional expenses that SBA incurs in carrying out Lender oversight activities (for example, the salaries and travel expenses of SBA employees and equipment expenses that are directly related to carrying out Lender oversight activities). However, SBA does not plan at this time to charge Lenders for these costs. A discussion of the comments received and considered and a section by section analysis follows.

II. Comments Received and Considered

With approximately 5,000 individual Lenders, SBA received only 56 comments on the proposed Lender review fee. Forty-nine of the comments were from 7(a) Lenders other than Small Business Lending Companies (SBLCs), and three comments were from SBLCs. Three comments were from trade organizations, and one comment came from a regulatory organization. Comments generally covered the following areas: (i) The fee levels were excessive; (ii) there was no incentive to control costs; (iii) the fee could drive small Lenders out of the program; (iv) use of other regulators or SBA staff to perform the reviews; (v) the manner and methodology used for the reviews and review fees (generally concerning the off-site review fee); and (vi) other comments.

Fee Levels

Some commenters asserted that the overall fees described in the proposed notice were generally excessive. A few commenters stated that the off-site fees were excessive and other commenters expressed that the on-site review or examination fees were too high.

SBA awards the contracts for the reviews and examinations in accordance with Federal procurement statutes and regulations, and makes the awards to those contractors that can best meet the program's needs while at the same time obtaining the best value for the Government. Further, SBA and its contractors work together to minimize costs whenever possible. For example, SBA may direct the on-site review or examination contractor to reduce its loan review sample sizes for SBA Supervised Lenders with small portfolios or no current lending activity. With respect to the cost of the on-site examinations, as we noted in the proposed rule, SBA's costs compare favorably to the assessments performed by other Federal regulators, which are similar in size and scope to SBA's examinations. For example, the Comptroller of the Currency's current annual assessment on a bank with $1 billion in assets is approximately $232,000, and the Office of Thrift Supervision assesses the same size institution approximately $215,682, whereas the annualized cost for an SBA Supervised Lender on a 24 month exam cycle with $1 billion in outstanding loan balances (with 71% of that portfolio guaranteed by SBA) would average $132,830. With respect to the off-site review fee, we note that the average size of an outstanding 7(a) loan is approximately $110,000 in SBA guaranteed dollars. The current off-site review fee is estimated to be $73 per million in outstanding guarantee dollars. Therefore, for the off-site review, the average outstanding 7(a) loan would cost the Lender an additional $8 per year, which SBA does not believe to be an unreasonable burden for Lenders.

Consequently, SBA believes that both the off-site and on-site cost-based fees are reflective of the market for such services and are fair and reasonable.

Cost Control

Many of the commenters raised concerns as to future efforts to control the costs of SBA's oversight activities. These commenters contended that SBA has little incentive to control costs if oversight costs are passed along to Lenders, and that SBA should consult with Lenders before increasing any of the review fees. In addition, several commenters were concerned that SBA would pass along to the Lenders the Agency's costs associated with Lender oversight.

SBA does not believe that the Lender fee structure will result in reduced efforts by SBA to minimize costs. For each of the contracts under which the examinations and reviews are conducted, SBA ensures that the contract cost is fair and reasonable in accordance with applicable law. In addition, SBA currently controls costs in general through fixed price contracts, contract monitoring and, as noted above, through coordinating the work with the contractors to minimize costs. For example, SBA works to control the costs of the on-site review primarily through a fixed-price contract, which currently ranges from $21,000 to $26,000 per review. The only variable rate component is for travel to and from the Lender's site, and these expenses are carefully evaluated for reasonableness by Office of Lender Oversight staff as part of the invoicing process. SBA also works closely with the Farm Credit Administration, its current contractor for on-site examinations, to control examination costs for SBLCs. For example, SBA and Farm Credit Administration have worked to ensure that the sample size of loans reviewed during the examination process is reflective of the SBLC's portfolio size. Finally, most of SBA's costs associated with the off-site reviews/monitoring are also fixed. These fixed costs minimize the potential for increased costs, and help ensure that costs will remain controlled during the life of the contracts (on-site reviews and off-site reviews/monitoring). As the contracts or agreements are re-competed or renewed, as appropriate, SBA will continue to consider cost as one of several important considerations in determining which offers or proposed agreements provide the best value to the government.

SBA also believes that Lender concerns with respect to SBA charging a fee to cover its own internal costs are misplaced. As noted in the proposed rule, the statute upon which the rule is based authorizes the Agency to charge a fee to cover the Agency's internal Lender oversight costs. However, it is not the Agency's intention to charge a fee to cover such costs at the present time. Should SBA later decide to include charges for other Lender oversight activities, SBA will provide Lenders a notice describing the costs to be included in the fee.

Many commenters suggested that SBA should establish a maximum charge for oversight activity fees and consult with Lenders before increasing the fees. As noted above, SBA minimizes the fees through competitive bidding processes, and by working with its contractors to reduce costs where possible (while still maintaining strong risk management capabilities). Therefore, SBA believes there is no need to establish a maximum fee threshold and, with respect to the comment on consultation, SBA will continue its practice of consulting with its Lenders through informal discussions and contacts.

Impact on Small Lenders

Many commenters asserted that the fee might force smaller Lenders out of SBA lending due to increased costs, damaging SBA's lending program. SBA believes that the fee will not have such an impact. First, we believe that the financial impact of the review fees themselves will be relatively minimal on most 7(a) Lenders, especially small Lenders. Since on-site reviews will generally only be performed on Lenders with SBA portfolios of at least $10 million in SBA guaranteed dollars, the overwhelming majority of Lenders will not be subject to on-site reviews, and will thus not be impacted by the on-site review cost. Of the approximately 5,000 SBA 7(a) Lenders, only about 350, or about 7 percent of all Lenders, have portfolios of greater than $10 million, and these Lenders hold about 84% of the outstanding SBA guaranteed dollars. In addition, it is SBA's expectation that on-site reviews would be normally performed approximately every two years and, thus, Lenders will not be bearing an annual on-site review cost. Off-site reviews will be performed on all 7(a) Lenders; however, the fee is relatively small for Lenders with lesser portfolios. The proposed rule stated that the cost for off-site reviews was expected to be approximately $82 for every $1 million SBA guaranteed dollars held by a Lender. SBA has revised its fee estimate and, due to several factors, we now estimate the cost of off-site reviews/monitoring to be approximately $73 for every $1 million in SBA guaranteed dollars. Thus, for a Lender with $10 million in SBA guaranteed loan dollars, the off-site review fee at this time would be $730. We do not believe this to be an unduly burdensome fee upon Lenders.

Second, we note that many Lenders in the 7(a) program are local community banks. A major role of these banks is to be a source of funds within the community, and to lend those funds to small business borrowers in need of those funds to pursue their dreams and opportunities. Since SBA is a "credit

elsewhere" program—i.e., recipients of 7(a) loans have not been able to obtain credit on reasonable terms from any other source—the banks are not willing to serve these customers without the SBA Guarantee. We believe that Banks—particularly local banks that must serve their community—will continue to offer SBA guaranteed loans to borrowers unable to obtain financing on such reasonable terms elsewhere.

Finally, SBA believes that the off-site reviews and monitoring and additional on-site reviews that the fee will sustain will dramatically improve the Agency's risk management of the 7(a) program. Off-site reviews/monitoring will enable SBA to quickly and continually spot Lenders with poorly performing portfolios and work with those Lenders to turn around their performance. Regular on-site reviews will allow SBA to ensure that its highest risk 7(a) Lenders are meeting their program obligations and complying with Agency origination, underwriting, servicing, and liquidation requirements. Expanding the number of on-site reviews will enable SBA to educate more Lenders on the correct origination, servicing and liquidation procedures for Agency loans. By doing so, it is SBA's expectation that more Lenders will comply with Agency guidelines, cutting the Agency's processing times and possibly reducing program losses. These benefits would reduce SBA's costs, which may be passed along to its lending partners and borrowers through reductions in other fees and ultimately improve the 7(a) program.

In the proposed rule, SBA indicated that it might establish a minimum fee threshold (below which it would waive the off-site fee) if it believed that collection costs would be high relative to the fee collected. SBA has determined that, currently, it will be cost effective to the Agency to waive the off-site review fee for Lenders with a total fee of less than $200 in lieu of incurring the cost associated with collecting these smaller fees. By setting this threshold, SBA estimates it will eliminate the fee for approximately 4,050 Lenders, while still collecting approximately 93 percent of the off-site review costs. SBA reserves the right to adjust this threshold from time to time in its sole discretion, and will periodically review the cost of collecting the off-site fee to determine if the threshold should be adjusted or eliminated. For example, if technological improvements reduce the cost of collections, SBA may reduce or eliminate the threshold at which it waives the fee. Such changes would be made through an SBA Notice. All Lenders owing more than the threshold amount will be required to pay the entire fee. It is important to note that the paying Lenders will not be paying more because the smaller fees are being waived for some Lenders; rather, SBA will absorb those costs.

As a result, SBA believes the review fees will not have a detrimental effect upon the 7(a) program. Furthermore, the Agency believes that the size of the fee is not an undue burden on smaller Lenders, and that the establishment of a fee waiver threshold will further reduce the impact on smaller Lenders. Therefore, we do not believe that the imposition of the fee will cause smaller Lenders to leave the 7(a) program.

Reviews by Other Regulators or SBA Staff

Several commenters suggested that it might be more efficient for SBA to have others perform on-site reviews. Most recommended using staff from financial regulators, while one proposed using local SBA staff to perform the reviews, and another expressed concern with SBA finalizing the rule before attempting to coordinate the reviews with state and federal regulators who have primary supervisory authority over the Lenders.

SBA believes that financial regulators generally do not have significant knowledge of SBA's 7(a) loan program; we would be concerned about a lack of consistency in the reviews performed. Thus, it could be difficult to rely on review results as a component of our Lender monitoring process, particularly when comparing review results between peers. In addition, by controlling reviews through dedicated contractors, we have maximum flexibility to move resources where immediately needed to timely address most pressing risk issues to SBA.

It is also not feasible for local SBA staff to perform the on-site reviews. Local SBA staff is dedicated to program development and outreach which, by being separate from the Lender oversight functions, avoids the appearance of any conflict between the two. In addition, the Agency does not currently have staff with the training and experience necessary to perform risk-based reviews or safety and soundness examinations.

Review Fee Methodology

SBA received a number of comments on the manner and methodology that SBA proposed for assessing the review fees. These comments concerned: (i) The frequency of the off-site review process, (ii) using a different approach to determine the off-site review fee, and (iii) applying the fee to loans already in Lenders' portfolios.

Many commenters raised concerns about the frequency of the off-site reviews. Some expressed that reviewing and updating Lender risk ratings on a quarterly basis was too frequent, while others suggested that the frequency of the risk ratings be tied to each Lender's relative risk—less risky Lenders being subject to updated risk ratings less often than riskier Lenders.

All lenders Risk Rating are updated on a quarterly base. Quarterly updating allows SBA to better monitor both individual Lender and portfolio-wide performance trends. Portfolio performance may change dramatically from quarter to quarter. Therefore, quarterly reviews may detect changes that threaten the 7(a) program sooner than reviews performed less frequently. The quarterly comparison enables SBA to regularly identify those Lenders with the greatest risk and to review them timely and more closely.

Because the risk rating system was designed to compare each Lender's risk to SBA relative to its peers, it is essential to perform a risk rating on all Lenders each review cycle. If the Agency did not compare the performance of all Lenders in a peer group, Lenders would not be accurately rated for relative risk. For example, if SBA only risk rated the worst performing Lenders in each peer group (removing the best performing Lenders from the analysis), the relatively better performing Lenders in this higher risk subset would appear to be performing better than they are because they would only be compared to even higher risk Lenders rather than both higher and lower risk Lenders. In addition, under the risk rating system, individual Lender ratings may rise or fall every quarter, as each Lender's performance becomes relatively more or less risky. Unless all Lenders are risk rated each quarter, SBA will be unable to detect positive or negative performance trends.

Several commenters requested that SBA consider adding a minimum fee component to the cost allocation methodology for the off-site review fee. These commenters suggested that SBA should charge each Lender a minimum fee, and then allocate the remainder of the cost to Lenders based upon the size of their 7(a) loan portfolios. The commenters reasoned that since at least a minimal level of contractual off-site review work is performed on each Lender, all Lenders should pay at least a minimal fee. However, some commenters supported SBA's proposal to provide a waiver or exemption of the fee for small volume lenders.

SBA has decided against charging a minimum fee. Charging a minimum fee for lower volume Lenders would run counter to SBA's determination to absorb those costs that are not cost effective to collect and equitably assess the remaining cost to higher volume lenders. This comment also appears to be based on the erroneous assumption that the Lenders who pay the fee will be subsidizing the Lenders who will have the fees waived. The paying Lenders will not be subsidizing the non-paying Lenders because SBA currently plans to absorb the costs of the waived fees. In addition, a minimum fee allocation methodology may result in a disproportionate distribution of the review costs relative to each Lender's participation level.

Several commenters suggested that SBA consider revising the formula upon which to base the off-site review fee. Rather than base the fee on portfolio size in SBA guaranteed dollars outstanding, commenters proposed that the fee be based upon such factors as the number of loans outstanding, average size of the loans in each Lenders' portfolio, historical portfolio performance, annual origination volume, and Lender risk ratings. The Agency believes that SBA guaranteed dollars outstanding is the factor most directly related to risk because it is a direct measure of the Agency's maximum risk exposure should SBA be forced to honor its loan guarantees.

A few commenters objected to SBA applying the off-site review fee to loans originated before the fee rule effective date. The commenters suggested that SBA should only apply the off-site fee to loans originated after this rule's effective date, to enable Lenders to price the cost of the fee into their loan. This suggestion, however, does not consider that SBA's off-site monitoring approach takes into account a Lender's entire 7(a) portfolio when risk rating a Lender's portfolio. All of the loans in each Lender's portfolio are monitored as part of SBA's risk management process, and all of the loans are included in the portfolio analysis that SBA uses to determine which Lenders may present an unreasonable level of risk to SBA. To exclude earlier originated loans and their dollar risk from the analysis would present an incomplete picture of the portfolio's risk to SBA. Further, such a measure would have an unfair effect between Lenders: One Lender with a portfolio of $10 million in SBA guaranteed dollars originated prior to the effective date would not be subject to the off-site review fee for the entire life of that portfolio, while another Lender with the same size portfolio of loans all originating after the effective date would be subject to the fee. In sum, this suggestion fails to consider that all loans, including currently outstanding loans, represent some level of risk to SBA and must be monitored.

Other Miscellaneous Comments

One commenter requested that SBA exclude loans purchased by SBA, but not yet charged-off by SBA, from the off-site review fee calculation. SBA includes purchased loans in its off-site monitoring efforts to help assist its purchase centers in tracking charge-off and recovery data. SBA believes the cost associated with purchased loans will be minimal since the Agency has made a concentrated effort to reduce charge-off time.

One commenter suggested that SBA limit the number of on-site reviews performed on individual Lenders to a maximum of one review every two years. SBA intends to perform an on-site review approximately every other year on SBA's larger 7(a) Lenders. However, SBA must reserve the right to review or examine these Lenders more frequently (and review smaller Lenders) if it determines that particular Lenders present an unacceptably high level of risk to SBA. It is possible that Lenders may be subject to multiple on-site reviews within a two-year cycle when there are significant weaknesses uncovered during an earlier review that must be corrected in order to reduce SBA's risk. However, SBA may also determine that Lenders with poor portfolio performance, as measured by their off-site Lender risk rating and performance factors, should be subject to a follow up review. Such decisions will be made in SBA's sole discretion.

Finally, two commenters asserted that it was unreasonable to expect Lenders to pay the review fee within the 30 day time period. SBA believes that the response time is sufficient for payments to be made. We note that some federal financial institution regulators allow even less time for payment of assessment fees. However, if a Lender has an extraordinary situation and cannot timely make payment, it should contact the Office of Lender Oversight in writing to request additional time. The final rule provides that SBA may waive or abate the collection of interest, charges and/or penalties for delinquent payments if circumstances warrant.

SBA has carefully reviewed the comments received and adopts the rule as proposed with three minor changes. Specifically, SBA has deleted a cite reference to a current enforcement regulation as SBA may in the future propose the relocation and revision of SBA's enforcement regulations, has added specific authority for SBA to waive the off-site review fee when it determines that it is not cost effective to collect the fee, and has clarified that Lenders will be required to pay a fee to cover other lender oversight activities only if SBA assesses such a fee.

III. Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C., Ch. 35)

Executive Order 12866

The Office of Management and Budget has determined that this final rule constitutes a significant regulatory action under Executive Order 12866 thus requiring a Regulatory Impact Analysis. We provided such an analysis in the proposed rule published on September 5, 2006. In that analysis, SBA stated that, as it delegates more authority to its Lenders, there is a need for better and more comprehensive Lender oversight, which SBA has developed through the off-site (L/LMS) and on-site reviews and examinations. The rule implements the recent amendment to the Small Business Act authorizing SBA to assess Lenders fees to cover the costs of those examinations or reviews. The costs of these oversight activities primarily consist of contractor charges for assistance in carrying out the reviews and examinations. In its analysis, SBA noted that the benefits of the proposed fees for Lenders include that the costs of on-site examinations or reviews are allocated directly to those Lenders for whom the costs are incurred, and that the costs of L/LMS would be allocated according to each Lender's participation level as measured by SBA guaranteed dollars. Besides allocating its review and monitoring costs to its Lenders, SBA will benefit through the relative ease of administering the assessment process. The analysis indicates that SBA considered alternatives to the L/LMS cost allocation plan, but that an allocation based on dollars at risk, rather than for example the number of loans, is better related to risk and, therefore, the most equitable.

SBA received several comments on costs and alternatives. SBA addressed these comments in the comments section of the preamble. For example, some commenters suggested that the proposed fee was excessive. SBA's examination and review costs primarily consist of contractor charges and contracts are awarded in accordance with Federal procurement statutes and regulations, while providing best value

for the Government. Consequently, SBA believes that both the off-site and on-site cost-based fees are reflective of the market for such services and are fair and reasonable. Some commenters also suggested that the fees would be prohibitive for small Lenders. As stated in the comments section, these fees will be waived for Lenders with small portfolios. The reviews may ultimately lead to greater compliance with Agency guidelines and less program losses, which may be passed along to Lenders through reductions in other fees. Therefore, SBA does not believe that the fees will force small Lenders out of SBA lending.

SBA received several comments recommending alternatives. For example, SBA received suggestions that the Agency consider setting minimum and maximum fee levels; tie review fees to risk ratings; and utilize other bank regulators for SBA program on-site reviews. The comment on minimum fees appears to be based on the erroneous assumption that the Lenders who pay the fees will be subsidizing the Lenders who will have the fees waived. Also, charging a minimum fee for lower volume Lenders would run counter to SBA's determination to absorb those costs that are not cost effective to collect. As to setting a maximum fee, SBA minimizes the fees through competitive bidding processes, through fixed price contracts and by working with its contractors to reduce costs where possible. Therefore, SBA believes there is no need to establish a minimum or a maximum fee threshold. Some commenters suggested that SBA should tie review fees to risk ratings. Risk Rating trends are indirectly incorporated into the fee methodology to the extent that better ratings could translate into less frequent on-site examinations and reviews. Another alternative suggested was that SBA utilize the other bank regulators for SBA program on-site reviews. SBA believes that utilizing the other bank regulators to perform SBA's reviews would cause concern about a lack of consistency in the reviews performed. Thus, it could be difficult to rely on review results as a component of our Lender monitoring process, particularly when comparing review results between peers. Therefore, SBA did not accept this alternative. For a more detailed discussion on the costs and alternatives, see the main text of the preamble.

Executive Order 12988

This final rule meets applicable standards set forth in §§ 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This final rule will not have retroactive or pre-emptive effect.

Executive Order 13132

This final rule will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires the Agency to "publish a final regulatory flexibility analysis" which will "describe the impact of the final rule on small entities." 5 U.S.C. 604(a). Section 605 of the RFA allows an Agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Although this rulemaking may affect a substantial number of small entities, for the reasons stated below, SBA does not believe that this rule will have a significant economic impact on a substantial number of small entities.

This rule implements Small Business Act § 5(b)(14), which authorizes SBA to require 7(a) Lenders to pay examination and review fees. These fees are to be available to fund the costs of examinations, reviews, and other Lender oversight activities.

The review fees will apply to all 7(a) Lenders with outstanding SBA guaranteed loan balances. Nearly 5,000 Lenders are currently participating in the 7(a) program, of which 11 are active SBLC Lenders. SBA has determined that SBLCs are classified under the size standard for NAICS 522298. Three of the 11 active SBLCs are below the $6.5 million in average annual receipts and are deemed small business concerns. Nearly all of the remaining 7(a) Lenders are covered under NAICS 522110 for commercial banks and other depository financial institutions. About 3,000 of the Lenders in this classification have less than $165 million in assets and are deemed small business concerns. (Note: with the waiver to any Lender with less than $200 in fees, SBA calculates that only approximately 300 Lenders that are classified as small will be affected.)

The final rule will not have a significant economic impact on a substantial number of the 3,000 Lenders covered under NAICS 522110. Most of these Lenders have very small SBA portfolios and will only be subject to fees for the off-site reviews/monitoring. The annual fee, if assessed for all 3,000 small Lenders, for 98 percent of these Lenders will be less than $945, the cost of a one year subscription to the "American Banker" magazine. SBA plans to waive the fees when it is not cost-effective to bill and collect. At this time, SBA has determined to waive the off-site fee for all Lenders with a fee of less than $200. That determination may be revised periodically to reflect changes in SBA's costs. SBA estimates that the annual fee will be waived for approximately 2700 small Lenders. For approximately 250 small Lenders, the annual fee will be between $200 and $1,000. The largest of the approximately 50 remaining Lenders classified as small business concerns has over $100 million in outstanding SBA guarantees. The largest annualized fee for a Lender classified as small, which will cover the cost of the bi-annual on-site review plus annual off-site monitoring cost, is estimated at $21,288. The estimated annualized fee of the on-site exam plus the annual off-site monitoring cost fee for the three SBLCs classified as small business concerns would range from $28,160 to $42,000.

Moreover, since SBA will calculate and bill for the fee, there will be virtually no recordkeeping or other compliance requirements of the rule. There are also no relevant Federal rules governing fees for the 7(a) program which may duplicate, overlap or conflict with the final rule. SBA certified this rulemaking at the proposed rule stage. SBA did not receive any comments on SBA's certification. However, SBA received comments from small lenders about the fee. In reviewing the comments SBA has determined that those lenders will not be affected by the fee implementation. Since, the SBA has decided to waive the off-site review fee for lenders with a total fee of less than $200, in lieu of incurring the cost associated with collecting these smaller fees. Accordingly, the Administrator of SBA hereby certifies to the Chief Counsel of Advocacy that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

SBA has determined that this final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 13 CFR Part 120

Loan programs—business, Small businesses.

■ For the reasons discussed in the preamble, SBA amends 13 CFR part 120 to read as follows:

PART 120—BUSINESS LOANS

■ 1. The authority citation for part 120 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 634(b)(7), 634(b)(14), 633(b)(3), 636(a) and (h), 650, and 696(3) and 697(a)(2).

■ 2. Revise § 120.454 to read as follows:

§ 120.454 PLP Performance Review.

SBA may review the performance of a PLP Lender.

■ 3. Add a new Subpart I to read as follows:

Subpart I—Lender Oversight

§ 120.1070 Lender oversight fees.

Lenders are required to pay to SBA fees to cover costs of examinations and reviews and, if assessed by SBA, other Lender oversight activities.

(a) *Fee components:* The fees may cover the following:

(1) *On-Site Examinations.* The costs of conducting on-site safety and soundness examinations of an SBA-Supervised Lender, including any expenses that are incurred in relation to the examination. For the purposes of this paragraph, the term "SBA-Supervised Lender" means a Small Business Lending Company or a Non-Federally Regulated Lender.

(2) *On-Site Reviews.* The costs of conducting an on-site review of a Lender, including any expenses that are incurred in relation to the review.

(3) *Off-Site Reviews/Monitoring.* The costs of conducting off-site reviews/monitoring of a Lender, including any expenses that are incurred in relation to the review/monitoring activities. SBA will assess this charge based on each Lender's portion of the total dollar amount of SBA guarantees in SBA's portfolio. SBA may waive the assessment of this fee for all Lenders owing less than a threshold amount below which SBA determines that it is not cost effective to collect the fee.

(4) *Other Lender Oversight Activities.* The costs of additional expenses that SBA incurs in carrying out Lender oversight activities (for example, the salaries and travel expenses of SBA employees and equipment expenses that are directly related to carrying out Lender oversight activities). This charge will be based on each Lender's portion of the total dollar amount of SBA guarantees in SBA's portfolio.

(b) *Billing Process.* For the on-site examinations or reviews conducted under (a)(1) and (a)(2) above, SBA will bill each Lender for the amount owed following completion of the examination or review. For the off-site reviews/monitoring conducted under (a)(3) above and the other Lender oversight expenses incurred under (a)(4) above, SBA will bill each Lender for the amount owed on an annual basis. SBA will state in the bill the date by which payment is due SBA and the approved payment method(s). The payment due date will be no less than 30 calendar days from the bill date.

(c) *Delinquent Payment and Late-Payment Charges.* Payments that are not received by the due date specified in the bill shall be considered delinquent. SBA will charge interest, and other applicable charges and penalties, on delinquent payments, as authorized by 31 U.S.C. 3717. SBA may waive or abate the collection of interest, charges and/or penalties if circumstances warrant. In addition, a Lender's failure to pay any of the fee components described in this section, or to pay interest, charges and penalties that have been charged, may result in a decision to suspend or revoke a participant's eligibility or to limit a participant's delegated authority.

Dated: March 23, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–8516 Filed 5–3–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 705, 730, 736, 744, 747, 754, 756, 760, 766, 768, 770, and 772

[Docket No. 070411085–7088–01]

RIN 0694–AE01

Updated Office Names, Office Addresses, Statements of Legal Authority and Statute Name and Citation

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule revises office names and addresses to reflect a recent Bureau of Industry and Security (BIS) reorganization, updates the statements of legal authority for ten parts of the Export Administration Regulations (EAR), and replaces an outdated statute name and citation with the current name of that statute in one section of the EAR.

DATES: This rule is effective May 4, 2007.

ADDRESSES: Comments concerning this rule should be sent to *publiccomments@bis.doc.gov*, fax (202) 482–3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694–AE01 in all comments, and in the subject line of email comments.

FOR FURTHER INFORMATION CONTACT: William Arvin, Regulatory Policy Division, Bureau of Industry and Security, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION

Background

This rule updates outdated office names, office addresses, legal authority citations and a reference to a statute as described below.

Revision of Addresses in Accordance With Reassignment of Responsibilities Within BIS

BIS recently created an Office of Technology Evaluation and assigned to it the responsibility for conducting investigations into the effect of imported articles on the national security pursuant to part 705 of the National Security Industrial Base Regulations (15 CFR Part 705) and for conducting foreign availability assessments pursuant to part 768 of the EAR (15 CFR Part 768). Accordingly, this rule revises both of those parts to include the mailing address of that office.

Updating Statements of Legal Authority

The legal authorities for the EAR (15 CFR 730–799) change from time to time. The expiration of the Export Administration Act on August 20, 2001, the issuance of Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002) and the annual notices declaring the continuation of the international emergency noted in that Executive Order mean that the legal authority for each part of the EAR has, in recent years, changed at least annually. In addition, the authority citations for some parts change more often due to periodic updates and amendments to the relevant statutes. This rule revises the citations of authority for parts 730, 736, 747, 754, 756, 760, 766, 768, 770, and 772 to reflect the legal authorities in currently in effect.

Updating Statement of BIS Organization

Section 730.9 of the EAR describes how the Bureau of Industry and

Security is organized. This rule removes the reference to the Director, Office of International Programs from paragraph (a) of that section and adds a reference to the Office of Technology Evaluation to paragraph (b) of that section in accordance with recent BIS actions to eliminate the Office of International Programs and to create the Office of Technology Evaluation.

Updating Name of a Referenced Statute

Section 744.19 describes BIS's licensing policy for transactions that involve certain entities sanctioned by the Department of State and references the statutes that authorize such sanctions. Prior to publication of this rule, § 744.19 referenced one such statute as "the Iran Nonproliferation Act of 2000 (Pub. L. 106–178)" This rule revises the reference to reflect the current name of the statute: the Iran, North Korea, and Syria Nonproliferation Act (Pub. L. 107–178, 114 Stat. 38 (March 14, 2000), as amended by Public Law 109–112, 119 Stat. 2366 (November 11, 2005) and Public Law 109–353, 120 Stat. 2015 (October 13, 2006)).

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 3, 2006, 71 FR 44551 (August 7, 2006), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves two collections that are subject to the Paperwork Reduction Act. OMB control number 0694–0120 applies to procedures for initiating investigations into the effect of import on national security pursuant to part 705 of the National Security Industrial Base Regulations. OMB Control number 0694–0004 applies to foreign availability submissions and technical advisory committee certifications submitted to BIS pursuant to part 768 of the Export Administration Regulations. BIS believes that this rule will make no changes to the burdens associated with either of those two collections. Send comments about this collection, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget, by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary. The changes made by this rule are not substantive changes. This rule only updates office names and addresses to reflect recent internal BIS organizational changes, updates legal authority citations, and updates the name and citation of a statute referenced in the National Security Industrial Base Regulations and the Export Administration Regulations. This rule does not alter any right, obligation or prohibition that applies to any person under those regulations. Because these revisions are not substantive changes, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule.

List of Subjects

15 CFR Part 705

Administrative practice and procedure, Business and industry, exports, Government contracts, Reporting and recording requirements.

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Parts 736, 770 and 772

Exports.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 747

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 754

Agricultural commodities, Exports, Forests and forest products, Horses, Petroleum, Reporting and recordkeeping requirements.

15 CFR Part 756

Administrative practice and procedure, Exports, Penalties.

15 CFR Part 760

Boycotts, Exports, Reporting and recordkeeping requirements.

15 CFR Part 766

Administrative practice and procedure, Confidential business information, Exports, Law enforcement, Penalties.

15 CFR Part 768

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements, Science and technology.

■ Accordingly, parts 705, 730, 736, 744, 747, 754, 756, 760, 766, 768, 770, and 772 of Title 15, Chapter VII of the Code of Federal Regulations (15 CFR parts 700–799) are amended as follows:

PART 705—[AMENDED]

■ 1. The authority citation for 15 CFR part 705 continues to read as follows:

Authority: Sec. 232, Trade Expansion Act of 1962, as amended (19 U.S.C. 1862).

■ 2. The second sentence of § 705.5(a) is revised to read as follows:

§ 705.5 Request or application for an investigation.

(a) * * * The original and 1 copy shall be filed with the Director, Office of Technology Evaluation, Room H–1093, U.S. Department of Commerce, Washington, DC 20230.

* * * * *

PART 730—[AMENDED]

3. The authority citation for 15 CFR part 730 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note, Pub. L. 108–175; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p.133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O.

12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p.208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of October 27, 2006, 71 FR 64109 (October 31, 2006).

■ 4. In § 730.9, the second sentence of the introductory text and the second sentence of paragraph (a) are revised to read as follows:

§ 730.9 Organization of the Bureau of Industry and Security.

* * * The Under Secretary is assisted by a Deputy Under Secretary for Industry and Security, the Assistant Secretary for Export Administration, the Assistant Secretary for Export Enforcement, the Director of Administration, the Director of the Office of Congressional and Public Affairs, and the Chief Information Officer. * * *

(a) * * * Its substantive work is carried out by six sub-units: the Office of Nonproliferation and Treaty Compliance, the Office of National Security and Technology Transfer Controls, the Office of Exporter Services, the Operating Committee, the Office of Strategic Industries and Economic Security, and the Office of Technology Evaluation.

* * * * *

PART 736—[AMENDED]

■ 5. The authority citation for 15 CFR part 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 (note), Pub. L. 108–175; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of October 27, 2006, 71 FR 64109 (October 31, 2006).

PART 744—[AMENDED]

■ 6. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of October 27, 2006, 71 FR 64109 (October 31, 2006).

■ 7. Section 744.19(b) is revised to read as follows:

§ 744.19 Licensing policy regarding persons sanctioned pursuant to specified statutes.

* * * * *.

(b) A sanction issued pursuant to the Iran, North Korea, and Syria Nonproliferation Act (Pub. L. 106–178, 114 Stat. 38 (March 14, 2000), as amended by Pub. L. No. 109–112, 119 Stat. 2366 (November 22, 2005) and Pub. L. No. 109–353, 120 Stat. 2015 (October 13, 2006)) that prohibits the granting of a license for the transfer to foreign entities of items, the export of which is controlled under the Export Administration Act of 1979 or the Export Administration Regulations.

* * * * *

PART 747—[AMENDED]

■ 8. The authority citation for 15 CFR part 747 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

PART 754—[AMENDED]

■ 9. The authority citation for 15 CFR part 754 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 30 U.S.C. 185(s), 185(u); 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

PART 756—[AMENDED]

■ 10. The authority citation for 15 CFR part 756 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

PART 760—[AMENDED]

■ 11. The authority citation for 15 CFR part 760 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

PART 766—[AMENDED]

■ 12. The authority citation for 15 CFR part 766 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

PART 768—[AMENDED]

■ 13. The authority citation for 15 CFR part 768 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 14. Section § 768.4(d) is revised to read as follows:

§ 768.4 Initiation of an assessment.

* * * * *

(d) *BIS mailing address.* All foreign availability submissions and TAC certifications should be submitted to: Department of Commerce, Bureau of Industry and Security, Room H–1093, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230.

■ 15. The second sentence of § 768.8(h) is revised to read as follows:

§ 768.8 Eligibility of expedited licensing procedures for non-controlled countries.

* * * * *

(h) * * * Submissions and certifications should be sent to: Department of Commerce, Bureau of Industry and Security, Room H–1093, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

PART 770—[AMENDED]

■ 16. The authority citation for 15 CFR part 770 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

PART 772—[AMENDED]

■ 17. The authority citation for 15 CFR part 772 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

Dated: April 30, 2007.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

[FR Doc. E7–8582 Filed 5–3–07; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 203, 250, 251, and 260

RIN 1010–AD42

Outer Continental Shelf Regulations—Technical Amendments

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This document makes minor technical changes to regulations that were published in various **Federal Register** documents and are codified in the Code of Federal Regulations. These changes will correct form names in 30 CFR parts 250 and 251, as well as various citations and typographical errors in 30 CFR parts 203, 250, 251, and 260.

DATES: Effective on May 4, 2007.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulatory Specialist at (703) 787–1607, fax (703) 787–1555, or e-mail *cheryl.blundon@mms.gov*.

SUPPLEMENTARY INFORMATION:

Background: The technical corrections in this document affect all offshore operators, lessees, pipeline right-of-way holders, and permittees. The corrections are necessary to correct citation and typographical errors, to add or change a few words for clarification, and to correct form names or provide the form numbers.

With respect to the table in § 250.125(a), we are assigning parenthetical numbered line designations for each requirement and its fee to make it easier to identify the affected requirements in future rulemakings or when referencing the items listed in this table. Where applicable, we also added the subsection to those citations in the third column that did not previously provide them (e.g., § 250.143 is corrected to read § 250.143(d)).

Also, in final rulemaking (67 FR 44360, July 2, 2002) we inappropriately used the term "geologic" in § 250.175(b)(3). We are correcting that term to read "interpreted geophysical."

This document corrects regulations in 30 CFR parts 203, 250, 251, and 260 to reflect these changes. Because this rule makes no substantive change in any rule or requirement, MMS for good cause finds that notice and public comment are impracticable and unnecessary pursuant to 5 U.S.C. 553(b)(B).

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This rule is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under E.O. 12866.

(1) This rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with action taken or planned by another agency. It will have no effect on any other agency.

(3) This rule will not alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients.

(4) This rule will not raise novel legal or policy issues.

Regulatory Flexibility Act (RFA)

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

Your comments are important to us. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This rule:

a. Will not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Leasing in the U.S. OCS is limited to residents of the U.S. or companies incorporated in the U.S. This rule will not change that requirement.

Unfunded Mandates Reform Act (UMRA)

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (Executive Order 12630)

This rule is not a governmental action capable of interference with constitutionally protected property rights. Thus, MMS did not need to prepare a Takings Implication Assessment according to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Federalism (Executive Order 13132)

With respect to E.O. 13132, this rule will not have federalism implications. This rule will not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this rule will not affect that role.

Civil Justice Reform (Executive Order 12988)

With respect to E.O. 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act (PRA)

This rule does not contain any new information collection requirements subject to the PRA, nor does it affect any previously approved collections. The rule does not require a submittal to OMB for review and approval under section 3507(d) of the PRA. Any information collection burdens referenced in this rulemaking are already approved under OMB Control Numbers 1010–0114, expiration October 31, 2007; 1010–0141, expiration August 31, 2008; and 1010–0048, expiration July 31, 2009, respectively. The PRA 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 and assigns a control number, you are not required to respond.

National Environmental Policy Act (NEPA) of 1969

The MMS has determined that this rule is strictly administrative in nature. This qualifies for a categorical exclusion under 516 Departmental Manual (DM) Chapter 2, Appendix 1.10. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act (NEPA), pursuant to 516 DM, Chapter 2, Appendix 1. In addition, the rule does not involve any of the 10 extraordinary circumstances listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires the agency to prepare a Statement of Energy Effects when it takes a regulatory action that is identified as a significant energy action. This rule is not a significant energy action, and therefore would not require a Statement of Energy Effects because it:

a. Is not a significant regulatory action under E.O. 12866,

b. Is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and

c. Has not been designated by the Administrator of the Office of Information and Regulatory Affairs, OMB, as a significant energy action.

Consultation With Indian Tribes (Executive Order 13175)

Under the criteria in E.O. 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. There are no Indian or tribal lands in the OCS.

List of Subjects

30 CFR Part 203

Continental shelf, Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Sulphur.

30 CFR Part 250

Administrative practice and procedures, Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Oil and gas exploration, Penalties, Pipelines, Public lands—minerals resource, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur.

30 CFR Part 251

Continental shelf, Freedom of information, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Research.

30 CFR Part 260

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: April 20, 2007.

C. Stephen Allred,

Assistant Secretary, Land and Minerals Management.

■ For the reasons stated above, MMS amends 30 CFR Parts 203, 250, 251, and 260 as follows:

PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

■ 1. The authority citation for part 203 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

■ 2. In § 203.44(a), revise "§ 204.45" to read "§ 203.45".

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 3. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*, and 31 U.S.C. 9701.

■ 4. In § 250.102(b), revise the table in paragraph (b) to read as follows:

§ 250.102. What does this part do?

* * * * *

(b) * * *

TABLE—WHERE TO FIND INFORMATION FOR CONDUCTING OPERATIONS

For information about	Refer to 30 CFR 250 subpart or
(1) Applications for permit to drill	D.
(2) Development and Production Plans (DPP)	B.
(3) Downhole commingling	K.
(4) Exploration Plans (EP)	B.
(5) Flaring	K.
(6) Gas measurement	L.
(7) Off-lease geological and geophysical permits	30 CFR 251.
(8) Oil spill financial responsibility coverage	30 CFR 253.
(9) Oil and gas production safety systems	H.
(10) Oil spill response plans	30 CFR 254.
(11) Oil and gas well-completion operations	E.
(12) Oil and gas well-workover operations	F.
(13) Decommissioning Activities	Q.
(14) Platforms and structures	I.
(15) Pipelines and Pipeline Rights-of-Way	J.
(16) Sulphur operations	P.
(17) Training	O.
(18) Unitization	M.

■ 5. In § 250.125, revise the table in paragraph (a) to read as follows:

§ 250.125 Service fees.

(a) * * *

SERVICE FEE TABLE

Service—processing of the following:	Fee amount	30 CFR citation
(1) Change in Designation of Operator	$150	§ 250.143(d).
(2) Right-of-Use and Easement for State lessee.	$2,350	§ 250.165.
(3) Suspension of Operations/Suspension of Production (SOO/SOP) Request.	$1,800	§ 250.171(e).
(4) Exploration Plan (EP)	$3,250 for each surface location; no fee for revisions.	§ 250.211(d).
(5) Development and Production Plan (DPP) or Development Operations Coordination Document (DOCD).	$3,750 for each well proposed; no fee for revisions.	§ 250.241(e).
(6) Deepwater Operations Plan	$3,150	§ 250.292(p).
(7) Conservation Information Document	$24,200	§ 250.296(a).
(8) Application for Permit to Drill (APD; Form MMS–123).	$1,850 for initial applications only; no fee for revisions.	§ 250.410(d); § 250.411; § 250.460; § 250.513(b); § 250.515; § 250.1605; § 250.1617(a); § 250.1622.
(9) Application for Permit to Modify (APM; Form MMS–124).	$110	§ 250.460; § 250.465(b); § 250.513(b); § 250.515; § 250.613(b); § 250.615; § 250.1618(a); § 250.1622; § 250.1704(g).
(10) New Facility Production Safety System Application for facility with more than 125 components.	$4,750 A component is a piece of equipment or ancillary system that is protected by one or more of the safety devices required by API RP 14C (incorporated by reference as specified in § 250.198); $12,500 additional fee will be charged if MMS deems it necessary to visit a facility offshore, and $6,500 to visit a facility in a shipyard.	§ 250.802(e).
(11) New Facility Production Safety System Application for facility with 25–125 components.	$1,150 Additional fee of $7,850 will be charged if MMS deems it necessary to visit a facility offshore, and $4,500 to visit a facility in a shipyard.	§ 250.802(e).
(12) New Facility Production Safety System Application for facility with fewer than 25 components.	$570	§ 250.802(e).
(13) Production Safety System Application—Modification with more than 125 components reviewed.	$530	§ 250.802(e).
(14) Production Safety System Application—Modification with 25–125 components reviewed.	$190	§ 250.802(e).
(15) Production Safety System Application—Modification with fewer than 25 components reviewed.	$80	§ 250.802(e).
(16) Platform Application—Installation—Under the Platform Verification Program.	$19,900	§ 250.905(k).
(17) Platform Application—Installation—Fixed Structure Under the Platform Approval Program.	$2,850	§ 250.905(k).
(18) Platform Application—Installation—Caisson/Well Protector.	$1,450	§ 250.905(k).
(19) Platform Application—Modification/Repair	$3,400	§ 250.905(k).
(20) New Pipeline Application (Lease Term)	$3,100	§ 250.1000(b).
(21) Pipeline Application—Modification (Lease Term).	$1,800	§ 250.1000(b).
(22) Pipeline Application—Modification (ROW)	$3,650	§ 250.1000(b).
(23) Pipeline Repair Notification	$340	§ 250.1008(e).
(24) Pipeline Right-of-Way (ROW) Grant Application.	$2,350	§ 250.1015(a).
(25) Pipeline Conversion of Lease Term to ROW.	$200	§ 250.1015(a).
(26) Pipeline ROW Assignment	$170	§ 250.1018(b).
(27) 500 Feet From Lease/Unit Line Production Request.	$3,300	§ 250.1101(f).
(28) Gas Cap Production Request	$4,200	§ 250.1101(f).
(29) Downhole Commingling Request	$4,900	§ 250.1106(d).
(30) Complex Surface Commingling and Measurement Application.	$3,550	§ 250.1202(a); § 250.1203(b); § 250.1204(a).
(31) Simple Surface Commingling and Measurement Application.	$1,200	§ 250.1202(a); § 250.1203(b); § 250.1204(a).

SERVICE FEE TABLE—Continued

Service—processing of the following:	Fee amount	30 CFR citation
(32) Voluntary Unitization Proposal or Unit Expansion.	$10,700	§ 250.1303(d).
(33) Unitization Revision	$760	§ 250.1303(d).
(34) Application to Remove a Platform or Other Facility.	$4,100	§ 250.1727.
(35) Application to Decommission a Pipeline (Lease Term).	$1,000	§ 250.1751(a) or § 250.1752(a).
(36) Application to Decommission a Pipeline (ROW).	$1,900	§ 250.1751(a) or § 250.1752(a).

* * * * *

§ 250.143 [Amended]

■ 6. Amend § 250.143(a), in the first sentence, by revising the word "form" to read "form (Form MMS–1123)".

§ 250.160 [Amended]

■ 7. In § 250.160, in paragraphs (f) and (g), the term "a fee" is revised to read "a rental amount".

§ 250.165 [Amended]

■ 8. In § 250.165, in paragraph (a), the citation "§ 0.1010(a);" is revised to read as "§ 250.125;" and in paragraph (b), the citation "§ 250.1009(c)(2)" is revised to read as "§ 250.160(g)."

§ 250.169 [Amended]

■ 9. In § 250.169(a), the citation "§ 250.180(b)" is revised to read "§ 250.180(b), (d), and (e)."

§ 250.175 [Amended]

■ 10. In § 250.175(b)(3), in the first sentence, the word "geologic" is revised to read "interpreted geophysical".

§ 250.186 [Amended]

■ 11. In § 250.186(b)(2), the citation "§ 250.196" is revised to read "§ 250.197".

§ 250.194 [Amended]

■ 12. In § 250.194(c), in the first sentence, after the word "lease" add the words "or right-of-way".

§ 250.197 [Amended]

■ 13. In § 250.197(a)(8), in the third column, the word "seciton" is revised to read "section"; and in § 250.197(b)(7), in the third column, the citations "§§ 250.197(b)(6) and (b)(7)" are revised to read "§§ 250.197(b)(5) and (b)(6)".

■ 14. Revise the table in § 250.198(d), to read as follows:

§ 250.198 Documents incorporated by reference.

* * * * *

(d) * * *

For	Write to
(1) ACI Standards	American Concrete Institute, P. O. Box 9094, Farmington Hill, MI 48333–9094.
(2) AISC Standards	American Institute of Steel Construction, Inc., One East Wacker Drive, Suite #700, Chicago, IL 60601–1802.
(3) ANSI/ASME Codes	American National Standards Institute, ATTN: Sales Department, 25 West 43rd Street, 4th Floor, New York, NY 10036; and/or American Society of Mechanical Engineers, 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007–2900.
(4) API Recommended Practices, Specs, Standards, Manual of Petroleum Measurement Standards (MPMS) chapters.	American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005–4070.
(5) ASTM Standards	American Society for Testing and Materials, 100 Bar Harbor Drive, P. O. Box C700, West Conshohocken, PA 19428–2959.
(6) AWS Codes	American Welding Society, 550 NW, LeJeune Road, P.O. Box 351040, Miami, FL 33135.
(7) NACE Standards	National Association of Corrosion Engineers, First Services Dept., 1440 South Creek Drive, Houston, TX 77218.

* * * * *

§ 250.199 [Amended]

■ 15. Section 250.199 is amended as follows:

■ A. In § 250.199(b), in the 4th sentence, the citation "§ 250.196", is revised to read "§ 250.197".

■ B. In § 250.199(e) the title of the first column is revised to read "30 CFR subpart, title and/or MMS Form (OMB Control No.)".

§ 250.201 [Amended]

■ 16. In § 250.201(a)(3), in the first column of the table, add the word "Development" before "Operations Coordination Document (DOCD)".

§ 250.210 [Amended]

■ 17. In § 250.210(a) and (b), in both paragraphs, revise "§ 250.196(b)" to read "§ 250.197(b)."

§ 250.232 [Amended]

■ 18. In § 250.232(a)(2) the citation "section 307(c)(3)(B)(iii)" is revised to read "section 307(c)(3)(B)(ii)".

§ 250.270 [Amended]

■ 19. In § 250.270(a)(l)(i) the citation "§ 267(a)(1), (a)(2), and (b)" is revised to read "§ 250.267(a)(1), (a)(2), and (b)".

§ 250.281 [Amended]

■ 20. In § 250.281(a)(3), the citation "§ 250.901" is revised to read "§ 250.905".

§ 250.285 [Amended]

■ 21. In § 250.285(c) the citation "§ 250.274" is revised to read "§ 250.273".

§ 250.408 [Amended]

■ 22. In § 250.408 in the 2nd sentence, after the word "(APD)" add the parenthetical phrase, "(Form MMS–123)".

§ 250.410 [Amended]

■ 23. In § 250.410(d)(2), the citation "§ 250.127" is revised to read "§ 250.186".

§ 250.417 [Amended]

■ 24. In § 250.417(c)(1), the citation "§ 250.903" is revised to read "§ 250.915 through § 250.918."

§ 250.466 [Amended]

■ 25. In § 250.466 introductory text, in the third sentence, the citation "§ 250.469" is revised to read "§ 250.467."

§ 250.490 [Amended]

■ 26. In § 250.490(o)(3), in the third sentence the term "(f)(13)(iv)" is revised to read "(f)".

■ 27. In § 250.513, paragraphs (a), (c), and (d) are revised to read as follows:

§ 250.513 Approval and reporting of well completion operations.

(a) No well-completion operation may begin until the lessee receives written approval from the District Manager. If completion is planned and the data are available at the time you submit the Application for Permit to Drill and Supplemental APD Information Sheet (Forms MMS–123 and MMS–123S), you may request approval for a well-completion on those forms (see §§ 250.410 through 250.418 of this part). If the District Manager has not approved the completion or if the completion objective or plans have significantly changed, you must submit an Application for Permit to Modify (Form MMS–124) for approval of such operations.

* * * * *

(c) Within 30 days after completion, you must submit to the District Manager an End of Operations Report (Form MMS–125), including a schematic of the tubing and subsurface equipment.

(d) You must submit public information copies of Form MMS–125 according to § 250.186.

§ 250.613 [Amended]

■ 28. In § 250.613, the following revisions are made:

■ A. In paragraph (d), the form name "Sundry Notices and Reports on Wells" is revised to read "Application for Permit to Modify".

■ B. In paragraph (d), the form name "Well Summary Report" is revised to read "End of Operations Report".

§ 250.801 [Amended]

■ 29. In § 250.801(h)(1), the form name "Sundry Notices and Reports on Wells" is revised to read "Application for Permit to Modify".

§ 250.802 [Amended]

■ 30. In § 250.802(e)(3), last sentence, after the word "Systems", add the parenthetical phrase "(incorporated by reference as specified in § 250.198)"; and in paragraph (e)(4)(i), first sentence, after the words "Zone 2", add the parenthetical phrase "(incorporated by reference as specified in § 250.198)".

§ 250.1001 [Amended]

■ 31. In § 250.1001, the following revisions are made:

■ A. In the definition of "right-of-way pipelines", paragraph (a) is amended to add the word "of" after the word "group".

■ B. In the definition of "right-of-way pipelines", paragraphs "(a)", "(b)", "(c)", and "(d)" are redesignated as paragraphs "(1)", "(2)", "(3)", and "(4)".

§ 250.1002 [Amended]

■ 32. In § 250.1002, paragraph (c)(2) is amended to add the word "pressure" after the parenthetical abbreviation "(HPT)".

§ 250.1003 [Amended]

■ 33. In § 250.1003, in paragraph (b)(1), the word "hydrostatically" is revised to read "pressure".

§ 250.1004 [Amended]

■ 34. In § 250.1004, paragraph (b)(2) is amended to remove the word "to" in the first sentence.

§ 250.1005 [Amended]

■ 35. In § 250.1005, paragraph (b) is amended to remove the last word in the paragraph, "measurements".

§ 250.1007 [Amended]

■ 36. In § 250.1007, in paragraph (a)(4), the word "were" is revised to read "will be".

§ 250.1010 [Amended]

■ 37. Section 250.1010 is amended as follows:

■ A. In § 250.1010(c), the word "lessee" in the last sentence is revised to read "right-of-way holder".

■ B. In § 250.1010(h), the citation "§ 250.1014" is revised to read "§ 250.1019".

§ 250.1011 [Amended]

■ 38. In § 250.1011, paragraph (b)(1) is revised to read, "(1) The Gulf of Mexico and the area offshore the Atlantic Coast;" and in paragraph (b)(2), the word "area" is revised to read "areas".

§ 250.1016 [Amended]

■ 39. In § 250.1016(c)(1), the citation "§ 250.1010(c)" is revised to read "§ 250.1015(c)".

§ 250.1019 [Amended]

■ 40. In § 250.1019, the citation "§ 250.1009(c)(9)" is revised to read "§ 250.1010(h)".

§ 250.1102 [Amended]

■ 41. In § 250.1102(a)(l), the form name "Request for Reservoir Maximum Efficient Rate (MER)" is revised to read "Sensitive Reservoir Information Report (SRI)".

§ 250.1103 [Amended]

■ 42. In § 250.1103(a), the fourth sentence is amended to remove the parenthetical phrase "(15.025 psia in the Gulf of Mexico OCS Region)".

§ 250.1202 [Amended]

■ 43. Amend § 250.1202(f)(1) by revising the citation "30 CFR 250.101" to read as "30 CFR 250.198".

§ 250.1602 [Amended]

■ 44. Amend § 250.1602(b), by revising the list of subparts "A, B, C, G, I, J, M, N, and O" to read as "A, B, C, I, J, M, N, O, and Q".

§ 250.1619 [Amended]

■ 45. Amend § 250.1619(b), by revising the form name "Well Summary Report" to read as "End of Operations Report"; and the form name, "Sundry Notices and Reports on Wells" to read as "Application for Permit to Modify".

PART 251—GEOLOGICAL AND GEOPHYSICAL (G&G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

■ 46. The authority citation for part 251 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*, 31 U.S.C. 9701.

■ 47. In § 251.7, paragraph (b) introductory text and the first sentence in paragraph (b)(6) are revised to read as follows:

§ 251.7 Test drilling activities under a permit.

* * * * *

(b) *Deep stratigraphic tests.* You must submit to the appropriate Regional Director, at the address in § 251.5(d), a drilling plan, an environmental report,

an Application for Permit to Drill (Form MMS–123), and a Supplemental APD Information Sheet (Form MMS–123S) as follows:

* * * * *

(6) *Application for permit to drill (APD).* Before commencing deep stratigraphic test drilling activities under an approved drilling plan, you must submit an APD and a Supplemental APD Information Sheet (Forms MMS–123 and MMS–123S) and receive approval. * * *

* * * * *

§ 251.14 [Amended]

■ 48. In § 251.14(b) revise "250.196(b)(2)" to read "250.197(b)(2)".

PART 260—OUTER CONTINENTAL SHELF OIL AND GAS LEASING

■ 49. The authority citation for part 260 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

§ 260.102 [Amended]

■ 50. Amend § 260.102, in the definitions of Highest responsible qualified bidder and Qualified bidder, the citations "256, subpart G" and "§ 256, subpart G" are both revised to read as "30 CFR part 256, subpart G".

[FR Doc. E7–8417 Filed 5–3–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–07–019]

RIN 1625–AA08

Special Local Regulations for Marine Events; Chesapeake Bay Bridges Swim Races, Chesapeake Bay, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.507 during the Annual Great Chesapeake Bay Swim and Chesapeake Challenge One Mile Swim events to be held on June 10, 2007. This action is necessary to provide for the safety of life on navigable waters before, during and after the event. The effect will be to restrict general navigation in the regulated area for the safety of event participants and support vessels in the event area.

EFFECTIVE DATES: The regulations in 33 CFR 100.507 will be enforced from 8:30 a.m. to 6 p.m. on June 10, 2007.

FOR FURTHER INFORMATION CONTACT: Ronald Houck, Marine Events Coordinator, Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, and (410) 576–2674.

SUPPLEMENTARY INFORMATION: The Great Chesapeake Bay Swim, Inc. will sponsor the "Great Chesapeake Bay Swim" and the "Chesapeake Challenge One Mile Swim" on the waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridge. Approximately 650 swimmers will start Great Chesapeake Bay Swim from Sandy Point State Park and swim between the spans of the William P. Lane Jr. Memorial Bridge to the Eastern Shore. Approximately 400 swimmers will start the Chesapeake Challenge One Mile Swim following a triangular shaped course beginning and ending at Hemingway's restaurant on the Eastern Shore adjacent to the William P. Lane Jr. Memorial Bridge. A large fleet of support vessels will be accompanying the swimmers. Therefore, to ensure the safety of participants and support vessels, 33 CFR 100.507 will be enforced for the duration of the event. Under provisions of 33 CFR 100.507, from 8:30 a.m. to 6 p.m. on June 10, 2007, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander. Vessel traffic will be allowed to transit the regulated area as the swim progresses, when the Patrol Commander determines it is safe to do so.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners and marine information broadcasts so mariners can adjust their plans accordingly.

Dated: April 24, 2007.

Larry L. Hereth,

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

[FR Doc. E7–8507 Filed 5–3–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–07–039]

RIN 1625–AA08

Special Local Regulations for Marine Events; Chester River, Chestertown, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.533 during the Maryland Swim for Life swim event to be held on June 16, 2007. This action is necessary to provide for the safety of life on navigable waters before, during and after the event. The effect will be to restrict general navigation in the regulated area for the safety of event participants and support vessels in the event area.

EFFECTIVE DATES: The regulations at 33 CFR 100.533 will be enforced from 6:30 a.m. to 2 p.m. on June 16, 2007.

FOR FURTHER INFORMATION CONTACT: Ronald Houck, Marine Events Coordinator, Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, and (410) 576–2674.

SUPPLEMENTARY INFORMATION: The Maryland Swim for Life Association will sponsor the "Maryland Swim for Life", an open water swimming competition held on the waters of the Chester River, near Chestertown, Maryland. Approximately 100 swimmers will start from Rolph's Wharf and swim up-river 2.5 miles then swim down-river returning back to Rolph's Wharf. A large fleet of support vessels will be accompanying the swimmers. Therefore, to ensure the safety of participants and support vessels, 33 CFR 100.533 will be enforced for the duration of the event. Under provisions of 33 CFR 100.533, from 6:30 a.m. to 2 p.m. on June 16, 2007, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander. Vessel traffic may be allowed to transit the regulated area only when the Patrol Commander determines it is safe to do so.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners and marine information broadcasts so mariners can adjust their plans accordingly.

Dated: April 24, 2007.

Larry L. Hereth,

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

[FR Doc. E7–8508 Filed 5–3–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–07–048]

Drawbridge Operation Regulations; Charles River and Its Tributaries, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Massachusetts Bay Commuter Railroad (MBCR)/Amtrak Bridge across the Charles River, mile 0.8, at Boston, Massachusetts. Under this temporary deviation, in effect for four weekends, the MBCR/Amtrak Bridge may remain in the closed position for five consecutive hours, each Friday evening from 11:59 p.m. through to 5 a.m. Saturday morning. From 5 a.m. on each Saturday morning through 11:59 p.m. on each Sunday evening the bridge will open on signal on the hour only. Vessels that can pass under the draw without a bridge opening may do so at all times. This deviation is necessary to facilitate bridge track repairs.

DATES: This deviation is effective from April 28, 2007 through May 20, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The MBCR/Amtrak Bridge, across the Charles River, mile 0.8, at Boston, Massachusetts, has a vertical clearance in the closed position of 3 feet at mean high water and 12 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.591(c).

The owner of the bridge, the Massachusetts Bay Commuter Railroad (MBCR), requested a temporary deviation to facilitate repairs to the bridge rails.

Under this temporary deviation, in effect from Friday, April 27, 2007 through Sunday May 20, 2007, the MBCR/Amtrak Bridge need not open for the passage of vessel traffic from 11:59 p.m. on each Friday evening through 5 a.m. each Saturday morning. From 5 a.m. each Saturday morning through 11:59 p.m. each Sunday evening the bridge shall open on signal, on the hour only. Vessels that can pass under the bridge without a bridge opening may do so at all times.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will rescind the remainder of this temporary deviation, and the bridge shall be returned to its normal operating schedule. Notice of the above action shall be provided to the public in the Local Notice to Mariners and the **Federal Register**, where practicable.

Dated: April 26, 2007.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E7–8612 Filed 5–3–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2007–0095; FRL–8309–3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving an amendment to the Missouri State Implementation Plan (SIP). This action approves an amendment to the SIP-approved Doe Run Herculaneum Consent Judgment to remove language specifying the exact bag technology to be used in the baghouses. Related performance standard requirements will remain unchanged. This action is independent and does not affect the revision to the Missouri SIP due in April 2007, in response to the SIP Call issued April 14, 2006, to bring the area of Herculaneum into compliance with the lead National Ambient Air Quality Standard.

DATES: This direct final rule will be effective July 3, 2007, without further notice, unless EPA receives adverse comment by June 4, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0095, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *E-mail: yoshimura.gwen@epa.gov.*

3. *Mail:* Gwen Yoshimura, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier.* Deliver your comments to Gwen Yoshimura, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2007–0095. 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 through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA

cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Gwen Yoshimura at (913) 551–7073, or by e-mail at *yoshimura.gwen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that State air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP. Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What is the Federal approval process for a SIP?

In order for State regulations to be incorporated into the Federally-enforceable SIP, States must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a State-authorized rulemaking body.

Once a State rule, regulation, or control strategy is adopted, the State submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the State submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All State regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual State regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given State regulation with a specific effective date.

What does Federal approval of a state regulation mean to me?

Enforcement of the State regulation before and after it is incorporated into the Federally-approved SIP is primarily a State responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What is being addressed in this document?

EPA established the National Ambient Air Quality Standard (NAAQS) for lead on October 5, 1978 (43 FR 46246). The standard for lead is set at a level of 1.5 micrograms (μg) of lead per cubic meter (m^3) of air, averaged over a calendar quarter. During the 1980s and 1990s, Missouri submitted and EPA approved a number of SIP revisions for lead to address ambient lead problems in various areas of the State. One such area was in Herculaneum, Missouri, which is the site of the Doe Run primary lead smelter. Doe Run-Herculaneum is the only currently operating primary lead smelter in the United States.

The most recent SIP revisions for the Doe Run-Herculaneum area were published in the **Federal Register** on April 16, 2002 (67 FR 18497). The State submittal included a Consent Judgment entered into by the State and the Doe Run Company, which contained the control and contingency measures with enforceable dates for implementation. As part of the Consent Judgment, a Total Suspended Particulate (TSP) limit of 0.022 grains per dry standard cubic foot was established for Number 7, 8, and 9 Baghouse. The Consent Judgment further specified that Teflon membrane filter bags be used in these baghouses.

Since implementing these specifications, Doe Run found that the Teflon filters resulted in operational issues such as bag cleaning and high operating pressure differentials which reduced bag life and led to higher maintenance. The bags that Doe Run proposes to install are spun-bound pleated filter elements that have approximately twice the filter area as the original bags. The manufacturer's specifications state that this design significantly reduces the differential pressure and air-to-cloth ratios, resulting in improved performance and durability. The pleated bags must meet the current Total Suspended Particulate limits (0.022 grains per dry standard cubic foot) required in the Consent Judgment. MDNR has also modified the Consent Judgment to require a performance test to verify the new filter elements are meeting performance requirements. This action removes language referring to the exact bag technology while leaving the related performance standard requirements in place. This is an approvable change as it will not increase emissions and does not affect the stringency of the control requirement.

Have the requirements for approval of a SIP revision been met?

The State submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision

meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What action is EPA taking?

This action approves revision to the Missouri SIP-approved Doe Run Herculaneum Consent Judgment. The revision removes language referring to the exact bag technology while leaving the related performance standard requirements in place. We are processing this action as a direct final action because the revisions do not change performance standard requirements and are thus expected to be noncontroversial. Additionally, the revisions have gone through the Missouri approval process, including a public hearing and opportunity for public comments. EPA was the only party to provide comments during Missouri's comment period. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a State rule implementing a Federal standard.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 3, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 26, 2007.

John B. Askew,

Regional Administrator, Region 7.

■ Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. In § 52.1320(d) the table is amended by adding entry (24) at the end of the table to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED MISSOURI SOURCE-SPECIFIC PERMITS AND ORDERS

Name of source	Order/permit number	State effective date	EPA approval date	Explanation
* *	*	*	* *	*
(24) Doe Run Herculaneum, MO.	Consent Judgment Modification, CV301–0052CCJ1.	12/20/05	5/4/07 [insert FR page number where the document begins].	

* * * * *

[FR Doc. E7–8560 Filed 5–3–07; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 72, No. 86
Friday, May 4, 2007

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. AMS–FV–07–0040; FV07–955–1]

Vidalia Onions Grown in Georgia; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers of Vidalia onions in Georgia, to determine whether they favor continuance of the marketing order regulating the handling of Vidalia onions grown in the production area.

DATES: The referendum will be conducted from September 10 to September 28, 2007. To vote in this referendum, growers must have been producing Vidalia onions within the designated production area in Georgia during the period January 1, 2006, through December 31, 2006.

ADDRESSES: Copies of the marketing order may be obtained from the office of the referendum agents at the Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 799 Overlook Dr., Suite A, Winter Haven, FL 33884–1671, Fax: (863) 325–8793, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or Internet: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793 or E-mail: *Doris.Jamieson@usda.gov* or *Christian.Nissen@usda.gov,* respectively.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Agreement and Order No. 955 (7 CFR part 955), hereinafter referred to as the "order," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by the growers. The referendum shall be conducted from September 10 to September 28, 2007, among Vidalia onion growers in the production area. Only growers that were engaged in the production of Vidalia onions in Georgia, during the period of January 1 to December 31, 2006, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers favor continuation of marketing order programs. USDA would consider termination of the order if less than two-thirds of the growers voting in the referendum, and growers of less than two-thirds of the volume of Vidalia onions represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, USDA will consider the results of the continuance referendum and other relevant information regarding operation of the order. USDA will evaluate the order's relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials to be used in the referendum herein ordered, are currently approved by the Office of Management and Budget (OMB), under OMB No. 0581–0178, Vegetable and Specialty Crops. It has been estimated that it will take an average of 20 minutes for each of the approximately 101 growers of Vidalia onions in Georgia to cast a ballot. Participation is voluntary. Ballots postmarked after September 28, 2007, will not be included in the vote tabulation.

Christian D. Nissen and Doris Jamieson of the Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR part 900.400 *et seq*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents, or from their appointees.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: May 1, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–8573 Filed 5–3–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1 and 33

[Docket No. FAA–2007–27899; Notice No. 07–05]

RIN 2120–AI96

Airworthiness Standards: Rotorcraft Turbine Engines One-Engine-Inoperative (OEI) Ratings, Type Certification Standards

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) is proposing to amend OEI rating definitions and type certification standards for 30-second OEI, 2-minute OEI, and 30-minute OEI ratings for rotorcraft turbine engines. This proposed rule, if adopted, would revise the ratings' standards to reflect recent analyses of the ratings' usage and lessons learned from completed engine

certifications and service experience. This proposal harmonizes FAA type certification standards for these ratings with the requirements of the European Aviation Safety Agency in the Certification Specifications for Engines (CS–E) and with proposed requirements for Transport Canada Civil Aviation. If adopted, the proposed changes would establish nearly uniform certification standards for ratings for rotorcraft turbine engines certificated in the United States under part 33 and in European countries under CS–E, thus simplifying airworthiness approvals for import and export.

DATES: Send your comments on or before August 2, 2007.

ADDRESSES: You may send comments, identified by Docket No. FAA–2007–27899, using any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information that you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

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: Dorina Mihail, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; (781) 238–7153; facsimile: (781) 238–7199; e-mail: *dorina.mihail@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

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

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

1. Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*):

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

3. Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

The One-Engine-Inoperative (OEI) rating powers provide rotorcraft with higher than takeoff and maximum continuous rating powers during takeoff, cruise, and landing when one or more engines of a multi-engine rotorcraft fails or is shutdown. These OEI rating powers enable the rotorcraft to continue safe flight until it reaches a suitable landing site. Part 33 prescribes airworthiness standards for 30-second OEI, 2-minute OEI, 2½-minute OEI, 30-minute OEI, and other OEI ratings for the issuance of type certificates for rotorcraft turbine engines. All OEI ratings are optional ratings that engine manufacturers may select from those specified in § 33.7.

The Certifications Specifications—Engines prescribe corresponding airworthiness standards of the European Aviation Safety Agency for these ratings. While these standards are similar, they differ in certain regulations. Non-uniform standards impose a regulatory hardship on applicants seeking certification under both sets of standards in the form of additional costs and delays in the time required for certification.

The FAA is committed to promoting harmonization. As part of this commitment, the FAA, with the European Joint Aviation Authorities (JAA) and Transport Canada Civil Aviation, developed a harmonized Terms of Reference for "2-Minute and 30-Second One-Engine-Out Ratings" in April 1992. The Terms of Reference established a joint effort to review and harmonize the requirements and interpretations for OEI ratings under part 33 and the corresponding Joint Aviation Requirements—Engines (JAR–E). The Aviation Rulemaking Advisory Committee (ARAC) assigned the task of harmonizing the differing OEI ratings to its Engine Harmonization Working Group, which consisted of representatives from the FAA, JAA, TC,

as well as from U.S., Canadian, and European industries.

On February 29, 2000, the Engine Harmonization Working Group reported its recommendations to the ARAC, which recommended that the FAA proceed with rulemaking. This NPRM reflects the ARAC recommendations.

Section-by-Section Discussion of the Proposals

The working group developed and agreed to the following proposals. The proposed changes to parts 1 and 33 contain language similar to that proposed for JAR–E, and subsequently adopted in the CS–E, thereby establishing equivalency and creating consistency between the regulations.

Section 1.1 Definitions

The current definitions of rated OEI powers refer to engine failure but not to engine shutdown. We are proposing, therefore, to revise the definition of rated 30-second OEI, rated 2-minute OEI, rated 2½-minute OEI, rated 30-minute OEI, and rated continuous OEI powers to include engine shutdown. In addition, to be consistent with the usage definitions of 30-second OEI and 2-minute OEI ratings, we are proposing to revise the "period of use" for the 2½-minute OEI rating from "a period of use" to "periods of use."

Section 33.5 Instruction Manual for Installing and Operating the Engine

We are proposing to add a new § 33.5(b)(4), applicable to rotorcraft engines having one or more OEI ratings, which would require applicants to provide engine data to aircraft manufacturers in support of aircraft power availability requirements, such as those specified in §§ 27.45(f) and 29.45(f). Since the power assurance data will not include a check of the highest OEI rating power level due to potential rapid engine hardware deterioration, the applicant must provide the necessary engine performance characteristics and variability to the engine installer. This data will enable the installer to establish power assurance procedures that enable the extrapolation of data to the highest OEI rating power. The engine database should include: a thermodynamic model; data gained from experience during development and certification testing; and data derived from service experience from engines of similar design, whenever applicable.

Section 33.29 Instrument Connection

We are proposing to revise § 33.29(c) to specify that the applicant must provide a means or a provision for a means to record the entry into the defined 30-second OEI and 2-minute OEI rating power bands. The applicant, for example, an engine manufacturer, may satisfy "a means" by providing a recorder to record entry into the OEI power bands. Alternatively, the applicant may fulfill "a provision for a means" by specifying that the installer provide a recorder to record entry into the OEI power bands.

The revised proposal would also require a means to indicate to the pilot the entry into the power bands, the corresponding impending time expiration, and the time expiration point. The automatic recording system must record the number of usages of 30-second OEI and/or 2-minute OEI rating powers and the time of each usage, or accumulated time, including any exceedance of 30-second OEI and 2-minute OEI operating limitations or relevant time limitations.

The automatic recording system should also provide a means to alert the maintenance personnel that the usage and/or exceedance of the 30-second and 2-minute OEI ratings has taken place. The required means for alerting the pilot, maintenance personnel, and the automatic recording system must not be capable of being reset in flight and must only be reset by maintenance personnel after retrieval of recorded data.

The proposal would delete the redundant design requirements of § 33.29(c)(2). The automatic data recording requirements of the existing § 33.29(c)(3), with a minor wording change for clarification, will become the new § 33.29(c)(2).

This proposal would add a new requirement designated as new § 33.29(c)(3) to alert maintenance personnel when the engines have been operated at the rating powers and of the need to retrieve the recorded engine data. A new § 33.29(c)(4) would specify the requirements for verification of the proper operation of indicating, recording, and retrieval systems. In addition, a new § 33.29(d) would specify resetting the recording on the ground only.

Section 33.67 Fuel System

The operating conditions requiring the use of 30-second OEI ratings may require the pilot to perform simultaneous actions to maintain safe flight. Therefore, an automatic means that does not require pilot input or control, other than a termination command, must apply and control the rating power. This automatic control requirement is intended to avoid the need for the pilot to monitor engine parameters, such as output shaft torque or power, output shaft speed, gas producer speed, and gas path temperature, during the OEI operation. Once the system is activated, it automatically controls the 30-second OEI power and prevents the engine from exceeding its specified operating limits.

We are proposing to revise § 33.67(d) to clarify that the intent of the proposed "automatic control" is to control the engine operating conditions, which should not exceed the engine's operating limits. The applicant's design, however, should not limit the time at which OEI power is used. This will enable the pilot to exceed OEI time limitations to safely land the rotorcraft in an in-flight emergency as permitted by § 91.3(b).

Section 33.87 Endurance Test

For rotorcraft engines having 30-second and 2-minute OEI ratings, the applicant must consider all applicable paragraphs of § 33.87(a) in running the tests under § 33.87(f). However, to reduce test complexity, and to improve the flexibility needed to attain the key parameters (speed, temperature and torque) during the tests, we are proposing to allow that the maximum air bleed for engine and aircraft services under § 33.87(a)(5) need not be used for the tests under § 33.87(f)(1) through (f)(8) if the applicant can show by testing, or analysis based on testing, that the validity of the endurance test is preserved. The analysis should include, but is not limited to (1) The effect of the bleed air extraction on the engine secondary air system that provides cooling air to various engine components, and (2) the thermodynamic cycle effects of bleed (*e.g.*, core speed to output shaft speed changes) which may enhance the engine's ability to meet the teardown inspection requirements of § 33.93(b)(2).

This proposal would allow the applicant to run the tests under §§ 33.87(f)(1) through (f)(8) without loading the accessory drives and mounting attachments if the applicant can substantiate that the durability of any accessory drive or engine component is not significantly affected. However, to meet the requirements of § 33.87(a)(6) without the power turbine accessory drives loaded during the test, the applicant must add equivalent power required for loading these accessory drives. This power must be added to the output drive shaft so that the power turbine rotor assembly is operated at or above the levels as when the power turbine accessory drives are loaded.

This proposal would clarify the intent of the test schedule for the first test sequence of the existing § 33.87(f)(4) test

by adding a new sentence, "However, where the greatest is the 30-minute OEI power, that sixty-five minute period shall consist of 30 minutes at 30-minute OEI power followed by 35 minutes at whichever is the greater of continuous OEI power or maximum continuous power." The proposal would also clarify the idle condition of § 33.87(f)(8) as flight idle.

This proposal would specify that the four test sequences of the 2-hour test under § 33.87(f) are to be run continuously without stoppage. If a stop occurs, the applicant typically would need to repeat the interrupted sequence in full. However, the sequence may be re-started from the interrupt point if there are technical justifications acceptable to the FAA. If the FAA determines that the sequence need not be repeated in its entirety, then the test should be re-started from a point where the engine thermal condition would be the same as at the time of interruption. If an excessive number of interruptions occur, the applicant would be required to repeat the entire § 33.87(f) test.

Additionally, we are proposing to revise the test schedule under § 33.87(c) for the 30-minute OEI rating to agree with the schedule in CS–E. The result would be the harmonization of the endurance test schedule for engines having a 30-minute OEI rating. The proposal would replace the existing § 33.87(c)(2) with a thirty-minute test at (a) Rated maximum continuous power during fifteen of the twenty-five 6-hour endurance test cycles; and (b) rated takeoff power during ten of the twenty-five 6-hour endurance test cycles. The existing § 33.87(c)(2) would be redesignated § 33.87(c)(4). The duration of the test in the existing § 33.87(c)(3) would be reduced from 2 hours to 1 hour. The existing § 33.87(c)(4) would be redesignated as § 33.87(c)(5) with the number of time and speed increments increased from 12 to 15, and with total running time increased from 2 hours to 2 hours and 30 minutes. The existing § 33.87(c)(5) and (c)(6) would be redesignated as § 33.87(c)(6) and (c)(7), respectively.

Section 33.88 Engine Overtemperature Test

We are proposing to delete the existing § 33.88(b), which refers to obtaining OEI ratings when the engine does not incorporate a means to limit gas temperature. This paragraph is not needed because the new § 33.67(d) requires automatic control of the 30-second OEI power within its gas temperature limit. The proposal would incorporate the existing test requirements in § 33.88(c) into the new § 33.88(b), which applies only to engines having the combined 30-second OEI and 2-minute OEI ratings. We are proposing to revise § 33.88(a) to apply to all other ratings, including all OEI ratings other than the combination specified above, regardless of whether the engine is equipped with an automatic temperature control.

Section 33.93 Teardown Inspection

In meeting the teardown inspection requirements after the 2-hour endurance tests of § 33.87(f), the applicant would be required to show that no failure of any significant engine component becomes evident during the test, shutdown, or the subsequent teardown inspection. For components that are distressed beyond serviceable limits by this test, the applicant must show that the inspections and mandatory maintenance actions for these components, specified in the Instructions for Continued Airworthiness (ICA), are adequate for maintaining their continued airworthiness.

Additionally, the applicant would need to evaluate component condition against a minimum hardware condition that can be expected for in-service engines. For the purpose of § 33.93(b)(2), engine parts that can affect structural integrity include, but are not limited to, mounts, cases, bearing supports, shafts, and rotors. We are proposing to remove the reference in § 33.93(b)(2) to the above mentioned components to emphasize that after the test the applicant needs to consider deterioration of any engine component that could affect the structural integrity of the engine, not just those listed above.

Appendix A33.4 Airworthiness Limitation Section

We are proposing to revise A33.4, Airworthiness Limitations Section (ALS), by adding a new paragraph for rotorcraft engines having 30-second OEI and 2-minute OEI ratings. For these engines, we will require the applicant to prescribe mandatory post-flight inspection and maintenance actions in the ALS of the ICA following the use of these ratings. We will also require the applicant to create a mandatory in-service engine evaluation program to ensure the continued adequacy of the airworthiness instructions for the engines.

The concept of the 30-second OEI and 2-minute OEI ratings is that of limited use in service followed by mandatory inspection and maintenance. This concept assumes that some engine parts or components may not be suitable for further use and will need to be replaced after the application of these ratings. The mandatory inspections and maintenance actions following the use of 30-second OEI, or 2-minute OEI ratings, must be capable of (1) Identifying and correcting any component distress that could significantly reduce subsequent engine reliability or prevent the engine from achieving 30-second OEI and 2-minute OEI rating powers; and (2) maintaining the engine in condition for safe OEI flight. This proposal requires the applicant to prescribe the mandatory post-flight inspection and maintenance actions in the ALS of the ICA following the use of either of these two ratings, prior to next flight, regardless of the frequency of usage and the condition of the engine. The applicant must validate the adequacy of the required inspections and maintenance actions.

The required inspections and maintenance actions are normally determined through certification testing supplemented by development testing and service experience of engines of the same type with similar design at the time of certification. Differences, however, may exist in hardware conditions and power availability characteristics between in-service engines and the conditions and characteristics of the engine prior to the § 33.87(f) tests. Similarly, differences may exist in power assurance characteristics for in-service engines after usage of 30-second or 2-minute OEI ratings and the characteristics observed following the § 33.87(f) tests.

Therefore, we are proposing an in-service evaluation program in the ALS to obtain relevant data concerning the condition of hardware and power availability at various stages in the life of the engine. The data should be compared with corresponding data observed during certification that defined the post-flight inspection and maintenance actions. If the data obtained from the in-service program indicates that the in-service differences are not properly accounted for, then this data should be used to modify the instructions as appropriate. To achieve the objectives of the program, the engine manufacturer must ensure that operators understand and are aware of the need for the procedures to properly collect and return information needed by the manufacturer.

Rulemaking Analyses and Notices

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section

106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General Requirements." Under that section, the FAA is charged with prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce, including minimum safety standards for aircraft engines. This regulation is within the scope of that authority because it updates the existing regulations for rotorcraft engine OEI ratings.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined there are no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review," dated September 30, 1993 (58 FR 51736) directs the FAA to assess both the costs and the benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify the costs. Our assessment of this rulemaking indicates that its economic impact is minimal because U.S. turbine rotorcraft manufacturers are already manufacturing rotorcraft turbine engines according to European requirements that are equivalent to these proposed requirements. Because the costs and benefits of this action do not make it a "significant regulatory action" as defined in the Order, we have not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking under the DOT Regulatory Policies and Procedures. We do not need to do a full evaluation where the economic impact of a rule is minimal.

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows.

This proposed rule harmonizes FAA airworthiness standards for the 30-second and 2-minute OEI ratings with similar requirements already adopted by EASA and being processed by Transport Canada. Because the OEI ratings are optional, manufacturers will provide this capability only if they expect to recover any additional costs in the marketplace. The FAA estimates that this rule would affect 8 engine models, approximately 100 helicopters, and that there would be approximately 3 OEI events per year. The total estimated cost of the proposed rule over 20 years is approximately $619,000 in present value cost (in 2005 dollars). These optional costs would only be incurred if the manufacturer believes the enhanced capability benefits exceed the costs. The FAA has not attempted to quantify the cost savings that may accrue due to harmonization of this rule, beyond noting that they contribute to a large potential harmonization savings. Safety after an engine failure or shutdown under this rule would be at least equivalent to operational safety under the previous regulations.

The FAA finds that the expected outcome of the proposed rule would have a minimal impact with positive net benefits, and, therefore, we did not prepare a full regulatory evaluation. The FAA requests comments with supporting justification about our determination of minimal impact. The FAA has, therefore, determined that this proposed rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354) directs the FAA to fit regulatory requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a "significant economic impact on a substantial number of small entities" as they are defined in the Act. If we find the action will have a significant impact, we must do a "regulatory flexibility analysis."

However, if an agency determines that a proposed rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

All U.S. multi-turbine engine rotorcraft manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees for aircraft manufacturers. Currently manufactured U.S. twin-turbine engine rotorcraft type certificate holders include: Bell Helicopter Textron, Sikorsky Aircraft Corporation, and MD Helicopters, Inc. In addition, all of the U.S. rotorcraft engine manufacturers exceed the Small Business

Administration small-entity criteria of 1,000 employees for aircraft engine manufacturers. There are four U.S. engine manufacturers that produce turbine engines for rotorcraft: (1) General Electric, GE Transportation, (2) Rolls-Royce Allison, Allison Engines, Inc., (3) Light Helicopter Turbine Engine Company (a partnership of Rolls-Royce and Honeywell), and (4) Honeywell International, Inc. Given that there are no small-entity manufacturers of twin-engine rotorcraft or of rotorcraft engines and the rule would impose only minimal costs, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA invites comments regarding this determination.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it uses the European international standards as the regulation basis and is in accord with the Trade Agreements Act.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million.

This proposed rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in Chapter 3, paragraph 312d, and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 1

Air transportation, Aircraft, Aviation safety, Engines, Helicopters, Ratings, Rotorcraft, Safety.

14 CFR Part 33

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

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 1 and 33 of Title 14, Code of Federal Regulations as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

2. Amend § 1.1 by revising the definitions for "Rated 30-second OEI power," "Rated 2-minute OEI power," "Rated continuous OEI power," "Rated 30-minute OEI power," and "Rated 2½-minute OEI power," to read as follows:

§ 1.1 General definitions.

* * * * *

Rated 30-second OEI Power, with respect to rotorcraft turbine engines, means the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under Part 33 of this chapter, for continuation of one flight operation after the failure or shutdown of one engine in multiengine rotorcraft, for up to three periods of use no longer than 30 seconds each in any one flight, and followed by mandatory inspection and prescribed maintenance action.

Rated 2-minute OEI Power, with respect to rotorcraft turbine engines, means the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under Part 33 of this chapter, for continuation of one flight operation after the failure or shutdown of one engine in multiengine rotorcraft, for up to three periods of use no longer than 2 minutes each in any one flight, and followed by mandatory inspection and prescribed maintenance action.

Rated continuous OEI power, with respect to rotorcraft turbine engines, means the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under Part 33 of this chapter, and limited in use to the time required to complete the flight after the failure or shutdown of one engine of a multiengine rotorcraft.

* * * * *

Rated 30-minute OEI power, with respect to rotorcraft turbine engines, means the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under Part 33 of this chapter, and limited in use to one period of use no longer than 30 minutes after the failure or shutdown of one engine of a multiengine rotorcraft.

Rated 2½-minute OEI power, with respect to rotorcraft turbine engines, means the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under Part 33 of this chapter for periods of use no longer than 2½ minutes each after the failure or shutdown of one engine of a multiengine rotorcraft.

* * * * *

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

3. The authority citation for part 33 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

4. Amend § 33.5 to add a new paragraph (b)(4) to read as follows:

§ 33.5 Instruction manual for installing and operating the engine.

* * * * *

(b) * * *

(4) For rotorcraft engines having one or more OEI ratings, applicants must provide data on engine performance characteristics and variability to enable the aircraft manufacturer to establish aircraft power assurance procedures.

5. Amend § 33.29 by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 33.29 Instrument connection.

* * * * *

(c) Each rotorcraft turbine engine having a 30-second OEI rating and a 2-minute OEI rating must have a means or a provision for a means to:

(1) Alert the pilot when the engine is at the 30-second OEI and the 2-minute OEI power levels, when the event begins, and when the time interval expires;

(2) Automatically record each usage and duration of power at the 30-second OEI and 2-minute OEI levels;

(3) Alert maintenance personnel in a positive manner that the engine has been operated at either or both of the 30-second and 2-minute OEI power levels, and permit retrieval of the recorded data; and

(4) Enable routine verification of the proper operation of the above means.

(d) The means, or the provision for a means, of paragraph (c) of this section must not be capable of being reset in flight.

6. Revise § 33.67(d) to read as follows:

§ 33.67 Fuel system.

* * * * *

(d) Rotorcraft engines having a 30-second OEI rating must incorporate a means, or a provision for a means, for automatic availability and automatic control of the 30-second OEI power within its operating limitations.

7. Amend § 33.87 by redesignating paragraphs (c)(2), (c)(4), (c)(5), and (c)(6) as paragraphs (c)(4), (c)(5), (c)(6), and (c)(7) respectively, by adding new paragraph (c)(2), and by revising paragraphs (a)(5), (a)(6), (c)(3), newly redesignated paragraphs (c)(4) through (c)(7), (f) introductory text, (f)(4) and (f)(8) to read as follows:

§ 33.87 Endurance test.

(a) * * *

(5) Maximum air bleed for engine and aircraft services must be used during at least one-fifth of the runs, except for the final 120-minute test required under paragraph (f) of this section, provided the validity of the test is not compromised. However, for these runs, the power or thrust or the rotor shaft rotational speed may be less than 100 percent of the value associated with the particular operation being tested if the FAA finds that the validity of the endurance test is not compromised.

(6) Each accessory drive and mounting attachment must be loaded in accordance with paragraphs (a)(6)(i) and (ii) of this section, except as permitted by paragraph (a)(6)(iii) of this section for the final 120-minute test required under paragraph (f) of this section.

(i) The load imposed by each accessory used only for aircraft service must be the limit load specified by the applicant for the engine drive and attachment point during rated maximum continuous power or thrust and higher output.

(ii) The endurance test of any accessory drive and mounting attachment under load may be accomplished on a separate rig if the validity of the test is confirmed by an approved analysis.

(iii) The applicant is not required to load the accessory drives and mounting attachments when running the tests under paragraphs (f)(1) through (f)(8) of this section if the applicant can substantiate that there is no significant effect on the durability of any accessory drive or engine component. However, the applicant must add the equivalent engine output power extraction from the power turbine rotor assembly to the engine shaft output.

* * * * *

(c) * * *

(2) *Rated maximum continuous and takeoff power.* Thirty minutes at—

(i) Rated maximum continuous power during fifteen of the twenty-five 6-hour endurance test cycles; and

(ii) Rated takeoff power during ten of the twenty-five 6-hour endurance test cycles.

(3) *Rated maximum continuous power.* One hour at rated maximum continuous power.

(4) *Rated 30-minute OEI power.* Thirty minutes at rated 30-minute OEI power.

(5) *Incremental cruise power.* Two hours and 30 minutes at the successive power lever positions corresponding with not less than 15 approximately equal speed and time increments between maximum continuous engine rotational speed and ground or minimum idle rotational speed. For engines operating at constant speed, power may be varied in place of speed. If there are significant peak vibrations anywhere between ground idle and maximum continuous conditions, the number of increments chosen must be changed to increase the amount of running conducted while subject to peak vibrations up to not more than 50 percent of the total time spent in incremental running.

(6) *Acceleration and deceleration runs.* Thirty minutes of accelerations and decelerations, consisting of six cycles from idling power to rated takeoff power and maintained at the takeoff power lever position for 30 seconds and at the idling power lever position for approximately 4½ minutes. In complying with this paragraph, the power control lever must be moved from one extreme position to the other in not more than one second. If, however, different regimes of control operations are incorporated that necessitate scheduling of the power control lever motion from one extreme position to the other, then a longer period of time is acceptable, but not more than 2 seconds.

(7) *Starts.* One hundred starts, of which 25 starts must be preceded by at least a two-hour engine shutdown. There must be at least 10 false engine starts, pausing for the applicant's specified minimum fuel drainage time, before attempting a normal start. There must be at least 10 normal restarts not more than 15 minutes after engine shutdown. The remaining starts may be made after completing the 150 hours of endurance testing.

* * * * *

(f) *Rotorcraft Engines for which 30-second OEI and 2-minute OEI ratings are desired.* For each rotorcraft engine for which 30-second OEI and 2-minute OEI power ratings are desired, and following completion of the tests under paragraphs (b), (c), (d), or (e) of this section, the applicant may disassemble the tested engine to the extent necessary to show compliance with the requirements of § 33.93(a). The tested engine must then be reassembled using the same parts used during the test runs of paragraphs (b), (c), (d), or (e) of this section, except those parts described as consumables in the Instructions for Continued Airworthiness. Additionally, the tests required in paragraphs (f)(1) through (f)(7) of this section must be run continuously. If a stop occurs during these tests, the interrupted sequence must be repeated unless the applicant shows that the severity of the test would

not be reduced if it were continued. The applicant must conduct the following test sequence four times, for a total time of not less than 120 minutes:

* * * * *

(4) 30-minute OEI power, continuous OEI power, or maximum continuous power. Five minutes at whichever is the greatest of rated 30-minute OEI power, rated continuous OEI power, or rated maximum continuous power, except that, during the first test sequence, this period shall be 65 minutes. However, where the greatest rating power is 30-minute OEI power, that sixty-five minute period shall consist of 30 minutes at 30-minute OEI power followed by 35 minutes at whichever is the greater of continuous OEI power or maximum continuous power.

* * * * *

(8) *Idle.* One minute at flight idle.

* * * * *

8. Amend § 33.88 by removing paragraph (b), redesignating (c) and (d) as paragraphs (b) and (c), respectively; and revising the text of the paragraph (a) and the new paragraph (b) to read as follows:

§ 33.88 Engine overtemperature test.

(a) In addition to the test requirements for the ratings as provided in paragraph (b) of this section, each engine must run for 5 minutes at maximum permissible rpm with the gas temperature at least 75 °F (42 °C) higher than the maximum rating's steady-state operating limit. Following this run, the turbine assembly must be within serviceable limits.

(b) Each engine for which 30-second OEI and 2-minute OEI ratings are desired, that incorporates a means for automatic temperature control within its operating limitations in accordance with § 33.67(d), must run for a period of 4 minutes at the maximum power-on rpm with the gas temperature at least 35 °F (19 °C) higher than the maximum operating limit at 30-second OEI rating. Following this run, the turbine assembly may exhibit distress beyond the limits for an overtemperature condition provided the engine is shown by analysis or test, as found necessary by the FAA, to maintain the integrity of the turbine assembly.

* * * * *

9. Revise § 33.93(b)(2) to read as follows:

§ 33.93 Teardown inspection.

* * * * *

(b) * * *

(2) Each engine may exhibit deterioration in excess of that permitted in paragraph (a)(2) of this section, including some engine parts or components that may be unsuitable for further use. The applicant must show by inspection, analysis, test, or by any combination thereof as found necessary by the FAA, that structural integrity of the engine is maintained; or

* * * * *

10. Amend Appendix A to part 33 by revising A33.4 to read as follows:

Appendix A to Part 33—Instructions for Continued Airworthiness

* * * * *

A33.4 AIRWORTHINESS LIMITATIONS SECTION

The Instructions for Continued Airworthiness must contain a section titled Airworthiness Limitations that is segregated and clearly distinguishable from the rest of the manual.

(a) For all engines:

(1) The Airworthiness Limitations section must set forth each mandatory replacement time, inspection interval, and related procedure required for type certification. If the Instructions for Continued Airworthiness consist of multiple documents, the section required under this paragraph must be included in the principal manual.

(2) This section must contain a legible statement in a prominent location that reads: "The Airworthiness Limitations section is FAA approved and specifies maintenance required under §§ 43.16 and 91.403 of Title 14 of the Code of Federal Regulations unless an alternative program has been FAA approved."

(b) For rotorcraft engines having 30-second OEI and 2-minute OEI ratings:

(1) The Airworthiness Limitations section must also prescribe the mandatory post-flight inspections and maintenance actions associated with any use of either 30-second OEI or 2-minute OEI ratings. The applicant must validate the adequacy of these inspections and maintenance actions; and

(2) The applicant must establish an in-service engine evaluation program to ensure the continued adequacy of the data for § 33.5(b)(4) pertaining to power availability and the adequacy of the instructions for mandatory post flight inspection and maintenance actions. The program must include service engine tests or equivalent service engine test experience on engines of similar design and evaluations of service usage of the 30-second OEI or 2-minute OEI ratings.

Issued in Washington, DC, on April 13, 2007.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. E7–7943 Filed 5–3–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–07–032]

RIN 1625–AA08

Special Local Regulations for Marine Events; Pamlico River, Washington, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations for the "SBIP—Fountain Powerboats Kilo Run and Super Boat Grand Prix", a marine event to be held August 3 and August 5, 2007, on the waters of the Pamlico River, near Washington, North Carolina. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Pamlico River during the event.

DATES: Comments and related material must reach the Coast Guard on or before June 4, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004; hand-deliver them to Room 415 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays; fax them to (757) 398–6203; or e-mail them to *Dennis.M.Sens@uscg.mil.* The Inspections and Investigations Branch, Fifth Coast Guard District, 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, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Inspections and Investigations Branch, at (757) 398–6204.

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 (CGD05–07–032),

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 the Coast Guard at the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On August 3 and August 5, 2007, Super Boat International Productions Inc. will sponsor the "SBIP—Fountain Super Boat Kilo Run and Super Boat Grand Prix", on the Pamlico River, near Washington, North Carolina. The event will consist of approximately 40 high-speed powerboats racing in heats along a 5-mile oval course on August 3 and 5, 2007. Preliminary speed trials along a straight one-kilometer course will be conducted on August 3, 2007. Approximately 20 boats will participate in the speed trials. Approximately 100 spectator vessels will gather nearby to view the speed trials and the race. If either the speed trials or races are postponed due to weather, they will be held the next day. During the speed trials and the races, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Pamlico River near Washington, North Carolina. The temporary special local regulations will be enforced from 6:30 a.m. to 12:30 p.m. on August 3, 2007, and from 10:30 a.m. to 4:30 p.m. on August 5, 2007. If either the speed trials or races are postponed due to weather, then the temporary special local regulations will be enforced during the same time period the next day. The effect of the temporary special local regulations will be to restrict general navigation in the regulated area during the speed trials and races. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Non-participating vessels will be allowed to transit the regulated area between races, when the Coast Guard Patrol Commander determines it is safe to do so. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

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 (DHS).

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.

Although this proposed regulation will prevent traffic from transiting a portion of the Pamlico River near Washington, North Carolina during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, local radio stations and area newspapers, so mariners can adjust their plans accordingly. Vessel traffic may be able to transit the regulated area between races, when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit this section of the Pamlico River during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for only a short period, from 6:30 a.m. to 12:30 p.m. on August 3, 2007 and from 10:30 a.m. to 4:30 p.m. on August 5, 2007. The regulated area will apply to a segment of the Pamlico River near the Washington, North Carolina waterfront. Marine traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area during the event, vessels will be required to proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. Before the enforcement period, we would issue maritime advisories so mariners can adjust their plans accordingly.

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

Assistance for Small Entities

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of

compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule 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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that 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, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add temporary *§ 100.35–T05–032* to read as follows:

§ 100.35–T05–032, Pamlico River, Washington, North Carolina.

(a) *Regulated area.* The regulated area is established for the waters of the Pamlico River including Chocowinity Bay, from shoreline to shoreline, bounded on the south by a line running northeasterly from Camp Hardee at Latitude 35°28′23″ North, longitude 076°59′23″ West, to Broad Creek Point at latitude 35°29′04″ North, longitude 076°58′44″ West, and bounded on the north by the Norfolk Southern Railroad Bridge. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector North Carolina.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector North Carolina with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the "Fountain Super Boat Grand Prix" under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector North Carolina.

(c) *Special local regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must: (i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be enforced from 6:30 a.m. to 12:30 p.m. on August 3, 2007, and from 10:30

a.m. to 4:30 p.m. on August 5, 2007. If either the speed trials or the races are postponed due to weather, then the temporary special local regulations will be enforced during the same time period the next day.

Dated: April 24, 2007.

Larry L. Hereth,

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

[FR Doc. E7–8509 Filed 5–3–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–07–006]

RIN 1625–AA00

Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a Safety Zone in Chicago Harbor. This zone is intended to restrict vessels from portions of Chicago Harbor during fireworks displays that pose a hazard to public safety. This zone is necessary to protect the public from the hazards associated with fireworks displays.

DATES: Comments and related materials must reach the Coast Guard on or before June 4, 2007.

ADDRESSES: You may mail comments and related material to Commander Coast Guard Sector Lake Michigan, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207. The Sector Lake Michigan Prevention Department 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, will become part of this docket and will be available for inspection or copying between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have further questions on this rule, contact CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related materials. If you submit a comment, please include your name and address, identify the docket number for this rulemaking [CGD09–07–006], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail (see **ADDRESSES**). If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period, which may result in a modification to the rule.

Public Meeting

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

Background and Purpose

This safety zone is necessary to protect vessels and people from the hazards associated with fireworks displays. Such hazards include the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm.

Discussion of Rule

The proposed safety zone is necessary to ensure the safety of vessels and people during fireworks displays in Chicago Harbor. The proposed safety zone encompasses the waters of Lake Michigan within Chicago Harbor between the east end of the Chicago Lock guidewall and Chicago Harbor breakwater.

The Coast Guard Patrol Commander will be on-scene while the safety zone is enacted and inform the public that the safety zone is being enforced. The Captain of the Port will cause notice of enforcement of the safety zone established by this section to be made by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended.

The proposed safety zone replaces 33 CFR 165.918 Safety Zones; Annual fireworks events in the Captain of the Port Chicago Zone, (13) and (14). The safety zone will encompass the waters of Lake Michigan within Chicago Harbor between the east end of the Chicago Lock guidewall and the Chicago Harbor breakwater beginning at 41°53′24″ N, 087°35′26″ W; then south to 41°53′09″ N, 087°35′26″ W; then east to 41°53′09″ N, 087°36′09″ W; then north to 41°53′24″ N, 087°36′09″ W; then back to the point of origin.

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. It has not been reviewed by the Office of Management and Budget under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

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. The Coast Guard's use of this safety zone will be periodic in nature and will likely not exceed forty, one-hour events per year. This safety zone will only be enforced during the time the safety zone is actually in use. Furthermore, this safety zone has been designed to allow vessels to transit unrestricted to portions of the harbor not affected by the zone. The Coast Guard expects insignificant adverse impact to mariners from the activation of this zone.

Small Entities

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

We suspect that there may be small entities affected by this rule but are unable to provide more definitive information as to the number of small entities that may be affected. The risk, outlined above, is severe and requires that immediate action be taken. The Coast Guard will evaluate whether a substantial number of small entities are

affected as more information becomes available.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies, 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 offered to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

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 will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This 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 may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that this proposed safety zone and fishing rights protection need not be incompatible. We have also determined that 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this Proposed Rule or options for compliance are encourage to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have 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 this rule should be categorically excluded, under figure 2–1, paragraph 34(g) from further environmental documentation. This proposed rule establishes a safety zone and as such is covered by this paragraph.

A preliminary "Environmental Analysis Check List" and a preliminary "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the 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, Security 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 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 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. Add § 165.931 to read as follows:

§ 165.931 Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago IL.

(a) *Location.* The following area is a safety zone: The waters of Lake Michigan within Chicago Harbor between the east end of the Chicago Lock guidewall and the Chicago Harbor breakwater beginning at 41°53′24″ N, 087°35′26″ W; then south to 41°53′09″ N, 087°35′26″ W; then east to 41°53′09″ N, 087°36′09″ W; then north to 41°53′24″ N, 087°36′09″ W; then back to the point of origin.

(b) *Definitions.* The following definitions apply to this section:

(1) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Lake Michigan to monitor this safety zone, permit entry into this zone, give legally enforceable orders to persons or vessels within this zones and take other actions authorized by the Captain of the Port.

(2) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(c) *Regulations.* (1) The general regulations in 33 CFR 165.23 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or a designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(4) All vessels must obtain permission from the Captain of the Port or a designated representative to enter, move within or exit the safety zone established in this section when this safety zone is enforced. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

(d) *Notice of Enforcement or Suspension of Enforcement.* The safety zone established by this section will be enforced only upon notice of the Captain of the Port. The Captain of the Port will cause notice of enforcement of the safety zone established by this section to be made by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended.

(e) *Exemption.* Public vessels as defined in paragraph (b) of this section are exempt from the requirements in this section.

(f) *Waiver.* For any vessel, the Captain of the Port Lake Michigan or a designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or environmental safety.

Dated: March 12, 2007.

Bruce C. Jones,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. E7–8608 Filed 5–3–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–07–005]

RIN 1625–AA00

Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishment of safety zones for annual events in the Captain of the Port Lake Michigan zone. This proposed rule is intended to restrict vessels from portions of water and shore areas during events that pose a hazard to public safety. The safety zones established by this proposed rule are necessary to protect spectators, participants, and vessels from the hazards associated with fireworks displays, air shows, and other events.

DATES: Comments and related materials must reach the Coast Guard on or before June 4, 2007.

ADDRESSES: You may mail comments and related material to Commander, Coast Guard Sector Lake Michigan (spw), 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207. Sector Lake Michigan Prevention Department 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, will become part of this docket and will be available for inspection or copying at the Coast Guard Sector Lake Michigan Prevention Office between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154.

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 [CGD09–07–005], 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 Commander, Coast Guard Sector Lake Michigan (SPW) at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

In 2005 the Coast Guard consolidated the Captain of the Port Milwaukee Zone and the Captain of the Port Chicago Zone and realigned the boundaries of the Captain of the Port Sault Ste. Marine zone to create the Captain of the Port Lake Michigan zone. This proposed rule will consolidate the regulations found in 33 CFR 165.909, Safety Zones; Annual fireworks events in the Captain of the Port Milwaukee Zone and 33 CFR

165.918, Safety Zones; Annual fireworks events in the Captain of the Port Chicago Zone into one rule that will include all safety zones for annual events in the Captain of the Port Lake Michigan Zone. This proposed rule will also add several annual events not previously listed in 33 CFR part 165 and remove several events that no longer occur annually or do not require a safety zone. These safety zones are necessary to protect vessels and people from the hazards associated with fireworks displays, air shows, or other events. Such hazards include obstructions to the waterway that may cause marine casualties and the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm.

Discussion of Proposed Rule

The proposed rule and associated safety zones are necessary to ensure the safety of vessels and people during events in the Captain of the Port Lake Michigan area of responsibility that may pose a hazard to the public. The proposed safety zones and associated events are described in subparagraphs (1) though (81) of this regulation. The proposed safety zones will be enforced only immediately before and during events that pose hazard to the public. If the event concludes prior to the scheduled termination time, the Coast Guard will cease enforcement of the safety zone and will announce that fact via Broadcast Notice to Mariners or Local notice to Mariners.

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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The Coast Guard's use of these safety zones will be periodic in nature, of short duration, and designed to minimize the impact on navigable waters. These safety zones will only be enforced immediately before and during the time the events are occurring. Furthermore, these safety zones have been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. The Coast Guard expects insignificant adverse impact to mariners from the activation of these safety zones.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in the areas designated as safety zones during the dates and times the safety zones are being enforced. These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zones in this proposed rule would be in effect for short periods of time and only once per year. The safety zones have been designed to allow traffic to pass safely around the zone whenever possible and vessels will be allowed to pass through the zones with the permission of the Captain of the Port.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154. 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 will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not effect the 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 proposed rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these safety zones and fishing rights

protection need not be incompatible. We have also determined that 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this Proposed Rule or options for compliance are encourage to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have 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 this proposed rule should be categorically excluded, under figure 2–1, paragraph 34 (g) of the Instruction from further environmental documentation. This proposed rule establishes a safety zone and as such is covered by this paragraph.

A preliminary "Environmental Analysis Check List" and a preliminary "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the proposed rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security 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 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 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. Add § 165.929 to read as follows:

§ 165.929 Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone.

(a) *Safety Zones.* The following areas are designated safety zones:

(1) *St. Patrick's Day Fireworks; Manitowoc, WI.* (i) *Location.* All waters of the Manitowoc River and Manitowoc Harbor, near the mouth Manitowoc River on the south shore, within the arc of a circle with a 100-foot radius from the fireworks launch site located in position 44°05′30″ N, 087°39′12″ W (NAD 83).

(ii) *Enforcement date and time.* The third Saturday of March; 5:30 p.m. to 7 p.m.

(2) *Michigan Aerospace Challenge Sport Rocket Launch; Muskegon, MI.* (i) *Location.* All waters of Muskegon Lake, near the West Michigan Dock and Market Corp facility, within the arc of a circle with a 1500-yard radius from the rocket launch site located in position 43°14′21″ N, 086°15′35″ W (NAD 83)

(ii) *Enforcement date and time.* The last Saturday of April; 8 a.m. to 4 p.m.

(3) *Tulip Time Festival Fireworks; Holland, MI.* (i) *Location.* All waters of Lake Macatawa, near Kollen Park, within the arc of a circle with a 1000-foot radius from the fireworks launch site in position 42°47′23″ N, 086°07′22″ W (NAD 83).

(ii) *Enforcement date and time.* The first Friday of May; 7 p.m. to 11 p.m. If the Friday fireworks are cancelled due to inclement weather, then this section will be enforced on the first Saturday of May; 7 p.m. to 11 p.m.

(4) *Rockets for Schools Rocket Launch; Sheboygan, WI.* (i) *Location.* All waters of Lake Michigan and Sheboygan Harbor, near the Sheboygan South Pier, within the arc of a circle with a 1500-yard radius from the rocket launch site located with its center in position 43°44′55″ N, 087°41′52″ W (NAD 83).

(ii) *Enforcement date and time.* The first Saturday of May; 8 a.m. to 5 p.m.

(5) *Celebrate De Pere; De Pere, WI.* (i) *Location.* All waters of the Fox River, near Voyageur Park, within the arc of a circle with a 500-foot radius from the fireworks launch site located in position 44°27′10″ N, 088°03′50″ W (NAD 83).

(ii) *Enforcement date and time.* The Sunday before Memorial Day; 8:30 p.m. to 10 p.m.

(6) [Reserved]

(7) *River Splash; Milwaukee, WI.* (i) *Location.* All waters of the Milwaukee River, near Pere Marquette Park, within the arc of a circle with a 300-foot radius from the fireworks launch site located on a barge in position 43°02′32″ N, 087°54′45″ W (NAD 83).

(ii) *Enforcement date and time.* The first Friday and Saturday of June; 9 p.m. to 11 p.m. each day.

(8) *International Bayfest; Green Bay, WI.* (i) *Location.* All waters of the Fox River, near the Western Lime Company 1.13 miles above the head of the Fox River, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°31′24″ N, 088°00′42″ W (NAD 83).

(ii) *Enforcement date and time.* The second Friday of June; 9 p.m. to 11 p.m.

(9) *Harborfest Music and Family Festival; Racine, WI.* (i) *Location.* All waters of Lake Michigan and Racine Harbor, near the Racine Launch Basin Entrance Light, within the arc of a circle with a 200-foot radius from the fireworks launch site located in position 42°43′43″ N, 087°46′40″ W (NAD 83).

(ii) *Enforcement date and time.* Friday and Saturday of the third complete weekend of June; 9 p.m. to 11 p.m. each day.

(10) *Jordan Valley Freedom Festival Fireworks; East Jordan, MI.* (i) *Location.* All waters of Lake Charlevoix, near the City of East Jordan, within the arc of a circle with a 1000-foot radius from the fireworks launch site in position 45°09′18″ N, 085°07′48″ W (NAD 83).

(ii) *Enforcement date and time.* Saturday of the third weekend of June; 9 p.m. to 11 p.m.

(11) *Spring Lake Heritage Festival Fireworks; Spring Lake, MI.* (i) *Location.* All waters of the Grand River, near buoy 14A, within the arc of a circle with a 500-foot radius from the fireworks launch site located on a barge in position 43°04′24″ N, 086°12′42″ W (NAD 83).

(ii) *Enforcement date and time.* The third Saturday of June; 9 p.m. to 11 p.m.

(12) *Elberta Solstice Festival Fireworks; Elberta, MI.* (i) *Location.* All waters of Betsie Bay, near Waterfront Park, within the arc of a circle with a 500-foot radius from the fireworks launch site located in position 44°37′43″ N, 086°14′27″ W (NAD 83).

(ii) *Enforcement date and time.* The last Saturday of June; 9 p.m. to 11 p.m.

(13) [Reserved]

(14) *Pentwater July Third Fireworks; Pentwater, MI.* (i) *Location.* All waters of Lake Michigan and the Pentwater Channel within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°46′57″ N, 086°26′38″ W (NAD 83).

(ii) *Enforcement date and time.* July 3; 9 p.m. to 11 p.m. If the July 3 fireworks are cancelled due to inclement weather, then this section will be enforced July 4; 9 p.m. to 11 p.m.

(15) *Taste of Chicago Fireworks; Chicago, IL.* (i) *Location.* All waters of Monroe Harbor and Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 41°52′41″ N, 087°36′37″ W (NAD 83).

(ii) *Enforcement date and time.* July 3; 9 p.m. to 11 p.m. If the July 3 fireworks are cancelled due to inclement weather, then this section will be enforced July 4; 9 p.m. to 11 p.m.

(16) *U.S. Bank Fireworks; Milwaukee, WI.* (i) *Location.* All waters of Milwaukee Harbor, in the vicinity of Veteran's Park, within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 43°02′27″ N, 087°53′45″ W (NAD 83).

(ii) *Enforcement date and time.* July 3; 9 p.m. to 11 p.m. If the July 3 fireworks are cancelled due to inclement weather, then this section will be enforced July 4; 9 p.m. to 11 p.m.

(17) *National Cherry Festival Fourth of July Celebration Fireworks; Traverse City, MI.* (i) *Location.* All waters of the West Arm of Grand Traverse Bay within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 44°46′12″ N, 085°37′06″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(18) *Harbor Springs Fourth of July Celebration Fireworks; Harbor Springs, MI.* (i) *Location.* All waters of Lake Michigan and Harbor Springs Harbor within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 45°25′30″ N, 084°59′06″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(19) *Bay Harbor Yacht Club Fourth of July Celebration Fireworks; Petoskey, MI.* (i) *Location.* All waters of Lake Michigan and Bay Harbor Lake within the arc of a circle with a 500-foot radius from the fireworks launch site located on a barge in position 45°21′50″ N, 085°01′37″ W (NAD 83).

(ii) *Enforcement date and time.* July 3; 9 p.m. to 11 p.m. If the July 3 fireworks are cancelled due to inclement weather, then this section will be enforced July 4; 9 p.m. to 11 p.m.

(20) *Petoskey Fourth of July Celebration Fireworks; Petoskey, MI.* (i) *Location.* All waters of Lake Michigan and Petoskey Harbor, in the vicinity of Bay Front Park, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 45°22′40″ N, 084°57′30″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(21) *Boyne City Fourth of July Celebration Fireworks; Boyne City, MI.* (i) *Location.* All waters of Lake Charlevoix, in the vicinity of Veterans Park, within the arc of a circle with a 1400-foot radius from the fireworks launch site located in position 45°13′30″ N, 085°01′40″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(22) *Independence Day Fireworks; Manistee, MI.* (i) *Location.* All waters of Lake Michigan, in the vicinity of the First Street Beach, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°14′51″ N, 086°20′46″ W (NAD 83)

(ii) *Enforcement date and time.* July 3; 9 p.m. to 11 p.m. If the July 3 fireworks are cancelled due to inclement weather, then this section will be enforced July 4; 9 p.m. to 11 p.m.

(23) *Frankfort Independence Day Fireworks; Frankfort, MI.* (i) *Location.* All waters of Lake Michigan and Frankfort Harbor, in the vicinity of the north breakwater, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°38′00″ N, 086°14′50″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(24) *Freedom Festival Fireworks; Ludington, MI.* (i) *Location.* All waters of Lake Michigan and Ludington Harbor, in the vicinity of the Loomis Street Boat Ramp, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°57′16″ N, 086°27′42″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(25) *White Lake Independence Day Fireworks; Montague, MI.* (i) *Location.* All waters of White Lake, in the vicinity of the Montague boat launch, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°24′33″ N, 086°21′28″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(26) *Muskegon Summer Celebration July Fourth Fireworks; Muskegon, MI.* (i) *Location.* All waters of Muskegon Lake, in the vicinity of Heritage Landing, within the arc of a circle with a 1000-foot radius from a fireworks launch site located on a barge in position 43°14′00″ N, 086°15′50″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(iii) *Impact on Special Anchorage Area regulations:* Regulations for that portion of the Muskegon Lake East Special Anchorage Area, as described in 33 CFR 110.81(b), which are overlapped by this regulation, are suspended during this event. The remaining area of the Muskegon Lake East Special Anchorage Area not impacted by this regulation

remains available for anchoring during this event.

(27) *Grand Haven Jaycees Annual Fourth of July Fireworks; Grand Haven, MI.* (i) *Location.* All waters of The Grand River between longitude 087°14′00″ W, near The Sag, then west to longitude 087°15′00″ W, near the west end of the south pier (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(28) *Celebration Freedom Fireworks; Holland, MI.* (i) *Location.* All waters of Lake Macatawa, in the vicinity of Kollen Park, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°47′23″ N, 086°07′22″ W (NAD 83).

(ii) *Enforcement date and time.* July 4, 2007; 9 p.m. to 11 p.m. Thereafter this section will be enforced the Saturday prior to July 4; 9 p.m. to 11 p.m. If the fireworks are cancelled due to inclement weather, then this section will be enforced the Sunday prior to July 4; 9 p.m. to 11 p.m.

(29) *Van Andel Fireworks Show, Holland, MI.* (i) *Location.* All waters of Lake Michigan and the Holland Channel within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°46′21″ N, 086°12′48″ W (NAD 83).

(ii) *Enforcement date and time.* July 3; 9 p.m. to 11 p.m. If the July 3 fireworks are cancelled due to inclement weather, then this section will be enforced July 4; 9 p.m. to 11 p.m.

(30) *Independence Day Fireworks; Saugatuck, MI.* (i) *Location.* All waters of Kalamazoo Lake within the arc of a circle with a 1000-foot radius from the fireworks launch site in position 42°38′52″ N, 086°12′18″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(31) *South Haven Fourth of July Fireworks; South Haven, MI.* (i) *Location.* All waters of Lake Michigan and the Black River within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°24′08″ N, 086°17′03″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(32) *St. Joseph Fourth of July Fireworks; St. Joseph, MI.* (i) *Location.* All waters of Lake Michigan and the St. Joseph River within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°06′48″ N, 086°29′15″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(33) *Town of Dune Acres Independence Day Fireworks; Dune Acres, IN.* (i) *Location.* All waters of Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 41°39′23″ N, 087°04′59″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(34) *Gary Fourth of July Fireworks; Gary, IN.* (i) *Location.* All waters of Lake Michigan, approximately 2.5 miles east of Gary Harbor, within the arc of a circle with a 500-foot radius from the fireworks launch site located in position 41°37′19″ N, 087°14′31″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(35) *Joliet Independence Day Celebration Fireworks; Joliet, IL.* (i) *Location.* All waters of the Des Plains River, at mile 288, within the arc of a circle with a 500-foot radius from the fireworks launch site located in position 41°31′31″ N, 088°05′15″ W (NAD 83).

(ii) *Enforcement date and time.* July 3; 9 p.m. to 11 p.m. If the July 3 fireworks are cancelled due to inclement weather, then this section will be enforced July 4; 9 p.m. to 11 p.m.

(36) *Glencoe Fourth of July Celebration Fireworks; Glencoe, IL.* (i) *Location.* All waters of Lake Michigan, in the vicinity of Lake Front Park, within the arc of a circle with a 500-foot radius from the fireworks launch site located in position 42°08′17″ N, 087°44′55″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(37) *Lakeshore Country Club Independence Day Fireworks; Glencoe, IL.* (i) *Location.* All waters of Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°08′27″ N, 087°44′57″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(38) *Shore Acres Country Club Independence Day Fireworks; Lake Bluff, IL.* (i) *Location.* All waters of Lake Michigan, approximately one mile north of Lake Bluff, IL, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°17′59″ N, 087°50′03″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(39) *Kenosha Independence Day Fireworks; Kenosha, WI.* (i) *Location.* All waters of Lake Michigan and Kenosha Harbor within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°35′17″ N, 087°48′27″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(40) *Fourthfest of Greater Racine Fireworks; Racine, WI.* (i) *Location.* All waters of Lake Michigan and Racine Harbor, in the vicinity of North Beach, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°44′17″ N, 087°46′42″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(41) *Sheboygan Fourth of July Celebration Fireworks; Sheboygan, WI.* (i) *Location.* All waters of Lake Michigan and Sheboygan Harbor, in the vicinity of the south pier, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°44′55″ N, 087°41′51″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(42) *Manitowoc Independence Day Fireworks; Manitowoc, WI.* (i) *Location.* All waters of Lake Michigan and Manitowoc Harbor, in the vicinity of south breakwater, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°05′24″ N, 087°38′45″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(43) *Sturgeon Bay Independence Day Fireworks; Sturgeon Bay, WI.* (i) *Location.* All waters of Sturgeon Bay, in the vicinity of Sunset Park, within the

arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 44°50′37″ N, 087°23′18″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(44) *Fish Creek Independence Day Fireworks; Fish Creek, WI.* (i) *Location.* All waters of Green Bay, in the vicinity of Fish Creek Harbor, within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 45°07′52″ N, 087°14′37″ W (NAD 83).

(ii) *Enforcement date and time.* The first Saturday after July 4; 9 p.m. to 11 p.m.

(45) *Celebrate Americafest Fireworks; Green Bay, WI.* (i) *Location.* All waters of the Fox River between the railroad bridge located 1.03 miles above the mouth of the Fox River and the Main Street Bridge located 1.58 miles above the mouth of the Fox River, including all waters of the turning basin east to the mouth of the East River.

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(46) *Marinette Fourth of July Celebration Fireworks; Marinette, WI.* (i) *Location.* All waters of the Menominee River, in the vicinity of Stephenson Island, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 45°06′09″ N, 087°37′39″ W and all waters located between the Highway U.S. 41 bridge and the Hattie Street Dam (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(47) *Evanston Fourth of July Fireworks; Evanston, IL.* (i) *Location.* All waters of Lake Michigan, in the vicinity of Centennial Park Beach, within the arc of a circle with a 500-foot radius from the fireworks launch site located in position 42°02′56″ N, 087°40′21″ W (NAD 83).

(ii) *Enforcement date and time.* July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(48) [Reserved]

(49) *Muskegon Summer Celebration Fireworks; Muskegon, MI.* (i) *Location.* All waters of Muskegon Lake, in the vicinity of Heritage Landing, within the arc of a circle with a 1000-foot radius from a fireworks barge located in position 43°14′00″ N, 086°15′50″ W (NAD 83).

(ii) *Enforcement date and time.* The Sunday following July 4; 9 p.m. to 11 p.m.

(iii) *Impact on Special Anchorage Area regulations:* Regulations for that portion of the Muskegon Lake East Special Anchorage Area, as described in 33 CFR 110.81(b), which are overlapped by this regulation, are suspended during this event. The remaining area of the Muskegon Lake East Special Anchorage Area not impacted by this regulation remains available for anchoring during this event.

(50) *National Cherry Festival Air Show; Traverse City, MI.* (i) *Location.* All waters of the West Arm of Grand Traverse Bay bounded by a line drawn from 44°46′48″ N, 085°38′18″ W, then southeast to 44°46′30″ N, 085°35′30″ W, then southwest to 44°46′00″ N, 085°35′48″ W, then northwest to 44°46′30″ N, 085°38′30″ W, then back to the point of origin (NAD 83).

(ii) *Enforcement date and time.* Friday, Saturday, and Sunday of the first complete weekend of July; 12 noon to 4 p.m. each day.

(51) *National Cherry Festival Finale Fireworks; Traverse City, MI.* (i) *Location.* All waters and adjacent shoreline of the West Arm of Grand Traverse Bay within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 44°46′12″ N, 085°37′06″ W (NAD 83).

(ii) *Enforcement date and time.* The second Saturday of July; 9 p.m. to 11 p.m.

(52) *Gary Air and Water Show; Gary, IN.* (i) *Location.* All waters of Lake Michigan within the arc of a circle with a 5.75 statute mile radius with its center point in position 41°37′25″ N, 087°15′42″ W (NAD 83).

(ii) *Enforcement date and time.* Friday, Saturday, and Sunday of the second weekend of July; from 8 a.m. to 6 p.m. each day.

(53) *Milwaukee Air Expo, Milwaukee, WI.* (i) *Location.* All waters Lake Michigan and Milwaukee Harbor located within a 4000-yard by 1000-yard rectangle with its major axis bearing approximately 030°T located in the northern half of Milwaukee Harbor and along the north shore of Milwaukee bounded by the points beginning at 43°01′36″ N, 087°53′02″ W; then northeast to 43°03′20″ N, 087°51′40″ W; then northwest to 43°03′35″ N, 087°52′16″ W; then southwest to 43°01′51″ N, 087°53′38″ W; the back to the point of origin (NAD 83).

(ii) *Enforcement date and time.* Friday, Saturday, and Sunday of the second weekend of July; from 1 p.m. to 5 p.m. each day.

(54) *Annual Trout Festival Fireworks; Kewaunee, WI.* (i) *Location.* All waters of Kewaunee Harbor and Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°27′29″ N, 087°29′45″ W (NAD 83).

(ii) *Enforcement date and time.* Friday of the second complete weekend of July; 9 p.m. to 11 p.m.

(55) *Michigan City Summerfest Fireworks; Michigan City, IN.* (i) *Location.* All waters of Michigan City Harbor and Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 41°43′42″ N, 086°54′37″ W (NAD 83).

(ii) *Enforcement date and time.* July 15, 2007, and thereafter the Sunday of the first complete weekend of July; 9 p.m. to 11 p.m.

(56) *Port Washington Fish Day Fireworks; Port Washington, WI.* (i) *Location.* All waters of Port Washington Harbor and Lake Michigan, in the vicinity of the WE Energies coal dock, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°23′07″ N, 087°51′54″ W (NAD 83).

(ii) *Enforcement date and time.* The third Saturday of July; 9 p.m. to 11 p.m.

(57) *Bay View Lions Club South Shore Frolics Fireworks; Milwaukee, WI.* (i) Location. All waters of Milwaukee Harbor and Lake Michigan, in the vicinity of South Shore Park, within the arc of a circle with a 500-foot radius from the fireworks launch site in position 42°59′42″ N, 087°52′52″ W (NAD 83).

(ii) *Enforcement date and time.* Friday, Saturday, and Sunday of the second or third weekend of July; 9 p.m. to 11 p.m. each day.

(58) *Venetian Festival Fireworks; St. Joseph, MI.* (i) *Location.* All waters of Lake Michigan and the St. Joseph River, near the east end of the south pier, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°06′48″ N, 086°29′15″ W (NAD 83).

(ii) *Enforcement date and time.* Saturday of the third complete weekend of July; 9 p.m. to 11 p.m.

(59) *Joliet Waterway Daze Fireworks; Joliet, IL.* (i) *Location.* All waters of the Des Plaines River, at mile 287.5, within the arc of a circle with a 300-foot radius from the fireworks launch site located in position 41°31′15″ N, 088°05′17″ W (NAD 83).

(ii) *Enforcement date and time.* Friday and Saturday of the third complete

weekend of July; 9 p.m. to 11 p.m. each day.

(60) *Charlevoix Venetian Festival Friday Night Fireworks; Charlevoix, MI.* (i) *Location.* All waters of Lake Charlevoix, in the vicinity of Depot Beach, within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 45°19′08″ N, 085°14″18″ W (NAD 83).

(ii) *Enforcement date and time.* Friday of the fourth weekend of July; 9 p.m. to 11 p.m.

(61) *EAA Airventure; Oshkosh, WI.* (i) *Location.* All waters of Lake Winnebago bounded by a line drawn from 43°57′30″ N, 088°30′00″ W; then south to 43°56′56″ N, 088°29′53″ W, then east to 43°56′40″ N, 088°28′40″ W; then north to 43°57′30″ N, 088°28′40″ W; then west returning to the point of origin (NAD 83).

(ii) *Enforcement date and time.* The last complete week of July, beginning Monday and ending Sunday; from 8 a.m. to 8 p.m. each day.

(62) *Charlevoix Venetian Festival Saturday Night Fireworks; Charlevoix, MI.* (i) *Location.* All waters of Round Lake within the arc of a circle with a 300-foot radius from the fireworks launch site located on a barge in position 45°19′03″ N, 085°15′18″ W (NAD 83).

(ii) *Enforcement date and time.* Saturday of the fourth weekend of July; 9 p.m. to 11 p.m.

(63) *Venetian Night Fireworks; Saugatuck, MI.* (i) *Location.* All waters of Kalamazoo Lake within the arc of a circle with a 500-foot radius from the fireworks launch site located on a barge in position 42°38′52″ N, 086°12′18″ W (NAD 83).

(ii) *Enforcement date and time.* The last Saturday of July; 9 p.m. to 11 p.m.

(64) *Roma Lodge Italian Festival Fireworks; Racine, WI.* (i) *Location.* All waters of Lake Michigan and Racine Harbor within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°44′04″ N, 087°46′20″ W (NAD 83).

(ii) *Enforcement date and time.* Friday and Saturday of the last complete weekend of July; 9 p.m. to 11 p.m.

(65) *Venetian Night Fireworks; Chicago, IL.* (i) *Location.* All waters of Monroe Harbor and Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 41°52′41″ N, 087°36′37″ W (NAD 83).

(ii) *Enforcement date and time.* Saturday of the last weekend of July; 9 p.m. to 11 p.m.

(66) *Port Washington Maritime Heritage Festival Fireworks; Port Washington, WI.* (i) *Location.* All waters of Port Washington Harbor and Lake Michigan, in the vicinity of the WE Energies coal dock, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°23′07″ N, 087°51′54″ W (NAD 83).

(ii) *Enforcement date and time.* Saturday of the last complete weekend of July or the second weekend of August; 9 p.m. to 11 p.m.

(67) [Reserved]

(68) *Grand Haven Coast Guard Festival Fireworks; Grand Haven, MI.* (i) *Location.* All waters of the Grand River between longitude 087°14′00″ W, near The Sag, then west to longitude 087°15′00″ W, near the west end of the south pier (NAD 83).

(ii) *Enforcement date and time.* First weekend of August; 9 p.m. to 11 p.m.

(69) *Sturgeon Bay Yacht Club Evening on the Bay Fireworks; Sturgeon Bay, WI.* (i) *Location.* All waters of Sturgeon Bay, in the vicinity of the Sturgeon Bay Yacht Club, within the arc of a circle with a 500-foot radius from the fireworks launch site located on a barge in position 44°49′33″ N, 087°22′26″ W (NAD 83).

(ii) *Enforcement date and time.* The first Saturday of August; 9 p.m. to 11 p.m.

(70) *Elk Rapids Harbor Days Fireworks; Elk Rapids, MI.* (i) *Location.* All waters of Grand Traverse Bay, in the vicinity of Edward G. Grace Memorial Park, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°53′58″ N, 085°25′04″ W (NAD 83).

(ii) *Enforcement date and time.* The first Saturday of August; 9 p.m. to 11 p.m.

(71) *Hammond Marina Venetian Night Fireworks; Hammond, IN.* (i) *Location.* All waters of Hammond Marina and Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 41°41′53″ N, 087°30′43″ W (NAD 83).

(ii) *Enforcement date and time.* The first Saturday of August; 9 p.m. to 11 p.m.

(72) *North Point Marina Venetian Festival Fireworks; Winthrop Harbor, IL.* (i) *Location.* All waters of Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°28′55″ N, 087°47′56″ W (NAD 83).

(ii) *Enforcement date and time.* The second Saturday of August; 9 p.m. to 11 p.m.

(73) *Waterfront Festival Fireworks; Menominee MI.* (i) *Location.* All waters of Green Bay, in the vicinity of Menominee Marina, within the arc of a circle with a 1000-foot radius from a fireworks barge in position 45°06′17″ N, 087°35′48″ W (NAD 83).

(ii) *Enforcement date and time.* Saturday following first Thursday in August; 9 p.m. to 11 p.m.

(74) *Ottawa Riverfest Fireworks; Ottawa, IL.* (i) *Location.* All waters of the Illinois River, at mile 239.7, within the arc of a circle with a 300-foot radius from the fireworks launch site located in position 41°20′29″ N, 088°51′20″ W (NAD 83).

(ii) *Enforcement date and time.* The first Sunday of August; 9 p.m. to 11 p.m.

(75) *Algoma Shanty Days Fireworks; Algoma WI.* (i) *Location.* All waters of Lake Michigan and Algoma Harbor within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°36′24″ N, 087°25′54″ W (NAD 83).

(ii) *Enforcement date and time.* Sunday of the second complete weekend of August; 9 p.m. to 11 p.m.

(76) *New Buffalo Ship and Shore Festival Fireworks; New Buffalo, MI.* (i) *Location.* All waters of Lake Michigan and New Buffalo Harbor within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 41°48′09″ N, 086°44′49″ W (NAD 83).

(ii) *Enforcement date and time.* The second Sunday of August; 9 p.m. to 11 p.m.

(77) *Pentwater Homecoming Fireworks; Pentwater, MI.* (i) *Location.* All waters of Lake Michigan and the Pentwater Channel within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°46′56.5″ N, 086°26′38″ W (NAD 83).

(ii) *Enforcement date and time.* Saturday following the second Thursday of August; 9 p.m. to 11 p.m.

(78) *Chicago Air and Water Show; Chicago, IL.* (i) *Location.* All waters and adjacent shoreline of Lake Michigan and Chicago Harbor bounded by a line drawn from 41°55′54″ N at the shoreline, then east to 41°55′54″ N, 087°37′12″ W, then southeast to 41°54′00″; N, 087°36′00″ W (NAD 83), then southwestward to the northeast corner of the Jardine Water Filtration Plant, then due west to the shore.

(ii) *Enforcement date and time.* The third Thursday, Friday, Saturday, and Sunday of August; from 9 a.m. to 6 p.m. each day.

(79) [Reserved]

(80) *Downtown Milwaukee BID 21 Fireworks; Milwaukee, WI.* (i) *Location.* All waters of the Milwaukee River between the Kilbourn Avenue Bridge at 1.7 miles above the Milwaukee Pierhead Light to the State Street Bridge at 1.79

miles above the Milwaukee Pierhead Light.

(ii) *Enforcement date and time.* The third Thursday of November; 6 p.m. to 8 p.m.

(81) *New Years Eve Fireworks; Chicago, IL.* (i) *Location.* All waters of Monroe Harbor and Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 41°52′41″ N, 087°36′37″ W (NAD 83).

(ii) *Enforcement date and time.* December 31; 11 p.m. to January 1; 1 a.m.

(b) *Definitions.* The following definitions apply to this section:

(1) Designated representative means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Lake Michigan to monitor this safety zone, permit entry into this zone, give legally enforceable orders to persons or vessels within this zones and take other actions authorized by the Captain of the Port.

(2) Public vessel means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(c) *Regulations.* (1) The general regulations in 33 CFR 165.23 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or a designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) All vessels must obtain permission from the Captain of the Port or a designated representative to enter, move within or exit the safety zone established in this section when this safety zone is enforced. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

(d) *Suspension of Enforcement.* If the event concludes earlier than scheduled, the Captain of the Port or a designated representative will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended.

(e) *Exemption.* Public vessels as defined in paragraph (b) of this section are exempt from the requirements in this section.

(f) *Waiver.* For any vessel, the Captain of the Port Lake Michigan or a designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or environmental safety.

§ 165.909 [Removed and Reserved]

3. Remove and reserve § 165.909.

§ 165.918 [Removed and Reserved]

4. Remove and reserve § 165.918.

Dated: March 12, 2007.

Bruce C. Jones,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. E7–8607 Filed 5–3–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–07–008]

RIN 1625–AA00

Safety Zone; Milwaukee Harbor, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety Zone in Milwaukee Harbor near Lakeshore State Park. This zone is intended to restrict vessels from portions of Milwaukee Harbor during fireworks displays. This zone is necessary to protect the public from the hazards associated with fireworks displays.

DATES: Comments and related material must reach the Coast Guard on or before June 4, 2007.

ADDRESSES: You may mail comments and related material to Commander, Coast Guard Sector Lake Michigan (spw), 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207. The Sector Lake Michigan Prevention Department 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, will become part of this docket and will be available for inspection or copying at the Sector Lake Michigan Prevention Department between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154.

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 [CGD09–07–008], 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 the Sector Lake Michigan Prevention Department at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

There are approximately twenty fireworks displays launched annually at Lakeshore State Park in Milwaukee, WI. The fireworks displays are sponsored festivals located at Henry W. Maier Festival Park. The fireworks displays impact the navigable waters of Milwaukee Harbor and pose a hazard to vessels and people. The purpose of this proposed rule it to establish a limited access area around the fireworks launch site to protect vessels and people from the hazards associated with fireworks displays. Such hazards include the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm.

Discussion of Proposed Rule

The proposed safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of fireworks displays at Lakeshore State Park in Milwaukee, WI. in conjunction with festivals at Henry W. Maier Festival Park. The proposed safety zone encompasses the waters of Lake Michigan within Milwaukee Harbor adjacent to the Lakeshore State Park and Henry W. Maier Festival Park. The proposed safety zone will be enforced only immediately before and during fireworks displays and only

upon notice by the Captain of the Port. If the event concludes prior to the scheduled termination time, the Coast Guard will cease enforcement of the safety zone and will announce that fact via Broadcast Notice to Mariners or Local notice to Mariners.

The safety zone will encompass the waters of Lake Michigan within Milwaukee Harbor including the Harbor Island Lagoon enclosed by a line connecting the following points: beginning at 43°02′00″ N, 087°53′53″ W; then south to 43°01′44″ N, 087°53′53″ W; then east to 43°01′44″ N, 087°53′25″ W; then north to 43°02′00″ N, 087°53′53″ W; then west to the point of origin.

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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The Coast Guard's use of this safety zone will be periodic in nature and will likely not exceed twenty, three-hour events, per year. This safety zone has been designed to allow vessels to transit unrestricted to portions of the harbor not affected by the zone. The Coast Guard expects insignificant adverse impact to mariners from the activation of this zone.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners of vessels intending to transits or anchor in a portion of Milwaukee Harbor during the dates and times the safety zone will be enforced. The safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only 3 hours each time the safety zone is implemented. Vessel traffic can safely pass around the safety zone.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule 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 the taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that this proposed safety zone and fishing rights protection need not be incompatible. We have also determined that 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this Proposed Rule or options for compliance are encourage to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not

likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that 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. This proposed rule establishes a safety zone and as such is covered by this paragraph.

A preliminary "Environmental Analysis Check List" and "Categorical Exclusion Determination" are 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, Security 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 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 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. Add § 165.935 to read as follows:

§ 165.935 Safety Zone, Milwaukee Harbor, Milwaukee WI.

(a) *Location.* The following area is a safety zone: the waters of Lake Michigan within Milwaukee Harbor including the Harbor Island Lagoon enclosed by a line connecting the following points: Beginning at 43°02′00″ N, 087°53′53″ W; then south to 43°01′44″ N, 087°53′53″ W; then east to 43°01′44″ N, 087°53′25″ W; then north to 43°02′00″ N, 087°53′53″ W; then west to the point of origin.

(b) *Definitions.* The following definitions apply to this section:

(1) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Lake Michigan to monitor this safety zone, permit entry into this zone, give legally enforceable orders to persons or vessels within this zones and take other actions authorized by the Captain of the Port.

(2) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(c) *Regulations.* (1) The general regulations in 33 CFR 165.23 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or a designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) All vessels must obtain permission from the Captain of the Port or a designated representative to enter, move within or exit the safety zone established in this section when this safety zone is enforced. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

(d) *Suspension of Enforcement.* If the event concludes earlier than scheduled, the Captain of the Port or a designated representative will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended.

(e) *Exemption.* Public vessels as defined in paragraph (b) of this section are exempt from the requirements in this section.

(f) *Waiver.* For any vessel, the Captain of the Port Lake Michigan or a designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or environmental safety.

Dated: March 12, 2007.

Bruce C. Jones,

Captain, U.S. Coast Guard, Commander, Coast Guard Sector Lake Michigan.

[FR Doc. E7–8614 Filed 5–3–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF EDUCATION

34 CFR Part 200

[Docket ID ED–2007–OESE–0130]

RIN 1810–AA99

Title I—Improving the Academic Achievement of the Disadvantaged (Subpart C—Migrant Education Program)

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Migrant Education Program (MEP) administered under Part C of Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA). These proposed regulations are needed to adjust the base amounts of the MEP Basic State formula grant allocations for fiscal year (FY) 2006 and subsequent years (as well as for supplemental MEP awards made for FY 2005); establish requirements to strengthen the processes used by State educational agencies (SEAs) to determine and document the eligibility of migratory children under the MEP; and clarify procedures SEAs use to develop a comprehensive statewide needs assessment and service delivery plan.

DATES: We must receive your comments on or before June 18, 2007.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal

or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* select "Department of Education" from the agency drop-down menu, then click "Submit." In the Docket ID column, select ED–2007–OESE–0130 to add or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for submitting comments, accessing documents, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to James J. English, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E315, FB6, Washington, DC, 20202–6135.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing on the Federal eRulemaking Portal at *http://www.regulations.gov.* All submissions will be posted to the Federal eRulemaking Portal without change, including personal identifiers and contact information.

FOR FURTHER INFORMATION CONTACT: James J. English. Telephone: (202) 260–1394 or via Internet: *James.English@ed.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in room 3E315, FB–6, 400 Maryland Ave., SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

The Department provides MEP formula grants to SEAs to establish or improve programs of education for the Nation's migrant children. These programs of education are expected to address the identified educational and educationally related needs of migrant children that result from their migratory lifestyle and to permit migrant children to participate effectively in school.

Under the ESEA, a core responsibility of each SEA is to ensure that only those children who are eligible for the MEP are identified, counted, and served. Meeting this responsibility is key to ensuring that— (1) States provide MEP-funded services only to eligible migrant children; (2) Each SEA's MEP allocation accurately reflects its statutory share of the funds that Congress annually appropriates for the MEP; and (3) Public confidence in the program's integrity remains strong.

With regard to State MEP allocations, since FY 2002 the amount of an SEA's annual MEP award under section 1303(a)(2) of the ESEA has been tied to the level of its FY 2002 base-year MEP award, which itself is dependent in large part on the SEA's 2000–2001 count of eligible migratory children residing in the State in relation to the counts of other States.

Over the last few years, the Department has become increasingly concerned about the accuracy and consistency of the processes SEAs have used to determine the eligibility of migratory children and the counts of children eligible for services that the SEAs report to the Department. Since 2004, the Office of Elementary and Secondary Education (OESE) and the Office of Inspector General (OIG) have undertaken efforts to examine SEA processes and child counts more closely. In order to assess and confirm the correctness of SEA eligibility determinations, OESE designed and implemented a process under which SEAs voluntarily re-interviewed a statewide, random sample of children they had identified as eligible for the MEP during the 2003–2004 program year. OESE provided guidance on reasonable ways to choose a random sample and to conduct this re-interviewing process, and requested that, following the re-interviews, participating States determine and report to the Department their "defect rate" (*i.e.,* the percentage of children in the State's 2003–2004 re-interview sample that were determined ineligible under the re-interview process).

To date, the vast majority of SEAs have voluntarily completed a re-interviewing process and reported their defect rates. The State-reported defect rates range from zero percent to 100 percent, with a mean defect rate of 9.8 percent and a median defect rate of 5.6 percent. The States that have reported defect rates account for more than 98 percent of the reported count of migratory children eligible for services nationally in the 2003–2004 program year.

Independently, the OIG has completed or, in some cases, is still conducting audits and investigations in a number of States (including States that did not initially participate in OESE's voluntary re-interviewing initiative) and has found errors in State migratory child eligibility counts. In some cases, the errors the OIG or the States found on their own may be actionable as civil or criminal fraud. In other cases, errors may reflect incorrect interpretations of MEP eligibility requirements. In most cases, however, the errors seem attributable to factors such as: Poor training of State and local personnel responsible for determining eligibility; weak quality-control procedures for reviewing child eligibility determinations; and a lack of uniformity

in the implementation of the MEP eligibility requirements.

The OIG findings and the SEA-reported defect rates are very troubling for several reasons. First, they suggest that the level and quality of MEP-funded services that eligible migrant students needed and deserved have been diluted by the delivery of services to children who were not eligible to receive them. Second, they suggest that, over the last several years, the Department may have awarded MEP funds to States on the basis of inaccurate and, in some cases, perhaps significantly inflated State counts of eligible children. And third, because section 1303 of the ESEA requires the Department to use the FY 2002 State MEP allocation as the "base amount" for allocations made to SEAs in subsequent years, the State MEP allocations for FY 2006 and each subsequent year (as well as supplemental FY 2005 awards that were issued in September 2006) will continue to be flawed unless the Department takes action.

Given these considerations, the Secretary is proposing these regulations, which would: Provide for the adjustment of the base amounts of the FY 2006 and subsequent year MEP allocations; clarify and expand the definitions governing who is a "migratory child"; and establish requirements for SEAs to develop and implement rigorous quality-control procedures in order to improve the accuracy of MEP eligibility determinations and State counts of eligible migratory children. The Secretary would also apply the procedures for determining final MEP allocations for FY 2006 and beyond to supplemental FY 2005 MEP awards that were made in September 2006.

The Secretary also proposes to make minor changes to the current regulations governing development of a comprehensive statewide needs assessment and service delivery plan.

Significant Proposed Regulations

We discuss the following substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Title I, Subpart C—Migrant Education Program

Section 200.81 Program Definitions

Agricultural Activity and Fishing Activity

Statute: The definition of *migratory child* in section 1309 of the ESEA refers to agricultural work and fishing work but does not provide for a definition of these terms or the terms agricultural activity and fishing activity.

Current Regulations: Section 200.81(a) and (b) provides definitions of *agricultural activity* and *fishing activity*. In the current definitions, an *agricultural activity* is defined as any activity directly related to: (1) The production or processing of agricultural products for initial commercial sale or personal subsistence; (2) the cultivation or harvesting of trees; or (3) fish farms. A *fishing activity* is defined as any activity directly related to the catching or processing of fish or shellfish for initial commercial sale or personal subsistence.

Proposed Regulations: We propose to revise both the terms and definitions relating to *agricultural activity* and *fishing activity*. Specifically, we propose changing the terms *agricultural activity* and *fishing activity* to *agricultural work* and *fishing work,* respectively. We propose to remove the phrases "an activity directly related to" and "for initial commercial sale" from the definitions of both of these terms and to add the word "initial" before the term "processing" in both definitions. We also propose modifying the definitions of *agricultural work* and *fishing work* to include the phrase "work performed generally for wages or in rare cases personal subsistence." Finally, we would modify the definition of *agricultural work* to remove the phrase "any activity directly related to fish farms"; the reference to fish farms would be added to the definition of *fishing work*.

Reasons: We propose the changes to the current terms and definitions of *agricultural activity* and *fishing activity* in order to clarify and simplify these terms. Changing the terms *agricultural activity* and *fishing activity* to *agricultural work* and *fishing work* provides consistency with the statutory definition of *migratory child* in section 1309(2) of the ESEA, which refers to a move being made to obtain temporary or seasonal employment in agricultural or fishing work. In addition, the phrase "any activity directly related to" in the current definitions of *agricultural activity* and *fishing activity* is unnecessary and confusing because it could be interpreted to include an activity (such as trucking services that transport livestock or fish to a processing plant or managing workers in a field or processing plant) that may be directly related to agriculture or fishing but is not inherently agricultural or fishing work; thus, we propose eliminating this phrase.

Further, the phrase "for initial commercial sale" in the current definitions of *agricultural activity* and *fishing activity* was primarily intended to limit the scope of these definitions to work that is involved with the initial processing of raw agricultural products, fish, or shellfish. However, as the definitions are currently written, use of the term "initial" with respect to a commercial sale is confusing, as there are circumstances in the agriculture and fishing industries where there may be two "initial" commercial sales: one associated with the production of agricultural products, fish, or shellfish, and the other associated with the processing of agricultural products, fish, or shellfish. For example, wheat is harvested and sold to a factory for processing into flour. The sale of the wheat to the factory is the initial commercial sale of a crop to the processor. This sale ends the production phase of the crop. The factory then processes the wheat into flour and sells the flour to a bakery. The sale of the flour to the bakery is an initial commercial sale of a processed product (flour) to a next-stage processor and ends the processing phase as a qualifying agricultural activity. Harvesting the wheat and processing the wheat into flour both meet the definition of agricultural activity because they are the production and processing of a crop for initial commercial sale. On the other hand, the processing of the flour into baked goods does not meet the definition of an agricultural activity because an initial commercial sale of a processed product had already occurred when the flour was sold to the bakery.

While removing the reference to "initial commercial sale", we propose to add the word "initial" before the term "processing" in both definitions in order to clarify that only initial processing of raw products is considered agricultural work or fishing work for the purposes of the MEP.

We propose specifying in the revised definitions of *agricultural work* and *fishing work* that these types of work consist of "work performed generally for wages or in rare cases personal subsistence" to clarify that, while there are some rare circumstances in which the worker and his or her family do the work for personal subsistence, the work is generally performed for wages. It is therefore appropriate to include a reference to work performed "generally for wages or in rare cases personal subsistence." Finally, we propose to move the reference to fish farms in the current definition of *agricultural activity* to the new definition of *fishing work*

because this change reflects a more consistent and simpler way of grouping work that involves fishing.

In Order To Obtain

Statute: Section 1309 of the ESEA provides in part that an individual is considered a migratory child if the child or child's parent, guardian, or spouse moved "in order to obtain" temporary or seasonal employment in agricultural or fishing work.

Current Regulations: The current regulations do not define the phrase " 'in order to obtain' * * * temporary or seasonal employment in agricultural or fishing work."

Proposed Regulations: We propose adding a definition of the term *in order to obtain* to clearly require that one of the purposes of the move must be to seek or obtain temporary or seasonal employment in agricultural or fishing work and that, absent this intent, the worker did not move "in order to obtain" temporary or seasonal employment in agricultural or fishing work. In addition, our proposed definition clarifies that a worker did not move in order to obtain temporary or seasonal employment in agricultural or fishing work if the worker would have moved and changed residence even if the work was unavailable.

Reasons: The statutory phrase in section 1309(2) that a migratory move be made "in order to obtain * * * temporary or seasonal employment in agricultural or fishing work" can only mean that the purpose or intent of the worker in making the move must be to seek or obtain that work. We are proposing this change to ensure consistency with the statute and to clarify that a possible contrary interpretation of this language that was included in non-regulatory guidance for the MEP that the Department issued prior to its current draft guidance, issued on October 23, 2003, is inconsistent with the statute. The former guidance indicated that an SEA could determine that a child qualified under the MEP if the child or the child's parent, guardian, or spouse found temporary or seasonal employment in agricultural or fishing work "as a result of the move." To the extent that this phrase may imply that the purpose or intent of the worker is irrelevant, it is inconsistent with the statute. Thus, our proposed definition of *in order to obtain* temporary or seasonal employment in agricultural or fishing work would distinguish between migratory agricultural workers and migratory fishers who move with the intent of obtaining temporary or seasonal employment in agricultural work or fishing work and individuals who move for other purposes but may end up working as a temporary or seasonal laborer in agriculture or fishing at a later date.

Migratory Agricultural Worker; Migratory Fisher; Principal Means of Livelihood

Statute: The statutory definition of *migratory child* refers to but does not further define a *migratory agricultural worker* or a *migratory fisher*.

Current Regulations: The current regulations in 34 CFR 200.81(c) and (e) define the terms *migratory agricultural worker* and *migratory fisher*. In the current definitions, a *migratory agricultural worker* and *migratory fisher* generally mean a person who, in the preceding 36 months, has moved from one school district to another in order to obtain temporary or seasonal employment in agricultural or fishing activities as a principal means of livelihood. The current regulations further define the term *principal means of livelihood,* in § 200.81(f), to mean that the activity plays an important part in providing a living for the worker and his or her family.

Proposed Regulations: We propose to remove the parenthetical phrase "(including dairy work)" from the definition of *migratory agricultural worker*. We also propose to amend the definition of *migratory fisher* to clarify that, in the special case of moves in a school district of more than 15,000 square miles, the migratory fisher must have moved in order to obtain temporary employment or seasonal employment in fishing. We propose to continue, with minor editorial changes, to use the current term (and the associated separate definition restated in proposed § 200.81(i)), *principal means of livelihood,* in the definitions of *migratory agricultural worker* and *migratory fisher*.

Reasons: We are removing the parenthetical "(including dairy work)" from the definition of *migratory agricultural worker* because it is redundant in view of the proposed definition of *agricultural work,* which includes the production and processing of dairy products. We propose to clarify that moves within a school district of more than 15,000 square miles must be "in order to obtain" temporary or seasonal employment in fishing work because this is consistent with the plain meaning of the statutory language in section 1309(2)(c). We propose to continue to use the term and current definition of *principal means of livelihood* in order to continue to clarify that the migratory work performed by a migratory agricultural worker or a migratory fisher must be an important part of providing a living to the migratory worker and his/her family.

Migratory Child

Statute: Section 1309(2) of the statute provides a basic definition of the term *migratory child*.

Current Regulations: The term *migratory child* is defined in § 200.81(d) and is substantially the same as the statutory definition. In general, a *migratory child* is defined as a child whose parent is a migratory agricultural worker or a migratory fisher, and who, in the preceding 36 months, has moved from one school district to another because the parent has moved in order to obtain temporary or seasonal employment in agricultural or fishing work. In addition, the current definition notes that a *migratory child* may move on his or her own as the migratory agricultural worker or migratory fisher (or with a spouse or guardian who is a migratory agricultural worker or migratory fisher), and provides special circumstances for moves within (1) a single-school-district-State and (2) school districts of more than 15,000 square miles.

Proposed Regulations: We propose to revise the organization and language of the definition of *migratory child* to make it clearer that a child may meet the definition if the child is a migratory agricultural worker or migratory fisher in his or her own right, or by accompanying or joining a parent, guardian, or spouse who is a migratory agricultural worker or migratory fisher.

Reasons: We propose revising the definition of *migratory child* because, as taken verbatim from the statute, it is convoluted and confusing. The revised definition seeks to clarify that a child may be a *migratory child* by moving either (1) as a migratory agricultural worker or migratory fisher in his or her own right or (2) as the child or spouse of such a worker. We also propose to revise the regulation to clarify what has been a longstanding policy in the program's non-regulatory guidance: that a *migratory child* includes both a child who accompanied the worker and a child who has joined a worker in a reasonable period of time.

Moved or Move

Statute: The statute does not provide a meaning for the terms *moved* or *move*.

Current Regulations: The current regulations also do not define the terms *moved* or *move*.

Proposed Regulations: We propose adding a definition for the terms *moved* or *move* to specify that either of these

terms means that a change in residence was made in order for the worker to obtain temporary or seasonal employment in agricultural or fishing work. We further propose that this definition not include travel or moves that occur either (1) during or after a vacation or holiday, or (2) for other personal reasons unrelated to seeking or obtaining temporary or seasonal employment in agricultural or fishing work even if this work is subsequently sought or obtained.

Reasons: While our non-regulatory guidance has for many years referred to the terms "moved" and "move" in a similar way, some States have determined as eligible under the MEP children who simply returned home from a trip to visit relatives or from a location where they briefly stayed for other personal reasons. We do not consider these types of relocations to constitute a move for purposes of determining eligibility under the MEP because they are not made for the purpose of obtaining temporary or seasonal employment. This new definition, therefore, is necessary to make clear that a move under the MEP would not include travel that occurs as a result of a vacation, holiday, or for other personal reasons unrelated to obtaining temporary or seasonal employment in agricultural or fishing work even if such work is subsequently sought or obtained.

Personal Subsistence

Statute: The ESEA does not define the term *personal subsistence* for purposes of the MEP.

Current Regulations: The current regulations also do not provide a definition of the term *personal subsistence* although the term is used in the current definitions of the terms *agricultural activity* and *fishing activity* and the proposed definitions of *agricultural work* and *fishing work*.

Proposed Regulations: We propose adding a definition to clarify that, in the context of the proposed definitions of *agricultural work* or *fishing work* (which would replace the terms *agricultural activity* and *fishing activity*), *personal subsistence* means that the worker and his or her family perform such work in order to consume the crops, dairy products, or livestock they produce or the fish they catch in order to survive. This proposed definition of *personal subsistence* would not include situations in which a family simply tends a backyard garden for personal consumption because the produce obtained from such gardening work, even though consumed by the family, is not necessary in order for the family to survive.

Reasons: This proposed definition is intended to establish a consistent standard for all States to use in determining whether agricultural work or fishing work is performed for personal subsistence.

Seasonal Employment

Statute: The statute does not define the term *seasonal employment*.

Current Regulations: The current regulations also do not define this term.

Proposed Regulations: We propose adding a definition of the term *seasonal employment* to mean employment that is dependent on the cycles of nature (e.g., employment in agricultural work that lasts for a particular period of time due to specific meteorological or climatic conditions associated with the cultivation or harvesting of crops).

Reasons: This additional definition is necessary to explain the meaning of the term seasonal employment as used in the statutory definition of *migratory child*. As such, it helps to distinguish between agricultural or fishing work that is seasonal employment (i.e., which lasts only for a particular season due to specific meteorological or climatic conditions) versus agricultural or fishing work that is temporary employment.

Temporary Employment

Statute: The ESEA does not define the term *temporary employment* for purposes of the MEP.

Current Regulations: The current regulations also do not provide a definition of *temporary employment*.

Proposed Regulations: We propose adding a definition of the term *temporary employment* to specify that this type of employment lasts for a limited period of time, usually a few months, and does not include employment that is constant and year-round. The definition includes examples of situations where employment in agriculture or fishing is temporary. The definition also clarifies that there are some circumstances (e.g., livestock processing plant facilities) in which an employer does not classify the work as temporary and workers may remain employed indefinitely but, in which, perhaps because of the nature of the work, the actual employment patterns of workers strongly indicate that employment in this agricultural or fishing work lasts only for a limited period of time. In these specific circumstances, we propose that an SEA may determine these types of employment to be temporary if it can document through annual surveys (by individual job site) of workers who move to obtain this work that virtually no workers remain employed more than 12 months.

Reasons: This proposed definition is intended to establish a consistent standard (1) applicable to employment in both production and initial processing activities, and (2) for all States to use in determining which types of employment in agricultural work and fishing work are temporary. This proposed definition is also intended to set a higher standard than we currently have in place in our non-regulatory guidance—where we have provided that SEAs can deem a job temporary if an employer certifies that the job has more than a 50 percent turnover rate in 12 months. We envision that the proposed annual survey of workers to establish whether or not particular types of work can be deemed temporary would be included as part of the annual process that SEAs already conduct to re-establish the continued residency of previously-identified children over the 3-year window of eligibility. We believe that the proposed terms "a few months" and "virtually no workers * * * will remain employed for more than 12 months" will allow the SEAS some flexibility to respond to different conditions in different States and different work sites and avoid setting precise criteria that may not take into account future changes in agricultural or fishing work (e.g., longer seasons due to improved farming or fishing technologies). We do not wish to set arbitrary limits, especially because it is unclear that one fixed rate would be appropriate in all situations. For example, there is likely to be more precision in determining these rates in sites with larger numbers of workers than in sites with small numbers of workers. This said, we wish to solicit public comment specifically on whether to retain the proposed terms "a few months" and "virtually no workers * * * will remain employed more than 12 months," whether those terms create opportunities for abuse, whether firm time limits and worker numbers or percentages should and might reasonably be established, and what those time limits or percentages might be. We also wish to solicit comments on whether there are additional regulatory requirements relating to the survey of workers to establish whether particular types of work are temporary that would: Improve the quality or consistency of the data; or provide for more efficient methods to collect this data.

Section 200.83 Responsibilities of SEAs To Implement Projects Through a Comprehensive Needs Assessment and a Comprehensive State Plan for Service Delivery

Statute: Under section 1306(a) of the ESEA, each SEA receiving MEP funds must ensure that it and its operating agencies identify and address the special educational needs of migratory children in accordance with a comprehensive needs assessment and service delivery plan that meets the requirements of that provision. Among other things, section 1306(a) states that the comprehensive State plan for service delivery must contain measurable program goals and outcomes.

Current Regulations: Section 200.83 clarifies the statutory responsibilities of an SEA receiving MEP funds regarding the development of a comprehensive needs assessment and service delivery plan. Section 200.83(a)(1) requires the plan to specify the performance targets "that the State has adopted for all children in reading and mathematics achievement, high school graduation, and the number of school dropouts, as well as the State's performance targets, if any, for school readiness," as well as "[a]ny other performance targets that the State has identified for migratory children." However, the regulation does not reference the need for the plan to specify measurable outcomes related to those performance targets.

Proposed Regulations: We propose to revise § 200.83 to clarify that the SEA's comprehensive needs assessment and plan for service delivery must also include the measurable outcomes that the State's MEP will produce for migratory children in relation to—

(1) The performance targets the State has adopted for all children in reading and mathematics achievement, high school graduation, and the number of school dropouts, as well as, if any, for children participating in school readiness programs, and

(2) Any other performance targets it has adopted for migratory children.

Reasons: When the Department issued § 200.83, it failed to include one of the statutory requirements for a needs assessment and service delivery plan, i.e., measurable outcomes. Unfortunately, a number of States appear to have assumed that the requirements contained in § 200.83 were exhaustive. The proposed change, therefore, would simply clarify in the regulations what the statute already requires—that an SEA's comprehensive plan must include both the specific performance targets (i.e., goals) it has established in keeping with the statute and its measurable outcomes relative to those targets.

Section 200.89(a) Allocation of Funds Under the MEP for Fiscal Year (FY) 2006 and Subsequent Years

Statute: Section 1303(a)(2) and (b) of the ESEA establishes a formula for State MEP allocations for FY 2003 and subsequent years under which each State receives the "base amount" awarded to it for FY 2002 and a share of any additional funds that Congress appropriates for the MEP over the level of the MEP's FY 2002 appropriations. Both the base amount and the amount of additional funds each State is entitled to receive are derived in part from State-submitted counts of eligible migratory children. In addition, section 1303(c)(1) directs the Secretary to reduce ratably the amount of State awards to reflect the actual amount Congress appropriates for the MEP in any fiscal year. Section 1303(c)(2) permits the Secretary to further reduce a State's MEP allocation if the Secretary determines, based on available information on the numbers and needs of eligible migratory children in the State and the State's program to address those needs, that the amount that would be awarded exceeds the amount the State needs.

Section 1303(e)(1) also directs the Secretary to use such information as most accurately reflects the actual number of migratory children in a State in calculating the amount of State MEP allocations. Finally, section 1304(c)(7) requires each SEA to provide an assurance in its application for funds that it will assist the Secretary, through such procedures as the Secretary requires, in determining the eligible numbers of migratory children in the State for purposes of making State MEP allocations.

Current Regulations: The current regulations do not address State MEP allocations and the formula used to calculate those allocations.

Proposed Regulations: Proposed § 200.89(a) would establish a procedure for the Secretary to use State defect rates that the Secretary accepts as the basis for adjusting the 2000–2001 counts of eligible children, and thereby determine the base amount of a State's MEP award for FY 2006 and subsequent years. The proposed regulation would also require, as a condition to an SEA's receipt of its final FY 2006 and subsequent-year MEP awards, thorough re-documentation of the eligibility of all children (and the removal of all ineligible children) included in an SEA's 2006–2007 MEP child counts.

Reasons: We know, as a result of the voluntary re-interviewing initiative and OIG's findings, that many of the State migratory child counts that were submitted to the Department for 2003–2004 were inaccurate to some degree. As further discussed in this preamble, we believe that there is significant reason to believe that comparable inaccuracies affect the SEAs' 2000–2001 counts of migratory children as well. Hence, we also believe that to continue to base MEP allocations on those 2000–2001 counts would be contrary to the statutory requirement that the Secretary award funds on the basis of "such information as the Secretary finds most accurately reflects the actual number of migratory children" in each State.

Section 1303(a) of the ESEA provides that MEP allocations for FY 2003 and beyond are to be based in part on the States' counts for 2000–2001 of the following: (1) All migratory children residing in their States during that year, and (2) all migratory children who participated in MEP summer and intersession programs during that year. It is inconceivable however that, in enacting section 1303(a), Congress intended the Department to continue to use the FY 2002 MEP State allocations amounts to make subsequent years' awards if the underlying State counts of eligible migratory children that supported the FY 2002 allocation determinations were inaccurate. Congress also provided in section 1304(c)(7) of the ESEA that States would have continuing responsibility to "assist the Secretary in determining the number of migratory children [used in calculating State MEP allocations] through such procedures as the Secretary may require." The Department annually provides instructions to the SEAs regarding the submission of accurate counts of migratory children in the "Migrant Child Count Report for State Formula Grant Migrant Education Programs under the [ESEA]" (OMB No. 1810–0519), and, by receipt of MEP funding through consolidated State applications submitted under section 9302 of the ESEA, each SEA provides an assurance to "adopt and use proper methods of administering each such program, including the enforcement of any obligations imposed by law. * * *" Given these related requirements, the responsibility of SEAs under section 1304(c)(7) of the ESEA to assist the Secretary in determining the number of migratory children clearly includes a responsibility to correct any originally submitted child counts that were inaccurate.

Therefore, we believe that, to make the appropriate allocations for FY 2006 and subsequent years consistent with the statute, the Department must re-

determine each SEA's FY 2002 base allocation amount by applying the defect rate accepted by the Department to the SEA's 2000–2001 child counts, and then use the adjusted base allocation amounts to calculate the allocations for FY 2006 and subsequent years.

When the Department began the re-interviewing initiative, it acknowledged that, because of the passage of time, States could face significant challenges in locating all of the children within their random sample of children counted in 2000–2001 for the purposes of conducting the needed re-interviews. For this reason, the Department gave participating States the option of conducting re-interviews for a random sample of children identified either (a) in 2000–2001, or (2) in 2003–2004, in which case the Department would apply the defect rate for that year to the State's reported 2000–2001 child counts.

We have no reason to believe that the defect rates States have reported for 2003–2004 would have been significantly different had States been able to conduct eligibility re-interviews of children they had identified as eligible for the MEP in 2000–2001. Indeed, for defect rates of children identified as eligible in 2000–2001 to be lower than those reported for 2003–2004, one would have to assume that State procedures for identifying eligible migratory children deteriorated between 2000–2001 and the time States conducted their re-interviews of children in their 2003–2004 migratory child counts. Given the major emphasis the Department has placed in recent years on improved migratory child eligibility decisions, we believe that State procedures for identifying eligible migratory children should have improved since 2000–2001.

Proposed § 200.89(a) notes that the Department would use State defect rates "that the Secretary accepts" for adjusting the 2000–2001 counts of eligible children, and thereby determine the base amount of a State's MEP award for FY 2006 and subsequent years. To determine that the reported defect rates are acceptable, the Department will review how each State determined its defect rate. To the extent that a defect rate is determined from the review not to be acceptable, a State would be required under proposed § 200.89(b) to conduct further re-interviewing. We consider it necessary to conduct this review to determine the acceptability of reported defect rates, and perhaps require additional re-interviewing, because States did not use identical methodologies in determining their defect rates.

We acknowledge that the State defect rates the Secretary ultimately accepts will not perfectly correct for errors in the 2000–2001 migratory child counts that States previously reported. However, we firmly believe that their use will enable the Department to distribute MEP funds for FY 2006 and subsequent years in a way that much better reflects the ESEA statutory formula and congressional intent than would the continued use of the original and inaccurate 2000–2001 child counts.

Finally, proposed § 200.89(a)(2) requires re-documentation of the eligibility of all children (and the removal of all ineligible children) as a condition to SEA receipt of final FY 2006 and subsequent-year MEP awards. From a practical standpoint, we expect that this re-documentation effort can be completed as an SEA carries out its annual activities relative to examining whether children previously identified as eligible in a prior performance year (and who have eligibility under the statutory definition for 36 months) are still resident and can be counted and served as eligible under the program. We would expect SEAs to carefully examine the underlying eligibility of all previously-identified migratory children relative to the types of problems identified during the retrospective re-interviewing as causing defective eligibility determinations. We propose this re-documentation effort in order to ensure that only eligible migratory children receive MEP funded services and are included in an SEA's 2006–2007 MEP child counts.

Section 200.89(b) Responsibilities of SEAs for Re-Interviewing To Ensure the Eligibility of Children Under the MEP

Statute: Section 1309(2) of the ESEA provides the definition of a *migratory child* that States must use to determine eligibility for MEP services. Section 1304(c)(7) requires that SEAs assist the Secretary, through such procedures as the Secretary requires, in determining the eligible numbers of migratory children in the State.

Current Regulations: The current regulations do not require States to conduct re-interviewing to ensure eligibility of children under the MEP.

Proposed Regulations: Proposed § 200.89(b) would require SEAs to conduct retrospective and prospective re-interviewing of children to confirm their eligibility. Retrospective re-interviewing would be required for those SEAs that have either (1) not conducted a re-interviewing process on a statewide random sample of identified migratory children and submitted a defect rate to the Secretary, or (2) submitted a defect rate that the Secretary does not accept. The proposed regulations identify minimum requirements for retrospective re-interviewing as well as the minimum content of the report that these States would need to submit to the Secretary on the defect rate and re-interviewing process.

Prospective re-interviewing would be required of all SEAs annually in order to provide an improved quality-control check on the accuracy of their current eligibility determinations and to guide any needed corrective actions or improvements in a State's migratory child identification and recruitment practices.

Reasons: Nearly all SEAs voluntarily re-interviewed a random sample of their identified migratory children and submitted a defect rate to the Department. However, a few did not. As a matter of fairness, and to ensure that the procedures the Department would use to calculate the final amount of each State's MEP award for FY 2006 and subsequent years reflect defect rates that the Secretary accepts for all States, the Secretary proposes to require that those last few States conduct retrospective re-interviewing. The proposed regulations require the retrospective re-interviewing to be completed within six months of the effective date of these regulations by those SEAs that did not conduct a retrospective re-interviewing process on a voluntary basis. We believe requiring completion of retrospective re-interviewing within six months of the effective date of the regulations is appropriate based on our analysis of the amounts of time needed by SEAs who conducted the re-interviewing process voluntarily.

The minimum elements of both the retrospective re-interviewing process and the report to the Secretary are included in proposed § 200.89(b) in order to clarify the procedures the Secretary expects States will use to determine and report a defect rate, and that the Secretary will review in assessing whether the reported defect rate is acceptable in order to adjust the base amounts of the FY 2006 and subsequent year MEP allocations. As set forth in the regulations, the minimum elements of retrospective re-interviewing would include: use of a statewide random sample (at a 95 percent confidence level with a confidence interval of plus or minus 5 percent); use of independent re-interviewers; and calculation of a defect rate based on the number of sampled children determined ineligible as a percentage of those sampled children whose parent/guardian was actually re-

interviewed. The minimum elements for reporting on retrospective re-interviewing would include: An explanation of the sample and the re-interview procedures, and the findings and corrective actions, as well as an acknowledgement that the defect rate can be used to adjust the 2000–01 child counts previously submitted by the State and used to determine the FY 2002 base year allocations.

To date, the Department has addressed various elements of quality control in non-regulatory guidance. However, since the counts of migratory children the States have reported have been found to include children ineligible for the program, we believe that it is necessary to require through regulations some minimum requirements for a State's quality-control system. (In this regard see the further discussion regarding proposed § 200.89(d).) In particular, we now propose that all States be required to conduct a process of prospective re-interviewing to ensure that State migratory child counts are not again affected by improper eligibility determinations. As described in proposed § 200.89(b)(2), prospective re-interviewing would include, as part of a State's system of quality controls, the face-to-face re-interviewing of a sufficient sample of identified migratory children (selected randomly on a statewide basis or within relevant strata) so as to enable the State to annually assess the level of accuracy of its eligibility determinations, uncover eligibility problems, and improve the accuracy of their child count determinations.

It should be noted that while the regulation proposes that retrospective re-interviewing be based on a statewide random sample (at a 95 percent confidence level with a confidence interval of plus or minus 5 percent), the regulation also proposes that prospective re-interviewing be based on a sufficient sample of identified migratory children. This is the case since the defect rate to be calculated from the retrospective re-interviewing sample must be able to be generalized to the State's entire population of identified migratory children, while, for prospective re-interviewing, the sample to be re-interviewed must only be of sufficient size and scope to enable the prospective re-interviewing process to serve as an adequate early warning system of developing eligibility problems. The samples for prospective re-interviewing can be selected randomly on a statewide basis or within relevant strata; the Department plans to provide updated guidance concurrent with the issuance of the final rule providing instruction on how to appropriately conduct sampling to satisfy this requirement.

The regulation proposes prospective re-interviewing on an annual basis. As discussed in the Paperwork Reduction Act submission to OMB, we expect that SEAs will need to prospectively re-interview no more than 100 families (on average) and that the burden would amount to less than 8,700 person-hours annually. However, the Department remains interested in the additional burden that mandatory prospective re-interviewing would impose and, therefore, requests comments on whether prospective re-interviewing on a different interval (e.g., biannually) would continue to be effective and efficient, while still retaining the program integrity goals outlined here.

The proposed regulation would also require each SEA to implement needed corrective actions or improvements, including corrective actions required by the Secretary, in order to address any problems identified through prospective re-interviewing with child eligibility determinations.

Section 200.89(c) Responsibilities of SEAs To Document the Eligibility of Migratory Children

Statute: Section 1309(2) of the ESEA provides the definition of a *migratory child* that each SEA must use to determine eligibility of a migratory child. Except for the very limited exceptions specified in section 1304(e) of the ESEA that govern continuity of MEP services to children whose eligibility has terminated, sections 1302 and 1304(a) require SEAs to provide MEP services only to eligible migratory children.

Current Regulations: While § 76.731 of the Education Department General Administrative Regulations (EDGAR) [34 CFR 76.731] requires SEAs to keep records to show their compliance with program requirements, the current MEP regulations do not specify a standard procedure for SEAs to document a child's eligibility under the MEP.

Proposed Regulations: Proposed § 200.89(c) would require that all SEAs and local operating agencies use a standard, national Certificate of Eligibility (COE) developed and promulgated by the Department to record and certify the accuracy of basic information documenting the eligibility of a migratory child. One COE would be completed per family per qualifying move and include basic information on each eligible child (e.g., name, age, grade). Proposed § 200.89(c) also identifies the SEA (i.e., the MEP grantee) as the responsible entity for all eligibility determinations, and would require an SEA to collect additional documentation on the child beyond that contained on the COE, as may be necessary to confirm a child's MEP eligibility.

Reasons: The Secretary proposes to require use of a standard COE on which all SEAs would record the minimum information necessary to confirm migratory child eligibility because she believes that use of a more systematic national procedure is needed to help ensure that acceptable documentation exists for all children in the Nation who are found eligible for the MEP. Under section 9304(a)(1) of the ESEA, each SEA that receives MEP funds already must provide an assurance that it will administer all ESEA programs in accordance with applicable statutes and regulations, and section 1302 of the ESEA places responsibility on these SEAs to use their MEP funds, either directly or through local operating agencies, to establish or improve education programs "for migratory children in accordance with [Title I, Part C of the ESEA]." In addition, section 80.40 of EDGAR provides that each SEA is "responsible for managing the day-to-day operations of grant and subgrant supported activities," and for "monitor[ing] grant and subgrant supported activities to assure compliance with applicable Federal requirements." Despite these requirements, given that incorrect eligibility determinations have been a pervasive problem in many States, we believe further regulation is necessary to avoid any uncertainty about an SEA's responsibility for all MEP eligibility determinations in the State—whether made directly by the SEA, or by its local operating agencies, subgrantees, or contractors.

Section 200.89(d) Responsibilities of an SEA To Establish and Implement a System of Quality Controls for the Proper Identification of Eligible Migratory Children

Statute: Section 9304(a)(6) of the ESEA requires each SEA to provide an assurance that it will "maintain such records * * * as the Secretary may find necessary to carry out the Secretary's duties," which would include the duty to collect the most accurate unduplicated counts possible of migratory children that each State had identified. However, the ESEA does not address the need of each SEA to maintain a system of quality controls designed to ensure the accuracy of child eligibility determinations under the MEP.

Current Regulations: Current MEP regulations do not address a system of quality controls that all SEAs must have in place to ensure the accuracy of eligibility determinations.

Proposed Regulations: Proposed § 200.89(d) would establish minimum requirements for a system of quality controls that all SEAs would need to implement to ensure accurate child eligibility determinations.

Reasons: Section 76.731 of EDGAR requires each SEA and subgrantee to "keep records to show its compliance with program requirements." However, as with section 9403 of the ESEA, it does not identify the steps SEAs need to take to ensure that their records are accurate. Generally, further regulations of this kind are not necessary. The program statutes and regulations, the cost principles contained in Office of Management and Budget circulars, as well as generally accepted audit standards, usually provide sufficiently clear instructions. Indeed for many years, the Department has treated quality control as a matter simply to be addressed in successive revisions of non-regulatory guidance issued for the MEP.

However, the findings of pervasive problems with prior eligibility determinations underscore that more is needed with regard to documentation of the correctness of determinations on migratory child eligibility. While the proposed regulations on prospective re-interviewing in § 200.89(b), if finalized, would be an important step to help confirm, after the fact, whether eligibility determinations have been correctly made, it would not be a substitute for front-end, process-oriented quality controls to make sure those determinations are made correctly at the beginning of the process.

Consequently, the Secretary proposes the requirements in § 200.89(d) to establish a clear set of both front-end, process-oriented quality controls and after-the-fact, product-oriented quality controls that SEAs and their local operating agencies or contractors would be required to use to improve and ensure the accuracy of child eligibility determinations for the MEP. The Department has for years included many of these elements in successive versions of non-regulatory guidance it has issued for the MEP. However, it is possible that because the Department has treated this matter as deserving only of guidance, some SEAs may have de-emphasized the pivotal importance of sound quality control procedures. Establishing such procedures now as a regulatory requirement governing an SEA's receipt and expenditure of MEP funds will help to ensure that SEAs examine whether or not they are adequately addressing some of the factors—such as poor or infrequent recruiter training and supervision, and lack of substantive review of COEs—that the national re-interviewing initiative and OIG have identified as contributing to the prevalence of incorrect eligibility determinations.

Executive Order 12866

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

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

These proposed regulations require SEAs to establish specific procedures to standardize and improve the accuracy of program eligibility determinations and clarify requirements for development of comprehensive statewide needs assessments and service delivery plans. The primary impact of the regulations is on SEAs that receive MEP funds and the children who are eligible for services under the MEP. By requiring SEAs to establish procedures to improve the accuracy of their eligibility determinations, the regulations will ensure that program funds and the services they fund are directed only to children who are eligible to receive services and reduce the possibility that children who are not eligible for services receive program benefits. The regulations the Secretary proposes to issue through this notice would also add clarity where the statute is ambiguous or unclear.

The Department estimates that the additional annual cost to recipients to comply with these regulations will be approximately $4.5 million:

- Adding measurable program outcomes to the State comprehensive MEP service delivery plan [§ 200.83] will cost approximately $600 annually;
- Re-interviewing samples of students [§ 200.89(b)] will cost approximately $220,000 annually;
- Documenting the eligibility of migratory children, including the use of a standard COE [§ 200.89(c)] will cost approximately $2.8 million annually; and
- Institution of specific quality control procedures [§ 200.89(d)] will cost approximately $1.5 million annually.

This estimate is based on and further explained in the information collection package required under the Paperwork Reduction Act of 1995 and discussed in more detail elsewhere in this notice.

The proposed regulations will not add significantly to the costs of implementing the MEP since we estimate that the SEAs are currently expending approximately these amounts implementing various eligibility determination activities, but the proposed regulations will add significantly to the consistency of eligibility determinations by standardizing the eligibility determination process nationally. The Department believes the activities required by the proposed regulations will be financed through the

appropriation for Title I, Part C (MEP) and will not impose a financial burden that SEAs and local educational agencies will have to meet from non-Federal resources.

The proposed regulations will help maintain public confidence in the program and ensure its continued operational integrity. As discussed elsewhere in this notice, Department analyses have shown that, on average, close to 10 percent of the children identified by SEAs as eligible for services for school year 2003–04 did not meet the statutory eligibility criteria. The proposed regulations will provide a benefit by ensuring that program funds are directed only to eligible migratory children. Increased accuracy will also ensure that program funds are allocated in the proper amounts and to the locations where eligible children reside. If implementation of the regulations results in 10 percent of currently participating children being determined ineligible, then some $38 million annually (10 percent of the appropriation) would be redirected from services to statutorily ineligible children to serving children who meet the statutory criteria. Because the statute is intended to focus on eligible children who have a genuine need for services (as a result of having made a qualifying move), there is a clear societal benefit to ensuring that program funds are used only to serve eligible students.

More specifically, society as a whole benefits when migratory children receive educational services targeted to their specific needs. As noted in numerous studies since the nineteen sixties,[1] the migratory children who are eligible to receive program benefits constitute a particularly needy and vulnerable school population. Migrant families tend to live in poverty, speak limited English, and lack access to preventive medical care. Few children from migrant families attend preschool, and they are often enrolled in high-poverty schools. Migratory youth are at high risk for dropping out of school without attaining a high school diploma. Access to education can help mitigate the effect of these risk factors. Preschool education prepares small children for the demands of elementary education and encourages parents to become active learners along with their children. Children who receive educational services targeted to address their specific needs are more likely to be successful in school and to receive other marginal services, such as vaccinations and health screenings, that are associated with school attendance. Youth who complete high school generally earn more in their lifetime than those who don't earn a high school diploma. These regulations benefit society because they require safeguards to ensure that the neediest migrant children will be identified and receive the services that will help them succeed in school.

There is also a potential cost to migratory children if these regulations are not enacted. In the absence of regulations, recipients have diluted the quantity and quality of services available to children who are legitimately eligible for services under the program by serving significant numbers of children who are not eligible. Since MEP services are only available to eligible children for a short period of time, preventing truly eligible migratory children from receiving the services they are entitled to may have an adverse effect on their educational attainment.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 200.81 Program Definitions.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities because these proposed regulations affect SEAs primarily. SEAs are not defined as "small entities" in the Regulatory Flexibility Act. The only small entities that could be subject to the proposed regulations would be small local educational agencies that receive MEP sub-grants from the SEA to act as "local operating agencies" under the MEP. In the case of these entities, as local operating agencies, they could be required to identify eligible migratory children; however, the costs of doing so would be financed through the State Title I, Part C MEP appropriation and would not impose a financial burden that a small entity would have to meet from non-Federal resources.

Paperwork Reduction Act of 1995

The proposed regulations listed in the following chart contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to OMB for its review.

Regulatory section	Collection information	Collection
§ 200.83	Requires SEAs to add measurable program outcomes into the comprehensive MEP State plan for service delivery.	"Migrant Education Program (MEP) Regulations and Certificate of Eligibility (COE)." OMB No. 1910–0662.
§ 200.89(b)(1)	Requires States to conduct retrospective re-interviewing ..	"Migrant Education Program (MEP) Regulations and Certificate of Eligibility (COE)." OMB No. 1910–0662.
§ 200.89(b)(2)	Requires States to conduct retrospective re-interviewing ..	"Migrant Education Program (MEP) Regulations and Certificate of Eligibility (COE)." OMB No. 1910–0662.

[1] See, for example, *Invisible Children: A portrait of migrant education in the United States,* National Commission on Migrant Education, U.S. Govt. Printing Office, Sept. 23, 1992; and *The same high standards for migrant students: Holding Title I schools accountable,* United States Department of Education, Washington, DC, 2002.

Regulatory section	Collection information	Collection
§ 200.89(c)	Requires States to document the eligibility of migratory children.	"Migrant Education Program (MEP) Regulations and Certificate of Eligibility (COE)." OMB No. 1910–0662.
§ 200.89(d)	Requires SEAs to establish a system of quality controls	"Migrant Education Program (MEP) Regulations and Certificate of Eligibility (COE)." OMB No. 1910–0662.

Respondents to this collection consist of State or local educational agencies. The collection of information is necessary to accurately identify and serve eligible migratory children. The proposed frequency of response is no more than annually.

The estimated total annual reporting and recordkeeping burden that will result from the collection of information is 510,456 hours. The estimated average burden hours per response are approximately 1,580 hours per each of 15 State respondents and 0.5 hours per each of 4,500 migrant parent respondents to address (on a one-time basis) the requirements of § 200.89(b)(1) for retrospective re-interviewing. We estimate that it will require approximately 152 hours per each of 49 State respondents and 0.5 hours per each of 2,450 migrant parent respondents to address (annually) the requirements of § 200.89(b)(2) for prospective re-interviewing. We estimate that it will require approximately 17,347 hours per each of 49 States and 1.5 hours per each of 300,000 parents (overall) to address the requirements of § 200.89(c) for documenting the eligibility of migratory children. We estimate that it will require approximately 1,220 hours per each of 49 States to address (annually) the requirements of § 200.89(d) to establish and implement adequate quality controls. We also estimate that the data burden associated with the proposed change in § 200.83 to add measurable program outcomes into the comprehensive MEP State plan for service delivery will not total more than one hour.

If you want to comment on the information collection requirements, please address your comments to the Desk Officer for Education, Office of Information and Regulatory Affairs, OMB, and send via e-mail to *OIRA_DOCKET@omb.eop.gov* or via fax to (202) 395–6974. Commenters need only submit comments via one submission medium. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble. We consider your comments on these proposed collections of information in—

• Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;

• Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;

• Enhancing the quality, usefulness, and clarity of the information we collect; and

• Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means 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. The proposed regulations in §§ 200.81 through 200.89 may have federalism implications, as defined in Executive Order 13132, in that they will have some effect on the States and the operation of their State MEPs. It should be noted that several major components of the proposed regulations—*i.e.*, the need for all SEAs to complete the retrospective re-interviewing and the need for more and clearer eligibility definitions—were proposed to the Department by various State and local MEP staff in numerous public meetings over the last several years. We encourage State and local elected officials to review and provide comments on these proposed regulations. To facilitate review and comment by appropriate State and local officials, the Department will, aside from publication in the **Federal Register**, post the NPRM to our MEP Web site and to the Office of Elementary and Secondary Education (OESE) Web site; make a specific email posting via a special listserv that is sent to each MEP State Director; and make a special posting to a more general MEP listserv that is accessed by State and local MEP staff other than State Directors.

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(Catalog of Federal Domestic Assistance Number 84.011: Title I, Education of Migrant Children.)

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Allocation

of funds, Children, Coordination, Education of children with disabilities, Education of disadvantaged children, Elementary and secondary education, Eligibility, Family, Family-centered education, Grant programs—education, Indians education, Institutions of higher education, Interstate coordination, Intrastate coordination, Juvenile delinquency, Local educational agencies, Local operating agencies, Migratory children, Migratory workers, Neglected, Nonprofit private agencies, Private schools, Public agencies, Quality control, Re-interviewing, Reporting and recordkeeping requirements, State-administered programs, State educational agencies, Subgrants.

Dated: May 1, 2007.

Kerri L. Briggs,

Acting Assistant Secretary, for Elementary and Secondary Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

1. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C 6301 through 6578, unless otherwise noted.

2. Revise § 200.81 to read as follows:

§ 200.81 Program definitions.

The following definitions apply to programs and projects operated under subpart C of this part:

(a) *Agricultural work* means the production or initial processing of crops, dairy products, poultry, or livestock, as well as the cultivation or harvesting of trees. It consists of work performed generally for wages or in rare cases personal subsistence.

(b) *Fishing work* means the catching or initial processing of fish or shellfish or the raising or harvesting of fish or shellfish at fish farms. It consists of work performed generally for wages or in rare cases personal subsistence.

(c) *In order to obtain,* when used to describe the purpose of a move, means that one of the purposes of the move is to seek or obtain temporary employment or seasonal employment in agricultural work or fishing work. A worker has not moved in order to obtain temporary employment or seasonal employment in agricultural work or fishing work if the worker would have changed residence even if temporary employment or seasonal employment in agricultural work or fishing work were unavailable.

(d) *Migratory agricultural worker* means a person who, in the preceding 36 months, has moved from one school district to another, or from one administrative area to another within a State that is comprised of a single school district, in order to obtain temporary employment or seasonal employment in agricultural work where the temporary employment or seasonal employment is a principal means of livelihood.

(e) *Migratory child* means a child—

(1) Who is a migratory agricultural worker or a migratory fisher; or

(2) Who, in the preceding 36 months, in order to accompany or join a parent, spouse, or guardian who is a migratory agricultural worker or a migratory fisher—

(i) Has moved from one school district to another;

(ii) In a State that is comprised of a single school district, has moved from one administrative area to another within such district; or

(iii) As the child of a migratory fisher, resides in a school district of more than 15,000 square miles, and migrates a distance of 20 miles or more to a temporary residence.

(f) *Migratory fisher* means a person who, in the preceding 36 months, has moved from one school district to another, or from one administrative area to another within a State that is comprised of a single school district, in order to obtain temporary employment or seasonal employment in fishing work where the temporary employment or seasonal employment is a principal means of livelihood. This definition also includes a person who, in the preceding 36 months, resided in a school district of more than 15,000 square miles and moved a distance of 20 miles or more to a temporary residence in order to obtain temporary employment or seasonal employment in fishing work where the temporary employment or seasonal employment is a principal means of livelihood.

(g) *Moved* or *Move* means that a change from one residence to another residence was made in order to obtain temporary employment or seasonal employment in agricultural work or fishing work. This definition does not include travel or moves that occur during or after a vacation or holiday, or for other personal reasons unrelated to seeking or obtaining temporary employment or seasonal employment in agricultural work or fishing work even if this work is subsequently sought or obtained.

(h) *Personal subsistence* means that the worker and his or her family perform such work in order to consume the crops, dairy products, or livestock they produce or the fish they catch in order to survive.

(i) *Principal means of livelihood* means that temporary employment or seasonal employment in agricultural work or fishing work plays an important part in providing a living for the worker and his or her family.

(j) *Seasonal employment* means employment that is dependent on the cycles of nature due to the specific meteorological or climatic conditions.

(k) *Temporary employment* means employment that lasts for a limited period of time, usually a few months.

(1) For example, it includes employment where:

(i) The employer hires the worker for a limited time frame (e.g., for a three-month period). For example, a poultry processing plant hires extra workers during the months of September, October, and November to handle the increase in turkey production before Thanksgiving. In this example, an employer hires temporary workers during a period of peak demand.

(ii) The employer hires the worker to perform a task that has a clearly defined beginning and end (e.g., digging an irrigation ditch or building a fence) and is not one of a series of activities that is typical of permanent employment.

(iii) The worker does not intend to remain employed indefinitely (e.g., the worker states that he plans to leave the job after four months).

(2) It does not include employment that is constant and year-round, except that an SEA may deem specific types of employment to be temporary if it documents through an annual survey that, given the nature of the work, virtually no workers who perform this work remain employed more than 12 months (e.g., they usually remain employed for only a few months), even though the work may be available on a year-round basis. Such surveys must be conducted separately for each employer and job site (i.e., each farm or processing plant).

(Authority: 20 U.S.C. 6391–6399, 6571)

3. Amend § 200.83 as follows:

a. Redesignate paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), respectively, and add a new paragraph (a)(3).

b. Revise the introductory text of redesignated paragraph (a)(4).

The revision and addition read as follows:

§ 200.83 Responsibilities of SEAs to implement projects through a comprehensive needs assessment and a comprehensive State plan for service delivery.

(a) * * *

(3) *Measurable program outcomes.* The plan must include the measurable program outcomes (i.e., objectives) that a State's migrant education program will produce to meet the identified unique needs of migratory children and help migratory children achieve the State's performance targets identified in paragraph (a)(1) of this section.

(4) *Service delivery.* The plan must describe the strategies that the SEA will pursue on a statewide basis to achieve the measurable program outcomes in paragraph (a)(3) of this section by addressing—

* * * * *

4. Add § 200.89 to read as follows:

§ 200.89 MEP allocations; Re-interviewing; Eligibility documentation; and Quality control.

(a) *Allocation of funds under the MEP for fiscal year (FY) 2006 and subsequent years.* (1) For purposes of calculating the size of MEP awards for each SEA for FY 2006 and subsequent years, the Secretary determines each SEA's FY 2002 base allocation amount under section 1303(a)(2) and (b) of the Act by applying, to the counts of eligible migratory children that the SEA submitted for 2000–2001, the defect rate that the SEA reports to the Secretary and that the Secretary accepts based on a statewide re-interviewing process that the SEA has conducted.

(2) The Secretary conditions an SEA's receipt of final FY 2006 and subsequent-year MEP awards on the SEA's completion of a thorough re-documentation of the eligibility of all children (and the removal of all ineligible children) included in the State's 2006–2007 MEP child counts.

(b) *Responsibilities of SEAs for re-interviewing to ensure the eligibility of children under the MEP—(1) Retrospective re-interviewing.*

(i) As a condition for the continued receipt of MEP funds in FY 2006 and subsequent years, an SEA that received such funds in FY 2005 but did not implement a statewide re-interviewing process and submit a defect rate accepted by the Secretary under § 200.89(a) must, within six months of the effective date of these regulations, or as subsequently required by the Secretary under paragraph (b)(2)(vii) of this section—

(A) Conduct a statewide re-interviewing process consistent with paragraph (b)(1)(ii) of this section; and

(B) Consistent with paragraph (b)(1)(iii) of this section, report to the Secretary on the procedures it has employed, its findings, its defect rate, and corrective actions it has taken or will take to avoid a recurrence of any problems found.

(ii) At a minimum, the re-interviewing process must include—

(A) Selection of a sample of identified migratory children (from the child counts of a particular year as directed by the Secretary) randomly selected on a statewide basis to allow the State to estimate the statewide proportion of eligible migratory children at a 95 percent confidence level with a confidence interval of plus or minus 5 percent.

(B) Use of independent re-interviewers (i.e., interviewers who are neither SEA or local operating agency staff members working to administer or operate the State MEP nor any other persons who worked on the initial eligibility determinations being tested) trained to conduct personal interviews and to understand and apply program eligibility requirements; and

(C) Calculation of a defect rate based on the number of sampled children determined ineligible as a percentage of those sampled children whose parent/guardian was actually re-interviewed.

(iii) At a minimum, the report must include—

(A) An explanation of the sample and procedures used in the SEA's re-interviewing process;

(B) The findings of the re-interviewing process, including the determined defect rate;

(C) An acknowledgement that, consistent with § 200.89(a), the Secretary will adjust the child counts for 2000–2001 and subsequent years downward based on the defect rate that the Secretary accepts;

(D) A summary of the types of defective eligibility determinations that the SEA identified through the re-interviewing process;

(E) A summary of the reasons why each type of defective eligibility determination occurred; and

(F) A summary of the corrective actions the SEA will take to address the identified problems.

(2) *Prospective re-interviewing.* As part of the system of quality controls identified in § 200.89(d), an SEA that receives MEP funds must, on an annual basis, validate current-year child eligibility determinations through the re-interview of a randomly selected sample of children previously identified as migratory. In conducting these re-interviews, an SEA must—

(i) Use, at least once every three years, one or more independent interviewers (i.e., interviewers who are neither SEA or local operating agency staff members working to administer or operate the State MEP nor any other persons who worked on the initial eligibility determinations being tested) trained to conduct personal interviews and to understand and apply program eligibility requirements;

(ii) Select a random sample of identified migratory children so that a sufficient number of eligibility determinations in the current year are tested on a statewide basis or within strata associated with identified risk factors (e.g., experience of recruiters, size or growth in local migratory child population, effectiveness of local quality control procedures) in order to help identify possible problems with the State's child eligibility determinations;

(iii) Conduct re-interviews with the parents or guardians of the children in the sample. States must use a face-to-face approach to conduct these re-interviews unless extraordinary circumstances make face-to-face re-interviews impractical and necessitate the use of an alternative method of re-interviewing;

(iv) Determine and document in writing whether the child eligibility determination and the information on which the determination was based were true and correct;

(v) Stop serving any children found not to be eligible and remove them from the data base used to compile counts of eligible children;

(vi) Certify and report to the Department the results of re-interviewing in the SEA's annual report of the number of migratory children in the State required by the Secretary; and

(vii) Implement corrective actions or improvements to address the problems identified by the State (including the identification and removal of other ineligible children in the total population) and any corrective actions required by the Secretary, including retrospective re-interviewing.

(c) *Responsibilities of SEAs to document the eligibility of migratory children.* (1) An SEA and its operating agencies must use the Certificate of Eligibility (COE) form established by the Secretary to document the State's determination of the eligibility of migratory children.

(2) In addition to the form required under paragraph (a) of this section, the SEA and its operating agencies must develop and maintain such additional documentation as may be necessary to confirm that each child found eligible for this program meets all of the eligibility definitions in § 200.81.

(3) An SEA is responsible for the accuracy of all the determinations of the eligibility of migratory children identified in the State.

(d) *Responsibilities of an SEA to establish and implement a system of quality controls for the proper identification and recruitment of eligible migratory children.* An SEA must establish and implement a system of quality controls for the proper identification and recruitment of eligible migratory children on a statewide basis. At a minimum, this system of quality controls must include the following components:

(1) Training to ensure that recruiters and all other staff involved in determining eligibility and in conducting quality control procedures know the requirements for accurately determining and documenting child eligibility under the MEP.

(2) Supervision and annual review and evaluation of the identification and recruitment practices of individual recruiters.

(3) A formal process for resolving eligibility questions raised by recruiters and their supervisors and for transmitting responses to all local operating agencies in written form.

(4) An examination by qualified individuals at the SEA or local operating agency level of each COE to verify that the written documentation is sufficient and that, based on the recorded data, the child is eligible for MEP services.

(5) A process for the SEA to validate that eligibility determinations were properly made, including conducting prospective re-interviewing as described in § 200.89(b)(2).

(6) Documentation that supports the SEA's implementation of this quality-control system and of a record of actions taken to improve the system where periodic reviews and evaluations indicate a need to do so.

(7) A process for implementing corrective action if the SEA finds COEs that do not sufficiently document a child's eligibility for the MEP, or in response to internal audit findings and recommendations.

(Authority: 20 U.S.C. 6391–6399, 6571, 7844(d); 18 U.S.C. 1001)

[FR Doc. E7–8580 Filed 5–3–07; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2007–0095; FRL–8309–4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an amendment to the Missouri State Implementation Plan (SIP). This action approves an amendment to the SIP-approved Doe Run Herculaneum Consent Judgment to remove language specifying the exact bag technology to be used in the baghouses. Related performance standard requirements will remain unchanged. This action is independent and does not affect the revision to the Missouri SIP due in April 2007, in response to the SIP Call issued April 14, 2006, to bring the area of Herculaneum into compliance with the lead National Ambient Air Quality Standard.

DATES: Comments on this proposed action must be received in writing by June 4, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0095 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: yoshimura.gwen@epa.gov.*

3. *Mail:* Gwen Yoshimura, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier.* Deliver your comments to Gwen Yoshimura, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Gwen Yoshimura at (913) 551–7073, or by e-mail at *yoshimura.gwen@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. The revisions will not increase emissions and do not affect the stringency of the control requirement. Additionally, the revisions have gone through the Missouri approval process, including a public hearing and opportunity for public comment. EPA was the only party to provide comments during Missouri's comment period. Therefore, we do not anticipate any adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: April 26, 2007.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E7–8566 Filed 5–3–07; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 72, No. 86
Friday, May 4, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. AMS–FV–07–0063; FV07–902–1NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension and revision to a currently approved generic information collection for marketing orders covering fruit crops.

DATES: Comments on this notice must be received by July 3, 2007.

ADDITIONAL INFORMATION OR COMMENTS: Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, room 1406–S. Washington, DC 20250–0237; Tel: (202) 205–2829, Fax: (202) 720–8938, E-mail: *moab.docketclerk@usda.gov,* or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

Small businesses may request information on this notice by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Ave., SW., STOP 0237, room 1406–S, Washington, DC, 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Marketing Orders for Fruit Crops.

OMB Number: 0581–0189.

Expiration Date of Approval: September 30, 2007.

Type of Request: Extension and Revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in specified production areas, to work together to solve marketing problems that cannot be solved individually. This notice covers the following marketing order program citations 7 CFR parts 905, 906, 915, 916, 917, 920, 922, 923, 924, 925, 927, and 929. Marketing order No. 931, "Fresh Bartlett Pears Grown in Oregon and Washington", previously included in this information collection, has been consolidated into Marketing Order No. 927, by order amendment effective May 21, 2005, and as published in the **Federal Register** on May 20, 2005 [70 FR 29388]. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674) industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the marketing order programs. Under the Act, orders may authorize the following: Production and marketing research, including paid advertising; volume regulations; reserves, including pools and producer allotments; container regulations; and quality control. Assessments are levied on handlers regulated under the marketing orders.

Several forms are required to be filed by USDA to enable its administration of each program. These include forms covering the selection process for industry members to serve on a marketing order's committee or board and ballots used in referenda to amend or continue marketing order programs.

Under Federal marketing orders, producers and handlers are nominated by their peers to serve as representatives on a committee or board which administers each program. Nominees must provide information on their qualifications to serve on the committee or board. Nominees are selected by the Secretary. Formal rulemaking amendments must be approved in referenda conducted by USDA and the Secretary. For the purposes of this action, ballots are considered information collections and are subject to the Paperwork Reduction Act. If an order is amended, handlers are asked to sign an agreement indicating their willingness to abide by the provisions of the amended order.

Some forms are required to be filed with the committee or board. The orders and their rules and regulations authorize the respective commodities' committees and boards, the agencies responsible for local administration of the orders, to require handlers and producers to submit certain information. Much of the information is compiled in aggregate and provided to the respective industries to assist in marketing decisions. The committees and boards have developed forms as a means for persons to file required information relating to supplies, shipments, and dispositions of their respective commodities, and other information needed to effectively carry out the purpose of the Act and their respective orders, and these forms are utilized accordingly.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the orders, and their use is necessary to fulfill the intent of the Act as expressed in the orders rules and regulations.

The information collected is used only by authorized employees of the committees and authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters' staff. Authorized committee or board employees are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .28 hours per response.

Respondents: Producers, handlers, processors, cooperatives, and public members.

Estimated Number of Respondents: 16,043

Estimated Number of Responses: 30,604

Estimated Number of Responses per Respondent: 1.91

Estimated Total Annual Burden on Respondents: 8,419 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference this docket number and the appropriate marketing order, and be mailed to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Ave., SW., STOP 0237, room 1406–S, Washington, DC 20250–0237; Fax (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov* or *www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 1400 Independence Ave., SW., STOP 0237, Washington, DC, room 1406–S, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 1, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–2203 Filed 5–1–07; 2:23 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket # AMS–2006–0111; FV–06–315]

United States Standards for Grades of Summer Squash

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; withdrawal.

SUMMARY: The Agricultural Marketing Service (AMS) is withdrawing the notice soliciting comments on its proposal to amend the voluntary United States Standards for Grades of Summer Squash. After reviewing and considering the comments received, the agency has decided not to proceed with this action.

EFFECTIVE DATE: May 4, 2007.

FOR FURTHER INFORMATION CONTACT: Vincent J. Fusaro, Standardization Section, Fresh Products Branch, (202) 720–2185. The United States Standards for Grades of Summer Squash are available by accessing the Fresh Products Branch Web site at: *http://www.ams.usda.gov/standards/stanfrfv.htm.*

Background

AMS had identified the United States Standards for Grades of Summer Squash for possible revisions. The standards were last revised on January 6, 1984.

On August 6, 2006, AMS published a notice in the **Federal Register** (71 FR 44607) soliciting comments on a possible revision to the United States Standards for Grades of Summer Squash. The comments are available by accessing AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/fv/fpbdocketlist.htm.* The comment period ended October 7, 2006.

During that sixty-day comment period, one comment was submitted opposing the revisions. The commentor stated, "the different varietal characteristics in each type could stop what would work as a "fancy" being packed for one area and put undue strain on the "medium" market because a particular variety of squash does not have the genetics to meet size criteria." The commentor also stated, "some regions can only successfully grow certain seed varieties and with the characteristics of some varieties, size restrictions could make it prohibitive for some areas to produce summer squash all together."

After reviewing and considering the comments received, AMS has decided not to proceed with the proposed revisions to the standards.

Authority: 7 U.S.C. 1621–1627.

Dated: May 1, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–8574 Filed 5–3–07; 8:45 am]

BILLING CODE 3410–02–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products and services previously furnished by such agencies.

Comments Must Be Received On Or Before: June 3, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Arlington, Virginia 22202.

Additions

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for the product will be required to procure the product listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification

on which they are providing additional information.

End of Certification

The following product is proposed for addition to Procurement List for production by the nonprofit agency listed:

Product: Binder, Loose-leaf.
NSNs:
7510–00–530–8881—Black, 2″ Capacity for 8 ½ x 11″ sheets, Turned Edge.
7510–01–203–8814—White, 2″ Capacity, view binder for 8½ x 11″ sheets.
7510–01–278–4130—Black, 2″ Capacity for 8 ½ x 11″ sheets.
7510–01–283–5274—Black, ½″ Capacity view binder for 8½ x 11″ sheets.
7510–01–425–6139—Red, ½″ Capacity, view binder for 8½ x 11″ sheets.
7510–00–281–6180—Black, 1″ Capacity for 8 ½ x 11″ sheets, Turned Edge.
Coverage: A-list—for the total Government requirement as specified by the General Services Administration.
NPA: South Texas Lighthouse for the Blind, Corpus Christi, TX.
Contracting Activity: General Services Administration, Region 2, New York, NY.
Deletions:

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for deletion from the Procurement List.

End of Certification

The following products and services are proposed for deletion from the Procurement List:

Products: Innerspring Mattress Rehabilitation (w/handles).
NSNs:
7699 GRP I Hndl—Less than 36.
7699 GRP II Hndl—36.
7699 GRP III Hnd—Over 41.
7699 GRP IV Hndl—Over 49
Innerspring Mattress Rehabilitation (w/o handles)
NSNs:
7699 GRP I w/o—Less than 36.
7699 GRP II w/o—36.
7699 GRP III w/o—Over 41.
7699 GRP IV w/o—Over 49.
NPAs:
Georgia Industries for the Blind, Bainbridge, GA.
Mississippi Industries for the Blind, Jackson, MS.
L.C. Industries for the Blind, Inc., Durham, NC.
Virginia Industries for the Blind, Charlottesville, VA.
Lions Volunteer Blind Industries, Inc., Morristown, TN.
Winston-Salem Industries for the Blind, Winston-Salem, NC.
Winston-Salem Industries for the Blind, Winston-Salem, NC at its facility in Asheville, North Carolina.
Contracting Activity: GSA, Global Supply Center, Fort Worth, TX.
Services:
Service Type/Location:
Janitorial/Custodial, Iowa Air National Guard (185th Air National Guard Base), Sioux Gateway Airport, Sioux City, IA.
NPA: Goodwill Community Rehabilitation Services, Inc., Sioux City, IA.
Contracting Activity: Department of the Air Force.
Service Type/Location:
Janitorial/Custodial, U.S. Army Reserve Center (Middletown), Middletown, CT.
NPA: Allied Community Services, Inc., Enfield, CT.
Contracting Activity: Department of the Army, Devens Reserve Forces, MA.
Service Type/Location:
Laundry Service, U.S. Air Force Academy (Cadet Dining Hall), Colorado Springs, CO.
NPA: Goodwill Industrial Services Corporation, Colorado Springs, CO.
Contracting Activity: Department of the Air Force.
Service Type/Location:
Janitorial/Custodial, Austin Straubel International Airport (ATCT and Base Building), Green Bay, WI.
NPA: ASPIRO, Inc., Green Bay, WI.
Contracting Activity: Federal Aviation Administration, Des Plaines, IL.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. E7–8511 Filed 5–3–07; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Correction to Notice of Proposed Addition to the Procurement List

In the document appearing on page 19878, FR Doc. E7–7525, Procurement List Proposed Additions, in the issue of Friday, April 20, 2007, in the third column, the Committee published the proposed addition of a product, Cap, Utility, Camouflage Pattern, Air Force, BDU. This notice corrects that proposed addition of the product to read as follows: Cap, Utility, Camouflage Pattern, Air Force, ABU. The other proposed additions announced in the Notice remain the same.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. E7–8510 Filed 5–3–07; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–868)

Folding Metal Tables and Chairs from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 4, 2007.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Matthew Quigley, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4243 or (202) 482–4551, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 2006, the Department of Commerce ("the Department") published the initiation of the administrative review of the antidumping duty order on folding metal tables and chairs from the People's Republic of China ("PRC"). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 42626 (July 27, 2006). On March 7, 2007, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review until May 31, 2007. *See Folding Metal Tables and Chairs from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 72 FR 10141 (March 7, 2007). This review covers the period June 1, 2005, through May 31, 2006. The preliminary results of review are currently due no later than May 31, 2007.

Extension of Time Limit for Preliminary Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days

if it determines it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the preliminary results of the administrative review of folding metal tables and chairs from the PRC within this time limit because of the need for additional information prior to mandatory verifications. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is further extending the time period for completion of the preliminary results of this review by 30 days until June 30, 2007. Because June 30, 2007, falls on a Saturday, the preliminary results will due on July 2, 2007, the next business day.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: April 30, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–8587 Filed 5–3–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–357–812

Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke In Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 29, 2006, the Department of Commerce (the Department) published its preliminary results of the administrative review of the antidumping duty order on honey from Argentina. *See Preliminary Results of Antidumping Duty Administrative Review and Intent Not to Revoke in Part*, 71 FR 78397 (December 29, 2006) (*Preliminary Results*). This administrative review covers three [1] firms, one of which, Seylinco, S.A. (Seylinco) was selected as a mandatory respondent. The period of review (POR) is December 1, 2004 to November 30, 2005. Based on our analysis of comments received, the margins for the final results do not differ from the preliminary results. *See Preliminary Results*.

EFFECTIVE DATE: May 4, 2007.

FOR FURTHER INFORMATION CONTACT: Maryanne Burke or Robert James, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone; (202) 482–5604 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 2006, the Department published its *Preliminary Results* of this antidumping duty administrative review of honey from Argentina for the period December 1, 2004, to November 30, 2005. In response to the Department's invitation to comment on the preliminary results, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) and Seylinco filed their case briefs on January 29, 2007. Seylinco and petitioners submitted their rebuttal briefs on February 5, 2007. In addition, the Department met separately with representatives for Seylinco, petitioners and the Embassy of Argentina to discuss the *Preliminary Results*. *See Ex Parte* Memoranda to the File, from Maryanne Burke dated March 6, 2007 and March 19, 2007, on file in CRU in room B–099 of the main Commerce building.

Scope of the Order

The merchandise covered by the order is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under this order is dispositive.

Determination Not to Revoke in Part

As discussed in the *Preliminary Results* at 78399, Seylinco requested that the Department revoke the order in regard to Seylinco pursuant to 19 CFR 351.222 based on three consecutive zero margins. We preliminarily determined not to revoke the order with respect to Seylinco because it did not ship in commercial quantities during each of the three years forming the basis of its request. *See id*. For these final results, the Department has relied upon Seylinco's sales activity during the 2002–2003, 2003–2004, and 2004–2005 PORs in making its decision with respect to Seylinco's revocation request. Although Seylinco had three consecutive years of sales at not less than normal value (NV), Seylinco did not sell subject merchandise in commercial quantities in each of these three years forming the basis of the request for revocation. Thus, Seylinco is not eligible for consideration for revocation pursuant to 19 CFR 351.222(d)(1). Accordingly, we have determined not to revoke the antidumping duty order with respect to Seylinco. *See* Comment 2 of the Issues and Decision Memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration (Issues and Decision Memorandum) accompanying this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum. A list of issues addressed in the Decision Memorandum is appended to this notice. The Decision Memorandum is on file in the CRU and can be accessed directly on the web at *http://www.ita.doc.gov/*.

Changes Since the Preliminary Results

Based on our analysis of comments received and findings at verification, we have made the following change in the margin calculation:

- We revised the color characteristic (GRADET/U) in both the U.S. and third–country market sales listings to differentiate amongst the various colors of honey actually shipped, in accordance with our established model–matching criteria.

Final Results of Review

We determine that the following dumping margins exist for the period December 1, 2004 through November 30, 2005.

Manufacturer / Exporter	Weighted Average Margin (percentage)
Seylinco	0.00
El Mana, S.A.	0.00

[1] Mielar S.A. (Mielar) and Compania Apicola Argentina S.A. (CAA) were treated as a single entity in a prior segment of the proceeding. For the purposes of this review we continue to treat Mielar and CAA as a single entity (M ielar/CAA).

Manufacturer / Exporter	Weighted Average Margin (percentage)
Mielar/CAA	0.00

Assessment

The Department shall determine, and the Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated a zero margin rate which will be applied uniformly on all Seylinco, El Mana S.A. and Mielar/CAA entries made during the POR. The Department intends to issue assessment instructions directly to CBP 15 days after the date of publication of these final results of review. We will direct CBP to liquidate without regard to antidumping duties.

The Department clarified its "automatic assessment" regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, consistent with section 751(a)(1) of the Tariff Act of 1930, as amended (the Tariff Act): (1) cash deposits for Seylinco, El Mana S.A. and Mielar/CAA will not be required; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less than fair value (LTFV) investigation, 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) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will continue to be 30.24 percent, which is the "All Others" rate established in the LTFV investigation. *See Notice of Antidumping Duty Order; Honey From Argentina*, 66 FR 63672 (December 10, 2001). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a final 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 doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: April 27, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix – Issues and Decision Memorandum

1. Whether to Apply Adverse Facts Available as a Result of Seylinco's Reported Grade/Color

2. Revocation

3. Adverse Facts Available for Beekeeper 2

4. Beekeeper Feed Costs

5. Beekeeper Drums Costs

[FR Doc. E7–8584 Filed 5–3–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–851

Certain Preserved Mushrooms from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 28, 2007, the Department of Commerce ("Department") initiated the administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC") covering the period of review from February 1, 2006, through January 31, 2007 ("POR"). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 14516 (March 28, 2007) ("*Initiation Notice*"). On April 17, 2007, the review request was withdrawn with respect to all parties who requested the review. Therefore, the Department is rescinding the administrative review of sales of certain preserved mushrooms from the PRC covering the POR.

EFFECTIVE DATE: May 4, 2007.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4081.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2007, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain preserved mushrooms from the PRC for the POR. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 5007 (February 2, 2007). On February 28, 2007, China Processed Food Import and Export Company, COFCO (Zhangzhou) Food Industrial Co. Ltd., China National Cereals, Oils and Foodstuffs Import and Export Corporation, Fujian Yu Xing Fruit and Vegetable Foodstuff Development Co., and Xiamen Jiahua Import and Export Trading Co., Ltd. requested administrative reviews of their sales of certain preserved mushrooms to the United States during the POR. Pursuant to this request, the Department initiated an administrative review of the

antidumping duty order on ceratin preserved mushrooms from the PRC. *See Initiation Notice*. On April 17, 2007, all five companies which requested the review timely withdrew their requests for administrative reviews.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation. In this case, the companies listed above withdrew their requests for administrative reviews of their exports of certain preserved mushrooms for the POR, within 90 days from the date of initiation. No other interested party requested a review of these companies. Therefore, the Department is rescinding this review of the antidumping duty order on certain preserved mushrooms from the PRC covering the POR, in accordance with 19 CFR 351.213(d)(1).

Assessment

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries for China Processed Food Import and Export Company, COFCO (Zhangzhou) Food Industrial Co. Ltd., China National Cereals, Oils and Foodstuffs Import and Export Corporation, Fujian Yu Xing Fruit and Vegetable Foodstuff Development Co., and Xiamen Jiahua Import and Export Trading Co., Ltd. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a final 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 assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders ("APOs")

This notice also serves as a reminder to parties subject to APOs of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4) of the Department's regulations.

Dated: April 26, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–8585 Filed 5–3–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–878

Saccharin from the People's Republic of China: Preliminary Results of the 2005–2006 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on saccharin from the People's Republic of China ("PRC") covering the period July 1, 2005, through June 30, 2006. We preliminarily determine that sales of subject merchandise were made at less than normal value ("NV") by Shanghai Fortune Chemical Co., Ltd. ("Shanghai Fortune"). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise exported by Shanghai Fortune during the period of review ("POR").

Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

EFFECTIVE DATE: May 4, 2007.

FOR FURTHER INFORMATION CONTACT: Ann Fornaro or Frances Veith, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3927 or (202) 482–4295, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 2003, the Department published the antidumping duty order on saccharin from the PRC. *See Notice of Antidumping Duty Order: Saccharin from the People's Republic of China*, 68 FR 40906 (July 9, 2003). On July 3, 2006, the Department published a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 37890 (July 3, 2006). In accordance with 19 CFR 351. 213(b)(1), the following requests were made: (1) on July 28, 2006, Shanghai Fortune and Suzhou Fine Chemical Co. Group Ltd. ("Suzhou Fine Chemical"), Chinese exporting producers of subject merchandise, requested that the Department conduct an administrative review of their exports; (2) on July 28, 2006, Amgal Chemical Products (1989) Ltd. ("Amgal"), an Israeli exporting producer of sodium saccharin made from subject merchandise manufactured in the PRC, requested that the Department conduct an administrative review of its exports.

On August 30, 2006, the Department initiated this administrative review with respect to Shanghai Fortune, Suzhou Fine Chemical, and Amgal. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 51573 (August 30, 2006). The Department issued antidumping duty questionnaires to Shanghai Fortune, Suzhou Fine Chemical, and Amgal on August 30, 2006.

On September 7, 2006, the Office of Policy issued a list of five surrogate countries at a level of economic development comparable to that of the PRC for the POR. *See* the Memorandum from Ron Lorentzen, Director, Office of Policy, to Wendy Frankel, Director, AD/CVD Enforcement, Office 8, regarding, "Administrative Review of Saccharin from the People's Republic of China (PRC): Request for a List of Surrogate Countries" (September 7, 2006) ("*Policy Memorandum*").

On October 16 and November 14, 2006, Suzhou Fine Chemical and Amgal, respectively, withdrew their requests for an administrative review.

No other party requested an administrative review of Suzhou Fine Chemical's or Amgal's exports to the United States.

On October 20, 2006, Shanghai Fortune submitted its sections A, C, and D questionnaire response ("*ACD–QR*"). On September 8 and 12, 2006, the Department invited interested parties to submit surrogate value ("SV") information and to submit comments on surrogate country selection. *See* the Letter from Blanche Ziv, Program Manager, Office 8, to All Interested Parties (September 8, 2006); and Letter from Blanche Ziv, Program Manager, Office 8, to All Interested Parties (September 12, 2006). On November 13, 2006, Shanghai Fortune submitted publicly available information to value the factors of production ("FOP"). No interested party submitted comments on the selection of a surrogate country.

The Department issued supplemental questionnaires to Shanghai Fortune on December 20, 2006, and on February 20, March 1, and March 14, 2007. Shanghai Fortune submitted responses to these supplemental questionnaires on January 17, March 6, March 20, and March 26, 2007, respectively. The Department also issued a supplemental questionnaire to Shanghai Fortune's U.S. customer on December 21, 2006. The U.S. customer submitted a response to the Department's supplemental questionnaire on January 18, 2007.

On December 26, 2006, the Department published a notice of partial rescission of this administrative review with respect to Suzhou Fine Chemical and Amgal. *See Saccharin from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 77382 (December 26, 2006).

On March 23, 2007, the Department published a notice in the **Federal Register** extending the time limit for issuing its preliminary results of review until May 2, 2007. *See Saccharin from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 72 FR 13746 (March 23, 2007).

Period of Review

The POR is July 1, 2005, through June 30, 2006.

Scope of the Order

The product covered by this antidumping duty order is saccharin. Saccharin is defined as a non–nutritive sweetener used in beverages and foods, personal care products such as toothpaste, table top sweeteners, and animal feeds. It is also used in metalworking fluids. There are four primary chemical compositions of saccharin: (1) Sodium saccharin (American Chemical Society Chemical Abstract Service ("CAS") Registry 128–44–44); (2) calcium saccharin (CAS Registry 6485–34–34); (3) acid (or insoluble) saccharin (CAS Registry 81–07–07); and (4) research grade saccharin. Most of the U.S.-produced and imported grades of saccharin from the PRC are sodium and calcium saccharin, which are available in granular, powder, spray–dried powder, and liquid forms. The merchandise subject to this order is currently classifiable under subheading 2925.11.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS") and includes all types of saccharin imported under this HTSUS subheading, including research and specialized grades. Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the scope of this order remains dispositive.

Non–Market Economy Country Status

Shanghai Fortune did not contest the Department's treatment of the PRC as a non–market economy ("NME") country, and the Department has treated the PRC as an NME country in all past antidumping duty investigations and administrative reviews and continues to do so in this case. *See*, *e.g.*, *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 71509 (December 11, 2006) ("*FMTC–Final–04–05*"); and *Non–Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 69546 (December 1, 2006) ("*Non–Malleable Pipe*"). No interested party in this case has argued that we should do otherwise. Designation as an NME country remains in effect until it is revoked by the Department. *See* Section 771(18)(C)(i) of the Act.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Normal Value" section below and in the Memorandum from Frances Veith, International Trade Compliance Analyst, through Blanche Ziv, Program Manager, to Wendy Frankel, Director, AD/CVD Operations, Office 8, "Preliminary Results of the 2005–2006 Antidumping Duty Administrative Review of Saccharin from the People's Republic of China: Surrogate Value Memorandum" (April 27, 2007) ("*Surrogate Value Memorandum*").

The Department determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See Policy Memorandum*. Customarily, we select an appropriate surrogate country from the *Policy Memorandum* based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. In this case, we found that India is a significant producer of comparable merchandise. *See* Memorandum from Frances Veith, International Trade Compliance Analyst, through Blanche Ziv, Program Manager, and Wendy Frankel, Director, AD/CVD Operations, Office 8, to the File, "2005–2006 Antidumping Duty Administrative Review of Saccharin from the People's Republic of China: Selection of a Surrogate Country" (February 26, 2007) ("*Surrogate Country Memorandum*").

Accordingly, we selected India as the primary surrogate country for purposes of valuing the FOPs in the calculation of NV because it meets the Department's criteria for surrogate country selection. *See Surrogate Country Memorandum* and *Surrogate Value Memorandum*. Where Indian data was not available, the Department calculated the SV using World Trade Atlas ("WTA") import statistics from the Philippines, available at *http://www.gtis.com/wta.htm*. The Philippines import data represents cumulative values for fiscal year 2005. We obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value factors of production within 20 days after the date of publication of these preliminary results of review.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all

companies within the country are subject to government control, and thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of subject merchandise subject to review in an NME country a single rate unless an exporter can demonstrate that it is sufficiently independent of government control to be entitled to a separate rate. *See*, *e.g.*, *Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 74764, 74765 (December 16, 2005) (unchanged in the final results);[1] and *Non–Malleable Pipe*, 71 FR at 69548.

We considered whether Shanghai Fortune, based in the PRC, is eligible for a separate rate. The Department's separate–rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border–type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision–making process at the individual firm level. *See*, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Certain Cut–to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61758 (November 19, 1997).

To establish whether an exporter is sufficiently independent of government control to be entitled to a separate–rate, the Department analyzes the exporter in light of select criteria. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20585, 22587 (May 6, 1991); and *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). Under this test, exporters in NME countries are entitled to separate, company–specific margins when they can demonstrate an absence of government control over exports, both in law ("*de jure*") and in fact ("*de facto*").

Shanghai Fortune provided company–specific separate–rate information and stated that it met the standards for the assignment of a separate rate.[2] Shanghai Fortune reported that it is wholly owned by Fortune Knitting Co., Ltd., a privately held foreign–owned market economy entity.[3] Therefore, further separate–rate analysis is not necessary to determine whether Shanghai Fortune's export activities are independent from government control. *See*, *e.g.*, *Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 38852, at 38853–38855 (July 10, 2006) ("*FMTC–Prelim–04–05*") (unchanged in the final)[4] and *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996).

Date of Sale

Section 351.401(i) of the Department's regulations states that:

> in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

See also Allied Tube and Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1090–1093 (CIT 2001) (upholding the Department's rebuttable presumption that invoice date is the appropriate date of sale). After examining the questionnaire responses and the sale documentation placed on the record by Shanghai Fortune, we preliminarily determine that invoice date is the most appropriate date of sale in this review. We made this determination based on statements on the record that indicate that Shanghai Fortune's invoice establishes the material terms of sale to the extent required by our regulations. *See* Shanghai Fortune's *ACD–QR* at A11 and C12. Nothing on the record of this review rebuts the presumption that invoice date should be the date of sale.

Fair Value Comparisons

To determine whether Shanghai Fortune's sale of saccharin to the United States was made at a price below NV, we compared Shanghai Fortune's export price ("EP") to NV, as described in the "Export Price" and "Normal Value" sections of this notice, pursuant to section 773 of the Act.

Export Price

Because Shanghai Fortune sold subject merchandise to an unaffiliated purchaser in the United States prior to importation into the United States and use of a constructed–export-price methodology was not otherwise indicated, we used EP in accordance with section 772(a) of the Act.

For Shanghai Fortune, we calculated EP based on the FOB Shanghai port price to an unaffiliated purchaser. From this price, we deducted amounts for foreign inland freight and brokerage and handling, pursuant to section 772(c)(2)(A) of the Act. *See* Memorandum to the File from Ann Fornaro, International Trade Compliance Analyst: "Analysis for the Preliminary Results of the 2005–2006 Antidumping Duty Administrative Review of Saccharin from the People's Republic of China: Shanghai Fortune Chemical Co., Ltd." (April 27, 2007) ("*Shanghai Fortune Preliminary Analysis Memorandum*").

The Department used two sources to calculate an SV for domestic brokerage and handling expenses. The Department averaged December 2003 through November 2004 data contained in Essar Steel's February 28, 2005, public version response submitted in the antidumping duty administrative review of hot–rolled carbon steel flat products from India. *See Certain Hot–Rolled Carbon Steel Flat Products From India: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018, 2022 (January 12, 2006). The Essar Steel data was averaged with the February 2004 through January 2005 data contained in Agro Dutch Industries Limited's ("Agro Dutch") May 24, 2005, public version response submitted in the administrative review of the antidumping duty order on certain preserved mushrooms from India. *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005); and *FMTC–Prelim–04–05* at 71 FR 38857 (utilizing this same data). The brokerage expense data reported by Essar Steel and Agro Dutch in their public versions is ranged data. Essar Steel reported averaged, ranged values for each reported sale transaction in its submission, while Agro Dutch reported an overall averaged, ranged value for its POR. In the instant review, the Department first derived an overall average value from

[1] *See Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 71 FR 34893 (June 16, 2006).

[2] *See ACD-QR* at pages A2 through A8.

[3] *Id.*

[4] *See FMTC-Final-04-05.*

Essar Steel's data. Then the Department adjusted both source's overall average value for inflation. Finally, the Department derived an SV for brokerage and handling by calculating an average from the source's inflated average value. *See Surrogate Value Memorandum* at Attachment 12.

To value truck freight, we used the freight rates published by Indian Freight Exchange, available at *http://www.infreight.com*. The truck freight rates are contemporaneous with the POR; therefore, we made no adjustments for inflation. *See Surrogate Value Memorandum* at Attachment 11.

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department will base NV on FOP because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Therefore, we calculated NV based on FOP in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

The FOPs include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used the FOPs reported by Shanghai Fortune for materials, energy, labor, and packing.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources an input from a market economy supplier and pays for it in market economy currency, the Department will normally value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *see also*, *Lasko Metal Products v. United States*, 43 F.3d 1442, 1445–1446 (Fed. Cir. 1994) (affirming the Department's use of market–based prices to value certain FOPs). However, when the Department has reason to believe or suspect that such prices may be distorted by subsidies, the Department will disregard the market economy purchase prices and use SVs to determine the NV. *See*, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of the 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 1953 (January 10, 2001), and accompanying *Issues and Decision Memorandum* at Comment 1. Shanghai Fortune reported that a significant percentage of its consumption of phthalic anhydride used in the production of saccharin was purchased from a market economy and paid for in a market economy currency. *See* the "Factor Valuations" section of this notice, below, for further discussion.

Shanghai Fortune reported that during the production process of saccharin, it generates and recycles certain chemical by–products for resale.[5] However, Shanghai Fortune was unable to provide documentation supporting its production and sales of these by–products during the POR. The amount of products reused or sold during the POR is an integral part of the factor calculation for by–products. *See Notice of Final Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions from Belarus*, 68 FR 9055 (February 27, 2003), and accompanying *Issues and Decision Memorandum* at Comment 3 ("The Department allows such credits, but only for the amount of the by–product/recovery actually sold or reused."); *Notice of the Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 68 FR 27530 (May 20, 2003), and accompanying *Issues and Decision Memorandum* at Comment 6; and *Saccharin from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative*, 71 FR 7515 (February 13, 2006), and accompanying *Issues and Decision Memorandum* at Comment 2. Therefore, we are not granting a by–product offset to Shanghai Fortune. For further details, *see Shanghai Fortune Preliminary Analysis Memorandum*.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by Shanghai Fortune for the POR. We relied on the factor–specific data submitted by Shanghai Fortune in its questionnaire and supplemental questionnaire responses for purposes of selecting SVs.

To calculate NV, we multiplied the reported per–unit factor–consumption rates by publicly available Indian SVs (except as noted below). In selecting the SVs, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to render them delivered prices. Specifically, we added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit"). *See Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997). Where necessary, we adjusted the SVs for inflation/deflation using the Indian Wholesale Price Index ("WPI") as published on the Reserve Bank of India ("RBI") website, available at *http://www.rbi.org.in*. For a detailed description of all SVs used for Shanghai Fortune, *see* the *Surrogate Value Memorandum*.

Except as noted below, we valued raw material inputs using the July 1, 2005, through June 30, 2006, weighted–average unit import values derived from the Monthly Statistics of the Foreign Trade of India, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India and used in the WTA, available at *http:www.gtis.com/wta.htm*. The Indian WTA import data is reported in rupees and is contemporaneous with the POR. *See Surrogate Value Memorandum* at Attachment 4. We adjusted the SVs to account for freight costs incurred between the supplier and respondent. We used the freight rates published by Indian Freight Exchange, available at *http://www.infreight.com*, to value truck freight. Because the truck freight rates are contemporaneous with the POR, we made no adjustments for inflation.

Furthermore, with regard to the WTA import–based SVs, for each input value, we used the average unit value for that input imported into India from all countries, with three exceptions. First, imports from all countries that the Department has previously determined to be NME countries were excluded from the average.[6] Second, it is the Department's current practice that, where the facts developed in U.S. or third–country countervailing duty findings include the existence of subsidies that appear to be used generally (in particular, broadly available, non–industry-specific export subsidies), it is reasonable for the Department to consider that it has particular and objective evidence to

[5] *See ACD-QR* in Exhibits D-3.

[6] For further information, *see Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology*, 70 FR 37761, 37763 (June 30, 2005) ("*Wage Rate FR*").

support a reason to believe or suspect that prices of the inputs from the country granting the subsidies may be subsidized. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of the 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 1953 (Jan. 10, 2001), and accompanying *Issues and Decision Memorandum* at Comment 1; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 57420 (Nov. 15, 2001), and accompanying *Issues and Decision Memorandum* at Comment 1; and *China National Machinery Imp. & Exp. Corp. v. United States*, 293 F. Supp. 2d 1334, 1339 (CIT 2003), as affirmed by the Federal Circuit, 104 Fed. Appx. 183 (Fed. Cir. 2004). We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. No. 576 100th Cong., 2. Sess. 590–91 (1988). Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. Therefore, we excluded export prices from Indonesia, South Korea, Thailand, and India in calculating the Indian import–based SVs or in calculating the Philippines import–based SV. *See* Surrogate Value Memorandum.

Finally, we excluded imports that were labeled as originating from an "unspecified" country from the average value because we could not be certain that they were not from either an NME or a country with general export subsidies. For a complete description of the factor values we used in these preliminary results, *see Surrogate Value Memorandum*.

To value aqueous ammonia, the Department used the POR average unit value for imports into India from all countries, except as noted above. We invite parties to submit comments and additional information on the valuation of aqueous ammonia to be considered by the Department for the final results, pursuant to 19 CFR 351.301(c)(3)(ii). For further discussion of the comments submitted to the Department by Shanghai Fortune regarding the valuation of aqueous ammonia, *see Surrogate Value Memorandum*.

In addition to the Indian WTA import data, we valued certain raw material inputs (*i.e.*, liquid sodium hydroxide, hydrochloric acid, sulfuric acid, sodium nitrite, copper sulfate, toluene, sodium bicarbonate, ionic membrane sodium hydroxide) based on Indian domestic price data obtained from the Indian publication *Chemical Weekly*. Because the domestic chemical prices obtained from *Chemical Weekly* are reported on a 100–percent concentration basis unless otherwise noted, we adjusted the weighted–average POR price for Shanghai Fortune's reported product chemical concentration percentage levels, where appropriate. *See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Review*, 64 FR 69503, 69504–69505 (December 13, 1999) at Comment 2. We calculated an average domestic price from the multiple publication prices within the POR, where applicable. We adjusted the average value to exclude excise and/or sales tax in each case where the price was specifically identified as being inclusive of the 16–percent excise tax identified in *Central Excise Tariff 1998–99* (as published by Cen–Cus Publications, New Delhi) and/or sales tax, as appropriate. For further details, *see Surrogate Value Memorandum* at Attachment 5.

As noted in the "Normal Value" section above, Shanghai Fortune provided evidence that it had purchased phthalic anhydride from a market economy supplier and paid for it in a market economy currency. Therefore, in accordance with 19 CFR 351.408(c)(1), the Department has determined to use the market economy price as reported by Shanghai Fortune to value this input because the market economy input represents a significant quantity of the input purchased during the POR. For further details, *see Shanghai Fortune Preliminary Analysis Memorandum*.

To value sulfur dioxide, the Department used the per–kilogram values obtained from Annual Import Statistics of the Philippines National Statistics Office, as published by the WTA, because we found the POR Indian data available for this input to be unreliable due to small quantities and aberrant values. We made adjustments to the weighted–average value to account for freight costs incurred between the PRC supplier and Shanghai Fortune. The Philippines WTA data is reported in U.S. dollars ("USD") and is contemporaneous with the POR. *See Surrogate Value Memorandum* at Attachment 4.

To value liquid chlorine, the Department selected the sales value of chlorine from public information the Department placed on the record of this review[7] (*i.e.*, annual reports of three Indian Chemical companies: 1) Bihar Caustic & Chemicals Ltd.; 2) Kanoria Chemicals & Industries Limited; and 3) TATA Chemicals) because we found the WTA Indian data available for this input to be unreliable due to small quantities and aberrant values and Chemical Weekly price data is not available for this input. We averaged the sales prices for chlorine reported in the three annual reports and made adjustments to account for freight costs incurred between the PRC supplier and Shanghai Fortune. The sales value data is reported in rupees per metric ton and is contemporaneous with the POR. *See also*, *Surrogate Value Memorandum* at Attachment 6.

To value electricity, the Department used the 2000 electricity price rates from *Key World Energy Statistics 2003*, published by the International Energy Agency available at *http://www.eia.doe.gov/emeu/international/elecprii.html*. Because this data was not contemporaneous with the POR, we adjusted the average value for inflation using WPI. *See Surrogate Value Memorandum* at Attachment 8.

To value water, we used the Revised Maharashtra Industrial Development Corporation ("MIDC") water rates for June 1, 2003, available at *http://www.midcindia.com/water–supply*, adjusted for inflation using WPI.

For direct labor, indirect labor and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression–based wage rates reflective of the observed relationship between wages and national income in market economy countries as reported on Import Administration's home page. *See* "Expected Wages of Selected NME Countries" (revised January 2007) (available at *http://www.trade.gov/ia/*). For further details on the labor calculation, *see Surrogate Value Memorandum* at Attachment 7.

For factory overhead, selling, general, and administrative expenses ("SG&A"), and profit values, consistent with 19 CFR 351.408(c)(4), we used public information gathered from an auditor's report for the year ending March 31, 2006, from an Indian producer of comparable merchandise (*i.e.*, Atul Ltd.). From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy ("ML&E") costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture) and traded

[7] *See* Memorandum to the File, from Frances Veith, International Trade Compliance Analyst, AD/CVD Operations, Office 8, regarding, "Surrogate Value Data for Liquid Chlorine," (March 8, 2007).

goods; and the profit rate as a percentage of the cost of manufacture plus SG&A and traded goods. *See Surrogate Value Memorandum* for a full discussion of the calculation of these ratios.

For packing materials, we used the per–kilogram values obtained from the Indian WTA import data and made adjustments to account for freight costs incurred between the PRC supplier and Shanghai Fortune. *See Surrogate Value Memorandum* at Attachment 4.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) 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

We preliminarily find the weighted–average dumping margin for Shanghai Fortune for the period July 1 2005, through June 30, 2006, to be 47.60 percent.

Disclosure

We will disclose the calculations used in our preliminary analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 42 days after the date of publication of this notice. *See* 19 CFR 351.310(d). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). The Department requests that parties submitting written comments also provide the Department with an additional copy of those comments on diskette or CD. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this administrative review. In accordance with 19 CFR 351.212(b)(1), we calculated an exporter/importer–or customer–specific assessment rate or value for merchandise subject to this review. For these preliminary results, we divided the total dumping margins for the reviewed sales by the total entered quantity of those reviewed sales for each applicable importer. In this review, if these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the entered customs value or per–unit assessment, as appropriate, for the subject merchandise on each importers'/customers' entries during the POR.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for Shanghai Fortune, which has a separate rate, the cash deposit rate will be the company–specific rate established in the final results of review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 329.33 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

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 determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 27, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–8581 Filed 5–3–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–351–826)

Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 4, 2007.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Dena Crossland, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0193 or (202) 482–3362, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 2006, the Department of Commerce ("the Department") published a notice of initiation of administrative review of the antidumping duty order on certain small diameter seamless carbon and alloy steel standard, line and pressure pipe from Brazil, covering the period August 1, 2005, through July 31, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 57465 (September 29, 2006). The preliminary results for this review are currently due no later than May 3, 2007.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary

results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Extension of Time Limits for Preliminary Results

The deadline for the preliminary results of this administrative review is currently May 3, 2007. The Department determines that completion of the preliminary results within the statutory time period is not practicable. The Department issued a supplemental sales and cost questionnaire to respondent V&M do Brasil, S.A. ("VMB") to gather information with respect to how VMB reported certain production costs and calculated its interest expense ratio on April 18, 2007, and the supplemental questionnaire response is currently due on May 2, 2007. The Department requires additional time to review and analyze VMB's supplemental questionnaire response, and to issue additional supplemental cost questionnaires, if necessary.

Therefore, given the additional time needed to conduct complete analyses for this administrative review, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for completion of these preliminary results by an additional 60 days to no later than July 2, 2007. The final results continue to be due no later than 120 days after the publication of the notice of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: April 30, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–8586 Filed 5–3–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–489–807)

Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review and Notice of Intent to Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review and a new shipper review of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey for the period April 1, 2005, through March 31, 2006. We have preliminarily determined that certain of the producers/exporters have made sales below normal value (NV). If these preliminary results are adopted in the final results of these reviews, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

We also have preliminarily determined to revoke the antidumping duty order with respect to Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret A.S. (collectively "Colakoglu") and Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Turizm Ticaret A.S., and Diler Dis Ticaret A.S. (collectively, "Diler").

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: May 4, 2007.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Alice Gibbons, 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) 482–0656 or (202) 482–0498, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 2006, the Department published in the **Federal Register** a notice of "Opportunity To Request Administrative Review" of the antidumping duty order on rebar from Turkey. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 16549 (Apr. 3, 2006).

In accordance with 19 CFR 351.213(b)(2), on April 28, 2006, the Department received requests to conduct an administrative review of the antidumping duty order on rebar from Turkey from the following producers/exporters of rebar: Colakoglu; Diler; Ekinciler Demir ve Celik Sanayi A.S. and Ekinciler Dis Ticaret A.S. (collectively "Ekinciler"); Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas); and Kaptan Demir Celik Endustrisi ve Ticaret A.S. and Kaptan Metal Dis Ticaret ve Nakliyat A.S. (collectively "Kaptan"). As part of their requests, Colakoglu and Diler also requested that the Department revoke the antidumping order with regard to them, in accordance with 19 CFR 351.222(b). Also, on April 28, 2006, the domestic interested parties, Nucor Corporation, Gerdau AmeriSteel Corporation and Commercial Metals Company, requested an administrative review for Colakoglu, Diler, Ekinciler, and Habas pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and in accordance with 19 CFR 351.213(b)(1). Further, in accordance with 19 CFR 351.214(b), on April 28, 2006, the Department received a request to conduct a new shipper review of the antidumping duty order on rebar from Turkey from Kroman Celik Sanayii A.S. and Yucelboru Ihracat Ithalat ve Pazarlama A.S. (collectively "Kroman").

In May 2006, the Department initiated an administrative review for Colakoglu, Diler, Ekinciler, Habas, and Kaptan and a new shipper review for Kroman, and we issued antidumping duty questionnaires to these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 30864 (May 31, 2006), and *Notice of Initiation of New Shipper Antidumping Duty Review: Certain Steel Concrete Reinforcing Bars from Turkey*, 71 FR 30383 (May 26, 2006). On May 22, 2006, Kroman agreed in writing to waive the time limits in order for the Department, pursuant to 19 CFR 351.214(j)(3), to conduct the new shipper review concurrently with the administrative review.

In July 2006, we received responses to sections A through D of the questionnaire from Colakoglu, Diler, Ekinciler, and Habas, and to sections A through C of the questionnaire from Kaptan and Kroman.

Also in July 2006, the domestic interested parties requested that the Department initiate sales–below-cost investigations of Kaptan and Kroman. We initiated sales–below-cost investigations for these companies in August 2006. *See* the Memoranda to James Maeder, Director, Office 2, AD/CVD Operations, from The Team, entitled, "Petitioners' Allegation of Sales Below the Cost of Production for Kaptan Demir Celik Endustrisi Ve Ticaret A.S. and Kaptan Metal Dis Ticaret Ve Nakliyat A.S." ("Kaptan Cost Allegation Memo") and "Petitioners' Allegation of Sales Below the Cost of Production for Kroman Celik Sanayii A.S. and Yucelboru Ihracat Ithalat ve Pazarlama A.S." ("Kroman Cost Allegation Memo"), dated August 11, 2006.

In August 2006, we issued supplemental sales questionnaires to each of the six respondent companies.

We received responses to these questionnaires in August and September 2006.

In September 2006, we conducted an on–site verification of Kroman's sales response in Turkey. Also during this month, we received Kaptan's and Kroman's responses to section D of the questionnaire, and we issued supplemental cost questionnaires to Colakoglu, Diler, Ekinciler, and Habas. We received responses to the supplemental cost questionnaires from Colakoglu, Diler, Ekinciler, and Habas in September and October 2006.

In October 2006, we issued supplemental cost questionnaires to Kaptan and Kroman. Also during this month, the Department postponed the preliminary results of this review until no later than April 30, 2007. *See Certain Steel Concrete Reinforcing Bars from Turkey; Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review*, 71 FR 62418 (Oct. 25, 2006).

We received a supplemental cost questionnaire response from Kaptan and Kroman in November 2006.

From November 2006 through January 2007, we issued additional supplemental questionnaires to each of the respondents. We received responses to these questionnaires from November 2006 through February 2007.

In February 2007, the domestic interested parties alleged that each of the rebar producers involved in both the administrative and new shipper reviews was engaged in anti–competitive practices in the home and U.S. markets during the period of review (POR), as evidenced by a 2005 finding by the Turkish Government Competition Board (Competition Board). As a result, the domestic industry requested that the Department *inter alia*: 1) reject the responses by the producers in the administrative review and base the preliminary dumping margins on adverse facts available (AFA), and 2) determine that Kroman is affiliated with all Turkish rebar producers named in the Competition Board report and rescind the initiation of the new shipper review for this company. In February and March 2007, we received comments from the respondents on these allegations, as well as reply comments from the domestic industry. For further discussion, see the "Turkish Government Competition Board Finding" section below.

In March 2007, we issued additional supplemental cost questionnaires to Colakoglu and Ekinciler, as well as questionnaires to all interested parties regarding the allegations noted above. We received responses to these questionnaires in April 2007.

Also in April 2007, the domestic interested parties submitted a second report by the Competition Board, which they allege: 1) demonstrates that several of the respondents were engaged in close supplier relationships; and, 2) should be relied upon by the Department to make a finding that the respondents in this proceeding are affiliated.

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 under subheadings 7213.10.000 and 7214.20.000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of these proceedings is dispositive.

Period of Review

The POR is April 1, 2005, through March 31, 2006.

Notice of Intent To Revoke, in Part

As noted above, on April 28, 2006, Colakoglu and Diler requested revocation of the antidumping duty order with respect to their sales of subject merchandise, pursuant to 19 CFR 351.222(b). These requests were accompanied by certifications that Colakolgu and Diler have sold the subject merchandise at not less than NV during the current POR and will not sell the merchandise at less than NV in the future. Colakoglu and Diler further certified that they sold subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. Colakoglu and Diler also agreed to immediate reinstatement of the antidumping duty order, as long as any exporter or producer is subject to the order, if the Department concludes that, subsequent to the revocation, they sold the subject merchandise at less than NV.

Pursuant to section 751(d) of the Act, the Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751(a) of the Act. While Congress has not specified the procedures the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. Sections 351.222(b)(1)(A) and 351.222(b)(2) of the Department's regulations explain that the Secretary may revoke an antidumping duty order in part if the Secretary concludes, *inter alia*, that one or more exporters or producers covered by the order have sold the subject merchandise in commercial quantities at not less than NV for a period of at least three consecutive years. *See Notice of Final Results of the Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip from the Netherlands*, 65 FR 742, 743 (Jan. 6, 2000).

We preliminarily determine that the requests from Colakoglu and Diler meet all of the criteria under 19 CFR 351.222(b). With regard to the criteria of subsection 19 CFR 351.222(b)(2), our preliminary margin calculations show that Colakoglu and Diler sold rebar at not less than NV during the current review period. *See* the "Preliminary Results of the Review" section below. In addition, Colakoglu and Diler sold rebar at not less than NV in the two previous administrative reviews in which they were involved (*i.e.*, their dumping margins were zero or *de minimis*). *See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082 (Nov. 7, 2006), unchanged in *Notice of Amended Final Results and Rescission of Antidumping Duty Administrative Review in Part: Certain Steel Concrete Reinforcing Bars From Turkey*, 71 FR 75711 (Dec. 18, 2006); *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).

Based on our examination of the sales data submitted by Colakoglu and Diler, we preliminarily determine that they sold the subject merchandise in the United States in commercial quantities in each of the consecutive years cited by Colakoglu and Diler to support their requests for revocation. *See* the Memoranda to the file from Brianne Riker entitled "Analysis of Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret A.S.'s Commercial Quantities for Request for Revocation" and "Analysis of Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Turizm Ticaret A.S., and Diler Dis Ticaret A.S.'s Commercial Quantities for Request for Revocation," dated April 30, 2007. Thus, we preliminarily find that

Colakoglu and Diler had zero or *de minimis* dumping margins for their last three administrative reviews and sold subject merchandise in commercial quantities in each of these years. Also, we preliminarily determine that the application of the antidumping duty order with respect to Colakoglu and Diler is no longer warranted for the following reasons: 1) the companies had zero or *de minimis* margins for a period of at least three consecutive years; 2) the companies have agreed to immediate reinstatement of the order if the Department finds that they have resumed making sales at less than NV; and, 3) the continued application of the order is not otherwise necessary to offset dumping. Therefore, we preliminarily determine that Colakoglu and Diler qualify for revocation of the order on rebar pursuant to 19 CFR 351.222(b)(2), and that the order with respect to merchandise produced and exported by Colakolgu and Diler should be revoked. If these preliminary findings are affirmed in our final results, we will revoke this order in part for Colakoglu and Diler and, in accordance with 19 CFR 351.222(f)(3), terminate the suspension of liquidation for any of the merchandise in question that is entered, or withdrawn from warehouse, for consumption on or after April 1, 2006, and instruct CBP to refund any cash deposits for such entries.

We note that the domestic interested parties have alleged that the Competition Board finding should render Colakoglu and Diler ineligible for revocation. The Department is currently considering this argument and will make a decision on it no later than the final results. For further discussion, see the "Turkish Government Competition Board Finding" section below.

Bona Fide Sale Analysis - Kroman

For the reasons stated below, we preliminarily find that Kroman's reported U.S. sale during the POR is a *bona fide* sale, as required by 19 CFR 351.214(b)(2)(iv)(c), based on the totality of the facts on the record. Specifically, we find that the price reported for Kroman's rebar sale was similar to the average unit value of U.S. imports of comparable rebar from Turkey during the POR. We also find that the quantity of the sale was within the range of shipment sizes of comparable goods exported from Turkey during the POR. *See* the Memorandum from Brianne Riker to the File, entitled "Placing Information from the 2005–2006 Administrative Review on Rebar from Turkey on the Record of the New Shipper Review on Rebar from Turkey for Kroman Celik Sanayii A.S.," dated April 30, 2007. Finally, we considered whether the importer involved in this transaction is an actual commercial entity, and we found no reason to doubt the legitimacy of the importing party involved in this new shipper review. *See* the Memorandum to James Maeder from Irina Itkin entitled, "Analysis of Kroman Celik Sanayii A.S.'s *Bona Fides* As A New Shipper in the New Shipper Review of Certain Steel Concrete Reinforcing Bars from Turkey," dated April 30, 2007, for further discussion of our price and quantity analysis.

Therefore, for the reasons mentioned above, the Department preliminarily finds that Kroman's sole U.S. sale during the POR was a *bona fide* commercial transaction. We note that the domestic interested parties have alleged that: 1) Kroman's U.S. sale is not a *bona fide* transaction because the price for this sale was not competitively set; and/or, 2) Kroman is not entitled to a new shipper review because it is affiliated with other respondents in this case. The Department is currently considering these arguments and, when we make a determination with regard to the Competition Board's reports, we will incorporate our analysis on this point into that determination. For further discussion, see the "Turkish Government Competition Board Finding" section below.

Turkish Government Competition Board Finding

On February 21 and 23, 2007, the domestic interested parties submitted a report by the Turkish Government Competition Board regarding the Turkish steel industry in the administrative review and new shipper review, respectively. The domestic interested parties argue that this report demonstrates that the respondents engaged in anti–competitive behavior prior to and during the POR by colluding with each other to manipulate home market and export prices and to suppress costs. The domestic interested parties assert that the Department should: (1) find that a particular market situation, a fictitious market, or sales outside the course of ordinary trade exist and not use home market sales as a basis for NV; (2) not revoke Colakoglu and Diler from the order due to collusive behavior; (3) find that all U.S. sales are not *bona fide*; and (4) collapse all Turkish rebar producers into a single entity and find that Kroman does not qualify as a new shipper because of affiliation with other respondents. The domestic parties further contend that the Department should, as a result, rescind the initiation of the new shipper review for Kroman and assign preliminary dumping margins to each of the remaining producers using AFA.

In addition, on April 9, 2007, the domestic interested parties submitted a second report by the Competition Board, which they allege: 1) demonstrates that several of the respondents were engaged in close supplier relationships; and 2) should be relied upon by the Department to make a finding that the respondents in this proceeding are affiliated.

The respondents in this case have objected to the Department's acceptance of these submissions because, they argue: (1) it is inappropriate to consider antitrust findings in the context of a dumping proceeding; (2) the Competition Board's ruling is not final, as it is under appeal in the Turkish judicial system; (3) the Competition Board's decision and evidence should not be considered in the current POR because it relates to a prior period of time; and/or (4) the small fines that the Competition Board levied indicate that it did not believe that the anti–competitive behavior was significant. The respondents did not submit arguments regarding the domestic interested parties' April 9, 2007, submission.

As a threshold matter, we have concluded that it is appropriate to accept the Competition Board's reports on the administrative record of these proceedings. Pursuant to 19 CFR 351.104(a), the Competition Board's reports are new factual information which are, at minimum, of concern to these proceedings in that they address alleged collusive and anti–competitive behavior among members of the Turkish steel industry, of which rebar producers are a significant part, that may have influenced the costs and market prices of the respondents in these reviews. Accordingly, the Department acted consistently with its authority in accepting this information and considering it for purposes of the ongoing administrative and new shipper reviews. See 19 CFR 351.104(a) and 351.301(c)(2) (authorizing the Department to consider information provided during the proceeding and allowing it to extend the time within which information may be provided during a review if it considers such an extension of time is warranted).

The Department has been unable to fully address this issue in these preliminary results because the Competition Board's reports were placed on the record late in the proceedings, and there has been a large amount of argument submitted by both sides on the matter. Furthermore, the domestic interested parties submitted

new arguments on this point not long before issuance of these preliminary results. Accordingly, the Department has not yet had the opportunity to fully review and address all issues with regard to this matter. Subsequent to publication of the preliminary results, the Department will provide to the interested parties its preliminary conclusions on these issues and give them an opportunity to comment on those conclusions before reaching final conclusions and publishing the final results of these administrative and new shipper reviews.

Comparisons to Normal Value

To determine whether sales of rebar from Turkey were made in the United States at less than NV, we compared the export price (EP) to the NV, as described in the "Normal Value" section of this notice. When making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of the Order" section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade based on the characteristics listed in sections B and C of our antidumping questionnaire.

Product Comparisons

In accordance with section 771(16) of the Act, we first attempted to compare products produced by the same company and sold in the U.S. and home markets that were identical with respect to the following characteristics: form, grade, size, and industry standard specification. Where there were no home market sales of foreign like product that were identical in these respects to the merchandise sold in the United States, we compared U.S. products with the most similar merchandise sold in the home market based on the characteristics listed above, in that order of priority.

Export Price

We used EP methodology for all U.S. sales, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation, and constructed export price methodology was not otherwise warranted based on the facts of record.

Regarding U.S. date of sale, four of the respondents (*i.e.*, Colakoglu, Ekinciler, Habas, and Kaptan) argued that we should use contract date as the date of sale for their U.S. sales in this review, while Diler and Kroman argued that we should base their dates of sale on invoice date. After analyzing the record, we determine that the appropriate U.S. date of sale for Colakoglu, Diler, and Habas is the earlier of invoice or shipment date because: (1) we previously found that the terms of sale (*i.e.*, price and quantity) were changeable after the contract date for these respondents (*see Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 26455, 26458 (May 5, 2006) (*04–05 Preliminary Results*), unchanged in the final results); and, (2) we find that there were no changes in the sales process, customers, types of contracts, etc., between the previous administrative review and the current POR for these respondents. Further, regarding Ekinciler, we determined that the appropriate U.S. date of sale is contract date because, as in the previous administrative review, we find that the material terms of sale were set at the contract date, given that the terms did not change prior to invoicing. *See id.*

Finally, regarding Kaptan and Kroman, because these companies were not respondents in the previous administrative review, we examined the contracts and invoices related to their U.S. sales. For Katpan, we found that the terms of sale were not set at the contract date and, therefore, we used the earlier of invoice or shipment date as the U.S. date of sale. For Kroman, we determined that there were no changes to the material terms of sale between the contract and invoice date and, therefore, we used contract date as the U.S. date of sale.

A. Colakoglu

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for loading expenses, inspection fees, demurrage expenses (offset by freight commission revenue, dispatch revenue, and other freight–related revenue), ocean freight expenses, U.S. customs duties, and U.S. brokerage and handling expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

B. Diler

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for foreign inland freight expenses, foreign brokerage and handling expenses, and loading expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

C. Ekinciler

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for foreign inland freight, customs overtime fees, crane charges, terminal charges, inspection fees, demurrage expenses (offset by despatch revenue), ocean freight expenses (offset by freight revenue), U.S. customs duties, and U.S. brokerage and handling expenses, in accordance with section 772(c)(2)(A) of the Act.

D. Habas

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for foreign inland freight expenses, customs overtime fees, loading charges (offset by despatch revenue), forklift charges, surveying expenses, and ocean freight expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act. Additionally, we added to the starting price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act.

E. Kaptan

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for foreign inland freight expenses, foreign brokerage and handling charges, loading expenses, inspection fees, freight commission expenses, demurrage commission expenses, weighing charges, and ocean freight expenses (offset by freight–related revenues), where appropriate, in accordance with section 772(c)(2)(A) of the Act. Additionally, we added to the starting price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act.

F. Kroman

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for foreign inland freight expenses, foreign brokerage and handling expenses, inspection fees, ocean freight expenses, U.S. customs duties, and U.S. brokerage and handling expenses where appropriate, in accordance with section 772(c)(2)(A) of the Act. Additionally, we added to the starting price an amount for duty

drawback pursuant to section 772(c)(1)(B) of the Act.

Normal Value

A. Home Market Viability and Selection of Comparison Markets

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that each respondent had a viable home market during the POR. Consequently, we based NV on home market sales.

For each respondent, in accordance with our practice, we excluded home market sales of non–prime merchandise made during the POR from our preliminary analysis based on the limited quantity of such sales in the home market and the fact that no such sales were made to the United States during the POR. *See*, *e.g.*, *04–05 Preliminary Results*, 71 FR at 26459, unchanged in the final results; *Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Notice of Intent To Revoke in Part*, 70 FR 23990, 23993 (May 6, 2005), unchanged in the final results; *Certain Steel Concrete Reinforcing Bars From Turkey; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke in Part*, 69 FR 25066, 25066 (May 5, 2004), unchanged in the final results; *Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke in Part*, 68 FR 23972 (May 6, 2003), unchanged in the final results.

B. Affiliated–Party Transactions and Arm's–Length Test

Diler, Ekinciler, Habas, and Kroman made sales of rebar to affiliated parties in the home market during the POR. Consequently, we tested these sales to ensure that they were made at arm's–length prices, in accordance with 19 CFR 351.403(c). To test whether the sales to affiliates were made at arm's–length prices, we compared the unit prices of sales to affiliated and unaffiliated customers net of all 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 that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade (LOT), we determined that the 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 (Nov. 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV 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).

C. Cost of Production Analysis

Pursuant to section 773(b)(2)(A)(ii) of the Act, for Colakoglu, Diler, Ekinciler, and Habas, there were reasonable grounds to believe or suspect that these respondents made home market sales at prices below their costs of production (COPs) in this review because the Department had disregarded sales that failed the cost test for these companies in the most recently completed segment of this proceeding in which these companies participated (*i.e.*, the 2003–2004 administrative review for Colakoglu, Diler, and Habas and the 2000–2001 administrative review for Ekinciler). As a result, the Department initiated an investigation to determine whether these companies made home market sales during the POR at prices below their COPs.

Pursuant to section 773(b)(2)(A)(i) of the Act, for Kaptan and Kroman, there were reasonable grounds to believe or suspect that these respondents made home market sales at prices below their COP in this review because of information contained in the cost allegations properly filed by the domestic interested parties. As a result, the Department initiated an investigation to determine whether Kaptan and Kroman made home market sales during the POR at prices below their COPs. *See* the "Kaptan Cost Allegation Memo" and the "Kroman Cost Allegation Memo."

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the respondents' cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses. *See* the "Test of Home Market Sales Prices" section below for treatment of home market selling expenses.

We relied on the COP information provided by each respondent in its questionnaire responses, except for the following instances where the information was not appropriately quantified or valued:

A. Colakoglu

Because Colakoglu's financial revenue exceeded its expense, we did not include an amount for financial expense in the calculation of COP or constructed value (CV). This is in accordance with the Department's practice of determining that, when a company earns enough financial income that it recovers all of its financial expense, that company did not have a resulting cost for financing during that period. *See Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 26455, 26460 (May 5, 2006) (*04–05 Preliminary Results*), unchanged in the final results; *Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products From Canada*, 70 FR 73437 (Dec. 12, 2005) (*Lumber from Canada*), and accompanying Issues and Decision Memorandum at Comments 9 and 25. For further discussion of this adjustment, see the Memorandum from LaVonne Clark to Neal Halper entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret A.S.," dated April 30, 2007.

B. Diler

1. We applied the transactions disregarded rule under section 773(f)(2) of the Act to the billets purchased through an affiliated reseller. As a result, we adjusted Yazici Demir Celik Sanayi ve Turizm Ticaret A.S.'s (Yazici Demir's) fixed and variable costs of steelmaking.
2. We adjusted the reported G&A expenses for Yazici Demir to exclude an offset for an income item related to an affiliated party because the income was associated with Yazici Demir's investment activities.
3. We adjusted the reported G&A expenses for Diler Demir Celik Endustrisi ve Ticaret A.S. (Diler

Demir) to include the cost of POR donations.
4. We adjusted the respective cost of sales figure used as the denominator for G&A and financial expense rate calculations by excluding the costs of byproduct merchandise sold during the 2005 fiscal year for Yazici Demir and Diler Demir.
5. Because Diler's financial revenue exceeded its expense, we did not include an amount for financial expense in the calculation of COP or CV. *See 04–05 Preliminary Results*, 71 FR at 26460; Lumber from Canada at Comments 9 and 25.

For further discussion of these adjustments, see the Memorandum from Angela Strom to Neal Halper entitled, "Cost of Production and Constructed Value Adjustments for the Preliminary Results - Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Tursizm Ticaret A.S., and Diler Dis Ticaret A.S.," dated April 30, 2007.

C. Ekinciler

1. We adjusted Ekinciler's G&A expense ratio to include the actual expenses charged by its parent company (*i.e.*, Ekinciler Holding) for direct services and allocated Ekinciler Holding's residual G&A expenses (*i.e.*, those G&A expenses not charged to a subsidiary) to each subsidiary, including Ekinciler, based on the proportion of each subsidiary's cost of sales (COS).
2. We recalculated Ekinciler's fiscal year–end 2005 depreciation expenses for assets with remaining useful lives to be based on the stated depreciation rates reported in Ekinciler's general assets ledger.
3. We have excluded the COS for scrap and defective billets from the COS denominator in calculating the G&A and financial expense ratios.
4. We adjusted Ekinciler's fixed overhead expense to include the amortization of certain proprietary assets.

For further discussion of these adjustments, see the Memorandum from Laurens van Houten to Neal Halper entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Ekinciler Demir ve Celik Sanayi A.S.," dated April 30, 2007.

D. Habas

1. We adjusted the reported cost of raw materials to include import duties that were not collected by the Turkish government due to the subsequent re–exportation of the material and the claimed duty drawback adjustment.
2. Because Habas' financial revenue exceeded its expense, we did not include an amount for financial expense in the calculation of COP or CV. *See 04–05 Preliminary Results*, 71 FR at 26460; *Lumber from Canada* at Comments 9 and 25.

For further discussion of these adjustments, see the Memorandum from Gina Lee to Neal Halper entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.," dated April 30, 2007.

E. Kaptan

We adjusted the reported cost of raw materials to include import duties that were not collected by the Turkish government due to the subsequent re–exportation of the material and the claimed duty drawback adjustment. For further discussion of these adjustments, see the Memorandum from Trinette Boyd to Neal Halper entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Kaptan Demir Celik Endustrisi ve Ticaret A.S. and Kaptan Metal Dis Ticaret ve Nakliyat A.S.," dated April 30, 2007.

F. Kroman

1. We adjusted the reported cost of raw materials to include import duties that were not collected by the Turkish government due to the subsequent re–exportation of the material and the claimed duty drawback adjustment.
2. We adjusted the net financial expense rate to: (1) exclude offsets for investment–related gains and losses by adding them to the reported net interest expense; and, (2) correct mathematical errors contained in Kroman's calculation.

For further discussion of these adjustments, see the Memorandum from Frederick Mines to Neal Halper entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Kroman Celik Sanayii A.S.and Yucelboru Ihracat Ithalat ve Pazarlama A.S.," dated April 30, 2007.

2. Test of Home Market Sales Prices

We compared the weighted–average COP figures to home market prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP. On a product–specific basis, we compared the COP to home market prices, less any applicable movement charges, selling expenses, and packing expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: 1) in substantial quantities within an extended period of time; and 2) at prices which permitted the recovery of all costs within a reasonable period of time. *See* sections 773(b)(1)(A) and (B) of the Act.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, we determined that sales of that model were made in "substantial quantities" within an extended period of time (as defined in section 773(b)(2)(B) of the Act), in accordance with section 773(b)(2)(C)(i) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded these below–cost sales for Diler, Ekinciler, Habas, Kaptan, and Kroman, and used the remaining sales as the basis for determining NV, in accordance with section 773(a)(1) of the Act.

D. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as EP. The NV LOT is that of the starting–price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, G&A expenses, and profit. For EP, the U.S. LOT is also the level of the starting–price sale, which is usually from the exporter to the unaffiliated U.S. customer.

To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison–market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the

LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

All the respondents in this review claimed that they sold rebar at a single LOT in their home and U.S. markets. Five of the respondents (Diler, Ekinciler, Habas, Kaptan, and Kroman) reported that they sold rebar directly to various categories of customers in the home market, while the remaining company (Colakoglu) reported that it made both direct sales and sales through affiliated resellers to various categories of customers in the home market. Regarding U.S. sales, all respondents reported only EP sales to the United States to a single customer category (*i.e.*, unaffiliated traders). Similar to their home market channels of distribution, five of these respondents reported direct sales to U.S. customers, while one respondent (Colakoglu) reported that it made all of its U.S. sales through an affiliated party in the United States. Regarding these latter sales, we have classified them as EP transactions, in accordance with our practice, because evidence on the record demonstrates that: (1) all significant selling activities related to these sales (*e.g.*, price negotiations, invoicing) were conducted by Colakoglu personnel in Turkey; (2) the only selling functions provided by Colakoglu employees on behalf of the affiliated party include certain import–related expenses; and (3) this affiliated party has no physical location or employees in the United States. *See 04–05 Preliminary Results*, 71 FR at 26461, unchanged in the final results.

To determine whether sales to any of these customer categories were made at different LOTs, we examined the stages in the marketing process and selling functions along the chain of distribution for each of these respondents. Regarding home market sales, each of the respondents reported that it performed identical selling functions across customer categories in the home market. After analyzing the data on the record with respect to these functions, we find that the respondents performed the same selling functions for their home market customers, regardless of customer category or channel of distribution. Regarding Colakoglu, although it made direct sales and sales through its affiliated resellers in the home market, we find that there is one home market LOT because: 1) the resellers do not have separate locations apart from Colakoglu's offices; and 2) all selling activities related to home market sales made by the affiliated resellers are performed by Colakoglu personnel. Therefore, we find that Colakoglu does not perform an additional layer of selling functions for the home market sales through its affiliated resellers. Accordingly, we find that all of the respondents made all sales at a single marketing stage (*i.e.*, at one LOT) in the home market.

Regarding U.S. sales, each of the respondents reported that it only made sales to one customer category through one channel of distribution in the U.S. market and, thus, identical selling functions were performed for all sales. Therefore, after analyzing the data on the record with respect to these functions, we find that the respondents made all sales at a single marketing stage (*i.e.*, one LOT) in the U.S. market.

Although each of the respondents provided certain additional services for U.S. sales and not home market sales, we did not find these differences to be material selling function distinctions significant enough to warrant a separate LOT for any respondent. Therefore, after analyzing the selling functions performed in each market, we find that the distinctions in selling functions are not material and thus, that the home market and U.S. LOTs are the same. Accordingly, we determined that sales in the U.S. and home markets during the POR for each respondent were made at the same LOT, and as a result, no LOT adjustment is warranted for any of the respondents.

E. Calculation of Normal Value

1. Colakoglu

We based NV on the starting prices to home market customers. For those home market sales negotiated in U.S. dollars, we used the U.S.-dollar price, rather than the Turkish lira (YTL) price adjusted for *kur farki* (*i.e.*, an adjustment to the YTL invoice price to account for the difference between the estimated and actual YTL value on the date of payment), because the only price agreed upon was a U.S.-dollar price, which remained unchanged. The buyer merely paid the YTL–equivalent amount at the time of payment. This treatment is consistent with our treatment of these transactions in the most recently completed segment of this proceeding. *See 04–05 Preliminary Results*, 71 FR at 26461, unchanged in the final results. Where appropriate, we made deductions from the starting price for foreign inland freight expenses, in accordance with section 773(a)(6)(B) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made circumstance–of-sale adjustments for credit expenses (offset by interest revenue), bank charges, exporter association fees, and commissions. Regarding commissions, Colakoglu incurred commissions only in relation to U.S. sales. Therefore, pursuant to 19 CFR 351.410(e), we offset U.S. commissions by the lesser of the commission amount or home market indirect selling expenses. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Where appropriate, we made an adjustment to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411(a). We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise. See 19 CFR 351.411(b).

2. Diler

We based NV on the starting prices to home market customers. For those home market sales negotiated in U.S. dollars, we used the U.S.-dollar price, rather than the YTL price adjusted for *kur farki*, because the only price agreed upon was a U.S.-dollar price, which remained unchanged. For further discussion, see the "Colakoglu" section above. Where appropriate, we made deductions from the starting price for foreign inland freight expenses, in accordance with section 773(a)(6)(B) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made circumstance–of-sale adjustments for credit expenses (offset by interest revenue), bank fees, and exporter association fees. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(B)(i) of the Act.

Where appropriate, we made an adjustment to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411(a). We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise. *See* 19 CFR 351.411(b).

3. Ekinciler

We based NV on the starting prices to home market customers. For those home market sales negotiated in U.S. dollars, we used the U.S.-dollar price, rather than the YTL price adjusted for *kur farki*, because the only price agreed upon was a U.S.-dollar price, which remained unchanged. For further discussion, see the "Colakoglu" section above. Where appropriate, we made deductions from the starting price for billing adjustments. In addition, where appropriate, we made deductions for

foreign inland freight expenses, in accordance with section 773(a)(6)(B) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made circumstance–of-sale adjustments for credit expenses, bank charges, and exporter association fees. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Where appropriate, we made an adjustment to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411(a). We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise. *See* 19 CFR 351.411(b).

4. Habas

We based NV on the starting prices to home market customers. For those home market sales negotiated in U.S. dollars, we used the U.S.-dollar price, rather than the YTL price adjusted for *kur farki*, because the only price agreed upon was a U.S.-dollar price, which remained unchanged. For further discussion, see the "Colakoglu" section above.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made circumstance–of-sale adjustments for credit expenses, bank charges, and exporter association fees. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Where appropriate, we made an adjustment to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411(a). We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise. *See* 19 CFR 351.411(b).

5. Kaptan

We based NV on the starting prices to home market customers. Where appropriate, we made deductions from the starting price for foreign inland freight expenses, in accordance with section 773(a)(6)(B) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made circumstance–of-sale adjustments for credit expenses, bank fees, exporter association fees, and commissions. Regarding commissions, Kaptan incurred commissions only in relation to U.S. sales. Therefore, pursuant to 19 CFR 351.410(e), we offset U.S. commissions by the lesser of the commission amount or home market indirect selling expenses. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Where appropriate, we made an adjustment to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411(a). We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise. *See* 19 CFR 351.411(b).

6. Kroman

We based NV on the starting prices to home market customers. For those home market sales negotiated in U.S. dollars, we used the U.S.-dollar price, rather than the YTL price adjusted for *kur farki*, because the only price agreed upon was a U.S.-dollar price, which remained unchanged. For further discussion, see the "Colakoglu" section above. Where appropriate, we made deductions from the starting price for billing adjustments. In addition, where appropriate, we made deductions from the starting price for foreign inland freight expenses, in accordance with section 773(a)(6)(B) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made circumstance–of-sale adjustments for credit expenses and exporter association fees. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(B)(i) of the Act.

Where appropriate, we made an adjustment to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411(a). We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise. *See* 19 CFR 351.411(b).

Currency Conversion

We made currency conversions into U.S. dollars pursuant to section 773A(a) of the Act and 19 CFR 351.415. Although the Department's preferred source for daily exchange rates is the Federal Reserve Bank, the Federal Reserve Bank does not track or publish exchange rates for Turkish Lira. Therefore, we made currency conversions based on exchange rates from the Dow Jones Reuters Business Interactive LLC (trading as Factiva).

Preliminary Results of the Review

We preliminarily determine that the following margins exist for the respondents during the period April 1, 2005, through March 31, 2006:

Manufacturer/Producer/Exporter	Margin Percentage
Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret A.S.	0.13 (*de minimis*)
Diler Demir Celik Endustrisi ve Ticaret A.S./ Yazici Demir Celik Sanayi ve Turizm Ticaret A.S./ Diler Dis Ticaret A.S.	0.16 (*de minimis*)
Ekinciler Demir ve Celik Sanayi A.S./ Ekinciler Dis Ticaret A.S.	3.70
Habas Sinai ve Tibbi Gazlar Istithsal Endustrisi A.S.	0.22 (*de minimis*)
Kaptan Demir Celik Endustrisi ve Ticaret A.S./ Kaptan Metal Dis Ticaret ve Nakliyat A.S.	0.00
Kroman Celik Sanayii A.S./ Yucelboru Ihracat Ithalat ve Pazarlama A.S.	0.00

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and, (3) a table of authorities. In addition, we note that we will provide interested parties with an opportunity to submit comments pertaining to our preliminary conclusions on the Competition Board's report once such conclusions are reached.

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. The Department will issue the final results of the administrative and new shipper reviews, 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

Upon completion of the administrative and new shipper reviews, 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 appraisement instructions for the companies subject to these reviews directly to CBP 15 days after the date of publication of the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), for all sales made by Colakoglu, Habas, Kaptan, and Kroman, as well as for certain sales made by Ekinciler, because we have the reported entered value of the U.S. sales, we have calculated importer–specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

Regarding all of Diler's and certain of Ekinciler's sales, we note that these companies did not report the entered value for the U.S. sales in question. Accordingly, we have calculated importer–specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer–specific *ad valorem* ratios based on the estimated entered value.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by these reviews if any importer–specific assessment rate calculated in the final results of these reviews is above *de minimis* (*i.e.*, at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). *See* 19 CFR 351.106(c)(1).

We are preliminarily revoking the order with respect to Colakoglu's and Diler's exports of subject merchandise. If these revocations become final, we will instruct CBP to terminate the suspension of liquidation for exports of such merchandise entered, or withdrawn from warehouse, for consumption on or after April 1, 2006, and to refund all cash deposits collected.

The final results of these reviews shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

The Department clarified its "automatic assessment" regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these preliminary results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the All–Others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following 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 the administrative and new shipper reviews, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for each specific company listed above will be that established in the final results of these reviews, 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 participating in these reviews, 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 these reviews or the original less–than-fair–value (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 16.06 percent, the All–Others rate established in the LTFV investigation. These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results of review in accordance with sections 751(a)(1), 751(a)(2)(B)(iv), and 777(i)(1) of the Act, as well as 19 CFR 351.214(i), 351.221(b)(4), and 351.222(f)(2)(iv).

Dated: April 30, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–8583 Filed 5–3–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Implementation of the Findings of the WTO Panel in US—Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 23, 2007, the U.S. Trade Representative instructed the Department of Commerce (the Department) to implement its findings under section 129 of the Uruguay Round Agreements Act (URAA) regarding the offsetting of dumped sales with non-dumped sales in investigations involving average-to-average transactions. The Department issued its findings on April 9, 2007, regarding eleven investigations challenged by the European Communities before the World Trade Organization. The Department is now implementing those findings.

DATES: The effective date of these determinations is April 23, 2007.

FOR FURTHER INFORMATION CONTACT: Daniel O'Brien, William Kovatch, or Michael Rill, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–1376, (202) 482–5052, or (202) 482–3058, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 22, 2007, the Department initiated twelve proceedings under section 129 of the URAA to implement the WTO dispute settlement panel's report in United States—Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") (WT/DS294). In each proceeding, the Department recalculated the weighted-average dumping margin from the following antidumping investigations, applying the calculation methodology described in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification; see* 71 FR 77722 (December 27, 2006):

1. Certain Hot-Rolled Carbon Steel from the Netherlands (A–421–807).
2. Stainless Steel Bar From France (A–427–820).
3. Stainless Steel Bar From Germany (A–428–830).
4. Stainless Steel Bar From Italy (A–475–829).
5. Stainless Steel Bar From the United Kingdom (A–412–822).
6. Stainless Steel Wire Rod From Sweden (A–401–806).
7. Stainless Steel Wire Rod From Spain (A–469–807).
8. Stainless Steel Wire Rod From Italy (A–475–820).
9. Certain Stainless Steel Plate in Coils from Belgium (A–423–808).
10. Stainless Steel Sheet and Strip in Coils from Italy (A–475–824).
11. Certain Cut-to-Length Carbon-quality Steel Plate From Italy (A–475–826).
12. Certain Pasta From Italy (A–475–818).

On February 26, 2007, the Department issued its preliminary results and requested comments. After receiving comments and rebuttal comments from the interested parties, the Department issued its Final Results for the Section 129 Determinations in eleven of the twelve proceedings on April 9, 2007.[1]

On April 20, 2007, consistent with section 129(b)(3) of the URAA, the U.S. Trade Representative held consultations with the Department and the appropriate congressional committees with respect to these determinations. On April 23, 2007, in accordance with sections 129(b)(4) and 129(c)(1)(B) of the URAA, the U.S. Trade Representative directed the Department to implement these determinations.

Nature of the Proceedings

Section 129 of the URAA governs the nature and effect of determinations issued by the Department to implement findings by WTO dispute settlement panels and the Appellate Body. Specifically, section 129(b)(2) provides that "notwithstanding any provision of the Tariff Act of 1930," within 180 days of a written request from the U.S. Trade Representative, the Department shall issue a determination that would render its actions not inconsistent with an adverse finding of a WTO panel or the Appellate Body. *See* 19 U.S.C. 3538(b)(2). The Statement of Administrative Action, U.R.A.A., H. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), variously refers to such a determination by the Department as a "new," "second," and "different" determination. *See* SAA at 1025, 1027. After consulting with the Department and the appropriate congressional committees, the U.S. Trade Representative may direct the Department to implement, in whole or in part, the new determination made under section 129. *See* 19 U.S.C. 3538(b)(4). Pursuant to section 129(c), the new determination shall apply with respect to unliquidated entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date on which the U.S. Trade Representative directs the Department to implement the new determination. *See* 19 U.S.C. 3538(c). The new determination is subject to judicial review separate and apart from judicial review of the Department's original determination. *See* 19 U.S.C. 1516a(a)(2)(B)(vii).

Analysis of Comments Received

The issues raised in the case and rebuttal briefs submitted by interested parties to these proceedings are addressed in the Issues and Decision Memorandum for the Final Results of the Section 129 Determinations, from Stephen J. Claeys to David M. Spooner, dated April 9, 2007 (Issues and Decision Memorandum), which is hereby adopted by this notice. The Issues and Decisions Memorandum is on file in the Central Records Unit (CRU), room B–099 of the Department of Commerce main building and can be accessed directly at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Issues and Decisions Memorandum are identical in content. A list of the issues addressed in the Issues and Decisions Memorandum is appended to this notice.

Final Antidumping Margins

The recalculated margins, unchanged from the Preliminary Results for all cases, except the investigation of Stainless Steel Sheet and Strip in Coils from Italy, are as follows:

(1) Certain Hot-Rolled Carbon Steel From the Netherlands

- The margin for Corus, the sole respondent, decreases from 2.59 percent to zero. Since Corus was the only respondent in the investigation, we are now revoking this order effective April 23, 2007 (the effective date).

(2) Stainless Steel Bar From France

- The margin for UGITECH decreases from 3.9 percent to zero. We are now revoking this order for UGITECH effective April 23, 2007 (the effective date).
- The margin for Aubert and Duval S.A. was based on total AFA. This margin does not change as a result of this proceeding.
- Since there are no non-AFA, above *de minimis* margins remaining, pursuant to Department practice, the all others rate is based on a simple average of the zero margins and the AFA margins. Therefore, the all-others rate changes from 3.9 percent to 35.92 percent.

(3) Stainless Steel Bar From Germany

- The margin for BGH decreases from 13.63 percent to 2.59 percent.
- The margin for Einsal decreases from 4.17 percent to *de minimis*. We are now revoking this order for Einsal effective April 23, 2007 (the effective date).
- The margin for Edelstahl Witten-Krefeld GmbH decreases from 15.40 percent to 10.82 percent.
- The margin for Krupp Edelstahlprofile GmbH decreases from 32.32 percent to 31.25 percent.
- The all-others rate changes from 16.96 percent to 15.16 percent.

(4) Stainless Steel Bar From Italy

- The margin for Acciaiera Valbruna S.p.A. decreases from 2.50 percent to

[1] With respect to Stainless Steel Sheet and Strip in Coils from Italy (A–475–824), one interested party made allegations of computational errors in calculating the weighted-average dumping margin. The Department found that there was a reasonable basis to investigate the allegations further, and postponed its decision in that proceeding in order to place additional information on the administrative record, and allow interested parties additional time to comment.

zero. We are now revoking this order for Acciaiera Valbruna S.p.A. effective April 23, 2007 (the effective date).

• The margin for Acciaiera Foroni S.p.A. decreases from 7.07 percent to zero. We are now revoking this order for Acciaiera Foroni S.p.A. effective April 23, 2007 (the effective date).

• Trafilerie Bedini S.r.l. was excluded from the order and that does not change as a result of this proceeding.

• The margin for Cogne Acciai Speciali Srl was based on total AFA. This margin does not change as a result of this proceeding.

• The margin for Rodacciai S.p.A. decreases from 3.83 percent to zero. We are now revoking this order for Rodacciai S.p.A. effective April 23, 2007 (the effective date).

• Since there are no non-AFA above *de minimis* margins remaining, pursuant to Department practice, the all-others rate is based on a simple average of the zero margins and the AFA margins. Therefore, the all-others rate changes from 3.81 percent to 6.60 percent.

(5) Stainless Steel Bar From the United Kingdom

• The margin for Corus Engineering Steels Ltd. decreases from 4.48 percent to zero. We are now revoking this order for Corus Engineering Steels Ltd. effective April 23, 2007 (the effective date).

• Firth Rixon Special Steels Ltd. and Crownridge Stainless Steel Ltd.'s/Valkia Ltd.'s margins were based on total AFA. These margins do not change as a result of this proceeding.

• Since there are no non-AFA above *de minimis* margins remaining, pursuant to Department practice, the all-others rate is based on a simple average of the zero margins and the AFA margins. Therefore, the all-others rate changes from 4.48 percent to 83.85 percent.

(6) Stainless Steel Wire Rod From Sweden

• The margin for Fagersta Stainless AB decreases from 5.71 percent to zero. Since Fagersta Stainless AB was the only respondent in the investigation, we are now revoking this order effective April 23, 2007 (the effective date).

(7) Stainless Steel Wire Rod From Spain

• The margin for Roldan S.A., the sole respondent, decreases from 4.76 percent to 2.71 percent.

• The all-others rate changes from 4.76 percent to 2.71 percent.

(8) Stainless Steel Wire Rod From Italy

• The margin for Cogne Acciai Speciali S.r.l. decreases from 12.73 percent to 11.25 percent.

• Acciaiera Valbruna S.p.A. was excluded from the order and that does not change as a result of this proceeding.

• The all-others rate changes from 12.73 percent to 11.25 percent.

(9) Stainless Steel Plate in Coils From Belgium

• The margin for Ugine & ALZ Belgium (formerly ALZ N.V.), the sole respondent, decreases from 9.84 percent to 8.54 percent.

• The all-others rate changes from 9.84 percent to 8.54 percent.

(10) Certain Cut-To-Length Carbon-Quality Steel Plate Products From Italy

• The margin for Palini and Bertoli S.p.A. decreases from 7.85 percent to 7.64 percent.

• ILVA S.p.A. was excluded from the order and that does not change as a result of this proceeding.

• The all-others rate changes from 7.85 percent to 7.64 percent.

(11) Certain Pasta From Italy

• The margin for Arrighi S.p.A. Industrie Alimentari decreases from 21.34 percent to 20.84 percent.

• The margin for Liguori Pastificio Dal 1820 S.p.A. decreases from 12.41 percent to 12.14 percent.

• The margin for Pastificio Fratelli Pagani S.p.A. decreases from 18.30 percent to 18.23 percent.

• The margin for La Molisana Industrie Alimentari S.p.A. remains at 14.78 percent based on this recalculation.

• De Matteis Agroalimentare S.p.A. and Delverde S.r.l. were excluded from the order and that does not change as a result of this proceeding.

• F.lli De Cecco de Filippo Fara San Martino S.p.A.'s margin was based on total AFA. This margin does not change as a result of this proceeding.

• The all-others rate changes from 12.09 percent to 16.51 percent. We note that Delverde S.r.l.'s margin in the investigation was a component of the all-others rate. However, since Delverde S.r.l. was later revoked from the order as a result of litigation relating to the investigation, its margin is no longer a component of the all others rate. We note also that, for cash deposit purposes, we deduct from the margin of dumping any export subsidies. On that basis, the new cash deposit rate that will be established for all others is 15.45 percent.

Revocations, Cash Deposits and Continuation of the Suspension of Liquidation

On April 23, 2007, in accordance with sections 129(b)(4) and 129(c)(1)(B) of the URAA, the U.S. Trade Representative, after consulting with the Department and Congress, directed the Department to implement these determinations.

With respect to Certain Hot-Rolled Carbon Steel from the Netherlands and Stainless Steel Wire Rod from Sweden, we will instruct U.S. Customs and Border Protection (CBP) to liquidate without regard to antidumping duties entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after April 23, 2007, (the effective date), and to discontinue collection of cash deposits of antidumping duties.

With respect to Stainless Steel Bar from France, we will instruct CBP to liquidate without regard to antidumping duties entries of the subject merchandise manufactured and exported by UGITECH, entered, or withdrawn from warehouse, for consumption on or after April 23, 2007, (the effective date), and to discontinue collection of cash deposits of antidumping duties. We will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from all other exporters or producers. CBP shall continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price. The suspension of liquidation instructions will remain in effect until further notice. The Section 129 Determination all-others rate will be the new cash deposit rate for all exporters of subject merchandise for whom the Department has not calculated an individual rate.

With respect to Stainless Steel Bar from Germany, we will instruct CBP to liquidate without regard to antidumping duties entries of the subject merchandise manufactured and exported by Einsal, entered, or withdrawn from warehouse, for consumption on or after April 23, 2007, (the effective date), and to discontinue collection of cash deposits of antidumping duties. We will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from all other exporters or producers. CBP shall continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price. The suspension of liquidation instructions will remain in effect until further notice. The Section 129 Determination all-others rate will be the new cash deposit rate for all

exporters of subject merchandise for whom the Department has not calculated an individual rate.

With respect to Stainless Steel Bar from Italy, we will instruct CBP to liquidate without regard to antidumping duties entries of the subject merchandise manufactured and exported by Acciaiera Valbruna S.p.A., Acciaiera Foroni S.p.A. and Rodacciai S.p.A., entered, or withdrawn from warehouse, for consumption on or after April 23, 2007, (the effective date), and to discontinue collection of cash deposits of antidumping duties. We will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from all other exporters or producers. CBP shall continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price. The suspension of liquidation instructions will remain in effect until further notice. The Section 129 Determination all-others rate will be the new cash deposit rate for all exporters of subject merchandise for whom the Department has not calculated an individual rate.

With respect to Stainless Steel Bar from the United Kingdom, we will instruct CBP to liquidate without regard to antidumping duties entries of the subject merchandise manufactured and exported by Corus Engineering Steels Ltd., entered, or withdrawn from warehouse, for consumption on or after April 23, 2007, (the effective date), and to discontinue collection of cash deposits of antidumping duties. We will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from all other exporters or producers. CBP shall continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price. The suspension of liquidation instructions will remain in effect until further notice. The Section 129 Determination all-others rate will be the new cash deposit rate for all exporters of subject merchandise for whom the Department has not calculated an individual rate.

With respect to Stainless Steel Wire Rod from Spain, we will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from all exporters or producers. CBP shall continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price. The suspension of liquidation instructions will remain in effect until further notice. The Section 129 Determination all-others rate will be the new cash deposit rate for all exporters of subject merchandise for whom the Department has not calculated an individual rate.

With respect to Stainless Steel Wire Rod from Italy, we will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from all exporters or producers. CBP shall continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price. The suspension of liquidation instructions will remain in effect until further notice. The Section 129 Determination all-others rate will be the new cash deposit rate for all exporters of subject merchandise for whom the Department has not calculated an individual rate.

With respect to Stainless Steel Plate in Coils from Belgium, we will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from all exporters or producers. CBP shall continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price. The suspension of liquidation instructions will remain in effect until further notice. The Section 129 Determination all-others rate will be the new cash deposit rate for all exporters of subject merchandise for whom the Department has not calculated an individual rate.

With respect to Certain Cut-To-Length Carbon-Quality Steel Plate Products from Italy, we will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from all exporters or producers. CBP shall continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price. The suspension of liquidation instructions will remain in effect until further notice. The Section 129 Determination all-others rate will be the new cash deposit rate for all exporters of subject merchandise for whom the Department has not calculated an individual rate.

With respect to Certain Pasta from Italy, we will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from all exporters or producers. CBP shall continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price. The suspension of liquidation instructions will remain in effect until further notice. The Section 129 Determination all-others rate will be the new cash deposit rate for all exporters of subject merchandise for whom the Department has not calculated an individual rate.

The cash deposit rates will remain unchanged for those companies that we are not revoking and whose cash deposit rates since the original investigation have been superseded by administrative reviews.

These Section 129 Determinations are issued and published in accordance with section 129(c)(2)(A) of the URAA.

Dated: April 30, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

Issues Raised in the Issues and Decision Memorandum

Comment 1: Whether the Department Has the Authority to Implement the WTO Appellate Body Decision

Comment 2: Targeted Dumping

Comment 3: Treatment of Unliquidated Entries

Comment 4: Calculation of All-Others Rate

Comment 5: Clerical Error Allegation in the Investigation of Stainless Steel Sheet and Strip in Coils from Italy

Comment 6: Clarification of Valbruna Exporter Name

Comment 7: The Department's Briefing Schedule

[FR Doc. 07–2212 Filed 5–3–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 070419095–7101–01]

NIST Consortium/Consortia for Post-Complementary Metal Oxide Semiconductor (CMOS) Nanoelectronics Research Program; Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that NIST seeks to work with a consortium or consortia to fund basic research in the field of nanoscale electronics focused on developing the next logic switch beyond complementary metal oxide semiconductor (CMOS).

DATES: All applications, paper and electronic, must be received no later that 5 p.m. Daylight Savings Time on June 4, 2007. Late applications will not be reviewed nor considered.

ADDRESSES: Application packages may be obtained by contacting Jason Boehm, National Institute of Standards and Technology, 100 Bureau Drive, Stop 1060, Gaithersburg, MD 20899–1060, phone (301) 975–8678, or by downloading them through Grants.gov. Completed application packages may be

sent to Dr. Jason Boehm, National Institute of Standards and Technology, 100 Bureau Drive, Stop 1060, Gaithersburg, MD 20899–1060 or submitted to Grants.gov.

FOR FURTHER INFORMATION CONTACT: For complete information about this program and instructions for applying by paper or electronically, read the Federal Funding Opportunity (FFO) Notice at *http://www.grants.gov.* A paper copy of the FFO may be obtained by calling (301) 975–6328. Questions about the program should be addressed to: Dr. Jason Boehm, National Institute of Standards and Technology, 100 Bureau Drive, Stop 1060, Gaithersburg, MD 20899–1060, (301) 975–8678, *Jason.boehm@nist.gov.* Technical questions should be addressed to: Dr. Stephen Knight, Electronics and Electrical Engineering Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8101, Gaithersburg, MD 20899–8101, (301) 975–2871, *Stephen.knight@nist.gov.* Grants Administration questions should be addressed to: Hope Snowden, Grants and Agreements Management Division, National Institute of Standards and Technology, 100 Bureau Drive, Stop 1650; Gaithersburg, MD 20899–1650; Tel: (301) 975–6002, *hope.snowden@nist.gov.* For assistance with using Grants.gov contact *support@grants.gov.*

SUPPLEMENTARY INFORMATION: *Catalog of Federal Domestic Assistance Name and Number:* Measurement and Engineering Research and Standards—11.609.

Program Description: The National Institute of Standards and Technology (NIST) seeks research and development (R&D) partnerships that promote directed basic research at universities focused on the long-term research needs of industry in specific technological sectors important for U.S. economic competitiveness. NIST seeks to support a program of one or more projects that involves an industry-led partnership that can include commercial, academic, non-profit, and/or government organizations to address the technical challenges highlighted in the International Technology Roadmap for Semiconductors (ITRS) roadmap, including the characterization and measurement issues inherent in the use of nanoscale electronics to develop the next logic switch beyond complementary metal oxide semiconductor (CMOS) technology. The program is expected to leverage Federal financial support with that of other partners from industry to fund research at universities. Through the formation of a formal competitive process within a partnership (hereinafter called "the consortium"), a funded consortium is expected to create a process for the review, selection, award and monitoring of research awards to universities to be made by the consortium in support of addressing the technical challenges associated with nanoscale electronics and the development of the next logic switch beyond CMOS technology.

Funding Availability: Proposals will be considered for cooperative agreements with durations up to five years subject to the availability of funds, satisfactory progress, and the continuing relevance to national and NIST priorities. Applicants should submit scopes of work and budgets for each proposed project year. The anticipated level of funding is potentially up to $3 million per year. NIST will determine whether to fund one award for the full amount; to divide funds into multiple awards; or not to select any proposal for funding, upon completing the selection process described in this notice. One award is likely.

Statutory Authority: 15 U.S.C. Sec. 3704(c)(11) and (12), and Sec. 3706.

Eligibility: The NIST Consortium/Consortia for Post-CMOS Nanoelectronics Research Program is open to any industry-led consortium consisting of any number of commercial organizations; institutions of higher education; nonprofit organizations; and/or units of State, local, and/or Indian tribal governments. Tax exempt organizations formed under 26 U.S.C. section 501(c)(4) are ineligible for this program if they engage in lobbying as defined in the Lobbying Disclosure Act of 1995, 2 U.S.C. sections 1601–1607.

The managing entity of the consortium must be a legal entity based in the United States.

Review and Selection Process: All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive to the scope of the stated program objectives. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for record keeping purposes and destroy all other copies.

Responsive proposals will be evaluated by an independent, objective panel composed of professionally and technically qualified NIST employees using the evaluation criteria in this notice. The reviewers will reach a consensus score resulting in a rank order of applicants.

The Director of the NIST Program Office, acting as the Selecting Official, will make the award selection. In making the award selection, the Selecting Official will take into consideration the panels' technical evaluation. The Selecting Official may choose a proposal out of rank order based upon one or more of the following factors: (1) Availability of funds, (2) Redundancy, (3) Program objectives described in the Funding Opportunity Description section of the Federal Funding Opportunity Notice for this program, and (4) Logistical concerns that would be detrimental to the success or timely completion of the proposal objectives. Therefore, the highest scoring proposal(s) may not necessarily be selected for an award. If an award is made to an applicant that deviates from the scores of the reviewers, the Selecting Official shall justify the selection in writing based on selection factors described above. The Selecting Official may select all, none, or some of the applications for funding.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, whether the application furthers the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The award decision of the Grants Officer is final. Applicants should allow up to 90 days processing time.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: For the NIST Consortia for Post-CMOS Nanoelectronics Research Program, proposals will be evaluated upon the following three equally weighted criteria:

Composition of Consortium and Technical Expertise: Proposals must provide a detailed description of the consortium. The breadth of the consortium in terms of the involvement of multiple industry partners, institutions of higher learning, non-profit organizations, and/or the participation of State and/or local governments will be evaluated. The proposal must illustrate the technical

expertise of the consortium members relevant to the application of nanoscale electronics towards the development of fundamentally new approaches to circumvent the inherent thermal limitations for switches based on charge transfer to research on nanoscale electronics.

Support for Research: Proposals must provide a detailed description of resources that the consortium is willing to apply towards research on post-CMOS nanoelectronics. Proposals must detail the nature of the 25% or more recipient contribution. The total amount of recipient contribution and its application to R&D will be evaluated. For example, proposals that demonstrate support for R&D in terms of (in order of priority) direct grants for research, salary support for scientists, or access to equipment will receive a higher ranking than proposals that count overhead or other administrative costs as a part of the consortium's contributions.

Quality of Proposal: Proposals will be evaluated on the breadth and quality of the process used to implement the program. Proposals should describe how the consortium will manage the funds to support R&D in the area of post-CMOS nanoelectronics. Specifically, proposals must describe: how the availability of funds will be announced, who is eligible to receive funding, how proposals will be evaluated in terms of merit and relevance to industry needs, a willingness to fund research on multiple alternative state variables, mechanisms for avoiding conflict of interest, and plans and metrics for evaluating the outputs of the funded proposals. If the proposed consortium contains university members, a university consortium member may not be involved in selecting itself for a subaward. If the consortium contains university members and non-consortium-member universities are eligible for subawards, the proposal must describe how the consortium will fairly evaluate research proposals from university researchers outside the original membership of the consortium.

Cost Share Requirements: The Consortium members must provide a minimum of a 25 percent match of NIST funds.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) is applicable to this notice. On the form SF–424, the applicant's 9-digit Dun and Bradstreet Data Universal Numbering System (DUNS) number must be entered in the Applicant Identifier block (68 FR 38402).

Collaborations with NIST Employees: All applications should include a description of any work proposed to be performed by an entity other than the applicant, and the cost of such work should ordinarily be included in the budget.

If an applicant proposes collaboration with NIST, the statement of work should include a statement of this intention, a description of the collaboration, and prominently identify the NIST employee(s) involved, if known. Any collaboration by a NIST employee must be approved by appropriate NIST management and is at the sole discretion of NIST. Prior to beginning the merit review process, NIST will verify the approval of the proposed collaboration. Any unapproved collaboration will be stricken from the proposal prior to the merit review.

Use of NIST Intellectual Property: If the applicant anticipates using any NIST-owned intellectual property to carry out the work proposed, the applicant should identify such intellectual property. This information will be used to ensure that no NIST employee involved in the development of the intellectual property will participate in the review process for that competition. In addition, if the applicant intends to use NIST-owned intellectual property, the applicant must comply with all statutes and regulations governing the licensing of Federal government patents and inventions, described at 35 U.S.C. sec. 200–212, 37 CFR part 401, 15 CFR 14.36, and in section B.20 of the Department of Commerce Pre-Award Notification Requirements published on December 30, 2004 (69 FR 78389). Questions about these requirements may be directed to the Counsel for NIST, 301–975–2803.

Any use of NIST-owned intellectual property by a proposer is at the sole discretion of NIST and will be negotiated on a case-by-case basis if a project is deemed meritorious. The applicant should indicate within the statement of work whether it already has a license to use such intellectual property or whether it intends to seek one.

If any inventions made in whole or in part by a NIST employee arise in the course of an award made pursuant to this notice, the United States government may retain its ownership rights in any such invention. Licensing or other disposition of NIST's rights in such inventions will be determined solely by NIST, and include the possibility of NIST putting the intellectual property into the public domain.

Collaborations Making Use of Federal Facilities: All applications should include a description of any work proposed to be performed using Federal Facilities. If an applicant proposes use of NIST facilities, the statement of work should include a statement of this intention and a description of the facilities. Any use of NIST facilities must be approved by appropriate NIST management and is at the sole discretion of NIST. Prior to beginning the merit review process, NIST will verify the availability of the facilities and approval of the proposed usage. Any unapproved facility use will be stricken from the proposal prior to the merit review. Examples of some facilities that may be available for collaborations are listed on the NIST Technology Services Web site, *http://ts.nist.gov/*.

Initial Screening of all Applications: All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive to the scope of the stated program objectives. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for record keeping purposes. The remaining copies will be destroyed.

Paperwork Reduction Act: The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Research Projects Involving Human Subjects, Human Tissue, Data or Recordings Involving Human Subjects: Any proposal that includes research involving human subjects, human tissue, data or recordings involving human subjects must meet the requirements of the Common Rule for the Protection of Human Subjects, codified for the Department of Commerce at 15 CFR part 27. In

addition, any proposal that includes research on these topics must be in compliance with any statutory requirements imposed upon the Department of Health and Human Services (DHHS) and other federal agencies regarding these topics, all regulatory policies and guidance adopted by DHHS, FDA, and other Federal agencies on these topics, and all Presidential statements of policy on these topics.

NIST will accept the submission of human subjects protocols that have been approved by Institutional Review Boards (IRBs) possessing a current registration filed with DHHS and to be performed by institutions possessing a current, valid Federal-wide Assurance (FWA) from DHHS. NIST will not issue a single project assurance (SPA) for any human subjects protocol proposed to NIST.

On August 9, 2001, the President announced his decision to allow Federal funds to be used for research on existing human embryonic stem cell lines as long as prior to his announcement (1) The derivation process (which commences with the removal of the inner cell mass from the blastocyst) had already been initiated and (2) the embryo from which the stem cell line was derived no longer had the possibility of development as a human being. NIST will follow guidance issued by the National Institutes of Health at *http://ohrp.osophs.dhhs.gov/humansubjects/guidance/stemcell.pdf* for funding such research.

Research Projects Involving Vertebrate Animals: Any proposal that includes research involving vertebrate animals must be in compliance with the National Research Council's "Guide for the Care and Use of Laboratory Animals" which can be obtained from National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20055. In addition, such proposals must meet the requirements of the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), 9 CFR parts 1, 2, and 3, and if appropriate, 21 CFR part 58. These regulations do not apply to proposed research using pre-existing images of animals or to research plans that do not include live animals that are being cared for, euthanized, or used by the project participants to accomplish research goals, teaching, or testing. These regulations also do not apply to obtaining animal materials from commercial processors of animal products or to animal cell lines or tissues from tissue banks.

Limitation of Liability: In no event will NIST or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige the agency to award any specific project or to obligate any available funds. Funding of any award under any program announced in this notice is subject to the availability of funds.

Executive Order 12866: This funding notice was determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Executive Order 12372: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Administrative Procedure Act/Regulatory Flexibility Act: Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: May 1, 2007.

William Jeffrey,

Director, NIST.

[FR Doc. E7–8611 Filed 5–3–07; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050107C]

North 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 North Pacific Fishery Management Council (Council) Observer Advisory Committee will meet in Seattle, WA.

DATES: The meeting will be held on May 21, 2007, from 12:30 p.m. to 5 p.m. and May 22, 2007, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Alaska Fishery Science Center, 7600 Sand Point Way NE, Bldg 4, Room 1055, Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Nicole Kimball, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Committee will review proposed regulatory changes to the existing North Pacific Fishery Groundfish Observer Program and provide recommendations on alternatives and options for analysis.

Special Accommodations

The meeting is 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: May 1, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–8543 Filed 5–3–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050107D]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Aleutian Island (AI) Ecosystem Committee will meet in Seattle, WA.

DATES: The meeting will be held on May 21, 2007, from 1 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE. Bldg 4, Room 2076, Traynor Room, Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The agenda is to discuss the AI Fishery

Ecosystem Plan, and develop recommendations for the Council.

Special Accommodations

The meeting is 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: May 1, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–8545 Filed 5–3–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050107E]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Crab Plan Team will meet in Seattle, WA.

DATES: The meeting will be held on May 22–23, 2007, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Alaska Fishery Science Center, 7600 Sand Point Way NE, Building 4, Traynor Room, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Stram, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The agenda includes the following:

1. Discussion of new Magnuson Stevens Reauthorization Act (MSRA) requirements - Annual Catch Limits and Accountability Measures, implications for the Crab Fishery Management Plan;
2. Review of draft Crab Overfishing Definition Assessment - review new alternatives and option, approval of document;
3. Review of 2006/07 Bering Sea Aleutian Island Crab fisheries;
4. Overview 2006 summer research plans/schedules;
5. Review of Aleutian Island Fishery Ecosystem plan;
6. Review stock assessment models;
7. Review and approve guidelines for external stock assessment reviews;
8. Review Bering Sea Crab Essential Fish Habitat measures considered by Council;
9. Discuss Stock Assessment Fishery Evaluation and other reporting issues;
10. Review of Crab Research Priorities; and
11. Other issues as needed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified 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 Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: May 1, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–8546 Filed 5–3–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050107F]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Technical Team Klamath Subcommittee (STTKS) will hold a meeting with members of the Yurok and Hoopa Tribes and additional agency personnel from the National Marine Fisheries Service and the California Department of Fish and Game to initiate planning and assignments for developing an overfishing review for Klamath River fall Chinook (KRFC). This meeting of the STTKS is open to the public.

DATES: The meeting will be held Wednesday, May 23, 2007, from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the California Department of Fish and Game office, located at 474 Aviation Blvd., Suite 130, Santa Rosa, CA 95403.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop a set of topics and assignments to assess the cause of KRFC failing to meet the 35,000 adult spawner conservation objective, and the implication to the long-term productivity of the stock of not meeting that objective, for three consecutive years.

When a salmon stock managed by the Council fails to meet its conservation objective for three consecutive years an overfishing concern is triggered according to the terms of the Pacific Coast Salmon Plan (Salmon Plan). The Salmon Plan requires the Council to direct its Salmon Technical Team to work with relevant agency and tribal personnel to undertake a review of the status of the stock in question and determine if excessive harvest was responsible for the shortfall, if other factors were involved, and the significance of the stock depression with regard to achieving maximum sustainable yield.

Although non-emergency issues not contained in the meeting agenda may come before the STTKS for discussion, those issues may not be the subject of formal action during this 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 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 5 days prior to the meeting date.

Dated: May 1, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–8544 Filed 5–3–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2007–OS–0042]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Office of the Secretary of Defense is deleting a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 4, 2007 unless comments are received which result in a contrary determination.

ADDRESSES: DIA Privacy Act Compliance Officer, DAN 1C, 200 McDill Blvd, Washington, DC 20340.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The Defense Intelligence Agency proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: April 30, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

LDIA 05–0004.

SYSTEM NAME:

AVUE Technologies Position Management, Recruitment, Retention and Staffing Module (PMRRS) (June 14, 2006, 71 FR 34317)

REASON:

Information is no longer collected or maintained by AVUE (Contractor). The information collected is being maintained in a system of records notice LDIA 05–0001, Human Resources Management System (HRMS) (November 25, 2005, 70 FR 71099).

[FR Doc. 07–2196 Filed 5–3–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2006–OS–0223]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Logistics Agency is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on June 4, 2007 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 30, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.11 DMDC

SYSTEM NAME:

Federal Creditor Agency Debt Collection Data Base (August 3, 1999, 64 FR 42101).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete second paragraph.

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

Written requests for information should contain the full name, Social Security Number (SSN), current address and telephone number of the individual requesting information."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221."

* * * * *

S322.11 DMDC

SYSTEM NAME:

Federal Creditor Agency Debt Collection Data Base.

SYSTEM LOCATION:

Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense officers and enlisted personnel, members of reserve and guard components, retired military personnel. All Federal-wide civilian employees and retirees and postal workers covered by the civil service retirement system. Individuals identified by Federal creditor agencies as delinquent in repayment of debts owed to the U.S. Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), debt principal amount, interest and penalty amount, if any, debt reason, debt status, demographic information such as grade or rank, sex, date of birth, duty and home address, and various dates identifying the status changes occurring in the debt collection process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Debt Collection Act of 1982 (Pub. L. 97–365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134); 5 U.S.C. 5514, Installment Deduction of Indebtedness; 31 U.S.C. 3711, Collection and Compromise; 31 U.S.C. 3716, Administrative Offset; 10 U.S.C. 136; 4 CFR 101.1–105.5, Federal Claims Collection Standards; 5 CFR 550.1101–1108, Collection by Offset from Indebted Government Employees; Guidelines on the Relationship Between the Privacy Act of 1974 and the Debt Collection Act of 1982, March 30, 1993 (48 FR 15556, April, 1983); the Interagency Agreement for Federal Salary Offset Initiative (Office of Management and Budget, Department of the Treasury, Office of Personnel Management and the Department of Defense, April 1987); and Office of Management and Budget Guidelines (54 FR 52818, June 19, 1989) interpreting the provisions of the Privacy Act (5 U.S.C. 552a) pertaining to computer matching; and E.O. 9397 (SSN).

PURPOSE(S):

The primary purpose for the establishment of this system of records is to maintain a computer data base permitting computer matching in compliance with the Privacy Act of 1974 (5 U.S.C. 552a) as amended; to assist and implement debt collection efforts by Federal creditor agencies under the Debt Collection Act of 1982; to identify and locate individual debtors; to increase the efficiency of U.S. Government-wide efforts to collect debts owed the U.S. Government; to provide a centralized Federal data bank for computer matching of Federal employment records with delinquent debt records furnished by Federal credital agencies under an Interagency agreement sponsored and monitored by the Department of the Treasury and the Office of Management and Budget; and to identify and locate employees or beneficiaries who are receiving Federal salaries or other benefit payments and indebted to the creditor agency in order to recoup the debt either through voluntary repayment or by administrative or salary offset procedures established by law.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES: IN ADDITION TO THOSE DISCLOSURES GENERALLY PERMITTED UNDER 5 U.S.C. 552A(B) OF THE PRIVACY ACT, THESE RECORDS OR INFORMATION CONTAINED THEREIN MAY SPECIFICALLY BE DISCLOSED OUTSIDE THE DOD AS A ROUTINE USE PURSUANT TO 5 U.S.C. 552A(B)(3) AS FOLLOWS:

Individual's name, Social Security Number, Federal agency or military service, category of employees, Federal salary or benefit payments, record of debts and current work or home address and any other appropriate demographic data to a Federal creditor agency for the purpose of contacting the debtor to obtain voluntary repayment and, if necessary, to initiate any administrative or salary offset measures to recover the debt.

To the Office of Finance of the U.S. House of Representatives and the Disbursing Office of the U.S. Senate, records of individual indebtedness from this system of records consisting of individual name, Social Security Number and amount, to be used to identify House and Senate members and their employees indebted to the Federal government for the purpose of collecting the debts.

The DOD "Blanket Routine Uses" apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic computer tape.

RETRIEVABILITY:

Records are retrieved by the individual's name and Social Security Number from a computerized index.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted by the use of locks, guards, and administrative procedures. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL

Records are erased within six months after each match cycle.

SYSTEM MANAGER(S) AND ADDRESS

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

Written requests for information should contain the full name, Social Security Number, current address and telephone number of the individual requesting information.

CONTESTING RECORD PROCEDURES

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained for the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES

Federal creditor agencies, the Office of Personnel Management and DoD personnel, and finance centers.

EXEMPTIONS CLAIMED FOR THE SYSTEM

None.

[FR Doc. 07–2197 Filed 5–3–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of Secretary of Defense

[DoD–2006–OS–0224]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to add a new system of records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on June 4, 2007 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279–8000.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 24, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated December 12, 2000, 65 FR 239.

Dated: April 30, 2007.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

T7225

SYSTEM NAME:

Integrated Accounts Payable System (IAPS).

SYSTEM LOCATION:

Defense Information Systems Agency, Defense Enterprise Computing Center, 7879 Wardleigh Road, Hill Air Force Base, Ogden, Utah 84058–5997.

Defense Finance and Accounting Service—Denver, 6760 E. Irvington Place, Denver, Colorado 80279–8000.

Defense Finance and Accounting Service—Japan, Building 206, Unit 5220, APO AP 96328–5220.

Defense Finance and Accounting Service—Columbus, 3990 East Broad Street, Columbus, Ohio 43213–1152.

Defense Finance and Accounting Service—Limestone, 27 Arkansas Road, Limestone, Maine 04751–1500.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD civilians, Air Force Active Duty and Reserve personnel, Air National Guard members, retired military members, vendors, and private citizens.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, address, Social Security Number (SSN), bank transit routing number, and bank account number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 31 U.S.C. Chapters 37 and 39, Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R, Vol. 10; and E.O. 9397 (SSN).

PURPOSE(S):

The system will be used to generate payment vouchers for claims, awards, personal expenditures, or other entitlements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the DoD compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Papers records in file folders and electronic storage media.

RETRIEVABILITY:

Name and Social Security Number (SSN).

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for a need-to-know. Access to computerized data is restricted by passwords, which are changed periodically according to agency security policy.

RETENTION AND DISPOSAL:

Records may be temporary in nature and destroyed when actions are completed, superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll or fiscal year, and destroyed up to 6 years and 3 months after cutoff. Records are destroyed by degaussing, burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager, Defense Finance and Accounting Service–Denver, Information and Technology Systems Management Directorate, 6760 E. Irvington Place, Denver, CO 80279–8000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Requests should contain individual's full name, Social Security Number (SSN), current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Requests should contain individual's full name, Social Security Number (SSN), current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/

Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

Individual and other DoD Components such as Defense Security Service and the National Geospatial-Intelligence Agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 07–2199 Filed 5–3–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability

AGENCY: Department of the Navy, DoD.

ACTION: Notice of availability.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality regulations (40 CFR parts 1500–1508), implementing procedural provisions of NEPA, the Department of the Navy (DON) gives notice that a Finding of No Significant Impact (FONSI) has been issued and is available for Expeditionary Strike Group Composite Training Unit Exercise (ESG COMPUTEX) May/June 2007. In addition, pursuant to Executive Order (EO) 12114, Environmental Effects Abroad of Major Federal Actions, a Finding of No Significant Harm (FONSH) has been issued and is available for ESG COMPUTEX May/June 2007.

DATES: The effective date of availability is May 4, 2007.

ADDRESSES: Electronic copies of the FONSI and FONSH are available for public viewing or downloading at *http://www.navydocuments.com.*

FOR FURTHER INFORMATION CONTACT: Commander, Second Fleet Public Affairs, Commander Phillips 757–443–9822 or visit *http://www.navydocuments.com.*

SUPPLEMENTARY INFORMATION: ESG COMPTUEX (May-June 2007) is a major Navy Atlantic Fleet training exercise proposed to occur in May and June 2007 in the offshore Virginia Capes, Cherry Point, and Charleston Operating Areas (OPAREAs) and adjacent military installations. The purpose of this exercise is to certify naval forces as combat-ready. Activities conducted during the exercise include air-to-ground bombing at land ranges, amphibious landings, mine warfare exercises, gunnery exercises, small craft interdiction operations, maritime interdiction operations, and anti-submarine warfare, including use of mid-frequency active (MFA) sonar.

The FONSI is based on analysis contained in a Comprehensive Environmental Assessment (EA) addressing environmental impacts associated with land-based training for Major Atlantic Fleet Training Exercises on the East and Gulf Coasts of the U.S. The FONSH is based on analysis contained in a Comprehensive Overseas Environmental Assessment (OEA) and Supplement to the Comprehensive OEA (SOEA) for environmental impacts associated with Navy's conduct of major exercise training in offshore operating areas along the East and Gulf Coasts of the U.S. Environmental concerns addressed in the EA included land use, community facilities, coastal zone management, socioeconomics, cultural resources, airspace, air quality, noise, geology, soils, water resources, biological resources, munitions and hazardous materials management, and safety. The OEAs addressed potential impacts to the ocean physical environment, fish and Essential Fish Habitat; sea turtles and marine mammals; seabirds and migratory birds; endangered and threatened species; socioeconomics; and cultural resources. The SOEA included an updated analysis of MFA sonar use and gunnery use associated with ESG COMPTUEX (May–June 2007).

This action includes mitigation measures to reduce impacts to a level that is less than significant. Based on information gathered during preparation of the Major Atlantic Fleet Training Exercise EA and OEA and the SOEA and the evaluation of the nature, scope and intensity of the proposed action, the Navy finds that the conduct of the ESG COMPUTEX (May–June 2007) will not significantly impact or harm the environment and, therefore, an Environmental Impact Statement or Overseas Environmental Impact Statement is not required.

Dated: 1 May 2007.

M. A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7–8572 Filed 5–3–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Revised Deadline for Scoping Comments for the Environmental Impact Statement (EIS)/Overseas Environmental Impact Statement (OEIS) for the Relocation of U.S. Marine Corps Forces to Guam, Enhancement of Infrastructure and Logistic Capabilities, Improvement of Pier/Waterfront Infrastructure for Transient U.S. Navy Nuclear Aircraft Carrier (CVN) at Naval Base Guam, and Placement of a U.S. Army Ballistic Missile Defense (BMD) Task Force in Guam

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Revised Deadline for Scoping Comments for the Environmental Impact Statement (EIS)/Overseas Environmental Impact Statement (OEIS) for the relocation of U.S. Marine Corps forces to Guam, enhancement of infrastructure and logistic capabilities, improvement of pier/waterfront infrastructure for transient U.S. Navy Nuclear Aircraft Carrier (CVN) at Naval Base Guam, and placement of a U.S. Army Ballistic Missile Defense (BMD) Task Force in Guam.

SUMMARY: The Department of the Navy is revising the deadline for Scoping Comments. The Notice of Intent establishing the original scoping period was published in the **Federal Register** on March 07, 2007 (Vol. 72, No. 44, p. 10186). The impacts of Typhoon Kong-Rey necessitates extension of the written public scoping comment deadline. The written public scoping comment deadline, originally scheduled for May 01, 2007 is extended until May 21, 2007.

DATES AND ADDRESSES: The Department of the Navy will accept written comments on the EIS scope postmarked by May 21, 2007. Comments should be mailed to: JGPO, c/o NAVFAC Pacific, 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860–3134, Attention: EV2.

FOR FURTHER INFORMATION CONTACT: Captain Robert Lee, Commander, Navy Region Marianas, PSC 455 Box 152, FPO AP, Guam 96540, telephone 671–339–6156, E-mail at: *Robert.Lee@guam.navy.mil.*

Dated: 1 May 2007.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7–8571 Filed 5–3–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meetings of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DoD.

ACTION: Notice of closed meetings.

SUMMARY: The Naval Research Advisory Committee (NRAC) will meet to discuss classified information from government organizations and proprietary information from commercial organizations. With the exception of participants' registration and introduction/welcoming remarks on Monday, June 18, 2007, all sessions of the meeting will be devoted to briefings, discussions and technical examination of information related to the tactical application of biometric technologies and Lightening the Combat Load of the Individual Marine. Discussions will focus on the exploitation of physical vulnerabilities and the tactical applications of known and emerging technologies. Each session will examine vulnerabilities of individuals and systems, and how the enemy is exploiting these vulnerabilities. The sessions will also include proprietary information regarding technology applications and systems under development in the private sector between competing companies. The sessions will also focus on the assessment of the emerging concepts of operations in each of these areas and evaluate appropriate options in such areas as: training, S&T funding allocation, technology monitoring, and progress assessments; and probable time frames for transformation and implementation. The sessions will also identify, review, and assess challenges with the utilization and fielding of various technology applications.

DATES: The meetings will be held on Monday, June 18, 2007, through Friday, June 22, 2007, from 8 a.m. to 5 p.m.; Monday, June 25, 2007, through Thursday, June 28, 2007, from 8 a.m. to 5 p.m. The sessions open to the public will be held on Monday, June 18, 2007, from 8 a.m. to 9:30 a.m. All other sessions will be closed to the public.

ADDRESSES: The meetings will be held at the Space and Naval Warfare Systems Center, San Diego, CA 92152.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Ellis, Jr., Program Director, Naval Research Advisory Committee, 875 North Randolph Street, Arlington, VA 22203–1995, 703–696–5775.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). With the exception of participants' registration and introduction/welcoming remarks on Monday, June 18, all sessions of the meeting will be devoted to executive sessions that will include discussions and technical examination of information related to biometrics and lightening the load for the individual combat Marine. These briefings and discussions will contain proprietary information and classified information that is specifically authorized under criteria established by Executive Order to be kept Secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The proprietary, classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening these sessions of the meeting. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the public interest requires that these sessions of the meetings be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552b(c)(1) and (4).

Dated: May 1, 2007.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7–8570 Filed 5–3–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

[DoD–USN–2007–0030]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Navy is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 4, 2007 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 30, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N12792–7

SYSTEM NAME:

Drug-Free Workplace Program Records (May 7, 2002, 67 FR 30652).

CHANGES:

SYSTEM NUMBER:

Delete "N12792–7" and replace with "NM12792–7."

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Records are located at the local Navy/Marine Corps activity, local servicing Human Resources Offices, Human Resource Service Center Regional Offices, or the Office of Civilian Human Resources."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Drug Program Manager, Office of Civilian Human Resources, Human Resource Service Center Southwest, 525 B Street, Suite 600, San Diego, CA 92101–4418."

* * * * *

Drug-Free Workplace Program Records.

SYSTEM LOCATION:

Records are located at the local Navy/Marine Corps activity, local servicing Human Resources Offices, Human Resource Service Center Regional Offices, or the Office of Civilian Human Resources.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and applicants for employment with the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records related to selection, notification, testing of employees and applicants, urine specimens, drug test results, collection authentication and chain of custody documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 100–71, 5 U.S.C. 7301; 21 U.S.C. 812 (Schedule of Controlled Substances); and E.O. 12564, Drug-Free Federal Workplace; and Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs; and E.O. 9397 (SSN).

PURPOSE(S):

The system is established to maintain records relating to the selection and testing of Department of the Navy employees, and applicants for employment, for use of illegal drugs and drugs identified in Schedules I and II of 21 U.S.C. 812 (Schedule of Controlled Substances).

The records are also used by the Medical Review Officer; the administrator of any employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating; and supervisory or management officials within the employee's agency having authority to take adverse personnel action against such employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

In order to comply with the provisions of 5 U.S.C. 7301, the DoD 'Blanket Routine Uses' published at the beginning of the Navy's compilation do not apply to this system.

To a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. The results of a drug test of civilian employees may be disclosed only as expressly authorized under 5 U.S.C. 7301. These statutes take precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Records are retrieved by name of employee, applicant for employment, Social Security Number (SSN), specimen I.D. number assigned, or any combination of these.

SAFEGUARDS:

Records will be stored in secure containers, e.g., safes, locked filing cabinets, etc. Urine specimens will be stored in appropriate locked storage facilities. Access to such records and specimens is restricted. Chain-of-custory and other procedural and documentary requirements of Pub. L. 100–71 and the Department of Health and Human Services. Guidelines will be followed in collection of urine samples, conducting drug tests, and processing test results. All information contained in computers is password protected.

RETENTION AND DISPOSAL:

Negative test records are retained for three years and then destroyed by shredding, burning, or erasure in the case of electronic media. Positive or Non-negative test records are permanently retained. Written records and test results together with urine specimens shall be retained until litigation is complete when the employee challenges or appeals adverse actions. Negative urine specimens are disposed of at the end of the test day.

SYSTEM MANAGER(S) AND ADDRESS:

Drug Program Manager, Office of Civilian Human Resources, Human Resources Service Center Southwest, 525 B Street, Suite 600, San Diego, CA 92101–4418.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Commanding Officer/Commander of the DON activity or the servicing human resources office at which they are or were employed, or at which they made application for employment, and for which they provided a urine specimen for drug testing.

Individuals may furnish their full name, Social Security Number (SSN), the title, series, and grade of the position they occupied or applied for when the drug test was conducted, specimen ID number, and the date of the test.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Commanding Officer/Commander of the DON activity or the servicing human resources office at which they are or were employed, or at which they made application for employment, and for which they provided a urine specimen for drug testing.

Individuals may furnish their full name, Social Security Number (SSN), the title, series, and grade of the position they occupied or applied for when the drug test was conducted, specimen ID number, and the date of the test.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records are obtained from the individual to whom the record pertains; DON or contractor employee involved in the selection, notification, and collection of urine from individuals who are tested; DON or contractor laboratories that test urine samples for the presence of illegal drugs, DON or contractor Medical Review Officers; supervisors and managers and other DON officials engaged in administering the Drug-Free Workplace Program; the Civilian Employee Assistance Program; processing adverse actions based on drug test results; and DON or contractor electronic databases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 07–2195 Filed 5–3–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

[DoD–USN–2007–0029]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice of a new system of records.

SUMMARY: The Department of the Navy proposes to add a new system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on June 4, 2007 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on April 24, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: April 30, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01533–2

SYSTEM NAME:

Navy Junior Reserve Officer Training Corps (NJROTC) Payment Reimbursement System.

SYSTEM LOCATION:

NSTC/NJROTC Program (CD211), 250 Dallas Street, Suite A, Pensacola, FL 32508–5268.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military retirees who participate in the NJROTC Instructor Program at selected high schools within the continental United States and various overseas locations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), school/school district name and address, applicable active duty entitlement amounts, and current gross retired pay amounts. Navy's applicable contribution percentage, gross and net contribution percentage, gross and net contribution amounts, and current employment period beginning and closing dates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2031, Junior Reserve Officers' Training Corps, Reserve Officers' Training Corps Program for Secondary Educational Institutions; DoD Instruction 1205.13, Junior Reserve Officers Training Corps Program; DoDFMR Volume 10, Chapter 21, para 2110; OPNAVINST 1533.5A, Naval Junior Reserve Officers Training Corps (NJROTC); and E.O. 9397 (SSN).

PURPOSE(S):

To accomplish payroll computations and the reimbursement portion of the NJROTC Instructor Program; to provide statements and/or reports to each instructor and school/school district; to answer inquiries from instructors, school districts or financial institutions where funds are distributed; to provide information required by an auditor during an audit of the program; and to assist the Department of the Navy with any audit of individual instructor, school/school district.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the school/school district to provide information regarding the instructor's computed minimum instructor pay, and the amount being reimbursed by the Navy.

To the Treasury Department to provide information on check issues and electronic funds transfers.

To the Federal Reserve Banks to distribute payments made through the direct deposit system to financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts.

The "Blanket Routine Uses" published at the beginning of the Navy's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSITION OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Information is retrieved by Instructor Name, Instructor Social Security Number (SSN), School Identification Code, School Name, District Identification Code, District Name, Retired Pay Grade, or by any combination of data elements within the database.

SAFEGUARDS:

As a minimum, records are accessed by person(s) responsible for servicing, and authorized to use, the record system in performance of their official duties and properly screened and cleared for the need-to-know. Additionally, records are stored in locked file cabinets. Access to building controlled through utilization of swipe card. All guests escorted. Access to electronic documents is limited by Common Access Card (CAC) and password protected.

RETENTION AND DISPOSAL:

Magnetic and paper records are maintained for a period of up to 6 years and 3 months from current fiscal year after which they are destroyed at system location. If storage space is unavailable for this period of time, they may be sent to the Regional Records Service Facilities for the retention period. Destruction is by tearing, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Naval Service Training Command, Citizenship Development, 250 Dallas Street, Suite A, Pensacola, FL 32526.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to this system of records should address written inquiries to the Naval Service Training Command, Citizenship Development (NJROTC), 250 Dallas Street, Suite A, Pensacola, FL 32526.

Requests should contain individual's full name, Social Security Number (SSN), duty position and if currently an NJROTC instruction, name of school. If no longer an NJROTC instructor, provide dates of service as an instructor.

The request must be signed, include current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Naval Service Training Command, Citizenship Development (NJROTC), 250 Dallas Street Suite A, Pensacola FL 32508–5268.

Requests should contain individual's full name, Social Security Number (SSN), duty position and if currently an NJROTC instructor, name of school. If no longer an NJROTC instructor, provide dates of service as an instructor.

The request must be signed, include current address and telephone number.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual instructors; school/school district offices; Department of the Navy and the Defense Retiree and Annuitant System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 07–2198 Filed 5–3–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.007, 84.032, 84.033, 84.038, 84.063, 84.069, 84.268, 84.375, and 84.376]

Student Assistance General Provisions, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Leveraging Educational Assistance Partnership, William D. Ford Federal Direct Loan, Academic Competitiveness Grant, and National Science and Mathematics Access To Retain Talent Grant Programs

ACTION: Notice of deadline dates for receipt of applications, reports, and other records for the 2006–2007 award year.

SUMMARY: The Secretary announces deadline dates for the receipt of documents and other information from institutions and applicants for the Federal student aid programs authorized under Title IV of the Higher Education Act of 1965, as amended, for the 2006–2007 award year. The Federal student aid programs include the Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, William D. Ford Federal Direct Loan, Federal Pell Grant, Academic Competitiveness Grant, National Science and Mathematics Access to Retain Talent Grant, and Leveraging Educational Assistance Partnership programs.

These programs, administered by the U.S. Department of Education (Department), provide financial assistance to students attending eligible postsecondary educational institutions to help them pay their educational costs.

Deadline and Submission Dates: See Tables A and B at the end of this notice.

Table A—Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs) by Institutions

Table A provides deadline dates for application processing, including corrections and submission of signatures, submission of verification documents and, for purposes of the Federal Pell Grant, Academic Competitiveness Grant (ACG), and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) programs, receipt by institutions of SARs or ISIRs. We are using only three deadline dates in Table A for the 2006–2007 award year. The single date for the receipt of a Free Application for Federal Student Aid (FAFSA) is July 2, 2007, regardless of the method that the applicant uses to submit the FAFSA. September 17, 2007 is the deadline date for the submission and receipt of a signature page (if required), corrections, changes of addresses or schools, or requests for a duplicate SAR. September 24, 2007 is the deadline date for the submission and receipt of all other documents and materials that are specified in Table A.

Table B—Federal Pell Grant, ACG, and National SMART Grant Programs Submission Dates for Disbursement Information by Institutions

Table B provides the earliest submission and deadline dates for institutions to submit Federal Pell Grant, ACG, and National SMART Grant disbursement records to the Department's Common Origination and Disbursement (COD) System.

In general, an institution must submit Federal Pell Grant, ACG, and National SMART Grant disbursement records no later than 30 days after making a Federal Pell Grant, ACG, and National SMART Grant disbursement or becoming aware of the need to adjust a student's previously reported Federal Pell Grant, ACG, and National SMART Grant disbursement. However, because institutions were not able to submit ACG and National SMART Grant disbursement records until December 16, 2006, we considered institutions to be in compliance with the 30-day disbursement-reporting requirement for those two programs until January 17, 2007.

In accordance with the regulations in 34 CFR 668.164, we consider that Federal Pell Grant, ACG, and National SMART Grant funds are disbursed on the earlier of the date that the institution: (a) Credits those funds to a student's account in the institution's general ledger or any subledger of the general ledger, or (b) pays those funds to a student directly. We consider that Federal Pell Grant, ACG, and National SMART Grant funds are disbursed even if an institution uses its own funds in advance of receiving program funds from the Department. An institution's failure to submit disbursement records within the required 30-day timeframe may result in an audit or program review finding. In addition, the Secretary may initiate an adverse action, such as a fine or other penalty for such failure.

Other Sources for Detailed Information

We publish a detailed discussion of the Federal student aid application process in the following publications:

- *2006–2007 Funding Education Beyond High School.*
- *2006–2007 Counselors and Mentors Handbook.*
- *A Guide to 2006–2007 SARs and ISIRs.*
- *2006–2007 Federal Student Aid Handbook.*

Additional information on the institutional reporting requirements for the Federal Pell Grant, ACG, and National SMART Grant programs is contained in the 2006–2007 *Common Origination and Disbursement (COD) Technical Reference.* You may access this reference by selecting "Software Technical References" under the heading "Publications" at the Information for Financial Aid Professionals Web site at: *www.ifap.ed.gov.*

Applicable Regulations: The following regulations apply: (1) Student Assistance General Provisions, 34 CFR part 668, (2) Federal Pell Grant Program, 34 CFR part 690, and (3) Academic Competitiveness Grant and National Science and Mathematics Access to Retain Talent Grant Programs, 34 CFR part 691.

FOR FURTHER INFORMATION CONTACT: Harold McCullough, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Union Center Plaza, Room 113E1, Washington, DC 20202–5345. Telephone: (202) 377–4030.

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 under **FOR FURTHER INFORMATION CONTACT**.

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

You may also view this document in PDF at the following site: *www.ifap.ed.gov.*

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

Program Authority: 20 U.S.C. 1070a, 1070a–1, 1070b–1070b–4, 1070c–1070c–4, 1071–1087–2, 1087a–1087j, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

BILLING CODE 4000–01–P

Table A. Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs) by Institutions

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date for receipt?
Student	Free Application for Federal Student Aid (FAFSA) on the Web or Renewal FAFSA on the Web	Electronically to the Department's Central Processing System (CPS)	July 2, 2007[1]
	Signature Page (if required)	To the address printed on the signature page	September 17, 2007
Student through an Institution	An electronic original or Renewal FAFSA	Electronically to the Department's CPS	July 2, 2007[1]
Student	A paper original FAFSA	To the address printed on the FAFSA or envelope provided with the form	July 2, 2007
Student	Corrections on the Web with all required electronic signatures	Electronically to the Department's CPS	September 17, 2007[1]
Student	Corrections on the Web needing paper signatures	Electronically to the Department's CPS	September 17, 2007[1]
	Paper signatures for Corrections on the Web	To the address printed on the signature page	September 17, 2007
Student through an Institution	Electronic corrections	Electronically to the Department's CPS	September 17, 2007[1]
Student	Paper corrections using a SAR, including change of mailing and e-mail addresses or institutions	To the address printed on the SAR	September 17, 2007
Student	Change of mailing and e-mail addresses, change of institutions, or requests for a duplicate SAR	To the Federal Student Aid Information Center by calling 1-800-433-3243	September 17, 2007
Student	SAR with an official expected family contribution (EFC) calculated by the Department's CPS (Pell, ACG, and National SMART Grant Only)	To the institution	The earlier of: - The student's last date of enrollment; or - September 24, 2007[2]
Student through CPS	ISIR with an official EFC calculated by the Department's CPS (Pell, ACG, and National SMART Grant Only)	To the institution from the Department's CPS	The earlier of: - The student's last date of enrollment; or - September 24, 2007[2]

Student	Valid SAR (Pell, ACG, and National SMART Grant Only)	To the institution	Except for late disbursements under 34 CFR 668.164(g), the earlier of: - The student's last date of enrollment; or - September 24, 2007[2] For late disbursements, the earlier of: - The timeframes provided in the regulations at 34 CFR 668.164(g)(4)(i); or - September 24, 2007[2]
Student through CPS	Valid ISIR (Pell, ACG, and National SMART Grant Only)	To the institution from the Department's CPS	
Student	Verification documents	To the institution	The earlier of:[3] - 120 days after the student's last date of enrollment; or - September 24, 2007
Student	Valid SAR after verification (For Pell, ACG, and National SMART Grant Only)	To the institution	The earlier of:[4] - 120 days after the student's last date of enrollment; or - September 24, 2007[2]
Student through the Department's CPS	Valid ISIR after verification (For Pell, ACG, and National SMART Grant Only)	To the institution from the Department's CPS	

[1] The deadline for electronic transactions is 11:59 p.m. (Central Time) on the deadline date. Transmissions must be completed and accepted before 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions do not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the rejection.

[2] The date the ISIR/SAR transaction was processed by CPS is considered to be the date the institution received the ISIR or SAR regardless of whether the institution has downloaded the ISIR from its SAIG mailbox or when the student submits the SAR to the institution.

[3] Although the Secretary has set this deadline date for the submission of verification documents, if corrections are required, deadline dates for submission of paper or electronic corrections and, for a Federal Pell Grant, ACG, and National SMART Grant, the submission of a valid SAR or valid ISIR to the institution must still be met. An institution may establish an earlier deadline for the submission of verification documents for purposes of the campus-based programs, the FFEL Program, and the Federal Direct Loan Program.

[4] Students completing verification while no longer enrolled will be paid based on the higher of the two EFCs.

Table B. Federal Pell Grant, ACG, and National SMART Grant Programs Submission Dates for Disbursement Information by Institutions

Who submits?	What is submitted?	Where is it submitted?	What are the earliest disbursement, submission, and deadline dates for receipt?
Institutions	At least one acceptable disbursement record must be submitted for each Federal Pell Grant recipient, ACG recipient, and National SMART Grant recipient at the institution.	To the Common Origination and Disbursement (COD) System using either: - The COD Web site at: www.cod.ed.gov; or - the Student Aid Internet Gateway (SAIG)	Earliest Disbursement Date: July 1, 2006 Earliest Submission Dates: An institution may submit actual or anticipated disbursement information as early as June 21, 2006[1], but actual disbursement information no earlier than: (a) 30 calendar days prior to the disbursement date under the advance payment method; (b) 7 calendar days prior to the disbursement date under the Just-in-Time or Cash Monitoring #1 payment methods; or (c) the date of disbursement under the Reimbursement or Cash Monitoring #2 payment methods. Deadline Submission Dates: Except as provided below, an institution is required to submit disbursement information no later than the earlier of: (a) 30 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data[1]; or (b) October 1, 2007.[2] An institution may submit disbursement information after October 1, 2007, only: (a) For a downward adjustment of a previously reported award or disbursement; (b) based upon a program review or initial audit finding per 34 CFR 690.83 or 691.83; (c) for reporting a late disbursement under 34 CFR 668.164(g); or (d) for reporting disbursements previously blocked as a result of another institution failing to post a downward adjustment.

	Request for administrative relief based on a natural disaster or other unusual circumstances, or an administrative error made by the Department	Via COD Web site at: www.cod.ed.gov or By e-mail to: fsa.administrative.relief@ed.gov	The earlier of: - A date designated by the Secretary after consultation with the institution; or - January 31, 2008
	Request for administrative relief for a student who reenters the institution (1) within 180 days after initially withdrawing and (2) after September 17, 2007[3]	Via COD Web site at: www.cod.ed.gov or By e-mail to: fsa.administrative.relief@ed.gov	The earlier of: - 30 days after the student reenrolls; or - May 1, 2008

[1] For purposes of the ACG and National SMART Grant programs only, an institution was not able to submit disbursement records to the COD System until December 16, 2006. Therefore, an institution was considered in compliance with the 30-day disbursement-reporting requirement until January 17, 2007 for these two programs.

[2] The deadline for electronic transactions is 11:59 p.m. (Eastern Time) on October 1, 2007. Transmissions must be completed and accepted before 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions will not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the rejection.

[3] Applies only to students enrolled in clock-hour and nonterm credit-hour educational programs.

<NOTE><HED>NOTE: <P>The COD System must accept origination data for a student from an institution before it accepts disbursement information from the institution for that student. Institutions may submit origination and disbursement data for a student in the same transmission. However, if the origination data is rejected, the disbursement data is rejected.</NOTE>

[FR Doc. E7–8576 Filed 5–3–07; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF EDUCATION

Notice of Funding of Continuation Grant and Waiver for the Pacific Vocational Educational Improvement Program (PVEIP)

AGENCY: Office of Vocational and Adult Education, Department of Education.

SUMMARY: The Secretary waives the requirements in 34 CFR 75.250 of the Education Department General Administrative Regulations (EDGAR) that generally prohibit project periods exceeding five years and announces the funding of a continuation grant for the PVEIP. This waiver enables the current, single eligible grantee, the Pacific Region Educational Laboratory (PREL), to continue to receive Federal funding beyond the five-year limitation from fiscal years (FYs) 2006 and 2007 appropriations.

EFFECTIVE DATE: This notice is effective June 4, 2007.

FOR FURTHER INFORMATION CONTACT: Laura Karl Messenger, U.S. Department of Education, 400 Maryland Avenue, SW., Room 11028, Potomac Center Plaza, Washington, DC 20202–7241. Telephone (202) 245–7840.

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

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

SUPPLEMENTARY INFORMATION: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, on March 9, 2007, in accordance with section 553(b) of the APA, the Department gave actual notice to the current PVEIP single eligible grantee and its sub-grantees of, and requested comment on, our proposal to waive 34 CFR 75.250 and to fund a continuation grant instead of requiring PREL to submit a new application for a new, one-year grant award. This waiver and continuation grant enable the Secretary to provide additional funds to the current, single eligible grantee for one additional project period, in accordance with the requirements of section 115(b)(1) of the Carl D. Perkins Career and Technical Education Act of 2006, Pub.L. 109–270 (Perkins Act). There are no substantive differences between the actual notice of our proposal and this notice of funding of a continuation grant and waiver. Therefore, all affected parties were provided actual notice of the Department's proposal and an opportunity to comment in lieu of publication of a notice of proposed rulemaking in the **Federal Register**.

The Perkins Act was signed into law on August 12, 2006. The PVEIP is authorized by section 115(b)(1) of the Perkins Act, which states that, for the first fiscal year following the date of enactment, i.e., FY 2007, the Secretary shall award a grant to PREL to make grants for career and technical education and training in Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and that, beginning with the second fiscal year after enactment, the Secretary shall make grants in equal proportions to Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands under section 115(b)(2) from the funds that were previously reserved for PREL.

The PVEIP makes grants to Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, for the purpose of providing direct career and technical educational services, including: (A) Teacher and counselor training and retraining; (B) curriculum development; and (C) the improvement of career and technical education and training programs in secondary schools and institutions of higher education or improving cooperative education programs involving secondary schools and institutions of higher education.

Because the Perkins Act does not make any substantive changes to the purpose of the PVEIP, and because the law specifies that PREL is to receive an award during one additional fiscal year only, we do not believe it would be in the public interest to require PREL to submit a new application for a one-year grant award. The nature of the PVEIP, in which the single eligible applicant, PREL, is defined in the law, allowed us to provide actual notice in lieu of publishing a notice of proposed rulemaking, consistent with section 553(b) of the APA. Pursuant to the requirements of section 553(b) of the APA, and in order to make a timely grant award in FY 2007, on March 9, 2007, we contacted PREL and its sub-grantees directly and provided them actual notice of, and requested their comments on, our proposal to waive 34 CFR 75.250 and fund a continuation grant.

In response to the actual notice of proposed funding of a continuation grant and waiver, and our invitation to comment, two parties submitted comments supporting the proposed waiver and the proposal to fund a continuation grant for the current, single eligible grantee. We did not receive any comments opposing the proposed waiver and proposal to fund a continuation grant, and, therefore, no substantive changes have been made.

The Secretary waives the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years. With this waiver we can continue the PVEIP grant to PREL and award the final funding authorized by the Perkins Act for PREL from the FY 2006 and FY 2007 appropriations, in accordance with the requirements of section 115(b)(1) of the Perkins Act. This waiver of 34 CFR 75.250 means that: (1) The current PVEIP grant will be continued in accordance with § 75.253, and (2) we will not make a new award in FY 2007.

The waiver of 34 CFR 75.250 does not exempt the current PVEIP grantee from the account closing provisions of 31 U.S.C. 1552(a), nor does it extend the availability of funds previously awarded to the current PVEIP grantee. As a result of 31 U.S.C. 1552(a), appropriations available for a limited period may be used for payment of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the Treasury Department and is unavailable for restoration for any purpose.

Regulatory Flexibility Act Certification

The Secretary certifies that this notice of funding of a continuation grant and waiver will not have a significant economic impact on a substantial number of small entities. The only entities that would be affected are the current eligible grantee and the three eligible PVEIP sub-grantees.

Paperwork Reduction Act of 1995

This notice of funding of a continuation grant and waiver does not contain any information collection requirements.

Assessment of Educational Impact

Based on our own review, we have determined that this notice of funding of a continuation grant and waiver does not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number: 84.048B Pacific Vocational Education Improvement Program)

Program Authority: 20 U.S.C. 2325.

Dated: April 30, 2007.

Troy R. Justesen,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. E7–8527 Filed 5–3–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–764–000]

Duke Energy Carolinas, LLC; Notice of Filing

April 30, 2007.

Take notice that on April 30, 2007, Duke Energy Carolina, LLC filed a First Amended and Restated Agreement with Blue Ridge Electric Membership Corporation, dated April 16, 2007, to become effective May 16, 2007.

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*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 7, 2007.

Philis J. Posey,

Deputy Secretary.

[FR Doc. E7–8537 Filed 5–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–073]

Gulf South Pipeline Company, LP; Notice of Negotiated Rate Filing

April 27, 2007.

Take notice that on April 20, 2007, Gulf South Pipeline Company, LP (Gulf South) filed with the Commission an amendment to a negotiated rate letter agreement between Gulf South and Centerpoint Energy Resources Corp. (Centerpoint) to correct a typographical error for the shoulder MDQ in Paragraph 1(b).

Gulf South states that copies of the filing has served copies of this filing upon all parties on the official service list created by the Secretary in this proceeding.

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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8518 Filed 5–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–406–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing and Non-Conforming Service Agreement

April 30, 2007.

Take notice that on April 23, 2007, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fourteenth Revised Sheet No. 478, to become effective June 1, 2007.

National Fuel states that the purpose of this filing is to submit for Commission review and acceptance a non-conforming amendment to a service agreement between National Fuel and Duferco Farrell Corporation. The amendment contains provisions that

deviate from the Form of Service Agreement for Firm Transportation contained in National Fuel's tariff.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Deputy Secretary.

[FR Doc. E7–8534 Filed 5–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–407–000]

OkTex Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 27, 2007.

Take notice that on April 23, 2006, OkTex Pipeline Company (OkTex) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, effective October 1, 2006:

17th Revised Sheet No. 5
6th Revised Sheet No. 5A
4th Revised Sheet No. 5B
3rd Revised Sheet No. 5C

OkTex states that the filing is being made to revise the Annual Charge Adjustment (ACA), to reflect a change in its ACA surcharge from $0.0018 to $0.0016 for the period October 1, 2006 through September 30, 2007. OkTex has been billing the FERC authorized ACA surcharge of $0.0016 since October 1, 2006.

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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8523 Filed 5–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 26, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–47–000.

Applicants: Covanta Waste to Energy Asia Ltd.

Description: Notice of Self-Certification as an Exempt Wholesale Generator of Covanta Waste to Energy Asia Ltd.

Filed Date: 04/25/2007.

Accession Number: 20070425–5027.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 16, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–457–001.

Applicants: E. ON U.S., LLC.

Description: E.ON US, LLC et al submits this letter to transmit the information required in the 3/23/07 deficiency letter.

Filed Date: 04/23/2007.

Accession Number: 20070425–0253.

Comment Date: 5 p.m. Eastern Time on Monday, May 14, 2007.

Docket Numbers: ER07–738–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits a notice of adoption of revised transmission loading relief procedures.

Filed Date: 04/09/2007.

Accession Number: 20070413–0151.

Comment Date: 5 p.m. Eastern Time on Friday, May 4, 2007.

Docket Numbers: ER07–775–000.

Applicants: American Electric Power Service Corp.

Description: The American Electric Power Service Corporation agent for AEP Operating Companies requests acceptance of an Interconnection &

Local Delivery Service Agreement 1578 with Monongahela Power Co.

Filed Date: 04/23/2007.

Accession Number: 20070425–0165.

Comment Date: 5 p.m. Eastern Time on Monday, May 14, 2007.

Docket Numbers: ER97–2846–012.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation dba Progress Energy Florida Inc submits its notice of change in status with respect to PEF generating capacity pursuant to FERC's Order 652.

Filed Date: 04/23/2007.

Accession Number: 20070425–0160.

Comment Date: 5 p.m. Eastern Time on Monday, May 14, 2007.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC07–49–000.

Applicants: CMS Generation LLC.

Description: Notification of Self-Certification of Foreign Utility Company Status of CMS Generation LLC.

Filed Date: 04/25/2007.

Accession Number: 20070425–5024.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 16, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8555 Filed 5–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 30, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–122–002.

Applicants: Interstate Power & Light Company.

Description: Interstate Power and Light Company submits Substitute First Revised Sheets 1 through 17 of the RES–5 Tariff.

Filed Date: 4/23/2007.

Accession Number: 20070426–0151.

Comment Date: 5 p.m. Eastern Time on Monday, May 14, 2007.

Docket Numbers: ER07–763–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection LLC submits executed interconnection construction service agreement with Forward WindPower, LLC.

Filed Date: 4/19/2007.

Accession Number: 20070426–0159.

Comment Date: 5 p.m. Eastern Time on Thursday, May 10, 2007.

Docket Numbers: ER07–782–000.

Applicants: Entergy Services, Inc.

Description: Entergy Services Inc agent for Entergy Operating Companies submits proposed revisions to Attachments P and V of its Open Access Transmission Tariff, FERC Electric Tariff Second Revised Volume 3.

Filed Date: 4/24/2007.

Accession Number: 20070426–0152.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 15, 2007.

Docket Numbers: ER07–783–000.

Applicants: Cleco Power LLC.

Description: Cleco Power LLC submits executed copies of a Service Agreement for Network Integration Transmission Service w/Louisiana Energy and Power Authority and a Network Operating Agreement etc.

Filed Date: 4/24/2007.

Accession Number: 20070426–0153.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 15, 2007.

Docket Numbers: ER07–784–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc et al submits revisions to Market Rule 1.

Filed Date: 4/24/2007.

Accession Number: 20070426–0154.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 15, 2007.

Docket Numbers: ER07–786–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp submits first revision to the Interconnection and Local Delivery Service Agreement 1427 with City of St Clairsville.

Filed Date: 4/25/2007.

Accession Number: 20070426–0162.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 16, 2007.

Docket Numbers: ER07–787–000.

Applicants: American Electric Power Service Corp.

Description: The American Electric Power Service Corp agent for AEP Operating Companies submits First Revised Interconnection and Local Delivery Service Agreement 1424 w/the Village of Ohio City.

Filed Date: 4/25/2007.

Accession Number: 20070426–0155.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 16, 2007.

Docket Numbers: ER07–788–000.

Applicants: American Electric Power Service Corp.

Description: The American Electric Power Service Corp agent for AEP Operating Companies submits First Revised Interconnection and Local Delivery Service Agreement 1426 with the Village of Republic.

Filed Date: 4/25/2007.

Accession Number: 20070426–0156.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 16, 2007.

Docket Numbers: ER07–789–000.

Applicants: American Electric Power Service Corp.

Description: The American Electric Power Service Corporation for AEP Operating Companies submits First

Revised Interconnection and Local Delivery Service Agreement 1429 w/ Village of Sycamore.

Filed Date: 4/25/2007.

Accession Number: 20070426–0157.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 16, 2007.

Docket Numbers: ER07–790–000.

Applicants: American Electric Power Services Corp.

Description: American Electric Power Service Corp submits first revision to the Interconnection and Local Delivery Service Agreement 1428 with Village of Shiloh.

Filed Date: 4/25/2007.

Accession Number: 20070426–0161.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 16, 2007.

Docket Numbers: ER07–791–000.

Applicants: American Electric Power Service Corp.

Description: American Electric Power Service Corp submits first revision to the Interconnection and Local Delivery Service Agreement 1430 with City of Wapakoneta.

Filed Date: 4/25/2007.

Accession Number: 20070426–0160.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 16, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Deputy Secretary.

[FR Doc. E7–8568 Filed 5–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–44–000; CP07–45–000]

Southeast Supply Header, LLC; Notice of Availability of the Draft Environmental Impact Statement, and Public Comment Meetings for the Proposed Southeast Supply Header Project

April 27, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this Draft Environmental Impact Statement (EIS) for the natural gas pipeline facilities proposed by Southeast Supply Header, LLC (SESH) under the above-referenced docket. SESH's Southeast Supply Header Project (Project) would be located in various counties and parishes in Louisiana, Mississippi, and Alabama.

The Draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act. The FERC staff concludes that the proposed Project, with the appropriate mitigation measures as recommended, would have limited adverse environmental impact.

As authorized by the Director of Energy Projects, this notice updates the Schedule of Environmental Review. The close of comment period for the Draft EIS is now June 18, 2007. The Final EIS date is still projected for August 17, 2007.

The U.S. Fish and Wildlife Service (FWS), National Park Service (NPS), U.S. Environmental Protection Agency (EPA), and the U.S. Army Corps of Engineers (COE) are federal cooperating agencies for the development of this EIS. A federal cooperating agency has jurisdiction by law or special expertise with respect to any environmental impact involved with the proposal and is involved in the NEPA analysis.

The purpose of the Project is to provide new transportation capacity that significantly enhances access to reliable, onshore gas supplies to serve growing demand in the Southeast. To provide this service, SESH proposes to construct and operate approximately 270 miles of natural gas pipeline and associated ancillary facilities capable of transporting up to approximately 1.14 billion cubic feet per day of natural gas.

The Draft EIS addresses the potential environmental impacts resulting from the construction and operation of the following facilities:

- Approximately 104 miles of 42-inch-diameter natural gas pipeline extending southeasterly from Richland Parish, Louisiana to Lawrence County, Mississippi;
- Approximately 165 miles of 36-inch-diameter natural gas pipeline extending southeasterly from Lawrence County, Mississippi to Mobile County, Alabama;
- Approximately 1.7 miles of 6-, 16-, 20-, 24- and 42-inch laterals in Jefferson Davis, Covington, and Forrest Counties, Mississippi and Mobile, Alabama;
- Three new compressor stations, the Delhi, Gwinville, and the Lucedale Compressor Stations, located in Richland Parish, Louisiana, and Jefferson Davis and George County, Mississippi, respectively;
- Two natural gas booster stations, the Collins Booster Station and Petal Booster Station in Covington and Forrest County, Mississippi, respectively; and
- Other ancillary facilities including thirteen meter and regulator (M&R) facilities, eighteen mainline valves, two tap valves, and three pig launcher and/or receiver facilities.

Dependent upon Commission approval, SESH proposes to commence construction of the proposed Project in November 2007.

Comment Procedures and Public Meetings

Any person wishing to comment on the Draft EIS may do so. To ensure that your comments are timely and properly recorded so that they may be considered in the Final EIS, please carefully follow these instructions:

- Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory

Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

- Label one copy of your comments to the attention of Gas Branch 2, DG2E; and Reference Docket No. CP07–44–000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC on or before June 18, 2007.

Please note that the Commission strongly encourages the electronic filing ("eFiling") of comments. Instructions on how to "eFile" comments can be found on the Commission's Web site at *www.ferc.gov* under the "Documents and Filings" link. In lieu of or in addition to sending written comments, we invite you to attend the public comment meetings the FERC will conduct in the project area to receive comments on the Draft EIS. All meetings will begin at 6 p.m. (CDT), and are scheduled as follows:

Date and time	Location
Monday, May 21, 6:00 p.m	Lucedale Rocky Creek Inn, 120 Woods Ridge Road, Lucedale, MS 39452, (601) 947–6900.
Tuesday, May 22, 6:00 p.m	La Quinta Inn—Mississippi Ballroom, 6563 U.S. Highway 49 North, Hattiesburg, MS 39401, (601) 268–2850.
Thursday, May 24, 6:00 p.m	Multipurpose Building, West Gallman Road, Gallman, MS 39077, (601) 953–9907.

The public comment meetings will be posted on the FERC's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx.* Interested groups and individuals are encouraged to attend and present oral comments on the Draft EIS. Transcripts of the meetings will be prepared.

After the comments received are reviewed, any significant new issues are investigated, and modifications are made to the Draft EIS, a Final EIS will be published and distributed by the FERC staff. The Final EIS will contain the staff's responses to timely comments received on the Draft EIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Anyone may intervene in this proceeding based on this Draft EIS. You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

The Draft EIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies of the Draft EIS are available from the Public Reference Room identified above. In addition, CD copies of the Draft EIS have been mailed to affected landowners; various federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; local libraries and newspapers; intervenors; and other individuals that expressed an interest in the proposed Project. Hard-copies of the Draft EIS have also been mailed to those who requested that format during the scoping and comment periods for the proposed Project.

Additional information about the proposed Project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*).

To access information via the FERC website click on the "eLibrary" link then click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. The "eLibrary" link provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. For assistance with "eLibrary", please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to these documents. To learn more about eSubscription and to sign up for this service please go to *www.ferc.gov/esubscribenow.htm.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8519 Filed 5–3–07; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC Docket No. CP06–459–000]

Transwestern Pipeline Company, LLC; Notice of Availability of the Draft Environmental Impact Statement and Draft General Conformity Determination for the Proposed Phoenix Expansion Project

April 27, 2007.

The environmental staffs of the Federal Energy Regulatory Commission (Commission or FERC); the U.S. Department of the Interior, Bureau of Land Management (BLM); the U.S. Department of Agriculture, Forest Service (FS); the U.S. Department of Transportation, Office of Pipeline Safety (OPS); the U.S. Department of the Interior, Bureau of Indian Affairs (BIA); and the Navajo Nation, collectively referred to as the Agency Staffs, have prepared the draft environmental impact statement (draft EIS) to address Transwestern Pipeline Company, LLC's (Transwestern) proposed expansion of its natural gas pipeline system. A draft General Conformity Determination was also prepared by the FERC to assess the potential air quality impacts associated with construction and operation of the proposed project and is included as Appendix Q of the draft EIS.

The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The Agency Staffs have concluded that if the project is constructed and operated in accordance with applicable laws and regulations, Transwestern's proposed mitigation, and the Agency Staffs' additional mitigation measures, it would have limited adverse environmental impact.

The FERC is the lead federal agency and will use the EIS to consider the environmental impacts that could result if it issues Transwestern a Certificate of Public Convenience and Necessity under section 7 of the Natural Gas Act.

The BLM and the FS are federal land management agencies affected by Transwestern's proposal and have elected to act as cooperating agencies in preparing the draft EIS. The BLM will use the document to meet its NEPA responsibilities in considering Transwestern's application for a Right-of-Way Grant and obtain Temporary Use Permits for the portion of the project on federal lands under section 185(f) of the Mineral Leasing Act of 1920. The BLM would issue the Right-of-Way Grant and Temporary Use Permits for the crossing of BLM-managed lands and the Kaibab and Prescott National Forests, which are managed by the FS, and for crossing lands managed by the U.S. Department of the Interior, Bureau of Reclamation (BOR). The BLM would consider the concurrence or non-concurrence of the FS and BOR, as well as FERC approval or denial, in making its decision whether to issue the Right-of-Way Grant and Temporary Use Permits. The BLM's decision would be documented in a Record of Decision.

The OPS is participating as a cooperating agency in preparing the draft EIS because it is responsible for ensuring the safe, reliable, and environmentally sound operation of the nation's transportation system and for providing oversight for oil and natural gas pipelines. The OPS' authority is found under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 *et seq.*) and the Hazardous Liquids Pipeline Safety Act of 1979 (49 U.S.C. 2001 *et seq.*).

The BIA and the Navajo Nation have also elected to act as cooperating agencies in preparing the draft EIS because the proposed project would be near tribal lands in Arizona and would cross two classes of Navajo Nation lands in New Mexico: Tribal lands and allotted lands. Tribal lands are owned in fee by the Navajo Nation, and access to these lands would be acquired through direct negotiation between Transwestern and officials of the Navajo Nation Tribal Headquarters in Window Rock, Arizona. Allotted lands are held in trust by the United States government and managed by the BIA for the benefit of individual allottees.

The Phoenix Expansion Project is designed to transport up to 500 million cubic feet per day of natural gas to the Phoenix area, which is one of the fastest-growing regions in the United States. The project would not only help to satisfy the increasing demand for electricity and natural gas, but would also increase competition in the regional energy market, thereby working to stabilize costs to the consumer.

The draft EIS addresses the potential environmental effects of the construction and operation of the following facilities proposed by Transwestern:

- 24.6 miles of new 36-inch-diameter pipeline loop [1] (the San Juan Lateral Loops A and B) extending along the existing San Juan Lateral in San Juan and McKinley Counties, New Mexico;
- 259.3 miles of new 42- and 36-inch-diameter lateral [2] pipeline (the Phoenix Lateral), consisting of 95.7 miles of 42-inch-diameter pipeline extending from milepost (MP) 0.0 in Yavapai County, Arizona to MP 95.2 in Maricopa County, Arizona, and 163.6 miles of 36-inch-diameter pipeline extending from MP 95.2 in Maricopa County, Arizona to MP 255.1 in Pinal County, Arizona;
- 1.4 miles of new 24-, 20-, 16-, and 6-inch-diameter lateral pipeline (the customer laterals) connecting the Phoenix Lateral to meter stations that are not located immediately adjacent to the Phoenix Lateral right-of-way;
- Minor piping and pressure control modifications at the existing Bloomfield Compressor Station in San Juan County, New Mexico and at the existing Seligman Compressor Station No. 1 in Mohave County, Arizona;
- Installation of the Ash Fork Facility at MP 0.0 of the Phoenix Lateral in Yavapai County, Arizona including 2 filter separators, odorant injection facilities, and telecommunications equipment; and
- Installation of 4 taps, 31 valves, 11 meter stations, 6 pig launchers, and 3 pig receivers.

[1] A loop is a segment of pipeline that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

[2] A lateral pipeline typically takes gas from the main system to deliver it to a customer, local distribution system, or another interstate transmission system.

Transwestern would also acquire an undivided interest in the existing East Valley Lateral consisting of 36.7 miles of 24-inch-diameter lateral pipeline in Pinal and Maricopa Counties, Arizona.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS and/or draft General Conformity Determination is encouraged to do so. To ensure consideration prior to a Commission decision on the proposal, it is important that your comments be received before the date specified below.

Please note that the Commission strongly encourages electronic filing of any comments, interventions, or protests to this proceeding. See Title 18 CFR 385.2001(a)(1)(iii) and the instructions on the FERC Internet Web site (*www.ferc.gov*) under the eFiling link and the link to the User's Guide. Before you can submit comments, you will need to create a free account by clicking on "Sign-up" under "New User." You will be asked to select the type of submission you are making. This type of submission is considered a "Comment on Filing." Comments submitted electronically must be submitted by June 18, 2007.

If you wish to mail comments, please mail your comments so that they will be received in Washington, DC on or before June 18, 2007. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St. NE; Room 1A, Washington, DC 20426;
- Reference Docket No. CP06–459–000; and
- Label one copy of your comments for the attention of Gas 2, DG2E.

In addition to or in lieu of sending written comments, the FERC and the cooperating agencies invite you to attend public meetings the Agency Staffs will conduct in the project area to receive comments on the draft EIS and draft General Conformity Determination. The dates, times, and locations of these meetings are as follows:

Date	Location
Monday, June 4, 2007; 7 p.m. (MST)	Central Arizona Seniors Association, 9360 East Manzanita Circle, Prescott Valley, AZ 86314, (928) 772–3337.
Tuesday, June 5, 2007; 7 p.m. (MST)	Albins Civic Center, Black Canyon Community Association,19055 East K-Mine Road, Black Canyon City, AZ 85375, (623) 374–5553.
Wednesday, June 6, 2007; 7 p.m. (MST)	Buckeye Community Center, 201 East Centre Avenue, Buckeye, AZ 85326, (623) 349–6600.
Thursday, June 7, 2007; 7 p.m. (MST)	Hotel Casa Grande, Cotton/Copper Room, 777 North Pinal Avenue, Casa Grande, AZ 85222, (520) 426–3500.
Tuesday, June 12, 2007; 1 p.m. (MST)	Navajo Technical College, (former Crownpoint Institute of Technology), Lower Point Road and State Highway 371, Crownpoint, NM 87313, (505) 786–4100.

These public meetings will be posted on the FERC's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx.* Interested groups and individuals are encouraged to attend and present written or oral comments on the draft EIS and/or draft General Conformity Determination. Transcripts of the meetings will be prepared.

After the comments are reviewed, any significant new issues are investigated, and necessary modifications are made to the draft EIS and draft General Conformity Determination, a final EIS, including a final General Conformity Determination, will be published and distributed. The final EIS will contain the Agency Staffs' responses to timely comments filed on the draft EIS and draft General Conformity Determination that are related to environmental issues.

Comments will be considered by the Commission and the cooperating agencies but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (Title 18 CFR Part 385.214).

Anyone may intervene in this proceeding based on the draft EIS and draft General Conformity Determination. You must file your request to intervene as specified above.[3] You do not need intervenor status to have your comments considered.

The draft EIS, including the draft General Conformity Determination, has been placed in the public files of the FERC and is available for distribution and public inspection at:

Federal Regulatory Energy Commission, Public Reference Room, 888 First St. NE; Room 2A, Washington, DC 20426, (202) 208–1371.

A limited number of copies are available from the FERC's Public Reference Room identified above. These copies may be requested in hard copy or as .pdf files on a CD that can be read by a computer with a CD–ROM drive. The draft EIS, including the draft General Conformity Determination, is also available for viewing on the FERC Internet Web site at *www.ferc.gov*. In addition, copies of the document have been mailed to federal, state, and local government agencies; elected officials; Native American tribes; affected landowners; local libraries and newspapers; intervenors to the FERC's proceeding; and other interested parties. Hard copies of the draft EIS, including the draft General Conformity Determination, can be viewed at the following libraries in the project area:

Ash Fork Public Library, 518 Lewis Avenue, Ash Fork, AZ 86320.

Avondale-Goodyear Public Library, 328 West Western Avenue, Avondale, AZ 85323.

Black Canyon City Community Library, 34701 South Old Black Canyon Hwy, Black Canyon, AZ 85324.

Buckeye Public Library, 310 North 6th Street, Buckeye, AZ 85032.

Casa Grande Public Library, 449 North Dry Lake, Casa Grande, AZ 85222.

Chino Valley Public Library, 1020 West Palomino Road, Chino Valley, AZ 86323.

Coolidge Public Library, 160 West Central Avenue, Coolidge, AZ 85228.

Flagstaff Public Library, 300 West Aspen, Flagstaff, AZ 86001.

Fredonia Public Library, 118 North Main Street, Fredonia, AZ 86022.

Mayer Public Library, 10004 Wicks Street, Mayer, AZ 86333.

Arizona State Library, 1700 West Washington Street, Phoenix, AZ 85007.

North Central Regional Library, 17811 North 32nd Street, Phoenix, AZ 85032.

Yavapai County Library District, 172 East Merritt Street, Suite E, Prescott, AZ 86301.

Prescott Public Library, 215 East Goodwin, Prescott, AZ 86303.

Prescott Valley Public Library, 7501 East Civic Circle, Prescott Valley, AZ 86314.

Williams Public Library, 113 South First Street, Williams, AZ 86046.

Bloomfield Public Library, 333 South First Street, Bloomfield, NM 87413.

Farmington Public Library, 100 West Broadway, Farmington, NM 87401–6420.

Octavia Fellin Public Library, 115 West Hill, Gallup, NM 87301.

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search," and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to the eSubscription link on the FERC Internet Web site.

Information concerning the involvement of the cooperating agencies in the EIS process may be obtained from:

U.S. Department of the Interior, Bureau of Land Management, Mark Mackiewicz, (435) 636–3616.

U.S. Department of Agriculture, Forest Service, Prescott National Forest, Ken Simeral, (928) 443–8010.

Kaibab National Forest, Tom Mutz, (928) 635–5661.

U.S. Department of Transportation, Office of Pipeline Safety, John Pepper, (713) 272–2849.

[3] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

U.S. Department of the Interior, Bureau of Indian Affairs, Navajo Area Office, Harrilene Yazzi, (505) 863–8286.
Phoenix Area Office, Amy Heuslein, (602) 379–6750.
Navajo Nation, Ron Maldonado, (928) 871–7139.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8524 Filed 5–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF07–6–000]

Colorado Interstate Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Totem Storage Field Project and Request for Comments on Environmental Issues

April 30, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Totem Storage Field Project involving construction and operation of facilities by Colorado Interstate Gas Company (CIG) in Adams County, Colorado.

This notice announces the opening of the scoping process we will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on May 30, 2007.

This notice is being sent to affected landowners; Federal, State, and local government representatives and agencies; environmental and public interest groups; Native American tribes; other interested parties in this proceeding; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice CIG provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

CIG proposes to convert a depleted natural gas production field in eastern Adams County, Colorado located 34 miles northeast of the City of Denver into the proposed Totem Storage Field Project. The storage field design would have a total gas inventory of approximately 10.7 Bcf, comprised of 7.0 Bcf of working gas and 3.7 Bcf of base gas. CIG seeks authority to:

- Construct and operate a 9,400 horsepower compressor station in Adams County, Colorado;
- Reenter 16 abandoned wells and replug 10 of the 16 wells and convert the remaining six wells to observation wells;
- Plug and abandon three of seven currently operational oil and gas wells and convert the remaining four operational oil and gas wells to observation wells;
- Drill eight horizontal injection withdrawal wells from three separate well pad locations. Horizontal wells (Nos. 1, 2. and 3) would be drilled at Site Pad No. 1 near the north end of the field in the vicinity of an existing well pad (Well No. 8–10); horizontal well (Nos. 4, 7, and 8) would be grouped at Site Pad No. 2 located in the center of the field; and horizontal wells (Nos. 5 and 6) would be drilled at Site Pad No. 3 in the south central portion of the field in the vicinity of an existing well pad location (Well No. 48–2);
- Drill one salt water disposal well; and
- Construct about 3 miles of 6-inch-diameter gathering pipeline and 1.5 miles of 4-inch-diameter saltwater pipeline.

The gathering lines would be high-pressure, steel line. The brine disposal line would be high-pressure, fiberglass line. Fiberglass pipe will also be used to collect brine and other fluids from the individual well head separators and dehydrators and will conduct these fluids to the dew point control plant located at the compressor station site. These pipes will occupy the same trench as the main gathering lines, fuel gas lines, electrical and communication lines.

The location of the project facilities is shown in Appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would require about 442.5 acres of land. Following construction, about 29.9 acres would be maintained as permanent pipeline right-of-way, well sites, or new aboveground facility sites. The remaining 412.6 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[2] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Hazardous waste.

[1] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the "eLibrary" link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[2] "We", "us" "our" refer to the environmental staff of the Office of Energy Projects (OEP).

• Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by CIG. This preliminary list of issues may be changed based on your comments and our analysis.

• Federally listed endangered or threatened species may occur in the proposed project area.

• Cultural resources may be affected by the project.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA/EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send an original and two copies of your letter to:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

• Label one copy of the comments for the attention of Gas Branch 2.

• Reference Docket No. PF07–6–000.

• Mail your comments so that they will be received in Washington, DC on or before May 30, 2007.

Please note that the Commission encourages electronic filing of comments. See 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the "eFiling" link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on "Login to File" and then "New User Account." You will be asked to select the type of filing you are making. This filing is considered a "Comment on Filing."

When CIG submits its application for authorization to construct and operate the Totem Storage Field Project, the Commission will publish a Notice of Application in the **Federal Register** and will establish a deadline for interested persons to intervene in the proceeding. Because the Commission's Pre-Filing Process occurs before an application to begin a proceeding is officially filed, petitions to intervene during this process are premature and will not be accepted by the Commission.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EA.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Philis J. Posey,

Deputy Secretary.

[FR Doc. E7–8538 Filed 5–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–25–001]

Copiah Storage, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed 2007 Copiah Storage Project and Request for Comments on Environmental Issues

April 30, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the 2007 Copiah Storage Project involving construction and operation of facilities by Copiah Storage LLC. (Copiah) in Copiah County, Mississippi.[1] In this docket, Copiah requests an amendment to Commission Order CP02–25–000 (issued June 13, 2002) to expand previously certificated storage, compression and pipeline facilities that have not yet been constructed. This EA will supplement the previous EA and will only examine the additional facilities. This EA will be

[1] Copiah's application was filed with the Commission under section 7 of the Natural Gas Act.

used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity. Please note that the scoping period will close on May 30, 2007.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice that Copiah provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Copiah is proposing to expand its currently unbuilt certificated facilities [2] in order to meet market demand for high deliverability storage services for the Gulf Coast and Northeast markets. Under their current certificate CP02–25–000, Copiah is authorized to construct:

- A single 3.3 billion cubic feet (Bcf) capacity gas storage cavern extending approximately 5,500 feet below the ground surface within an underground salt dome (with an option for a second cavern);
- 13,350 horsepower (hp) compressor station to provide compression for injection and withdrawal of natural gas from the gas storage cavern;
- Approximately 635 feet of 20-inch-diameter pipeline from the compressor station to the storage cavern wellhead;
- Up to five well sites consisting of a freshwater withdrawal well and brine injection well at each site; and
- Appurtenant facilities consisting of 20-inch-diameter water supply and brine discharge pipelines, instrument and control equipment, and access roads.

Under this amendment, CP02–25–001, Copiah is seeking authorization to add a second storage cavern and to increase the size of the currently certificated underground salt cavern from 3.3 Bcf working capacity to 7.75 Bcf for a two-cavern storage facility with a total of 15.5 Bcf working gas capacity. The storage facility would have a peak withdrawal capacity of 1,300,000 dekatherms per day (Dth/d) and peak injection capacity of 650,000 Dth/d at full capacity. Copiah also seeks to increase the horsepower of the compressor station to 32,000 hp.

Also under this amendment, Copiah is seeking authorization to construct header facilities to connect to two natural gas pipelines:

- 1.55 miles of 24-inch-diameter pipeline connecting the storage facility to the Texas Eastern Transmission, LP (TETLP) pipeline.
- 13.43 miles of 24-inch-diameter pipeline connecting the storage facility to the proposed Southeast Supply Header (SESH) and Southern Natural Gas (SNG) pipeline.
- Appurtenant facilities consisting of two tap valves, two pig launcher and receivers, two meter and regulator stations, and access roads.

The Copiah Storage Facility would be located in Copiah, Mississippi. The location of the project facilities is shown in Appendix 1.[3]

Land Requirements for Construction

The Copiah Storage Facility would be located within an approximately 665-acre parcel of land owned by Copiah. Construction of these proposed facilities would require 86.70 acres of land. Following construction, 83.31 acres would be maintained as new aboveground facility sites and permanent rights-of-way. The remaining 3.39 acres would be returned to its previous land use. No facilities or activities are proposed for the remaining 578.30 acres.

Construction of the Copiah Header Facilities, the two connecting pipelines, would require 154.63 acres during construction and 55.64 acres during operation. The remaining 98.99 acres would be returned to its previous land use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we [4] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Hazardous waste.
- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific

[2] Copiah states that it did not build under the original certificate in 2002 due to a decrease in the electric generation market.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the "eLibrary" link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[4] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP02–25–001.
- Mail your comments so that they will be received in Washington, DC on or before May 30, 2007.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or "intervenor". To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov*. Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with email addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Philis J. Posey,

Deputy Secretary.

[FR Doc. E7–8540 Filed 5–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF07–4–000]

Midcontinent Express Pipeline LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Midcontinent Express Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings

April 27, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an Environmental Impact Statement (EIS) that will identify and address the environmental impacts that could result from construction and operation of the Midcontinent Express Pipeline Project (Project) proposed by Midcontinent Express Pipeline LLC (MEP). The Commission will use the EIS in its decision-making process to determine whether or not to authorize the Project. This notice explains the scoping process we [1] will use to gather input from the public and interested agencies on the Project. Your input will help us determine the issues that need to be evaluated in the EIS. Please note that the scoping period will close on May 29, 2007.

Comments on the Project and the issues that should be addressed in the EIS may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of sending written comments, we invite you to attend the public scoping meetings that we have scheduled as follows:

[1] "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

Date and time	Location
Monday, May 14, 2007; 7 p.m. (CDT)	Quitman Depot, Main Street and Railroad Avenue, Quitman, MS 39355.
Tuesday, May 15, 2007; 7 p.m. (CDT)	Pearl Community Room, 2420 Old Brandon Rd., Pearl, MS 39208.
Thursday, May 17, 2007; 7 p.m. (CDT)	Delhi High School Auditorium, 413 Main Street, Delhi, LA 71232.

Date and time	Location
Monday, May 21, 2007; 7 p.m. (CDT)	Minden Community House, 711 Gladney Street, Minden, LA 71055.
Tuesday, May 22, 2007; 7 p.m. (CDT)	Mt. Pleasant Civic Center, 1800 North Jefferson, Mt. Pleasant, TX 75455.
Thursday, May 24, 2007; 7 p.m. (CDT)	Love Civic Center, 2025 South Collegiate Drive, Paris, TX 75460.

This notice is being sent to affected landowners; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers; all of which are encouraged to submit comments on the proposed Project. Details on how to submit comments are provided in the Public Participation section of this notice.

If you are a landowner receiving this notice, you may be contacted by a MEP representative about the acquisition of an easement to construct, operate, and maintain the proposed Project facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the Project is approved by the FERC, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility on My Land? What Do I Need To Know?" is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the FERC's proceedings.

Summary of the Proposed Project

MEP proposes to construct, own and operate approximately 494 miles of new 30-, 36-, and 42-inch-diameter interstate natural gas transmission pipeline, a total of approximately 111,420 horsepower (hp) of compression at one booster and four new mainline compressor stations, and related appurtenant facilities located in portions of Oklahoma, northeast Texas, northern Louisiana, central Mississippi, and Alabama. The proposed pipeline route identified by MEP would extend from a receipt point with existing pipeline infrastructure near Bennington in Bryan County, Oklahoma, to an interconnect with the existing Transcontinental Gas Pipe Line Company system near Butler in Choctaw County, Alabama. The general location of the proposed pipeline is shown in the figure included as Appendix 1.[2]

Specifically, the MEP Project facilities under FERC jurisdiction would include the following:

- Approximately 40 miles of 30-inch-diameter pipeline in Bryan County, Oklahoma, and Fannin and Lamar Counties, Texas;
- Approximately 257 miles of 42-inch-diameter pipeline in Lamar, Red River, Franklin, Titus, Morris, and Cass Counties, Texas, and Caddo, Bossier, Webster, Claiborne, Lincoln, Union, Ouachita, Morehouse, Richland, and Madison Parishes, Louisiana;
- Approximately 197 miles of 36-inch-diameter pipeline in Madison Parish, Louisiana, and Warren, Hinds, Rankin, Simpson, Smith, Jasper, Clarke, Counties, Mississippi, and Choctaw County, Alabama;
- Four new mainline and one booster, natural gas-fired compressor stations, including:

—A new 38,555 hp compressor station at Milepost (MP) 43.9 in Lamar County, Texas;
—A new 12,270 hp compressor station at MP 131.7 in Cass County, Texas;
—A new 32,720 hp compressor station at MP 249.7 in Union Parish, Louisiana;
—A new 18,405 hp compressor station at MP 346.1 in Warren County, Mississippi;
—A new 9,470 hp booster compressor station at MP 300.6 in Madison Parish, Louisiana;

- Meter stations at up to 13 interconnects with existing pipeline infrastructure in Bryan County, Oklahoma; Lamar and Cass Counties, Texas; Ouachita, Richland, and Madison Parishes, Louisiana; Hinds, Smith, Jasper, and Clarke Counties, Mississippi; and Choctaw County, Alabama;
- Various pig[3] launching and receiving facilities; and
- 29 mainline valves.

MEP indicates that the proposed Project facilities would provide long-haul takeaway capacity to facilitate the transport of natural gas from production areas in Texas, Oklahoma, and Arkansas to markets in the Southeast, Northeast and Midwest regions of the United States that can be accessed through interconnects with existing pipeline infrastructure. The Project would consist of two capacity zones. The initial transport capacity of Zone 1, which would include the 30- and 42-inch-diameter portions of the pipeline facilities, would be 1.4 billion cubic feet of natural gas per day (Bcf/d). However, additional supporting contracts could provide for expansion of the Zone 1 transport capacity to 1.5 Bcf/d. Zone 2, which would include the balance of the pipeline facilities, would have a transport capacity of 1.2 Bcf/d.

MEP proposes to place the first 40 miles of 30-inch-diameter pipeline in service by October 31, 2008, with the remainder of the pipeline constructed and operational by February 2009.

Land Requirements for Construction

As proposed, the typical construction right-of-way for the Project pipeline would be 100 feet wide for the 30-inch-diameter portion of the pipeline and 125 feet wide for the 36-inch and 42-inch-diameter portions of the pipeline. Following construction, MEP would retain a 50-foot-wide permanent right-of-way for operation of the Project. Additionally, temporary extra

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the "eLibrary" link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the Public Participation section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to MEP.

[3] A pig is a mechanical tool used to clean and inspect the interior of a pipeline.

workspaces beyond the typical construction right-of-way limits would also be required at certain feature crossings (e.g., roads, railroads, wetlands, or waterbodies), in areas with steep side slopes, in association with special construction techniques, or at pipe storage and contractor yards. In residential areas, wetlands, and other sensitive areas, the construction right-of-way width would be reduced as necessary to protect homeowners and environmental resources. Following construction, all temporary workspaces (including the temporary construction rights-of-way and extra workspaces) would be restored and allowed to revert to its former use.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from the approval of an interstate natural gas pipeline. The FERC will use the EIS to consider the environmental impact that could result if the Project is authorized under Section 7 of the Natural Gas Act.

NEPA also requires us to discover and address concerns the public may have about proposals to be considered by the Commission. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. With this Notice of Intent, the Commission staff is requesting public comments on the scope of the issues to be addressed in the EIS. All comments received will be considered during preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction and operation of the proposed Project under these general headings:

- Geology and soils;
- Water resources;
- Wetlands and vegetation;
- Fish and wildlife;
- Threatened and endangered species;
- Land use, recreation, and visual resources;
- Air quality and noise;
- Cultural resources;
- Socioeconomics;
- Reliability and safety; and
- Cumulative impacts.

In the EIS, we will also evaluate possible alternatives to the proposed Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on affected resources.

Our independent analysis of the issues will be included in a Draft EIS. The Draft EIS will be mailed to Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; commentors; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. We will consider all comments on the Final EIS before we make our recommendations to the Commission. To ensure that your comments are considered, please follow the instructions in the Public Participation section of this notice.

Although no formal application has been filed, the FERC staff has already initiated its NEPA review under the Commission's Pre-filing Process. The purpose of the Pre-filing Process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC.

With this notice, we are asking Federal, State, and local governmental agencies with jurisdiction and/or special expertise with respect to environmental issues, especially those identified in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the instructions for filing comments provided in Appendix 2.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of construction and operation of the proposed Project. We have already identified several issues that we think deserve attention based on a preliminary review of the Project site and the facility information provided by MEP. This preliminary list of issues may be changed based on your comments and our analysis.

- Potential impacts to water resources, including groundwater and perennial and intermittent waterbodies.
- Evaluation of temporary and permanent impacts on wetlands and development of appropriate mitigation.
- Potential impacts to fish and wildlife habitat, including potential impacts to federal and state-listed threatened and endangered species.
- Potential impacts to natural vegetative communities, including native prairie and forestland.
- Potential effects on prime farmland soils and soils with a high potential for compaction or erosion.
- Potential impacts to existing land uses, including agricultural and managed forested lands.
- Potential impacts to recreation and special interest areas, including Wetland Reserve Program lands and the Natchez Trace Parkway.
- Potential impacts to residential areas and planned developments.
- Potential disruption to area businesses associated with construction.
- Potential visual effects of the pipeline easement and aboveground facilities on surrounding areas.
- Potential impacts to local air and noise quality associated with construction and operation.
- Potential impacts to cultural resources and Native American lands.
- Public safety and hazards associated with the transport of natural gas.
- Alternative alignments for the pipeline route and alternative sites for the compressor stations.
- Assessment of the effect of the proposed Project when combined with other past, present, or reasonably foreseeable future actions in the Project area, including the potential cumulative effect of collocating multiple utility rights-of-way.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposed Project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. Your comments should focus on the potential environmental effects, reasonable alternatives (including alternative facility sites and pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please carefully follow these instructions:

- Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of your comments for the attention of Gas Branch 3, DG2E.
- Reference Docket No. PF07–4–000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC on or before May 29, 2007.

The Commission strongly encourages electronic filing of any comments in response to this Notice of Intent. For information on electronic filing of comments, please see the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide, as well as information in 18 CFR 385.2001(a)(1)(iii). Before you can submit comments you will need to create a free account, which can be created on-line.

The public scoping meetings (dates, times, and locations are listed above) are designed to provide another opportunity to offer comments on the proposed Project. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of each meeting will be generated so that your comments will be accurately recorded.

Once MEP formally files its application with the Commission, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within distances of certain aboveground facilities, as defined in the Commission's regulations.

If you received this notice, you are on the environmental mailing list for this Project. If you do not want to send comments at this time, but still want to remain on our mailing list, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be removed from the Commission's environmental mailing list.

Availability of Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at 1–866–208-FERC (3372) or on the FERC Internet Web site at *http://www.ferc.gov.* Using the "eLibrary" link, select "General Search" and enter the Project docket number excluding the last three digits (*i.e.*, PF07–4) in the "Docket Number" field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm.*

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, MEP has established an Internet Web site for this Project at *http://www.midcontinentexpress.com.* The Web site includes a description of the Project, a map of the proposed pipeline route, and answers to frequently asked questions. You can also request additional information or provide comments directly to MEP at 1–877–327–5515 or *pipelineinfo@midcontinentexpress.com.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8522 Filed 5–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–89–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed North Welda Storage Field Expansion Project and Request for Comments on Environmental Issues

April 30, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the North Welda Storage Field Expansion Project involving construction and operation of facilities by Southern Star Central Gas Pipeline, Inc. (Southern Star) in and to an existing gas storage field in Anderson County, Kansas.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice that Southern Star provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Southern Star is proposing to: (1) Expand the existing certificated boundary and buffer zone of its existing storage field by acquiring certain property rights to approximately 1,240 acres; (2) to redefine the cap rock of the

[1] Southern Star's application was filed with the Commission under section 7 of the Natural Gas Act.

gas storage formation; (3) install a gas compressor unit; and (4) revise the maximum certificated wellhead shut-in pressure and restate the maximum certificated capacity at Southern Star's existing North Welda Storage Field located in Anderson County, Kansas. Southern Star seeks authority to install an AJAX DPC–180 (173 bhp) skid mounted compressor package unit, building, and auxiliary facilities on a 150 by 150-foot lot. Southern Star would install certain minor facilities under separate authorization of its Blanket Certificate issued in Docket No. CP82–479–000. The minor facilities would include 3.5 miles of 4-inch diameter suction storage lateral, 300 feet of 4-inch discharge lateral, and three oil/gas separators with collection tanks. The lateral system would connect 6 existing oil wells (Squirrel Wells 1 through 6) which would be converted to pressure recovery wells.

The location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 8.7 acres of land. Following construction, about 1.8 acres would be maintained as new aboveground facility sites and permanent rights-of-way. The remaining 6.9 acres of land would be restored and allowed to revert to its former use (primarily pasture/hayland).

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Hazardous waste.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP07–89–000.
- Mail your comments so that they will be received in Washington, DC on or before May 31, 2007.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or "intervenor". To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov.* Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with e-mail addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations,

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (map), are available on the Commission's Web site at the "eLibrary" link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Philis J. Posey,

Deputy Secretary.

[FR Doc. E7–8535 Filed 5–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12478–001]

Dam Hydroelectric Company, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

April 27, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12478–001.

c. *Date filed:* April 3, 2007.

d. *Applicant:* Gibson Dam Hydroelectric Company, LLC.

e. *Name of Project:* Gibson Dam Project.

f. *Location:* North Fork Sun Fork in Teton and Lewis and Clark Counties, Montana. It would use the U.S. Bureau of Reclamation's Gibson Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 USC. 791(a)–825(r).

h. *Applicant Contact:* Mr. Steven C. Marmon, Project Manager, Gibson Dam Hydroelectric Company, LLC, 3633 Alderwood Avenue, Bellingham, WA 98225, (360) 738–9999.

i. *FERC Contact:* Robert Bell, (202) 502–4126.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12748–001) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Bureau of Reclamation's Gibson Dam and operated in a run-of-river mode, would consist of: (1) Two proposed 300-foot-long, steel penstocks, (2) a powerhouse containing two generating units having a total installed capacity of 15 megawatts, (3) A proposed 34.5 kilovolt underground transmission line, and (4) appurtenant facilities. The Gibson Dam Hydroelectric Company, LLC project would have an average annual generation of 50 gigawatt-hours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit

application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", and "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8520 Filed 5–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12769–000]

Ice House Partners, Inc.; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 27, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption from Licensing.

b. *Project No.:* 12769–000.

c. *Date filed:* January 22, 2007.

d. *Applicant:* Ice House Partners, Inc.

e. *Name of Project:* Ice House Power Project.

f. *Location:* On the Nashua River, in the Town of Ayer, Middlesex County, Massachusetts. The project would use Federal land.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. sections 2705 and 2708.

h. *Applicant Contact:* Liisa Dowd, Ice House Partners, Inc., 323 West Main Street, Ayer, MA 01432, (978) 772–3303.

i. *FERC Contact:* Tom Dean, (202) 502–6041.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "eFiling" link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. *Description of Project:* The Ice House Power Project would consist of the following existing facilities: (1) The 300-foot-long, 10-foot-high Ice House Dam consisting of a 210-foot-long spillway topped with flashboards; (2) a 137-acre reservoir with a normal full pond elevation of 215 feet National Geodetic Vertical Datum; (3) a 50-foot-wide, 600-foot-long power canal; (4) a restored powerhouse containing two generating units with a total installed capacity of 270 kilowatts; and (5) appurtenant facilities. The project would have an average annual generation of 2,500 megawatt-hours.

m. A copy of the filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must: (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4)

otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural schedule:* The application will be processed according to the following revised hydro licensing schedule.

Notice of application is ready for environmental analysis September 2007.

Notice of the availability of the EA February 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8521 Filed 5–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI07–8–000]

Slatersville Hydro, LLC; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

April 30, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI07–8–000.

c. *Date Filed:* April 20, 2007.

d. *Applicant:* Slatersville Hydro, LLC.

e. *Name of Project:* Slatersville Hydro Project.

f. *Location:* The proposed Slatersville Hydro Project will be located on the Branch River, tributary to the Blackstone River, near North Smithfield, in Providence County, Rhode Island.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Michael P. DeFrancesco, P.E., LLC, 87 Hallville Road, Exeter, RI 02822; telephone: (401) 742–1968; fax: (401) 742–5014; e-mail: *mpdpe@aol.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or e-mail address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* May 31, 2007.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and/or interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing link.

Please include the docket number (DI07–8–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed run-of-river Slatersville Hydro Project will include: (1) An 18-foot-high, 100-foot-long stone-and-concrete dam; (2) a powerhouse containing a turbine-generator rated at 400 kW; (3) a 45-acre reservoir; and (4) appurtenant facilities. The project will be connected to an interstate grid, but will not occupy any tribal or Federal lands

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Locations of the Application: Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link, select "Docket#" and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", AND/OR "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Philis J. Posey,

Deputy Secretary.

[FR Doc. E7–8536 Filed 5–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

April 30, 2007.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not

be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659.

Docket number	Date received	Presenter or requester
Prohibited:		
1. EL06–94–001	4–23–07	Andrew Ott [1]
Exempt:		
1. Docket No. CP06–365–000	4–12–07	Hon. Brian Hatfield, Hon. Brian Blake, Hon. Dean Takko.
2. Project No. 1971–079	4–18–07	Alan Mitchnick [2].
3. Project No. 11858–002	4–18–07	Karen A. Goebel.
4. Project No. 12658–000	4–27–07	Martin J. Reinert [3].

[1] Transcript of Technical Conference on SEAMS issues for RTO's and ISO's in the Eastern Interconnection which was convened on March 29, 2007. This exempt record is in reference to a communication made by Mr. Ott before the Commission (at this conference) and which is recorded in this transcript.

[2] Document submitted during the tribal consultation meeting held on March 30, 2007, at Owyhee, Nevada.

[3] Telephone and email exchange between staff and Mr. Reinert.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8539 Filed 5–3–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6686–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

Draft EISs

EIS No. 20060414, ERP No. D–USA–J11022–CO, Pinon Canyon Maneuver Site (PCMS) Transformation Program, Implementation, Base Realignment and Closure Activities, Fort Carson, Las Animas, Otero and Huerfano Counties, CO.

Summary: EPA expressed environmental concerns about air quality impacts, water quality impacts and impacts to wildlife and vegetation, and requested additional information on energy conservation and pollution prevention.

Rating EC2.

EIS No. 20060510, ERP No. D–NRC–B06006–MA, Generic—License Renewal of Nuclear Plants, Supplement 29 to NUREG–1437, Regarding the License Renewal of Pilgrim Nuclear Power Station, Cape Cod Bay, Town of Plymouth, Plymouth County, MA

Summary: EPA expressed environmental concerns about entrainment and impingement impacts and cooling water discharge impacts, and requested additional information on thermal backwash operations, the fish return system, and mitigation.

Rating EC2.

EIS No. 20060521, ERP No. D–NRC–B06007–VT, Generic—License Renewal of Nuclear Plants, Supplement 30 to NUREG–1437, Regarding Vermont Yankee Nuclear Power Station, Vernon, VT.

Summary: EPA expressed environmental concerns about impacts related to entrainment and impingement of fish and other aquatic organisms, and impacts from heat shock.

Rating EC2.

EIS No. 20070044, ERP No. D–AFS–G65104–NM, Surface Management of Gas Leasing and Development, Proposes to Amend the Forest Plan include Standard and Guidelines Related to Gas Leasing and Development in the Jicarilla Ranger District, Carson National Forest, Rio Arriba County, NM.

Summary: EPA does not object to the proposed action.

Rating LO.

EIS No. 20070047, ERP No. D–COE–F09803–MN, Minnesota Steel Project, Construction and Operation of an Open Pit Taconite Mine Facilities, Concentrator, Pellet Plant, Direct Reduced Iron Plant and Steel Mill Project, located west of Nashwauk, Itasca County, MN.

Summary: EPA expressed environmental concerns about wetlands impacts and the proposed mitigation, as well as impacts to water and air quality and tribal resource uses.

Rating EC2.

EIS No. 20070084, ERP No. D–BPA–L08065–WA, Port Angeles—Juan de Fuca Transmission Project, Construct a 550-Megawatt Direct Current Cable from Victoria, British Columbia, across the Strait of Juan de Fuca to Port Angeles, Presidential Permit, Clallam County, WA.

Summary: EPA expressed environmental concerns about the

potential for sediment discharge and increased turbidity in the Strait of Juan de Fuca and Harbor, as well as degradation of water quality within marine waters and creeks that are currently listed under the Clean Water Act Section 303(d) for low dissolved oxygen and fecal coliform.

Rating EC2.

EIS No. 20070092, ERP No. DC–COE–E36167–FL, Central and Southern Florida Project, Tamiami Trail Modifications, Modified Water Deliveries to Everglades National Park, Acquisition of Real Estate Rights to Portions of Privately Owned Properties along the Tamiami Trail, Dade County, FL.

Summary: EPA continues to support the proposed partial bridging and elevation of Tamiami Trail as a component of Everglades restoration, and has no objection to the proposed project.

Rating LO.

Final EISs

EIS No. 20070029, ERP No. F–GSA–B40096–ME, Madawaska Border Station Project, Replacement of Existing Border Station in Madawaska, Selected the Build Alternative, International Border between United States and Canada, Aroostook County, ME

Summary: EPA does not object to the proposed project, and continues to encourage the GSA to further investigate an anti-idling program for the project.

Dated: May 1, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division Office of Federal Activities.

[FR Doc. E7–8531 Filed 5–3–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6686–5]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 04/23/2007 Through 04/27/2007 Pursuant to 40 CFR 1506.9.

EIS No. 20070164, Final EIS, AFS, MT, Northeast Yaak Project, Additional Documentation of Cumulative Effects Analysis, Proposed Harvest to Reduce Fuels in Old Growth, Implementation, Kootena National Forest, Three Rivers Ranger District, Lincoln County, MT, Wait Period Ends: 06/04/2007, Contact: Kathy Mohar 406–295–4693

EIS No. 20070165, Final Supplement, NRS, WV, Lost River Subwatershed of the Potomac River Watershed Project, Construction of Site 16 on Lower Cove Run and Deletion of Site 23 on Upper Cove Run, U.S. Army COE Section 404 Permit, Hardy County, WV, Wait Period Ends: 06/04/2007, Contact: Kevin Wickey 304–284–7540

EIS No. 20070166, Final EIS, AFS, ID, Newsome Creek Watershed Rehabilitation, Stream Restoration and Improvement and Decommissioning of Roads, Red River Ranger District, Nez Perce National Forest, Idaho County, ID, Wait Period Ends: 06/04/2007, Contact: Stephanie Bransford 208–983–0675

EIS No. 20070167, Final Supplement, AFS, IN, German Ridge Restoration Project, New Information on 2006 Land and Resource Management Plan and on the Inadequate Effects Analysis, Implementation, Hoosier National Forest, Tell City Ranger District, Perry County, IN, Wait Period Ends: 06/04/2007, Contact: Ron Ellis 812–276–4733

EIS No. 20070168, Draft EIS, FTA, CA, Alameda-Contra Transit (AC Transit) East Bay Bus Rapid Transit Project, Improve Transit Serve in cities of Berkeley, Oakland and San Leandro, San Francisco Bay Area, Alameda County, CA , Comment Period Ends: 06/18/2007, Contact: Lucinda Eagle 415–744–3133

EIS No. 20070169, Draft EIS, GSA, CO, Denver Federal Central Site Plan Study, Master Site Plan, Implementation, City of Lakewood, Jefferson County, CO, Comment Period Ends: 06/18/2007 Contact: Lisa Morpurgo 303–236–8000 Ext. 5039

EIS No. 20070170, Final EIS, NPS, FL, Castillo de San Marcos National Monument, General Management Plan, Implementation, City of St. Augustine, St. Johns County, FL, Wait Period Ends: 06/04/2007, Contact: David Libman 404–562–3124 Ext. 685

EIS No. 20070171, Draft EIS, FRC, AZ, Phoenix Expansion Project, Construction and Operation of Existing Natural Gas Transmission Pipeline, Right-of-Way Grant and Temporary Use Permit, San Juan and McKinley Counties, NM and Pinal and Maricopa Counties, AZ , Comment Period Ends: 06/18/2007, Contact: Andy Black 1–866–208–3372

EIS No. 20070172, Draft EIS, FRC, 00, Southeast Supply Header Project, Construction and Operation of Natural Gas Pipeline Facilities, Located in various Counties and Parishes in LA, MS and AL, Comment Period Ends: 06/18/2007, Contact: Andy Black 1–866–208–3372

EIS No. 20070173, Final EIS, COE, FL, Central and Southern Florida Project, New Authorization for Broward County Water Preserve Areas, South Florida Water Management District (SFWMD), Comprehensive Everglades Restoration Plan, (CERP), Broward County, FL, Wait Period Ends: 06/04/2007, Contact: Michael Dupes 904–232–1689

EIS No. 20070174, Draft EIS, BPA, WA, Chief Joseph Hatchery Program, Construction, Operation and Maintenance of a Chinook Salmon Hatchery Production Program, Confederated Tribes of the Colville Reservation (Colville Tribes), Okanogan River and Columbia River, Okanogan County, WA, Comment Period Ends: 06/18/2007, Contact: Mickey Carter 503–230–5885

EIS No. 20070175, Final Supplement, USN, 00, Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar Systems, Updated and Additional Information, Implementation, Wait Period Ends: 06/04/2007, Contact: John F. Mayer 703–465–8404.

Dated: May 1, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7–8529 Filed 5–3–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8310–2]

Meeting of the National Drinking Water Advisory Council—Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Under Section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given of a meeting of the National Drinking Water Advisory Council (NDWAC), established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*). The topics to be discussed and considered by the Council include EPA and utility activities to address emerging contaminants and climate change. EPA will consult with the Council on the Aircraft Drinking Water Rule and Lead and Copper Rule Revisions. The Council

will also be briefed on activities to improve waterborne disease outbreak surveillance; investigation and reporting; activities to advance sustainable infrastructure and water security; and activities related to developing a management framework for geosequestration of carbon dioxide. If time permits, the Council will also be updated on the status of other regulatory and implementation activities underway in the national drinking water protection program.

DATES: The Council meeting will be held on May 23, 2007 from 1 p.m. to 5:30 p.m., May 24, 2007 from 9 a.m. to 5:30 p.m., and May 25, 2007 from 8:30 a.m. to noon, Eastern time.

ADDRESSES: The meeting will be held at the Courtyard Marriott Hotel, which is located at 8506 Fenton Street, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Members of the public who would like to attend the meeting, present an oral statement, or submit a written statement, should contact Daniel Malloy, by e-mail at *malloy.daniel@epa.gov*, by phone 202–564–1724, or by regular mail at the U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (MC 4601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The Council encourages the public's input and will allocate one hour (4:45–5:45 p.m.) on May 24, 2007 for this purpose. Oral statements will be limited to five minutes. It is preferred that only one person present the statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals or organizations interested in presenting an oral statement should notify Daniel Malloy by telephone at 202–564–1724, no later than May 15, 2007. Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received by May 15, 2007 will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received by May 15, 2007 or after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Special Accommodations

For information on access or services for individuals with disabilities, please contact Dan Malloy at 202–564–1724 or by e-mail at *malloy.daniel@epa.gov*. To request accommodation of a disability, please contact Dan Malloy, preferably at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: May 1, 2007.

Pamela S. Barr,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. E7–8654 Filed 5–3–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0291; FRL–8128–5]

Guidance for Pesticide Registrants on Small-Scale Field Testing and Low-Level Presence in Food of Plant-Incorporated Protectants (PIPs); Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Agency is announcing the availability of a Pesticide Registration Notice (PR Notice) titled "Guidance on Small-Scale Field Testing and Low-Level Presence in Food of Plant-Incorporated Protectants (PIPs)." PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. The PR Notice provides guidance to the registrant concerning clarification on the process by which EPA reviews and ensures the safety of low-level residues of PIPs in food or feed, and the conditions under which a tolerance or exemption from the requirement of a tolerance would be required for field tests for biotechnology-derived food and feed crop plants containing PIPs.

FOR FURTHER INFORMATION CONTACT: Patricia Moe, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0744; fax number: (703) 308–7026; e-mail address: *moe.patricia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are involved in plant breeding using PIPs including but not limited to academic researchers, seed companies, and PIP registrants. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Guidance Does the PR Notice Provide?

The PR Notice provides guidance to the registrant concerning the policies described in the August 2, 2002 **Federal Register** (67 FR 50578)notice on "Proposed Federal Actions to Update Field Test Requirements for Biotechnology Derived Plants and to Establish Early Food Safety Assessments for New Proteins Produced by Such Plants" issued under the auspices of the Office of Science and Technology Policy (OSTP). The OSTP notice was issued to outline what measures federal agencies would take to prevent low levels of biotechnology derived genes and gene products from being found in commercial food and feed. The OSTP notice stated that EPA would rely on existing processes and publish guidance for individuals and organizations conducting field testing of PIPs. The PR Notice describes those existing rules along with the existing procedures related to them. Additionally, the PR Notice provides guidance on residue containment in small-scale field testing and the kinds of information that EPA has received to support the PIP tolerances issued thus far.

III. Do PR Notices Contain Binding Requirements?

The PR Notice discussed in this notice is intended to provide guidance to EPA personnel and decision makers and to pesticide registrants. While the requirements in the statutes and Agency regulations are binding on EPA and the applicants, the PR Notice is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: April 30, 2007,

Debra Edwards,

Director, Office of Pesticide Programs.

[FR Doc. E7–8550 Filed 5–3–07; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

TIME AND DATE: The open meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, May 9, 2007. The closed portion of the meeting will follow immediately the open portion of the meeting.

PLACE: Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street NW, Washington DC 20006.

STATUS: The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN PORTION:

2007 Designation of Directorships.

New Business Activity Notice: Federal Home Loan Bank of Atlanta.

MATTER TO BE CONSIDERED AT THE CLOSED PORTION: Periodic Update of Examination Program Development and Supervisory Findings.

CONTACT PERSON FOR MORE INFORMATION: Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202–408–2876 or *williss@fhfb.gov.*

Dated: May 2, 2007.

By the Federal Housing Finance Board.

Neil R. Crowley,

Acting General Counsel.

[FR Doc. 07–2242 Filed 5–2–07; 3:47 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 21, 2007.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. J. Donald Steele, Jr., and Joanne K. Steele, Lewisburg, Pennsylvania; to acquire voting shares of Northumberland Bancorp, Northumberland, Pennsylvania, and thereby indirectly acquire voting shares of The Northumberland National Bank, Northumberland, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Peter Mahurin, Bowling Green, Kentucky, and Ben Lovell Cundiff, Cadiz, Kentucky, individually, and as a group in concert with Damon Salvatore Vitale, Bowling Green, Kentucky, and Charles Lester Key, Franklin, Kentucky, to gain control of Jackson Financial Corporation, Mayfield, Kentucky, and thereby indirectly gain control of FNB Bank, Inc., Mayfield, Kentucky.

Board of Governors of the Federal Reserve System, May 1, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–8533 Filed 5–3–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. CapitalSouth Bancorp, Birmingham, Alabama; to acquire 100 percent of the voting shares of Monticello Bancshares, Inc., and thereby indirectly acquire Monticello Bank, both of Jacksonville, Florida, and engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, May 1, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E7–8532 Filed 5–3–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Comment Request

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice.

SUMMARY: The FTC is considering conducting a study to analyze the use and likely short- and long-run competitive effects of authorized generic drugs in the prescription drug marketplace. Before investigating these issues, the FTC is seeking public comments on its proposed information requests to firms in the prescription drug industry. The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA") (44 U.S.C. 3501–3520).

DATES: Comments must be received on or before June 4, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Authorized Generic Drug Study: FTC Project No. P062105" to facilitate the organization of comments. A comment filed in paper form should include this reference both

in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/ Office of the Secretary, Room H–135 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed below. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled "Confidential." [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible.

Comments filed in electronic form should be submitted by clicking on the following weblink: *https://secure.commentworks.com/AuthorizedGenericStudy* and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the *https://secure.commentworks.com/AuthorizedGenericStudy* weblink. If this notice appears at *www.regulations.gov*, you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

Comments should also be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Karen A. Goldman, Attorney, Policy Studies, Office of the General Counsel, 600 Pennsylvania Avenue, NW., Washington, DC 20580; telephone (202) 326–2574.

SUPPLEMENTARY INFORMATION: In the United States, the Food and Drug Administration ("FDA") must approve the marketing of any pharmaceutical drug, whether brand-name or generic. The Hatch-Waxman Act establishes the regulatory framework under which the FDA may approve a generic drug to be marketed. Typically, a brand-name drug obtains FDA approval through a New Drug Application ("NDA"), and a generic drug manufacturer obtains FDA approval through an Abbreviated New Drug Application ("ANDA") in which it may be allowed to rely on the clinical data first submitted by the brand-name drug manufacturer.

To encourage generic entry as soon as is warranted, the Hatch-Waxman Act allows generic drug manufacturers, in certain circumstances, to market a generic drug prior to the expiration of claimed patent protection for the corresponding brand-name drug. To be permitted to do so, a generic drug manufacturer must first submit a "paragraph IV" ANDA in which it certifies that (a) its generic drug will not infringe patents listed in the FDA's "Orange Book" ("Orange Book patents") as claiming the relevant brand-name drug product, and/or (b) the relevant Orange Book patents are invalid. If the paragraph IV ANDA leads to litigation, then 30 months after the litigation was filed (or after final decision in the litigation, if earlier), the FDA may authorize the marketing of the generic drug under the ANDA application.

At that point, the first-filed paragraph IV ANDA applicant becomes entitled to a 180-day marketing exclusivity period, during which the FDA cannot approve any other, later-filed paragraph IV ANDA for a generic drug corresponding to the same brand-name drug product. This protects the first FDA-approved paragraph IV ANDA applicant from competition with other ANDA applicants during this time.

The 180-day marketing exclusivity period does not preclude competition from NDA-approved "authorized generics," however.[2] An authorized generic is chemically identical to a particular brand-name drug, which the brand-name manufacturer authorizes to be marketed in a generic version under the NDA-approval that the FDA granted for the brand-name drug. The brand-name manufacturer either sells the authorized generic itself through a subsidiary or licenses a generic firm to sell the authorized generic. The trade dress typically differs for the brand-name drug and its authorized generic equivalent, but the drug product is exactly the same.

In recent years and with increasing frequency, brand-name drug manufacturers have begun to market authorized generic drugs at precisely the same time that a paragraph IV generic is beginning its period of 180-day marketing exclusivity. The likely effects of this practice on generic competition have been subject to some debate. In the short run, the entry of an authorized generic drug may benefit consumers by creating additional competition that lowers generic prices further than if only the paragraph IV generic were marketed. Many generic manufacturers assert, however, that in the long run, consumers will be harmed because an expectation of competition from authorized generics will significantly decrease the incentives of generic manufacturers to pursue entry prior to patent expiration. For a generic manufacturer, the additional competition from an authorized generic may result in significantly less profit during the period of 180-day exclusivity than if the generic manufacturer had no authorized-generic competition during that time.

Given the importance of generic drugs in lowering health care costs, Senators Grassley, Leahy, and Rockefeller have requested that the Commission conduct a study of "the short term and long term effects on competition of the practice of 'authorized' generics." [3] In addition, Representative Waxman, one of the co-authors of the Hatch-Waxman Act, has requested that the FTC study "the impact of so-called 'authorized generics' on competition in the prescription drug marketplace." [4]

The Commission proposes to undertake such a study, as described in this notice, to examine both the likely short-term competitive effects of authorized generic drug entry and, to the extent possible, the likely long-term impact of entry by authorized generic

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] *Teva Pharm. Indus.* v. *FDA*, 410 F.3d 51 (D.C. Cir. 2005).

[3] *See* Letter to Chairman Deborah Platt Majoras, from Senators Grassley, Leahy, and Rockefeller (May 9, 2005).

[4] *See* Letter to Chairman Deborah Platt Majoras from Representative Henry A. Waxman (Sept. 13, 2005).

drugs on competition by generic manufacturers.[5] The study will be carried out pursuant to Section 6(b) of the FTC Act, 15 U.S.C. 46(b). Among other things, the proposed study will examine prices (including rebates, discounts, etc.) for brand-name and generic drugs, both with and without competition from authorized generics; business reasons that support authorized generic entry; factors (including product development and litigation costs) relevant to the decisions of generic firms about whether and under what circumstances to seek entry prior to patent expiration; and licensing agreements regarding authorized generics. This information will enable the proposed study to make new contributions on the effects of authorized generic drug entry on prescription drug prices and, in particular, permit an evaluation of the impact of authorized generic drugs on the incentive offered by the period of 180-day exclusivity afforded to generic drugs that enter the market as the result of an ANDA with a paragraph IV certification.

Pursuant to 5 CFR 1320.8(d), the FTC published on April 4, 2006 a **Federal Register** Notice seeking comments from the public concerning the FTC's proposed study.[6] The comments and the Commission's responses to them are set forth below. Based on the comments, the Commission has revised the previously published information requests.

Generally, the Commission's revised Special Orders seek information on (i) authorized generic drugs (launched after Jan. 1, 2001) and all drugs related to them, i.e., brand-name versions of authorized generic drugs and all bioequivalent generic drugs; (ii) brand-name drugs that first faced generic competition after Jan. 1, 2001, for which at least one ANDA with a paragraph IV certification was filed, and all bioequivalent generic drugs; [7] and (iii) brand-name drugs for which at least one ANDA with a paragraph IV certification was filed after Jan. 1, 2001, and generic entry has not yet occurred. Within this general framework, the Commission has ensured that the requests are tailored to the needs if the planned study. For example, reflecting the widespread perception that the marketing of authorized generics increased markedly beginning in 2003, requests for generic company documents are generally limited to documents prepared after Jan. 1, 2003. In order to collect documents that underlie marketing strategies adopted in 2003, requests to brand-name companies seek documents prepared after January 1, 2002.

Similarly, the Commission has confined the study to drugs most likely to yield information necessary for evaluating the short- and long-run competitive effects of authorized generic drugs. Because no comprehensive list of authorized generic drugs is available, the Commission plans to identify the authorized generic drugs covered by the study via an initial, brief information request asking brand-name companies to identify their authorized generic drugs. The Commission will use those initial responses to develop subsequent Special Orders to generic and authorized generic companies that market authorized generic drugs. Based on a preliminary analysis, approximately 80 brand-name drug manufacturers, several authorized generic drug companies, and 100 generic companies will receive Special Orders. The revised Special Orders are set forth on the OMB Web site on information collection review, *http://www.reginfo.gov/public/do/PRAMain* and on the FTC's web page on the authorized generic study, *http://www.ftc.gov/os/comments/genericdrugstudy3/*.

Pursuant to the OMB regulations that implement the PRA (5 CFR Part 1320), the FTC is providing this second opportunity for public comment while requesting that OMB grant clearance for the proposed information requests. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before June 4, 2007.

Public Comments/Consultation Outside the Agency and Actions Taken

The FTC received 13 comments on the proposed information collection requests.[8] All of the public interest organizations that submitted comments, which included a nonprofit group dedicated to the use of antitrust as a component of competition policy, strongly endorsed the study. For example, the American Antitrust Institute, CFA, FUSA, and USPIRG stated that by "initiating this study, the FTC has demonstrated its commitment to ensuring that the anticompetitive practices of brand name drug manufacturers do not threaten Americans' access to low cost generic drugs." [9] Generally, the strong support of public interest organizations reflects their representation of consumers and retirees, and concern about the rising cost of pharmaceuticals.[10] Industry views, however, varied depending on whether the commenter was a marketer of AGs or in competition with marketers of AG drugs.[11]

Generic companies and their trade organization, GPhA, supported the study. GPhA "commend[ed] the FTC for taking initiative on this important issue. * * * This Study is no less critical than the FTC's earlier efforts on the generic drug front, such as the 2002 FTC study of generic pharmaceuticals, which led to a broad and nuanced perspective at an important time in the industry's history." [12] No generic drug company questioned the practical utility of the study. GPhA and one generic company commenter, however, asserted that the FTC's requests would be burdensome, and suggested that the FTC narrow or otherwise modify its request.[13] Generic company views on how to lessen the burden were somewhat variable, presumably because some generic companies market both ANDA-generic and AG drugs. Generic companies (and brand-name and AG companies) also

[5] In its 2002 study of how generic drug competition prior to patent expiration has developed, the Commission found that the Hatch-Waxman framework had promoted entry by low-cost generic drugs prior to patent expiration. Federal Trade Commission, Generic Drug Entry Prior to Patent Expiration: An FTC Study (July 2002), available at <*http://www.ftc.gov/os/2002/07/genericdrugstudy.pdf*> ("Generic Drug Study").

[6] Agency Information Collection Activities; Comment Request, 71 FR 16779 (April 4, 2006).

[7] Categories (i) and (ii) are likely to overlap substantially.

[8] The comments are available at *http://www.ftc.gov/os/comments/genericdrugstudy3/*. The 13 submissions are from AARP (nongovernmental organization for Americans age 50 and older); Actavis Group (Actavis) (generic pharmaceutical company); American Antitrust Institute, Consumer Federation of America, Families USA, and U.S. Public Interest Research Groups (AAI/CFA/FUSA/USPIRG) (nongovernmental public interest organizations); Consumers Union (nonprofit organization representing consumers); Ronald W. Davis (Davis) (attorney submitting comments "on behalf of an undisclosed client"); Generic Pharmaceutical Association (GPhA) (trade association representing generic pharmaceutical manufacturers); Gilbert's LLP (Gilbert's) (law firm representing "one of the largest generic pharmaceutical companies in the United States"); IMS Health Inc. (IMS) (provider of information and research to the health care industry); Eli Lilly and Co. (Lilly) (an innovation-driven pharmaceutical company); Ohio Public Employees Retirement System (OPERS) (Ohio pension system); Pharmaceutical Research and Manufacturers of America (PhRMA) (trade association representing research-based pharmaceutical and biotechnology companies); Prasco, LLC (Prasco) (privately held, independent pharmaceutical company that makes AGs); and Prescription Access Litigation (PAL) (coalition of "consumer, healthcare, labor, senior, legal services, and women's health organizations").

[9] AAI/CFA/FUSA/USPIRG at 1. OPERS, AARP, PAL, Consumers Union, and GPhA also enthusiastically endorsed the study.

[10] See OPERS; AARP; PAL; Consumers Union.

[11] One industry commenter, IMS, submitted comments that only considered the possible use by the study of IMS' commercially available data.

[12] GPhA at 2.

[13] See GPhA at 5; Actavis at 1–2.

urged the Commission to broaden the scope of the study by addressing a number of topics relevant to their marketing strategies.

Comments from the brand-name pharmaceutical industry, which markets or authorizes the marketing of AGs, generally accepted the core concepts of the study, but expressed concerns primarily focused on the breadth of the originally proposed document requests. The PhRMA comments, which were endorsed by Lilly, stated that the "proposed empirical study will show whether authorized generics benefit consumers by lowering prices for generic drugs," but also asserted that the proposed "information requests are overbroad." [14] Davis, apparently representing a brand-name pharmaceutical company, asserted that a very recent statutory change could sufficiently change the marketing of AGs to render a study based on recent historical data outdated.[15]

The FTC received only one comment from an independent authorized generic drug company; most AGs are either marketed by a subsidiary or division of a brand-name company or by a generic drug company under a license from a brand-name company. The independent AG drug company, Prasco, did not express a view of the study as a whole but rather commented on substantive issues that should be addressed, and ways to minimize burden.

As discussed below, the Commission has incorporated many of the suggestions to narrow the requests, especially for documents, which were the focus of the commenters' concerns about burden. In doing so, the FTC will avoid requesting information that is not necessary for the study and will substantially reduce the burden of the study. The Commission has not, however, adopted suggestions that would limit the study's usefulness. Indeed, the Commission has adopted a number of substantive suggestions that will enhance the utility of the study without imposing additional burden.

The following discussion of issues raised by the comments is organized into five sections: (A) The practical utility of the proposed study and why it is necessary for the proper performance of the FTC's functions; (B) suggestions to narrow the scope of the study; (C) suggestions to use alternative sources of information; (D) comments requesting limitations on the use of the information submitted; and (E) suggestions to broaden the scope of the study.

[14] PhRMA at 1, 7. See also Lilly at 1.

[15] See Davis at 9–11.

A. Practical Utility of the Proposed Study and Its Necessity for the Proper Performance of the FTC's Functions

The Commission has proposed to obtain factual information that would provide a comprehensive picture of how generic competition is affected by the marketing of AG drug products.

Comments: Most comments stated that the proposed study will have practical utility, that it is necessary for the proper performance of the FTC's functions, or otherwise stressed the importance of the study. For example, Consumers Union stated, "We strongly believe that the collection of 'the information will have practical utility,' because we believe the data will show serious anti-competitive consequences of these arrangements." [16] GPhA stated that the study "will be crucial to a proper understanding of authorized generics, and is a prudent use of the Commission's resources." [17] AAI/FUSA/USPIRG asserted that "It is particularly important for the FTC to study authorized generics and other forms of anticompetitive conduct in the pharmaceutical market at this time, as over the next three years alone, prescription drugs worth over an estimated $50 billion in U.S. sales will go off patent." [18] PAL "commend[ed] the FTC for its decision to conduct this study. This information will be particularly useful as a tool for Congress to make an informed decision on whether further legislation needs to be adopted surrounding the marketing of authorized generics." [19]

While acknowledging that the proposed study "should enhance public understanding of how authorized generics impact consumers," [20] PhRMA asserted that some of the information sought by the proposed *document requests* would have little practical utility. PhRMA took this position because in its view the document requests were broader than necessary and would require the production of many documents unrelated to the topic of AGs.[21] Thus, PhRMA's concerns about utility are a restatement of its concerns about burden. PhRMA did not assert that the proposed study and the planned report on AG drugs lacks utility. Davis, however, asserted that "the practical utility of the information [that the FTC proposes to collect] will be limited, because of a recent material change in the regulatory environment: The enactment of Section 6003 of the Deficit Reduction Act ["DRA"] of 2005." [22] Davis stated that by changing the definition of the Medicaid "best price" to include AGs, Section 6003 will increase manufacturers' Medicaid rebates [23] and thereby "fundamentally reduce the incentives of branded firms to introduce authorized generics. "[24]

Response: As discussed below, the Commission has addressed concerns about the breadth of the study by modifying the requests to ensure that they are limited to relevant documents.

Contrary to Davis' assertion, the available information indicates that the enactment of Section 6003 of the DRA will have little effect on the marketing of AGs. Section 6003 was enacted to increase brand-name pharmaceutical manufacturer Medicaid rebates to states by ensuring that AGs, as versions of brand-name drug approved under an NDA, are included in the Medicaid rebate calculation for sole source and brand-name multiple source drugs.[25] The price of an AG may be the best price available for a brand-name drug and, consequently, their inclusion may increase the Medicaid rebate. AGs are

[16] Consumers Union at 2.

[17] GPhA at 2.

[18] AAI/FUSA/USPIRG at 2.

[19] PAL at 6. See also OPERS at 1; AARP at 1 (supporting the proposed study).

[20] PhRMA at 2.

[21] See PhRMA at 14–15 ("The proposed document requests-by encompassing future competition documents, by focusing on documents unrelated or indirectly related to authorized generics, by reaching much deeper within the organizations than is customary, and by requiring a catalog of information relating to each responsive document-lack practical utility in light of the objective of this study.") See also PhRMA at 2, 6, 9, 17; Lilly at 1.

[22] Davis at 3. Section 6003 of the Deficit Reduction Act of 2005, P.L. 109–171, amends Section 1927(b)(3)(A) of the Social Security Act (42 U.S.C. 1396r–8(b)(3)(A)) to include in the manufacturer's report of the best price and average manufacture price of sole source and innovator drugs pursuant to the Medicaid program, "all such drugs that are sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act," a requirement that would include AGs.

[23] Generally, manufacturers pay rebates to Medicaid that help to ensure that the price of drugs sold through the Medicaid program matches the generally available best price. In general, the rebate is equal to "the difference between the average manufacturer price and the best price * * *." 42 U.S.C. 1396r–8(b)(3)(A)(ii)(I).

[24] Davis at 3. See also PhRMA at footnote 17 (discussing the possible effect of the Deficit Reduction Act's provisions on incentives to market AGs).

[25] See 151 CONG. REC. S12069 (Oct. 31, 2005) (statement of Senator Grassley) ("My committee's title also achieves savings by helping State Medicaid Programs obtain millions in payments owed by third-party payers each year. It also produces savings by ending drug manufacturers' gaming of the system by closing the authorized generic loophole so that appropriate rebates are paid to the States."). The amendment equalizes treatment of AGs by FDA—which treated them as branded drugs so that they could be marketed during the 180-day exclusivity period—and Centers for Medicare and Medicaid Services (CMS), which previously treated them as generic drugs for purposes of the rebate calculation.

thought to be launched at the onset of generic competition, however, when brand-name sales drop off rapidly due to mandatory generic substitution requirements in most states' Medicaid programs.[26] Thus, the inclusion of AGs in the calculation of the best price is unlikely to substantially decrease brand-name company revenues for most drugs.[27] Indeed, the Office of the Actuary in CMS projected that the anticipated savings to the Medicaid program from Section 6003 are likely to be modest, a total of only $229 million for both federal and state programs over a period of five years.[28]

Accordingly, the FTC concludes that Section 6003 is unlikely to have a sufficient effect on the marketing of AGs to impair the practical utility of this study based on recent historical data. Nonetheless, the FTC has revised its Special Orders to include requests for information that will allow it to follow the marketing of AGs throughout 2007, after Section 6003 has gone into effect.

B. Suggestions To Reduce Burden by Narrowing the Scope of the Proposed Information Requests

Most comments concerning burdens focused on the document requests. Both brand-name and generic pharmaceutical companies asserted that the proposed document requests would be excessively burdensome, and proposed ways to limit the scope of the requests. By contrast, commenters generally did not express concern about burden due to requests for economic data, except regarding the request for cost data. They did not assert that the requests for sales and price data were excessive. As discussed in the following responses to the comments, the FTC has taken multiple steps to reduce substantially the burden arising from document requests, and it also has addressed concerns about cost data.

1. Comments on Document Requests

a. Request Documents Closely Related To Authorized Generics

Comment: Both brand-name and generic pharmaceutical companies asserted that the FTC's proposed document requests are too broad, and should be limited to documents that closely relate to AGs. PhRMA expressed concern about the large number of documents that could be required by the FTC's "broad requests for documents that relate generally to competition between brand name and generic drug companies."[29] PhRMA suggested that "document requests should be focused exclusively on those drug products for which a company has manufactured or licensed an authorized generic that has been sold in the marketplace," because otherwise the response "would encompass large volumes of documents unrelated to authorized generics."[30] Davis and PhRMA also suggested that tangentially relevant documents could be eliminated by deleting the phrase, "'any documents'" from the request for "'any documents, including studies, surveys, analyses, and reports * * * that evaluated, considered, analyzed, or discussed how to respond * * * to * * * future or current generic competition * * *.'"[31] Similarly, a generic pharmaceutical company, Actavis, asserted that the FTC's proposed request to generic companies for "'any documents, including studies, surveys, analyses, and reports * * * that evaluated, considered, analyzed, or discussed whether or how to proceed with generic entry * * *'"[32] is too broad, because "[a]s a generic firm, most of Actavis' documents will relate to whether or how to proceed with generic entry."[33] Actavis also suggested eliminating the "any document" language and limiting the requests to final strategy documents.

Response: We have narrowed the proposed document requests by better tailoring them to focus on AG drugs. Accordingly, the FTC has eliminated the requests for documents relating generally to competition and generic entry, and rephrased all companies' requests to focus specifically on AGs and issues arising from them.[34] In addition, consistent with the FTC's previous Special Orders to the pharmaceutical industry, the "'any document'" language has been eliminated,[35] and the request has been revised to seek only high-level planning, decisional, and strategy documents.[36]

b. Reduce the Document Requests by Focusing on Generic Company Documents

Comments: PhRMA asserted that the study should focus on generic company documents, because "[t]he best documentary source for information on the costs and profitability of entry is generic drug company documents. The generic drug companies' market analyses, studies, surveys, and reports will most directly respond to the core question of whether authorized generics have removed the companies' financial incentives to enter."[37] PhRMA also recommended that any request for brand-name company documents be limited to those that retrospectively analyze the effects of AGs on price competition and other matters, rather than consider future competitive strategies involving AGs. In PhRMA's view, documents providing prospective analyses should not be required because they are subjective; consider the intent of brand-name companies, which is not relevant to whether patent challenges are profitable for generic companies; and address events that may not have occurred.[38]

Response: The FTC will request the relevant documents of brand-name, AG, and ANDA-generic companies. While generic company documents may be the most informative as to generic companies' financial incentives to enter and challenge patents, documents from brand-name and AG companies, including prospective documents also, are relevant. Brand-name companies are sophisticated and knowledgeable market participants, and their strategies and views on the use of AGs should provide insight into the likely effects of AGs. The FTC will take into account the

[26] States use a variety of strategies to encourage the use of generic drugs in the Medicaid program, and "[s]ince 2000, there has been a steady trend toward increased mandatory generic substitution. In 2005, nearly all states * * * reported that they require generics to be dispensed when available." THE HENRY J. KAISER FAMILY FOUNDATION, STATE MEDICAID OUTPATIENT PRESCRIPTION DRUG POLICIES: FINDINGS FROM A NATIONAL SURVEY, 2005 update (October 2005).

[27] Section 6003 might have a bigger effect on drugs that are particularly heavily used within the Medicaid program or must be dispensed without generic substitution and in states that do not have mandatory generic substitution requirements in their Medicaid programs.

[28] See Medicaid Program; Prescription Drugs; Proposed Rule, 71 FR 77174, 77190 (Dec. 22, 2006). See also U.S. CONG. BUDGET OFFICE, COST ESTIMATE: S. 1932, DEFICIT REDUCTION ACT OF 2005 35 (Jan. 27, 2006) (Table 15. Estimated Budgetary Effects of Title VI, Subtitle A—Medicaid, period from 2006–2010, projecting federal Medicaid savings of $150 million).

[29] PhRMA at 2. See also PhRMA at 7–9.

[30] PhRMA at 8.

[31] See Davis at 13 (quoting 71 FR at 16781); see also PhRMA at 7. See also Davis at 4–7, 11–13 (expressing concern about the breadth of the study and suggesting that the FTC focus on "the central question").

[32] Actavis at 2 (quoting 71 FR at 16782).

[33] Actavis at 3.

[34] See Brand-Name Drug Company Special Order, Item 27; Authorized Generic Drug Company Special Order, Item 10; and Generic Drug Company Special Order, Items 18, 19.

[35] See GENERIC DRUG ENTRY PRIOR TO PATENT EXPIRATION at A–20 (July 2002) (requesting "all studies, surveys, analyses and reports."); PHARMACY BENEFIT MANAGERS: OWNERSHIP OF MAIL-ORDER PHARMACIES A–2 (August 2005) (requesting "all business plans, strategic plans, planning documents, industry studies, analyses, and consultant reports * * *.").

[36] The request has not been limited to "final" documents, however, because of the difficulty of ascertaining what is "final."

[37] PhRMA at 5.

[38] PhRMA at 3, 5, 9–11.

limitations expressed by PhRMA regarding documents that consider prospective matters in assessing the weight they should be accorded.

c. Limit the Required Document Search

Comment: The FTC's proposed request asked for documents that "were prepared or received by or for any senior vice president (or equivalent position) with product line responsibility for the specified drug product or any officer(s) or director(s) of the company * * *."[39] PhRMA suggested, however, that the documents requested by the FTC be limited to those "maintained in the files of current officers or directors."[40] PhRMA asserted that this would be consistent with the approach taken for previous FTC reports on competition in the pharmaceutical industry and with practices under the Hart-Scott-Rodino Act, and would "avoid confusion, reduce the burden, and focus the review on the most probative company documents."[41]

Response: The Commission believes that for the purpose of this study, which should cover decisions at the individual drug level as well as a company's general views on marketing AGs, it is necessary to consider documents at the level of product-line decisions as well as company-wide. However, to reduce the burden arising from this request, the Commission has limited the request for documents of senior vice presidents to documents maintained in their files. For the presumably smaller number of documents related to officers and directors, the Commission has retained the "prepared by or for" language. The Commission believes that this arrangement, plus the reduction in the number of drugs covered (discussed below), should reduce burden without jeopardizing the production of important, high-level, planning, decisional, and strategy documents. Moreover, depending on turnover, a request limited to the files of current officers and directors could eliminate all but the most recent documents. Such a limitation could impair the practical utility and quality of the information collected.

d. Limit Sorting of Documents and Information About Their Preparation

Comment: PhRMA objected to the FTC's requirement that companies indicate on each document "the date of preparation and the name and title of each individual who prepared the document, and group the documents by identified drug product."[42] PhRMA asserted that this requirement will be very burdensome, and noted that sorting of documents is no longer required by the FTC in second requests in merger investigations.[43] Accordingly, PhRMA requested that companies be required to produce documents "as they are maintained in the regular course of business along with a list or index identifying the person whose files the document came from."[44]

Response: The FTC believes that its ability to evaluate and analyze the information submitted in response to the Special Orders for this study would be greatly enhanced by a requirement to "group the documents by identified drug product."[45] Eliminating this requirement could make it difficult to ascertain the relevance of many documents, and would slow analysis of the information by FTC staff. Given that the FTC has reduced the number of drugs covered by the requests (discussed below), sorting documents by drug should not be as burdensome as originally anticipated. Moreover, it is likely that information about different drugs is maintained separately in the regular course of business. The FTC recognizes, however, that some documents may generally address a topic, and relate to more than one drug. Accordingly, the FTC has modified the Special Orders to require all companies to group documents by identified drug product, and to respond separately regarding documents that discuss AGs generally.

The Commission believes that in most cases the date of preparation and the name and title of each individual who prepared the document will be evident from the document itself. However, to reduce burden, the FTC will require firms that respond to the Special Orders to specify only the name of the person from whose files the document came and whether the document was generated within the Company, or the name of the source if generated externally. This information should help the FTC determine the relevance of each document.

2. Comments on Matters Affecting Both Document and Data Requests

a. Limit the Time Period Covered by the Request

Comments: The FTC's proposed request asked for documents dated after Jan. 1, 1998. GPhA and Actavis recommended that the FTC not seek documents from before Jan. 1, 2003, because the marketing of AGs, especially during 180-day exclusivity periods, began to increase around that time.[46] Moreover, Actavis asserted that older information is especially burdensome to obtain because it may be available only "in off-site storage facilities or on back-up tapes," and may exist in older formats and systems that companies no longer support.[47]

Response: To avoid imposing an unnecessary burden, the FTC has substantially reduced the period for which documents are being sought. The FTC agrees that generic company documents dated after Jan. 1, 2003 are likely to be the most useful for understanding the effects of AGs on generic companies' incentives to file ANDAs and to challenge patents via paragraph IV certifications. Therefore, we are changing the initial year for generic company documents from 1998 to 2003. The FTC's request for brand-name and AG company documents will be limited to those dated after Jan. 1, 2002, so that the reasons for any increased marketing of AGs beginning in 2003 might be ascertained.

The FTC also is reducing the time period covered by its data requests. Under the first **Federal Register** Notice, a data request potentially could have extended back until Jan. 1, 1999. To ensure consistency in reporting, the FTC is requesting sales and price data on brand-name, AG, and generic drugs after Jan. 1, 2001, or whenever marketing began. A request for this data is necessary to ensure the availability of sufficient comparison data on drugs for which no AG was marketed, to assess possible trends over time, and to examine possible correlations between sales or price levels and various business strategies such as patent challenges, marketing of AGs, and sharing of 180-day exclusivity.

b. Reduce the Number of Drugs Covered

Comments: Both brand-name and generic drug companies suggested limiting the documents requested (and to some extent the data) by reducing the number of drugs covered by the study. PhRMA suggested that the FTC reduce the number of drug products covered by the study by limiting the sample for which information would be requested to those drugs for which an AG version has been marketed and a random

[39] 71 FR at 16781–2.

[40] PhRMA at 12.

[41] See PhRMA at 11; see also PhRMA at 12–13 (discussing Item 4 (c) of the Hart-Scott-Rodino notification report, FTC Form C4, rev. 06/06/06).

[42] 71 FR at 16781.

[43] See PhRMA at 13–15.

[44] PhRMA at 14.

[45] 71 FR at 16781.

[46] See GPhA at 4 n.5; Actavis at 2.

[47] Actavis at 1–2. See also GPhA at 4 (noting that agreements to market AGs did not become prevalent until late 2003).

stratified sample of other drugs, e.g., by studying a percentage of the drugs in various dollar sales ranges.[48] Actavis recommended that the FTC limit the request for documents to "drugs for which there was an AG launch or an announced agreement for an authorized generic launch."[49] Davis also suggested limiting the drugs covered by the study by asking generic companies to identify drugs for which they did not file an ANDA because of concerns about competition from an AG, and initially request "relevant decisional documents as to these products."[50] Prasco, on the other hand, appears to be concerned that by limiting the number of drugs or companies, e.g., by considering only drugs for which generic competition began with a period of 180-day exclusivity, the FTC might not examine the full range of situations in which AGs are marketed.[51]

Response: The FTC agrees that the number of drugs covered by the study should be reduced by focusing on AGs[52] and a limited number of other drugs necessary to illuminate the issues addressed by this study.

Accordingly, the Commission has limited the data requests to both brand-name and generic companies to (i) AGs and all related drugs, i.e., brand-name versions of AGs and bioequivalent ANDA-generic drugs; and (ii) brand-name drugs for which at least one ANDA with a paragraph IV certification has been filed, and all bioequivalent ANDA-generic drugs.[53] The data requests must address all such drugs so that the FTC has a complete and accurate basis upon which to evaluate relative prices, market shares, and sales levels sufficient to support paragraph IV patent challenges.

Moreover, the FTC recognizes that the scope of drugs necessary for purposes of document requests is narrower than the set of drugs needed to undertake a reliable economic analysis, which must include comparison drugs for which no AG was marketed. Consequently, document requests to brand-name companies have been modified to focus on documents that discuss specific AGs or related brand-name drugs identified by the brand-name company, or documents that generally discuss the marketing of AGs. Such documents should shed light on the brand-name companies' economic and strategic reasons for marketing AGs. The scope of document requests to generic drug companies, however, is not limited to drugs for which an AG has been marketed. Rather, to fully explore concerns that AGs are inhibiting generic entry and patent challenges, generic companies are required to submit documents that discuss AGs in regard to a decision to submit an ANDA and/or make a paragraph III or IV certification with respect to *any specific* drug, and documents that generally discuss AGs in regard to submission of ANDAs and/or making paragraph III or IV certifications, but not in regard to a particular drug. This approach takes account of the possibility that generic companies make decisions about whether to pursue marketing of a generic drug before it is known whether an AG will be launched, and thus relevant documents may concern drugs for which no AG has been marketed, drugs for which the generic company decided to file an ANDA with a paragraph III certification rather than a paragraph IV, or drugs for which the company decided not to file an ANDA.

3. Data

a. Quantitative vs. Qualitative Information

Comments: Brand-name pharmaceutical companies asserted that the study should be based primarily on quantitative information, rather than documents, while generic companies stressed the importance of qualitative information found in documents. PhRMA asserted that "data, rather than documents, best meet the needs of the study" because it believes that pricing and output data as well as data on generic entry in the presence of an AG will "show most clearly and directly whether authorized generics have benefited consumers by increasing availability of prescription drugs at lower prices."[54] By contrast, generic companies argued that while quantitative data are useful for analyzing short-term effects of AGs, qualitative information is essential to gauge the extent to which AGs will affect generic drug entry decisions in the future.[55] Similarly, AAI/FUSA/USPIRG stated that "the more significant long-term effects will not be identified by current quantitative data" because the "more profound impact of authorized generics may be on the long-term incentive and ability of generic firms to engage in the costly and risky conduct of attempting to invent non-infringing drugs and challenge questionable patents."[56]

Response: Quantitative and qualitative data are complementary, and both are necessary for a full exploration and analysis of the short- and long-term effects of AGs on competition in the prescription drug marketplace. Of the quantitative data that the FTC is seeking, price data show the short-term effects of AGs on consumers, while data on sales, market share, and return on investment are more relevant to the long-term effects of AGs on ANDA-generic companies' incentives to file ANDAs and challenge patents. Quantitative data on recent filings of ANDAs with paragraph IV certifications should also be relevant to the long-term picture, because recent filings have been made in light of the current climate regarding the marketing of AGs.

Qualitative information, including company documents, however, is essential to evaluate the long-term effects of AGs on generic company decisions to file ANDAs and challenge patents. Generic company documents prepared before the first **Federal Register** Notice for this study was published are essential to interpret the

[48] PhRMA at 8–9, 18–19. Note that PhRMA, which asserted that the FTC's requests "would cover not only brand drug 'products that have first faced generic competition since January 1, 1999' but also products 'that have received notice of the filing of an ANDA,' misinterpreted the FTC's **Federal Register** Notice and thus incorrectly believed that the study would cover a very large number of drugs. See PhRMA at 18 (quoting 71 FR at 16781). The FTC's **Federal Register** Notice stated that "the brand-name companies to which the information requests would be sent include those companies with products that have first faced generic drug competition since January 1, 1999 or those that have received notice of the filing of an ANDA * * *." 71 FR at 16781. Thus the criteria quoted by PhRMA refer to the companies that would receive notice, not the drugs that would be covered. These criteria would likely cover many companies, but the number of drugs for which each company will be required to provide data will be limited to AGs, brand-name and ANDA-generic versions of AGs, and drugs for which an ANDA with a paragraph IV certification has been filed. Thus, the number of drugs should not be large.

[49] Actavis at 2–3.

[50] Davis at 12.

[51] See Prasco at 2.

[52] Focusing requests on AGs is not straightforward because no comprehensive list of AGs is available. Thus, the first request proposed for this study is a request to brand-name companies to identify all AGs initially marketed after January 1, 2001. Although the FTC will provide a list of putative AGs (drugs for which an AG is believed to have been marketed) and drugs subject to ANDAs with paragraph IV certifications, the Special Orders assume that brand-name companies are better aware of drugs that have been marketed pursuant to their NDAs, and thus can identify their AGs, even if they are not on a list provided by the FTC.

[53] These two groups are likely to overlap. Also, price data will not be requested regarding brand-name drugs for which an ANDA with a paragraph IV certification has been filed, but generic entry has not yet occurred.

[54] PhRMA at 2–3; see also Lilly at 1 (endorsing the comments of PhRMA on the scope and extent of the proposed request for information).

[55] *See, e.g.,* PAL at 6 ("Much of the information concerning * * * longer-term effects is qualitative and narrative in nature, rather than quantitative."); GPhA at 4–5 (data collection must include both quantitative and qualitative data).

[56] AAI/FUSA/USPIRG at 6.

quantitative data and to understand what factors or conditions, including AGs, might have contributed to any quantitative trends that we might observe. Generic company documents are also necessary to understand how AGs actually affect generic company decision-making. Brand-name company documents could further elucidate the likely effects of AGs on generic company decisions to challenge patents, and aid in the interpretation of the quantitative data.

b. Cost Accounting Data

Comment: PhRMA suggested that the FTC eliminate its request for cost accounting data from brand name firms because "cost accounting and margin data for brand name drug companies will not show whether generic entry has become unprofitable" and therefore such data are not useful for that analysis.[57] Similarly, Davis urged that the FTC drop its request for all cost data, because he believes that cost data are of limited relevance to the study and would be very burdensome to collect and analyze.[58]

Both PhRMA and Prasco, however, asserted that to evaluate whether AGs have deterred ANDA-generic entry, cost data from generic companies on the profitability of entry and return on investment are essential.[59] Prasco emphasized that the FTC should obtain data that would enable it to determine the "return-on-investment generated by generic products with and without competition from authorized generics," and whether that return is a sufficient incentive for challenging patents.[60]

Response: The FTC agrees that the request for cost data from brand-name companies should be eliminated because it is not useful for evaluating generic companies' incentives to file ANDAs and make paragraph IV certifications. Cost data regarding brand-name drugs will no longer be required.

Cost data regarding generic drugs, however, are necessary to evaluate the effects of AGs on profitability and return on investment, particularly during 180-day exclusivity. Thus, the revised requests require generic companies to submit cost data. Companies generate cost data in the ordinary course of business, so the request will not be excessively burdensome. To enhance uniformity and minimize burden, the FTC has modified the Special Orders to request the overall cost to manufacture, and has eliminated the request that companies separately provide data for cost subcategories, e.g., material cost, labor cost, manufacturing cost, distribution cost, API cost, and overhead cost. The FTC is also requesting generic companies' costs for research and development and for paragraph IV litigation, to ensure that it can completely evaluate the investment necessary for generic entry that entails a patent challenge.

C. Suggestions on Alternative Sources of Information

1. Comments on Holding Hearings

Comment: Several commenters, including GPhA, suggested that the FTC hold hearings to gather information on the likely long-term effects of AGs because they believe that the effects of AGs would not be reflected adequately in data on currently marketed ANDA-generic drugs, for which entry decisions and strategies may have been made before the marketing of AGs became more common in 2003.[61] Unlike the other commenters, however, GPhA also suggested that the FTC not use subpoenas: "[S]ubpoenas are an unnecessarily forceful mechanism by which to gather information, as many generic companies are interested in this issue and will be inclined to voluntarily submit information in response to FTC's request."[62]

Response: While the FTC recognizes the value of hearings for gathering information from industry and economic experts and enhancing our understanding of an issue, hearings cannot substitute for pre-existing, often confidential documents and data that can be acquired only by compulsory process. The use of Special Orders to gather pre-existing information was critical to the FTC's reports on GENERIC DRUG ENTRY PRIOR TO PATENT EXPIRATION (July 2002)[63] and PHARMACY BENEFIT MANAGERS: OWNERSHIP OF MAIL-ORDER PHARMACIES (August 2005).[64] As the FTC reviews the information it receives in response to the Special Orders, it will consider whether hearings should be held to supplement the responses with up-to-date views on particular issues.

2. Comments on the Requests for IMS Information

Comments: IMS, a provider of economic data on pharmaceuticals, asserted that rather than obtaining IMS data from individual companies, "the Commission could obtain information it seeks more efficiently by licensing the information directly from IMS."[65] IMS believes that licensing would be more efficient because IMS data frequently are customized to a particular customer, and the FTC's request could involve numerous companies. Accordingly, the FTC would likely receive data in inconsistent formats, which would not be comparable across "manufacturers, products, and time periods."[66] IMS also suggested that the FTC eliminate its proposed request for "any other IMS data, or the equivalent thereof, used in the ordinary course of business," because it is too broad and would at least in part yield IMS information unrelated to the study.[67] Several pharmaceutical companies also suggested that the FTC obtain IMS data directly from IMS,[68] because "IMS Health sells its data under licenses that restrict licensees from disclosing the data to third parties."[69]

Response: The FTC agrees that obtaining data directly from IMS would be more efficient, and would enhance the FTC's ability to analyze and interpret the data. It would also reduce the burden on industry respondents, who would not have to find and produce this information. In addition, licensing data from IMS would facilitate obtaining complete data, especially retail-level sales and price data necessary for an evaluation of the effects of AGs on consumers.[70] Accordingly, the FTC has eliminated the requests for IMS information from the proposed Special Orders.

D. Comments Requesting Limitations on Use of the Information Submitted

Comment: GPhA requested that "the FTC give assurances that information

[57] PhRMA at 17.

[58] See Davis at 14.

[59] See PhRMA at 20; Prasco at 3.

[60] Prasco at 3.

[61] See GPhA at 1, 4, 6–7. See also AAI/FUSA/USPIRG at 6; PAL at 6; Gilbert's at 2–3 (suggesting that the FTC hold hearings because the effects of AGs may not be reflected in pre-existing documents which "may show that generic companies have continued developing certain products despite the threat of authorized generics in the hope that the practice is curtailed by the courts, regulation or legislation").

[62] GPhA at 5.

[63] Hereinafter GENERIC DRUG REPORT.

[64] Hereinafter PBM REPORT.

[65] IMS at 2.

[66] IMS at 2.

[67] IMS at 3–4. See also Prasco at 1–2 (suggesting that "IMS Integrated Promotional Services Total Promotion Reports" are unrelated to the topic of the study).

[68] See Actavis at 3; Davis at 14; PhRMA at 15–16.

[69] PhRMA at 15–16. IMS also stated that whether FTC obtains data from IMS directly or from individual companies, "IMS information constitutes confidential trade secret and commercial information that is protected from disclosure under section 6(f) of the FTC Act, 15 U.S.C. 46(f)." IMS at 3.

[70] See Gilbert's at 3 (urging "the FTC to specifically request information on the pricing of drugs at the retail level, as this data may not be captured by the request as currently stated").

gathered in conducting this study will be used solely for the purposes of the study."[71]

Response: Although the purpose of the proposed information collection is to provide a basis for the proposed study, the Commission cannot give assurances that the documents and information collected will not be used for other purposes such as law enforcement investigations. The Commission would not exercise its enforcement authority solely on the basis of information collected in response to the Special Orders, however. Rather, it would do so only after gathering additional information from a company and/or other sources through an investigation separate from the proposed study. Also, although materials submitted may be covered by one or more stringent confidentiality constraints, the Commission cannot rule out that, under circumstances specified by law, the information could be used by other agencies for law enforcement purposes, by Congress, or in judicial proceedings.

E. Suggestions To Broaden the Scope of the Proposed Study

The FTC received a number of suggestions from generic, brand-name, and AG companies to broaden the scope of the study. Some of the suggestions addressed new topics not contemplated by the **Federal Register** Notice of April 4, 2006, and would require the submission of information not contemplated by that notice. Other suggested topics were more closely related to the proposed study and might require little or no additional information. Although the agency cannot be certain that it will be possible to address particular topics because the nature of the information to be collected cannot entirely be predicted, the Commission will make every effort to maximize the practical utility of the information it receives by using it to address as many issues relevant to the study as possible.

1. Topics Closely Related to the Scope of the Proposed Study

Comment: Davis and PhRMA suggested that the FTC study take into account possible beneficial effects of AGs on generic companies that license them, *e.g.*, from licensing revenues, by enhancing a company's portfolio of products, or by allowing a company to offer all dosages or strengths of a drug.[72]

Response: The FTC agrees that its study should encompass all aspects of the impact of AGs on generic companies, including both positive and negative effects. The Commission has revised its document requests to ensure that it is clear that information requests to generic companies extend to documents that discuss possible benefits to a company of marketing an AG drug.

Comment: Several commenters suggested examining a number of complex issues regarding the purposes, effects, limits, and necessity of 180-day exclusivity. Lilly suggested that the FTC analyze whether and to what extent consumers benefit from accelerated generic entry due to patent challenges; whether 180-day exclusivity undermines those benefits by delaying competition; and whether 180-day exclusivity is a necessary incentive for generic companies to undertake patent challenges.[73] Prasco suggested that the Commission assess whether the effects of AGs on competition differ from the effects of shared exclusivity by multiple first filers of ANDAs with paragraph IV certifications under the MMA.[74] Prasco also recommended that the FTC take into account the "apparent diminishing number of brand products available for paragraph IV ANDA challenges" when considering whether AGs have caused a decrease in the number of paragraph IV certifications.[75]

Response: These issues are related to the proposed study, and the FTC anticipates that the information to be obtained from companies and other sources may allow the Commission to address aspects of many of them. Such information includes price data, the timing of generic entry, dates of patent expiration, the extent of multiple entry, profitability, return on investment, and trends in paragraph IV certifications, and documents related to these issues. The Commission, however, will not broaden its information requests in order to expand the scope of its study beyond the previously announced analysis of the effect of AG drugs on competition.

2. Topics Outside the Scope of the Proposed Study

Comment: Several commenters suggested considering the full range of strategies that brand-name companies might use to delay generic entry and competition or otherwise promote the use of brand-name drugs at the expense of generics, regardless of whether the strategies involve AG drugs.[76] Practices suggested for inclusion in the study included the filing of citizen petitions or the use of the declaratory judgment system to delay generic entry;[77] the use of "product hopping" or other strategies to switch consumers from one brand-name drug to another at the onset of generic competition;[78] and the use of "reverse payments" and purportedly problematic patent settlements.[79]

Response: While the FTC appreciates the importance of studying strategies that might adversely affect generic competition, these topics are generally beyond the scope of the congressional request to study the competitive effects of AGs. Given finite resources, examination of these issues through expansion of the Special Orders would detract from the quality and timeliness of the study of AGs. To the extent that the study finds that AGs are marketed pursuant to the settlement of paragraph IV litigation, however, the FTC will examine the competitive implications of the arrangements as part of its ongoing review of such settlements.

Comment: Other commenters suggested that the FTC broaden the study to examine practices of generic pharmaceutical companies that might be anti-competitive and chill brand-name manufacturers' incentives to innovate. In particular, Lilly suggested that the FTC examine "early and speculative patent challenges," which "can have a chilling effect on innovation."[80]

Response: The possible effects of early and speculative patent challenges and other practices on innovation are outside the scope of the congressionally requested study. An analysis of this complex issue, which would involve

[71] GPhA at 5.

[72] See Davis at 15–16; PhRMA at 20.

[73] See Lilly at 2.

[74] See Prasco at 3. The MMA defined "first applicant" in such a way that all applicants who submit a substantially complete application containing a paragraph IV certification on the first day the FDA receives such an application may be granted 180-day exclusivity. See 21 U.S.C. 355(j)(5)(B)(iv)(II)(bb). The MMA codified a policy that had been adopted by the FDA not long before the enactment of the MMA in 2003. See FDA, GUIDANCE FOR INDUSTRY: 180–DAY EXCLUSIVITY WHEN MULTIPLE ANDAS ARE SUBMITTED ON THE SAME DAY (July 2003), available at *http://www.fda.gov/CDER/GUIDANCE/5710fnl.pdf.* Before that time, the FDA granted exclusivity on a patent-by-patent basis, so that two companies that were first filers with respect to challenges to different patents might share exclusivity for the drug product. See Letter from Gary Buehler, Office of Generic Drugs, FDA, to Diane Servello, Andrx Pharmaceuticals, Inc. (Nov. 16, 2001).

[75] Prasco at 3.

[76] See PAL at 6; AAI/FUSA/USPIRG at 5; Gilbert's at 3; GPhA at 6.

[77] See AAI/FUSA/USPIRG at 4 (citizen petitions and declaratory judgment system); Gilbert's at 3 (citizen petitions); GPhA at 6 (citizen petitions).

[78] See GPhA at 6 (product hopping); Gilbert's at 3 (product switches); AAI/FUSA/USPIRG at 5 (product switches).

[79] See Gilbert's at 3; AAI/FUSA/USPIRG at 5; PAL at 6.

[80] Lilly at 3. See also Davis at 15.

assessing innovation or measuring branded firms' pharmaceutical research and development efforts, would detract from the FTC's ability to carry out a complete and timely study of the effects of AGs on competition.

Comment: AARP suggested that the Commission broaden the scope of the study by "assess[ing] how different generics offer different levels of savings over the brand name drug; examin[ing] whether, in order to get better prices, consumers must search for a generic not produced by the manufacturer of the brand name drug; examin[ing] the cost impact of authorized generics on public programs, such as Medicare and Medicaid, and on private health insurance; and assessing] how the use of authorized generics impacts access to lower cost generic drugs, particularly for low-income individuals."[81]

Response: The first suggestion, that the FTC assess the savings offered by different types of generic drugs relative to the brand-name drug, is within the scope of the proposed study and one that the Commission plans to address. The other topics, however, are outside the scope of the congressionally requested study, which is designed to examine the short- and long-term effects of AGs on competition in the prescription drug marketplace, focusing on their impact on generic company incentives to market generic drugs and undertake patent challenges. The FTC does not anticipate addressing issues such as the impact of AGs on consumer behavior or specific classes of consumers, and on public or private programs not administered by this agency, because to do so would detract from the quality and timeliness of the congressionally requested study.

Destruction of Documents

It should be noted that subsequent to this notice, any destruction, removal, mutilation, alteration, or falsification of documentary evidence that may be responsive to this information collection within the possession or control of a person, partnership or corporation subject to the FTC Act may be subject to criminal prosecution. 15 U.S.C. 50; *see also* 18 U.S.C. 1505.

Confidentiality

The information presented in the study will not identify company-specific data. See 15 U.S.C. 57b–2(d)(1)(B). Rather, the Commission anticipates using primarily aggregated totals, on a level sufficient to protect individual companies' confidential information, to provide a factual summary of the effect of authorized generic entry since 1999. Section 6(f) of the FTC Act, 15 U.S.C. 46(f), bars the Commission from publicly disclosing trade secrets or confidential commercial or financial information it receives from persons pursuant to, among other methods, special orders authorized by Section 6(b) of the FTC Act. Such information also would be exempt from disclosure under the Freedom of Information Act. 5 U.S.C. 552(b)(4). Moreover, under Section 21(c) of the FTC Act, 15 U.S.C. 57b–2(c), a submitter who designates a submission as confidential is entitled to 10 days' advance notice of any anticipated public disclosure by the Commission, assuming that the Commission has determined that the information does not, in fact, constitute 6(f) material. Although materials covered under one or more of these various sections are protected by stringent confidentiality constraints, the FTC Act and the Commission's rules authorize disclosure in limited circumstances (*e.g.*, official requests by Congress, requests from other agencies for law enforcement purposes, administrative or judicial proceedings). Even in those limited contexts, however, the Commission's rules may afford the submitter advance notice to seek a protective order. *See* 15 U.S.C. 57b–2(c); 16 CFR 4.9—4.11.

Estimated Burden Hours and Labor Cost Burden

In its prior **Federal Register** notice, the FTC estimated that a company's burden for the AG study would range from 140 to 408 hours depending upon the number of a company's drugs covered by the study.[82]

Two commenters asserted that the FTC's estimates for complying with its document requests understated the burden hours. PhRMA, for example, asserted that "the FTC's estimates understate by several multiples the amount of time and money it would likely take to comply with the requests as written."[83] In contrast, the AG company Prasco had no "comment on the accuracy of the FTC's estimates" but noted that the "burden of providing the requested information can only be assessed in relation to the size of the company responding."[84] GPhA also did not comment on the FTC's estimates.

The initial hour burden estimates are consistent with previous PRA estimates and the FTC's experience with information requests that require financial data, answers to questions, and production of pre-existing documents. Even assuming, however, that due to the nature of the questions and the time frame covered in the first **Federal Register** notice, the FTC's initial estimate understated the burden, the Commission believes that its estimates are realistic given the modifications to the requests, which largely adopt industry suggestions for reducing burden. Previously, the study covered drug products that first faced generic competition after Jan. 1, 1999, for which an ANDA with a paragraph III or IV patent certification was filed. It now covers drugs subject to competition after Jan. 1, 2001, for which at least one ANDA with a paragraph IV certification was filed. Our preliminary review suggests that there are approximately 200 such drugs subject to generic competition, and that this set of drugs will also capture many of the AGs that have been marketed during this time frame.[85] The reduction in the number of drugs covered resulting from the changes in time frame and criteria for inclusion in the study should reduce the hour burden by more than one-half.

Other changes should reduce the burden even more. The time period covered by the document requests, which previously began on Jan. 1, 1998, now begins on Jan. 1, 2002 or 2003, depending on company type, and ends on April 3, 2006. This should reduce the burden of document production by more than half, and probably much more because older documents often are harder to obtain. Moreover, the document requests are now limited to planning, decisional, and strategy documents that specifically address AGs. Although any estimate of the expected decrease in burden due to the changes that focus the requests on AGs is necessarily imprecise because no complete list of AGs is available, the Commission believes, from preliminary information, that these changes alone should reduce the burden markedly.

Finally, the requests for IMS Health data and cost data from brand-name companies have been eliminated. The request for cost data from generic firms has been simplified by requesting

[81] AARP at 2.

[82] 71 FR 16779, 16783 (April 4, 2006).

[83] PhRMA at 7. See also Davis at 11 (the FTC's **Federal Register** notice "materially underestimates the burden of compliance"). PhRMA did not comment on the Commission's burden estimates for complying with requests for financial data.

[84] 84 Prasco at 2.

[85] In addition, to obtain a complete picture of industry practices in marketing AGs, we are asking companies to identify and provide information on all AGs (tablet or capsule form) that were launched after Jan. 1, 2001, regardless of what certifications were made regarding patents on the brand-name drug. Brand-name companies will also be requested to provide sales data on brand-name drugs for which at least one ANDA with a paragraph IV certification was filed after Jan. 1, 2001, and generic entry has not yet occurred.

annual operating statements. In sum, as a result of the combined effects of the changes to reduce the burden of both financial and document requests, the hour burden of the study should be a fraction of what it would have been pursuant to the requests of the first **Federal Register** notice.

After taking account of the public comments and the burden-reducing changes that we have made in response, the FTC believes that its previously published estimate of the total burden hours remains reasonable. The Commission has retained a three-tier estimate of burden hours depending upon the number of drug products for which a company is required to provide a response: Companies with one to five drug products, companies with six to 10 drug products, and companies with more than 10 drug products. As before, the Commission anticipates that the majority of burden hours will result from document production. However, given that the Commission seeks only high-level documents strongly relevant to the AG study, the Commission has revised its burden estimates to reflect a greater amount of time spent on identifying responsive documents, and less time spent on retrieving and copying. The Commission has also increased its estimates of the maximum hours for these tasks to reflect the possibility that a few companies will have a relatively large number of drugs responsive to its requests.

Based on preliminary information, the FTC anticipates that it will seek information for 1 to 5 drug products from approximately 130 companies, 6 to 10 drug products from 20 companies, and for greater than 10 drug products from 40 companies. Thus, the cumulative hours burden to produce documents and prepare the response sought will be approximately 40,780 hours. [(138 hours × 130 companies) + (230 × 20 companies) + (456 hours × 40 companies)] As previously discussed, the Commission anticipates that in general the number of drugs, and thus the number of burden hours, will be proportional to company size.[86] The following table shows the estimated burden hours for different tasks for companies with different numbers of drugs covered by the study:

Task	1–5 Drug Products (hours	6–10 Drug Products (hours)	> 10 Drug Products (hours)
Organize document and information retrieval	12	24	48
Identify requested documents	40	80	200
Retrieve and copy requested documents	10	20	48
Identify requested financial information	40	50	60
Obtain financial information	12	16	20
Prepare response	24	40	80
Total	138	230	456

It is not possible to calculate with precision the labor costs associated with answering the planned questions and producing the documents requested, because responses will entail participation by management and/or support staff at various compensation levels within many different companies. Individuals within some or all of those labor categories may be involved in the information-collection process. Nonetheless, the FTC has assumed that mid-management personnel and outside legal counsel will handle most of the tasks involved in gathering and producing the responsive information, and has applied an average hourly wage of $250/hour for their labor. Thus, the labor costs per company should range between $34,500 (138 hours × $250/hour) and $114,000 (456 hours × $250/hour).

Estimated Annual Capital or Other Non-labor Costs

The capital or other non-labor costs associated with the information requests will be minimal. Industry members should already have in place the means to store information of the volume requested. In addition, respondents may have to purchase office supplies such as file folders, computer CDs or DVDs, photocopier toner, or paper in order to comply with the Commission's requests. The FTC estimates that such costs will be minimal.

By direction of the Commission, Commissioner Harbour recused.

Donald S. Clark,

Secretary.

[FR Doc. E7–8567 Filed 5–3–07; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Preparedness and Response the authorities vested in the Secretary of Health and Human Services under section 319C–2, 319F, and 319I of the Public Health Service Act, as amended, as it pertains to the functions assigned to the Assistant Secretary for Preparedness and Response. These delegations to the Assistant Secretary for Preparedness and Response include the authority vested in the Secretary of Health and Human Services to continue the administration of any grants and contracts initially awarded by the Health Resources and Services Administration under sections 319C–1, 319C–2, 319F, and 319I of the Public Health Service Act. This delegation permits the Assistant Secretary for Preparedness and Response to administer grants and contracts under the terms and conditions of the initial awards.

This authority may be redelegated. These delegations shall be exercised under the Department's policy on regulations and the existing delegation of authority to approve and issue regulations. This delegation excludes the authority to issue reports to Congress and to take final action to withhold funds from States.

This delegation supersedes all prior delegations of authority to the Health Resources and Services Administration's officials to the extent that they are inconsistent with the provisions of this delegation.

[86] The Commission recognizes, however, that this may not apply to independent AG companies, for which a large fraction of the company's drugs may be covered. The FTC anticipates that there are few such companies, and that their responses are especially important to this study.

I have ratified any actions taken by the Assistant Secretary for Preparedness and Response, or any other Office of the Assistant Secretary for Preparedness and Response officials, which, in effect, involved the exercise of this authority prior to the effective date of this delegation.

This delegation is effective immediately.

Dated: April 16, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. 07–2193 Filed 5–3–07; 8:45 am]

BILLING CODE 4150–37–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–07–0639]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at 404–639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Special Exposure Cohort Petitions—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

On October 30, 2000, the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384–7385 [1994, supp. 2001] was enacted. It established a compensation program to provide a lump sum payment of $150,000 and medical benefits as compensation to covered employees suffering from designated illnesses incurred as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy and certain of its vendors, contractors and subcontractors. This legislation also provided for payment of compensation for certain survivors of these covered employees. The only change to the collection is an increase in burden hours because more petitioners are requesting to have their work site named as a special exposure cohort. This program has been mandated to be in effect until Congress ends the funding.

EEOICPA instructed the President to designate one or more Federal Agencies to carry out the compensation program. Accordingly, the President issued Executive Order 13179 (“Providing Compensation to America’s Nuclear Weapons Workers”) on December 7, 2000 (65 FR 77487), assigning primary responsibility for administration of the compensation program to the Department of Labor (DOL). The executive order directed the Department of Health and Human Services (HHS) to perform several technical and policymaking roles in support of the DOL program.

Among other duties, the executive order directed HHS to establish and implement procedures for considering petitions by classes of nuclear weapons workers to be added to the “Special Exposure Cohort” (the “Cohort”), various groups of workers whose claims for cancer under EEOICPA can be adjudicated without demonstrating that their cancer was “at least as likely as not” caused by radiation doses they incurred in the performance of duty. In brief, EEOICPA authorizes HHS to designate such classes of employees for addition to the Cohort when NIOSH lacks sufficient information to estimate with sufficient accuracy the radiation doses of the employees, if HHS also finds that the health of members of the class may have been endangered by the radiation dose the class potentially incurred. HHS must also obtain the advice of the Advisory Board on Radiation and Worker Health (the “Board”) in establishing such findings. On March 7, 2003, HHS proposed procedures for adding such classes to the Cohort in a notice of proposed rulemaking at 42 CFR part 83.

The HHS procedures authorize a variety of individuals and entities to submit petitions, as specified under § 83.7. Petitioners are required to provide the information specified in § 83.9 to qualify their petitions for a complete evaluation by HHS and the Board. HHS has developed two petition forms to assist the petitioners in providing this required information efficiently and completely. Petition Form A is a one-page form to be used by EEOICPA claimants for whom NIOSH will have attempted to conduct dose reconstructions and will have determined that available information is not sufficient to complete the dose reconstruction. The form addresses the informational requirements specified under § 83.9(a) and (b). Petition Form B, accompanied by separate instructions, is intended for all other petitioners. The form addresses the informational requirements specified under § 83.9(a) and (c). Forms A and B can be submitted electronically as well as in hard copy. Petitioners should be aware that HHS is not *requiring* petitioners to use the forms. Petitioners can choose to submit petitions as letters or in other formats, but petitions must meet the informational requirements referenced above. NIOSH expects, however, that all petitioners for whom Form A would be appropriate will actually use the form, since NIOSH will provide it to them upon determining that their dose reconstruction cannot be completed and encourage them to submit the petition. NIOSH expects the large majority of petitioners for whom Form B would be appropriate will also use the form, since it provides a simple, organized format for addressing the informational requirements of a petition.

NIOSH will use the information obtained through the petition for the following purposes: (a) Identify the petitioner(s), obtain their contact information, and establish that the petitioner(s) is qualified and intends to petition HHS; (b) establish an initial definition of the class of employees being proposed to be considered for addition to the Cohort; (c) determine whether there is justification to require HHS to evaluate whether or not to designate the proposed class as an addition to the Cohort (such an evaluation involves potentially extensive data collection, analysis, and related deliberations by NIOSH, the Board, and HHS); and, (d) target an evaluation by HHS to examine relevant potential limitations of radiation monitoring and/or dosimetry-relevant records and to examine the potential for related radiation exposures that might have endangered the health of members of the class.

Finally, under § 83.18, petitioners may contest the proposed decision of the Secretary to add or deny adding classes of employees to the cohort by submitting evidence that the proposed decision relies on a record of either factual or procedural errors in the implementation of these procedures. NIOSH estimates that the time to prepare and submit such a challenge is 45 minutes. Because of the uniqueness of this submission, NIOSH is not providing a form. The submission should be in a letter format.

There are no costs to petitioners unless a petitioner chooses to purchase

the services of a expert in dose reconstruction, an option provided for under 42 CFR § 83.9(c)(2)(iii). The petitioner would assume the financial burden of purchasing such services at their option. In such cases, HHS estimates a report by such an expert may cost between $640 and $6,400, depending on the scope of the petition and access to relevant information. This is based on an estimate of costs of $80 per hour for contractual services by a health physicist, who NIOSH estimates would be employed within a range of eight to eighty hours to conduct and prepare a report on the required assessment. The total estimated annualized burden hours are 235.

Estimate of Annualized Burden Hours

Form name& number (CFR reference)	Respondents	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)
83.9	Petitioners using Form A	30	1	3/60
83.9	Petitioners using Form B	40	1	5
83.9	Petitioners not using Form B	5	1	5.5
83.18	Petitioners Appealing proposed decisions	5	1	45/60
Authorization Form		20	1	3/60

Dated: April 27, 2007.

Maryam Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–8593 Filed 5–3–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–07–06BL]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Examining the Efficacy of the HIV Testing Social Marketing Campaign for African American Women (HTSMC)—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Coordinating Center for Infectious Diseases (CCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This project involves evaluation of the HIV Testing Social Marketing Campaign for African American Women (HTSMC), a CDC-sponsored social marketing campaign aimed at increasing HIV testing rates among young, single, African American women. The CDC has designed an efficacy study to evaluate the HTSMC and its messages under controlled conditions. The study entails selecting a sample of single African American females, ages 18 to 34, with less than 4 years of college education and collecting baseline data on their knowledge, attitudes, beliefs, intentions, and behaviors related to HIV testing. The study represents an "efficacy" methodology in that participants will be divided into treatment and control conditions. Participants in the treatment condition, will be exposed to campaign materials including radio advertisements, a billboard, and an informational booklet that will be distributed over the Internet. Thus the study participants' exposure will occur under controlled conditions, without the distractions and variability of potential exposure in the real world. As part of the advertisement stimuli package, the billboard advertisement will appear as part of the online log-in for each stimuli session in order to simulate the appearance of a sign. Therefore, we do not estimate any additional burden for exposure to the billboard advertisement.

Key outcomes related to the HTSMC will be measured in two follow-up surveys. The first follow-up survey will occur 2 weeks after the baseline survey. The second follow-up survey will occur 6 weeks after the baseline survey. Comparisons of changes in these outcomes would then be made between participants in the treatment and control conditions. Findings from this study will be used by CDC and its partners to inform current and future program activities.

We expect a total of 1630 participants to complete the baseline survey. The 1630 participants who complete the baseline survey will be randomly assigned to the treatment or control condition. Eight hundred fifteen participants (the treatment condition) will be exposed to the radio ad and booklet. Of the 1630 participants who completed the baseline survey, we expect 1140 to complete the first follow-up survey. Of the 1140 who complete the first follow-up survey, we expect 800 to complete the second follow-up survey, which will have fewer questions than the first follow-up survey because it will only pertain to questions about behavior change and selected behavioral intentions.

There are no costs to the respondents other than their time. The total estimated annual burden hours are 1,127.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Responses per respondent	Average burden per response (in hours)
Study Screener	1630	1	2/60.
Baseline survey	1630	1	13/60.
Radio ad stimuli viewing	815	1	12/60.

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Respondents	Number of respondents	Responses per respondent	Average burden per response (in hours)
Booklet reading	815	1	15/60.
Follow-Up survey 1	1140	1	15/60.
Follow-Up survey 2	800	1	5/60.

Dated: April 29, 2007.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–8641 Filed 5–3–07; 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 Panel (SEP) "Assessment of Proposed Revisions to the Youth Tobacco Survey: Impact on Measures of Youth Tobacco Use", Request for Applications (RFA) DP07–003

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 a meeting of the aforementioned SEP.

Time and Date: 1 p.m.–3 p.m., June 7, 2007 (Closed).

Place: Teleconference.

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 scientific merit of applications received in response to "Assessment of Proposed Revisions to the Youth Tobacco Survey: Impact on Measures of Youth Tobacco Use," RFA DP07–003.

FOR FURTHER INFORMATION CONTACT: Denise Burton, Ph.D., Scientific Review Administrator, Office of the Chief Science Officer, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone 404–639–4641.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 27, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–8562 Filed 5–3–07; 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 Panel: Centers for Disease Control and Prevention (CDC) Grants for Public Health Research Dissertation, Program Announcement (PA) PAR–07–231

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention announces a meeting of the aforementioned Special Emphasis Panel.

Times and Dates: 8 a.m.–5 p.m., June 14, 2007 (Closed). 8:30 a.m.–5 p.m., June 15, 2007 (Closed).

Place: Doubletree Hotel Buckhead, 3342 Peachtree Road NE, Atlanta, GA 30326, telephone 404–321–1234.

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 "CDC Grants for Public Health Research Dissertation," PA PAR–07–231.

Contact Person For More Information: Juliana Cyril, Ph.D., M.P.H, Scientific Review Administrator, Office of the Chief Science Officer, CDC, 1600 Clifton Road NE., Mailstop D74, Atlanta, GA 30333, Telephone 404–639–4639.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 27, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. E7–8591 Filed 5–3–07; 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 Panel (SEP): Behavioral Assessments and Rapid HIV Testing Among African American Adolescents and Adults, Men Who Have Sex With Men and Other Groups at Risk for HIV Infection, Funding Opportunity Announcement (FOA) Number PS 07–001, and Rapid HIV Testing in Community Mental Health Settings Serving African Americans, FOA PS 07–005

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 aforementioned meeting.

Time and Date: 12:30 p.m.–4:30 p.m., May 25, 2007 (Closed).

Place: Teleconference.

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 "Behavioral Assessments and Rapid HIV Testing Among African American Adolescents and Adults, Men Who Have Sex With Men and Other Groups at Risk for HIV Infection," FOA Number PS 07–001, and "Rapid HIV Testing in Community Mental Health Settings Serving African Americans," FOA PS 07–005.

Contact Person For More Information: J. Felix Rogers, Ph.D., M.P.H., Scientific Review Administrator, Extramural Research Program Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS

E05, Atlanta, GA 30333, telephone 404.639.6101.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 27, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. E7–8617 Filed 5–3–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices (ACIP): Meeting

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 of the aforementioned Federal Advisory Committee:

Times and Dates: 8 a.m.—6 p.m., June 27, 2007. 8 a.m.—4 p.m., June 28, 2007.

Place: Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Global Communications Center, Building 19, Room 232, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. Meeting space accommodates approximately 330 people. Overflow space for real-time viewing will be available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters to be Discussed: The agenda will include discussions on vaccine financing; Hepatitis A post-exposure prophylaxis which will include a VFC vote; cold adapted influenza vaccine; immunization safety; TDap-IPV-Hib combination vaccine (Pentacel); MCV4 dose to 2 years; vaccine shortages; economic analyses of vaccines; evidence-based recommendations; Human Papillomavirus Vaccine; update on HIV vaccines; childhood immunization schedule; adult immunization schedule; update on pneumococcal vaccines working group; update on vaccines during pregnancy and breastfeeding working group; Hepatitis B update on adult recommendations; and agency updates. VFC votes will be taken to add Pentacel to the Diphtheria, Tetanus, Pertussis resolution; to the Haemophilus influenzae type b resolution and to the Polio resolution pending Food and Drug Administration approval for licensure of Pentacel. Agenda items are subject to change as priorities dictate.

Additional Information: In order to expedite the security clearance process at the CDC Roybal Campus located on Clifton Road, *all* ACIP attendees are required to register online at *www.cdc.gov/nip/acip,* which can be found at the "Upcoming Meetings" tab. Please complete all the required fields before submitting your registration and submit no later than May 31, 2007.

Please Note: In addition to completing the registration form online, as described above, all non-U.S. citizens are required to complete the "Access Request Form." The completed access request form should be sent by e-mail directly to Ms. Gardner at *dgardner@cdc.gov.*

Contact Person For More Information: Demetria Gardner, Immunization Services Division, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road, NE, (E–05), Atlanta, Georgia 30333, telephone 404/639–8836, fax 404/639–6258.

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 CDC and ATSDR.

Dated: April 27, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. E7–8590 Filed 5–3–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry

The Health Department Subcommittee of the Board of Scientific Counselors (BSC), CDC, National Center for Environmental Health (NCEH)/Agency for Toxic Substances and Disease Registry (ATSDR): Teleconference Meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention, NCEH/ATSDR announces the following subcommittee teleconference meeting:

Times and Dates: 12:30 p.m.–2 p.m., June 4, 2007.

Place: Century Center, 1825 Century Boulevard, Atlanta, Georgia 30345.

Status: Open to the public. Teleconference access limited only by availability of telephone ports.

Purpose: Under the charge of the Board of Scientific Counselors, NCEH/ATSDR, the HDS Subcommittee will provide the BSC, NCEH/ATSDR with advice and recommendations on local and state health department issues and concerns that pertain to the mandates and mission of NCEH/ATSDR.

Matters To Be Discussed: The meeting will include a review of the agenda; approval of minutes from the last conference call; a discussion of recommendations, work plan and comments from the BSC; public comment and the next steps for the HDS.

Items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: This teleconference meeting is scheduled to begin at 12:30 p.m. Eastern Daylight Savings Time. To participate, please dial 877/315–6535 and enter conference code 383520. The public comment period is scheduled from 1:20–1:30 p.m.

FOR FURTHER INFORMATION CONTACT: Shirley D. Little, Committee Management Specialist, NCEH/ATSDR, 1600 Clifton Road, Mail Stop E–28, Atlanta, GA 30303; telephone 404/498–0615, fax 404/498–0059; E-mail: *slittle@cdc.gov.*

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 27, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–8561 Filed 5–3–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–244, CMS–18F5, CMS–417, and CMS–724]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the

following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* The Medicare and Medicaid Programs: Programs of All-inclusive Care for the Elderly (PACE); *Form Number:* CMS–R–244 (OMB#: 0938–0790); *Use:* PACE organizations must demonstrate their ability to provide quality community-based care for the frail elderly who meet their State's nursing home eligibility standards using capitated payments from Medicare and the State. PACE programs must provide all Medicare and Medicaid covered services including hospital, nursing home, home health, and other specialized services. This collection is necessary to ensure that only appropriate organizations are selected to become PACE organizations and that CMS has the information necessary to monitor the care they provide; *Frequency:* Reporting—Once and On occasion; *Affected Public:* Not-for-profit institutions and State, Local, or Tribal Governments; *Number of Respondents:* 54; *Total Annual Responses:* 108; *Total Annual Hours:* 44131.50.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Application for Hospital Insurance Benefits; *Form Number:* CMS–18F5 (OMB#: 0938–0251); *Use:* The CMS–18F5 form is used to establish entitlement to and enrollment in Part A of Medicare for beneficiaries who are not automatically entitled to Medicare Part A under Title XVIII of the Social Security Act and must file an application. Sections 226(a), 227 and 1818A of the Social Security Act and sections 42 CFR 406.10, 406.11 and 406.20 outline the requirements for entitlement to Medicare hospital insurance (Part A). Section 42 CFR 406.6 provides information about who needs to file an application for Part A and who does not. Section 42 CFR 406.7 lists the CMS–18F5 form as the application to be used by individuals applying for Part A of Medicare. The CMS–18F5 form was designed to capture all the information needed to make a determination of an individual's entitlement to hospital insurance (Part A); *Frequency:* Reporting—Once; *Affected Public:* Individuals or households; *Number of Respondents:* 50,000; *Total Annual Responses:* 50,000; *Total Annual Hours:* 12,495.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Hospice Request for Certification in the Medicare Program; *Form Number:* CMS–417 (OMB#: 0938–0313); *Use:* The Hospice Request for Certification Form is the identification and screening form used to initiate the certification process and to determine if the provider has sufficient personnel to participate in the Medicare program; *Frequency:* Reporting—Yearly; *Affected Public:* Private Sector: Business or other for-profits; *Number of Respondents:* 2,286; *Total Annual Responses:* 2,286; *Total Annual Hours:* 572.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Psychiatric Hospital Survey Data and Supporting Regulations at 42 CFR 482.60, 482.61, and 482.62; *Form Number:* CMS–724 (OMB#: 0938–0378); *Use:* The Medicare/Medicaid Psychiatric Hospital Survey is used to collect data that is not collected elsewhere and assists CMS in program planning and evaluation of survey needs. In addition, the survey assists CMS in maintaining an accurate data base on providers participating in the Medicare psychiatric hospital program; *Frequency:* Reporting—Yearly; *Affected Public:* Private Sector: Business or other for-profits; *Number of Respondents:* 420; *Total Annual Responses:* 200; *Total Annual Hours:* 100.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on July 3, 2007.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—C, Attention: Bonnie L Harkless, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 27, 2007.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E7–8423 Filed 5–3–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-R–245]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of the currently approved collection; *Title of Information Collection:* Medicare and Medicaid Programs OASIS Collection Requirements as Part of the Conditions of Participation for Home Health Agencies and Supporting Regulations in 42 CFR 484.55, 484.205, 484.245, 484.250; *Form No.:* CMS–R–245 (OMB# 0938–0760) *Use:* The Outcome and Assessment Information Set (OASIS) is a requirement for one of the Conditions of Participation (CoPs) that Home Health Agencies (HHAs) must meet in

order to participate in the Medicare program. Specifically, the CoP at § 484.55 requires that each patient receive from an HHA a patient-specific, comprehensive assessment that identifies a patient's continuing need for home care and meets the patient's medical, nursing, rehabilitative, social and discharge planning needs. In addition, the regulation requires that as part of the comprehensive assessment, HHAs use a standard core assessment data set, the OASIS, to evaluate, non-maternity patients. The data collected using OASIS is used for three main purposes: assessing and improving the quality of care provided by an HHA, submitting and paying claims for Medicare home health services, and surveying the HHAs in accordance with Section 1891 of the Social Security Act (the Act).

We have made several modifications to this information collection without increasing the burden. The modifications include but are not limited to the following items. In order for the OASIS to have the information necessary to allow the grouper to price-out the claim, we propose to make the following changes to the OASIS to capture whether an episode is an early or later episode. In addition, for the purposes of payment, we propose to make changes to the OASIS in order to enable agencies to report secondary case mix diagnosis codes. The proposed changes clarify how to appropriately fill out OASIS items M0230 and M0240, using ICD–9–CM sequencing requirements if multiple coding is indicated for any diagnosis. The proposed OASIS revisions also include incorporating previously revised instructions regarding diagnosis coding in items M0190, M0210, and M0230/M0240/M0246 (previously M0245). The burden associated with these proposed changes includes possible training of staff, the time and effort associated with downloading a new form and replacing previously pre-printed versions of the OASIS, and utilizing updated vendor software. However, CMS will be removing or modifying existing questions in the OASIS data set to accommodate the requirements referenced above. Therefore, CMS believes the burden increase associated with these changes is negated by the removal or modification of several current data items. *Frequency:* Recordkeeping and Reporting—upon patient assessment; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 8,277; *Total Annual Responses:* 10,105,827; *Total Annual Hours:* 11,977,601.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed or faxed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: April 27, 2007.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E7–8424 Filed 5–3–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301/496–7057; *fax:* 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Method for Predicting and Detecting Tumor Metastasis

Description of Technology: Detecting cancer prior to metastasis greatly increases the efficacy of treatment and the chances of patient survival. Although numerous biomarkers have been reported to identify aggressive tumor types and predict prognosis, each biomarker is specific for a particular type of cancer, and no universal marker that can predict metastasis in a number of cancers have been identified. In addition, due to a lack of reliability, several markers are typically required to determine the prognosis and course of therapy.

Available for licensing are carboxypeptidase E (CPE) inhibitor compositions and methods to progonose and treat cancer as well as methods to determine the stage of cancer. The inventors discovered that CPE expression levels increase according to the presence of cancer and metastasis wherein CPE is upregulated in tumors and CPE levels are further increased in metastatic cancer. This data has been demonstrated both in vitro and in vivo experiments and in liver, breast, prostate, colon, and head and neck cancers. Metastatic liver cells treated with CPE siRNA reversed the cells from being metastatic and arrested cells from further metastasis. Thus, CPE as a biomarker for predicting metastasis and its inhibitors have an enormous potential to increase patient survival.

Applications:

1. Method to prognose multiple types of cancer and determine likelihood of metastasis.

2. Compositions that inhibit CPE such as siRNA.

3. Method to prevent and treat cancer with CPE inhibitors.

Market:

1. 600,000 cancer related deaths in 2006;

2. Global cancer market is worth more than eight percent of total global pharmaceutical sales;

3. Cancer industry is predicted to expand to $85.3 billion by 2010.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Y. Peng Loh (NICHD) *et al.*

Publication: Manuscript in preparation.

Patent Status:

1. U.S. Provisional Application No. 60/885,809 filed 19 Jan 2007 (HHS Reference No. E–096–2007/0–US–01)

2. U.S. Provisional Application No. 60/887,061 filed 29 Jan 2007 (HHS Reference No. E–096–2007/1–US–01)

3. U.S. Provisional Application No. 60/895,912 filed 20 Mar 2007 (HHS Reference No. E–096–2007/2–US–01)

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301/435–4633; *wongje@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute for Child Health and Human Development, Section on Cellular Neurobiology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize CPE as a biomarker for predicting metastasis. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Novel Diagnostics and Therapeutics for Various Hematologic Malignancies: Monoclonal Antibodies to Members of Fc receptor-like (FCRL) Proteins

Description of Technology: Fc receptor-like (FCRL) is a gene family homologous to Fc receptors (alternative names, FcRH, IRTA, IFGP, SPAP). FCRL1–6 genes are located on human chromosome 1, where translocations and other abnormalities are frequently observed in certain B-cell lymphoma and multiple myeloma. Previous studies suggests that the FCRL proteins are differently expressed on various malignant cells from B-linage cells as well as normal B cells in different stage of the differentiation in adaptive immunity. Although the natural ligands are not known, FCRL proteins likely play roles in regulation of immunity. The members of the immunoglobulin superfamily receptor translocation associated (IRTA) genes 1–6 encode proteins homologous to Fc receptors. Previous studies suggest that each IRTA may play a different role in B-cell differentiation and immune responses. FCRL1–6 proteins possess 3–9 extracellular immunoglobulin (Ig) domains, each of which exhibits a substantial homology to the same subtypes of Ig domains (up to 86% identity). Consequently there are some epitopes shared by FCRL1–6 extracellular domains evidenced by the presence of many cross-reactive monoclonal antibodies (MAbs) with FCRL1–6. The invention relates to the development of novel MAbs specific to each members of the FCRL proteins, which show no cross-reactivity with other FCRL members. These antibodies could be used for studies on detailed expression studies of FCRLs in different cancer cells and on potential therapeutic use for FCRL-expressing hematological malignancies.

Applications and Modality:

1. Novel monoclonal antibodies to FCRL family members can help diagnose and treat B cell malignancies and RA.

2. The antibodies can be used as research tools to detect cellular expression of FCRLs.

Advantage: Monoclonal antibody clones are available that are specific to one member of the FCRL family with no cross-reactivity to other members.

Development Status: The technology is in pre-clinical stage of development.

Inventors: Ira Pastan (NCI) *et al*.

Publications:

1. A manuscript directly related to this technology will be available as soon as it is accepted for publication.

2. T Ise, H Maeda, K Santora, L Xiang, RJ Kreitman, I Pastan, S Nagata. Immunoglobulin superfamily receptor translocation associated 2 protein on lymphoma cell lines and hairy cell leukemia cells detected by novel monoclonal antibodies. Clin Cancer Res. 2005 Jan 1;11(1):87–96.

3. T Ise, RJ Kreitman, I Pastan, S Nagata. Sandwich ELISAs for soluble immunoglobulin superfamily receptor translocation-associated 2 (IRTA2)/FcRH5 (CD307) proteins in human sera. Clin Chem Lab Med. 2006;44(5):594–602.

4. T Ise, S Nagata, RJ Kreitman, WH Wilson, AS Wayne, M Stetler-Stevenson, MR Bishop, DA Scheinberg, L Rassenti, TJ Kipps, RA Kyle, DF Jelinek, I Pastan. Elevation of soluble CD307 (IRTA2/FcRH5) protein in the blood and expression on malignant cells of patients with multiple myeloma, chronic lymphocytic leukemia, and mantle cell lymphoma. Leukemia. 2007 Jan;21(1):169–174. Epub 2006 Oct 19.

Patent Status:

1. U.S. Provisional Application No. 60/891,434, filed 23 Feb 2007, entitled "Antibodies That Specifically Bind IRTA and Methods of Use" (HHS Reference No. E–016–2006/0–US–01)

2. PCT Application No. PCT/US2005/034444 filed 22 Sep 2005, entitled "IRTA2 Antibodies and Methods of Use," which published as WO 2006/039238 on 25 Jan 2007 (HHS Reference No. E–287–2004/1–PCT–01)

3. U.S. Patent Application filed 28 Mar 2007 (HHS Reference No. E–287–2004/1–US–02)

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: Jesse S. Kindra, J.D.; 301–435–5559; *kindraj@mail.nih.gov*.

High Speed Parallel Molecular Nucleic Acid Sequencing

Description of Technology: Available for licensing and commercial development is a new system, methods and compositions for DNA sequencing, also known as Two Dye Sequencing (TDS). This invention is based on Fluorescence Resonance Energy Transfer (FRET), a technology increasingly in use for several molecular analysis purposes. In particular, the method consists of:

(1) Attachment of engineered DNA polymerases labeled with a donor fluorophore to the surface (chamber) of a microscope field of view;

(2) Addition to the chamber of DNA with an annealed oligonucleotide primer, which is bound by the polymerase;

(3) Further addition of four nucleotide triphosphates, each labeled on the base with a different fluorescent acceptor dye;

(4) Excitation of the donor fluorophore with light of a wavelength specific for the donor but not for any of the acceptors, resulting in the transfer of the energy associated with the excited state of the donor to the acceptor fluorophore for a given nucleotide, which is then radiated via FRET;

(5) Identification of the nucleotides most recently added to the primer by recording the fluorescent spectrum of the individual dye molecules at specific locations in the microscope field, and

(6) Converting the sequential spectrum into a DNA sequence for each DNA molecule in the microscope field of view.

Application: Sequencing of single nucleic acid molecules on a substrate.

Development Status: Early stage of development.

Inventors: Thomas Schneider and Denise Rubens (NCI).

Patent Status: U.S. Patent No. 6,982,146 issued 03 Jan 2006 (HHS Reference No. E–033–1999/0–US–03); U.S. Patent Application No. 11/204,367 filed 12 Aug 2005 (HHS Reference No. E–033–1999/0–US–04)

Licensing Status: Available for co-exclusive licensing.

Licensing Contact: Cristina Thalhammer-Reyero, PhD, M.B.A.; 301/435–4507; *thalhamc@mail.nih.gov*.

Collaborative Research Opportunity: The NCI Nanobiology Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize nanoscale or molecular nucleic acid sequencing. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Peptide Inhibitors of Fibronectin and Related Collagen-Binding Proteins

Description of Technology: Fibronectin has been implicated in a variety of cell contact processes, including cell attachment and migration. Fibronectin interacts with collagen through its gelatin-binding domain and this interaction is fundamental to the organization of extracellular matrices and the behavior of these cells on substrates. Fibronectin is essential for the attachment and migration of many cells, including various tumor and cancer cells.

The issued patents disclose peptide compositions having binding affinity for fibronectin, as well as methods for binding fibronectin with a fibronectin-binding peptide and methods for inhibiting fibronectin-mediated cell adhesion. The peptides disclosed are derived from the extracellular matrix protein thrombospondin, which is a modular adhesive glycoprotein that binds to the gelatin binding domain of fibronectin. These peptides are strong inhibitors of fibronectin-mediated cell adhesion. As such, they may be applicable to a variety of indications including cancer, wound healing, and connective tissue diseases.

Applications:

1. Potential therapeutic use for applications such as cancer, wound healing, and connective tissue disease.

2. Research tools for study of cell adhesion and migration processes.

Inventors: David D. Roberts *et al.* (NCI)

Related Publications:

1. JM Sipes, N Guo, E Nègre, T Vogel, HC Krutzsch, DD Roberts. Inhibition of fibronectin binding and fibronectin-mediated cell adhesion to collagen by a peptide from the second type I repeat of thrombospondin. J Cell Biol. 1993 Apr;121(2):469–477.

2. S Schultz-Cherry, H Chen, DF Mosher, TM Misenheimer, HC Krutzsch, DD Roberts, JE Murphy-Ullrich. Regulation of TGFbeta activity by peptides from the type I repeats of thrombospondin-1. J Biol Chem. 1995 Mar 31;270(13):7304–7310.

3. C Daniel, J Wiede, Y Takabatake, M Mizui, Y Isaka, E Imai, H Rupprecht, E Schulze-Lohoff, HC Krutzsch, SMF Ribeiro, DD Roberts, JE Murphy-Ullrich, C Hugo. Thrombospondin-1 is a major activator of TGFbeta in fibrotic renal disease in the rat in *vivo*. Kidney Int. 2004 Feb;65(2):459–468.

Patent Status:

1. U.S. Patent No. 5,491,130 issued 13 Feb 1996 (HHS Reference No. E–219–1992/0–US–01).

2. U.S. Patent No. 5,849,701 issued 15 Dec 1998 (HHS Reference No. E–219–1992/0–US–10).

3. Foreign counterparts issued in Australia, Great Britain, France, Germany, and Japan.

Related Technologies:

1. Heparin- and Sulfatide-Binding Peptides From the Type I Repeats of Human Thrombospondin.

a. U.S. Patent No. 5,357,041 issued 18 Oct 1994 (HHS Reference No. E–198–1991/0–US–01);

b. U.S. Patent No. 5,770,563 issued 23 Jun 1998 (HHS Reference No. E–198–1991/2–US–01);

c. U.S. Patent No. 6,051,549 issued 18 Apr 2000 (HHS Reference No. E–198–1991/2–US–03); and

d. foreign counterparts.

2. Compositions for Stimulating TGF Activity.

a. U.S. Patent No. 6,384,189 issued 07 May 2003 (HHS Reference No. E–019–1994/1–US–02)

Licensing Availability: Available for exclusive or non-exclusive licensing.

Licensing Contact: Tara Kirby, PhD; 301/435–4426; *tarak@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Pathology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize these peptides. Please contact John D. Hewes, Ph.D. at (301) 435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: April 27, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–8500 Filed 5–3–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(9)(b), Title 5 U.S.C., as amended, because the premature disclosure of information and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: May 24, 2007.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: The Panel will review the final draft of 2006/2007 Annual Report to the President.

Place: National Cancer Institute, National Institutes of Health, Building 6116, Room 212, 6116 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Abby Sandler, PhD, Executive Secretary, Chief, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, Building 6116, Room 212, MSC 8349, 6116 Executive Boulevard, Bethesda, MD 20892–8349, 301/451–9399, *sandlera@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/pcp/pcp.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2190 Filed 5–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK Diabetes Centers Applications.

Date: July 22–24, 2007.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Gaithersburg Marriott Washington Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.
Contact Person: Atul Sahai, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 908, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–2242, *sahaia@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: April 27, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2184 Filed 5–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, R–13 Conference Applications.
Date: May 14, 2007.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: D.G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 914, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 27, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2185 Filed 5–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Communication Disorders Review Committee, CDRC.
Date: June 21–22, 2007.
Time: June 21, 2007, 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham Hotel, 101 W. Fayette Street, Baltimore, MD 21201.
Time: June 22, 2007, 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham Hotel, 101 W. Fayette Street, Baltimore, MD 21201.
Contact Person: Sheo Singh, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS).

Dated: April 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2187 Filed 5–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Alcohol Abuse and Alcoholism Initial Review Group, Clinical and Treatment Subcommittee.
Date: June 5–6, 2007.
Time: 8:30 a.m. and 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crown Plaza—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Katrina L Foster, PhD, Scientific Review Administrator, National Inst on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 3042, Rockville, MD 20852, 301–443–4032, *katrina@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2191 Filed 5–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, April 27, 2007, 1 p.m. to April 27, 2007, 3 p.m., National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 which was published in the **Federal Register** on April 23, 2007, FR #07–2037.

The meeting will be held on 4/26/2007 from 2–3 p.m. The meeting is closed to the public.

Dated: April 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2192 Filed 5–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEATLH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review or R21 Applications Responding to NR 07–002.

Date: May 16–18, 2007.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular and Integrative Signal Transduction.

Date: May 31, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, 301–402–8228, *rayam@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Biomaterials and Biointerfaces Study Section.

Date: May 31–June 1, 2007.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alexander Gubin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mammalian Ocular Development.

Date: June 4, 2007.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20036.

Contact Person: Biano Tian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Gene and Drug Delivery Systems Study Section.

Date: June 7–8, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Steven J. Zullo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7849, Bethesda, MD 20892, 301–435–2810, *zullost@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Atherosclerosis and Inflammation of the Cardiovascular System Study Section.

Date: June 7–8, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Savoy Suites of Georgetown, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Tumor Progression and Metastasis Study Section.

Date: June 11–12, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington State Convention and Trade Center, 800 Convention Place, 307–308, Seattle, WA 98101.

Contact Person: Manzoor Zarger, MS, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Cellular aspects of Diabetes and Obesity Study Section.

Date: June 11–12, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel and Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ana A. Jerkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, 301–435–4514, *jerkinsa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Health of the Population Fellowship Review Special Emphasis Panel.

Date: June 15, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

Contact Person: Fungai F. Chanetsa, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–435–1262, *chanetsaf@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Tumor Cell Biology Study Section.

Date: June 18–19, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biomedical Imaging and Bioinformatics.

Date: June 19–20, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Guo Feng Xu, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–435–1032, *xuguofen@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Central Visual Processing Study Section.

Date: June 19–20, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, 301–435–1247, *steinmem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Biology and Therapy Pilot Studies.

Date: June 20–21, 2007.

Time: 8 a.m. to 11 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *gubanics@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2186 Filed 5–3–07; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 14, 2007, 8 a.m. to June 15, 2007, 5 p.m., Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009 which was published in the **Federal Register** on April 24, 2007, 72 FR 20352–20354.

The meeting will be held at The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: April 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2188 Filed 5–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 5, 2007, 8 a.m. to June 5, 2007, 1 p.m., Georgetown Suites, 1111 30th Street, NW., Washington, DC 2007 which was published in the **Federal Register** on April 24, 2007, 72 FR 20352–20354.

The meeting has been changed to "Clinical Studies in Digestive Diseases and Nutrition". The meeting is closed to the public.

Dated: April 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2189 Filed 5–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1689–DR]

California; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of California (FEMA–1689–DR), dated March 13, 2007, and related determinations.

DATES: *Effective Date:* April 20, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of California is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 13, 2007:

Kings, Madera, and Merced Counties for Disaster Unemployment Assistance and Food Commodities.

Stanislaus County for Disaster Unemployment Assistance.

All counties within the State of California are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–8512 Filed 5–3–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3275–EM]

Iowa; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Iowa (FEMA–3275–EM), dated March 30, 2007, and related determinations.

DATES: *Effective Date:* April 24, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the

State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of March 30, 2007:

Dickinson, Plymouth, and Woodbury Counties for emergency protective measures (Category B), including snow removal, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–8514 Filed 5–3–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1691–DR]

Maine; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–1691–DR), dated April 20, 2007, and related determinations.

DATES: *Effective Date:* April 20, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 20, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Maine resulting from flooding during the period of March 16–18, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Albert L. Lewis, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared major disaster:

Hancock, Knox, Lincoln, and Waldo Counties for Public Assistance.

All counties within the State of Maine are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–8513 Filed 5–3–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Revision of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–730, Refugee/Asylee Relative Petition; OMB Control No. 1615–0037.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until July 3, 2007.

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, Chief, 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 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 an existing information 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 35 minutes (.583) 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 contact: Chief, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: May 1, 2007.

Richard A. Sloan,

Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E7–8548 Filed 5–3–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5125–N–18]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* May 4, 2007.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: April 26, 2007.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 07–2139 Filed 5–3–07; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5141–N–02]

Manufactured Housing Consensus Committee; Advanced Notice of Proposed Rulemaking

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

SUMMARY: This notice invites interested persons to submit recommendations related to proposed changes to the Federal Manufactured Construction and Safety Standards and Manufactured Home Procedural and Enforcement Regulations. The recommendations are to be submitted to the Manufactured Housing Consensus Committee (Consensus Committee) for review, and consideration for providing periodic recommendations to the Secretary of the Department of Housing and Urban Development to adopt, revise, and interpret the Federal manufactured housing construction standards and proposed procedural and enforcement regulations.

ADDRESSES: Proposed changes should be mailed to: The National Fire Protection Association, One Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269, *Attention:* Robert Solomon.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Associate Deputy Assistant Secretary, Office of Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Consensus Committee is mandated and established under the authority of Section 604(a) of the National Manufactured Housing Construction and Safety Standards Act of 1974 ("the Act"), 42 U.S.C. 5401 *et seq.* Pursuant to the Act, the Consensus Committee (an advisory committee), not less than once during each two-year period, is charged with providing recommendations to the Secretary to revise, and interpret manufactured home construction and safety standards and procedural and enforcement regulations. Further, the Act mandates that an administering organization administer the process for the Consensus Committee's development and interpretation of the Federal standards and the procedural and enforcement regulations. The administering organization that administers this process is the National Fire Protection Association (NFPA). This notice requests that proposed revisions to the Federal standards and regulations be submitted to the Consensus Committee for consideration through the administering organization, NFPA. The NFPA is responsible for ensuring delivery of all proposals to the Consensus Committee for review and consideration.

Dated: April 27, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E7–8498 Filed 5–3–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and/or marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
146530	Robert H. Clark	72 FR 9770; March 5, 2007	April 10, 2007.

MARINE MAMMALS

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
143853	Charles P. Kupfer	72 FR 8006; February 22, 2007	April 5, 2007

Dated: April 13, 2007.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–8558 Filed 5–3–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by June 4, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Lisa Firbank c/o Southern Florida Wildlife Rehabilitation Center, Homestead, FL, PRT–139965

The applicant requests a permit to re-export one live captive-born male Sumatran tiger (*Panthera tigris sumatrae*) to Isle of Wight Zoo, Sandown, Isle of Wight, United Kingdom for the purpose of enhancement of the survival of the species.

Applicant: Louis J. Resha, Jr., Nashville, TN, PRT–150471

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Brian R. Busch, Chesterton, IN, PRT–151277

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: U.S. Geological Survey, Alaska Science Center, Anchorage, AK, PRT–690038

The applicant has requested renewal and amendment of the permit to take polar bears (*Ursus maritimus*) in Alaska and to import and export biological samples for the purpose of scientific research. The take activities include capture, recapture and release; tag, mark and radio collar; and collection of

biometrics and biological samples. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Anton Gossein, Escondido, CA, PRT–151297

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Kevin Dahm, Algonquin, IL, PRT–151316

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Tony Casagrande, Pataskala, OH, PRT–151317

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Pat P. Decastro, Taylor Mill, KY, PRT–150523

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Leon E. Houser, Lebanon, PA, PRT–150941

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Dated: April 13, 2007.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–8557 Filed 5–3–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Jena Band of Choctaw Indians of Louisiana; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction to notice.

SUMMARY: The Bureau of Indian Affairs published in the **Federal Register** of April 2, 2007, a notice informing the public that the Principal Deputy Assistant Secretary—Indian Affairs proclaimed approximately 63.52 acres, more or less, as the Jena Band of Choctaw Reservation for the Jena Band of Choctaw Indians of Louisiana (Jena Band). The land description as published contained an error. This action corrects that error.

FOR FURTHER INFORMATION CONTACT: Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, Mail Stop 4639–MIB, 1849 C Street, NW., Washington, DC 20240, Telephone (202) 208–7737.

Correction

In the notice document, FR Doc E7–6049, beginning on page 15712, in the issue of Monday, April 2, 2007, make the following correction:

On page 15712, in the third column, second paragraph, fourth line, "17'41" east" should read "18'41" east".

Dated: April 26, 2007.

George T. Skibine,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E7–8578 Filed 5–3–07; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–400–1110–CB–241A]

Notice of Public Meeting, Recreation Subcommittee of the Coeur d'Alene District Resource Advisory Council Meeting; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Coeur d'Alene District Resource Advisory Council (RAC) subcommittee will meet as indicated below.

DATES: June 5, 2007. The meeting will start at 8 a.m. and end about 4 p.m. The public comment period will be from 1 p.m. to 1:30 p.m. The meeting will be held at Ruby's Inn located at 4825 N. Reserve in Missoula, MT. Missoula is a central location for subcommittee participants as well as public land users.

FOR FURTHER INFORMATION CONTACT: Lisa Wagner, RAC Coordinator, BLM Coeur d'Alene District, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815 or telephone (208) 769–5014.

SUPPLEMENTARY INFORMATION: The recreation subcommittee is made up of four members from the 15-member Resource Advisory Council who will invite private and commercial floaters, powerboaters and other recreation users to help prioritize use of fees collected on the Main and Middle Fork Salmon rivers for the Salmon-Challis National Forest. This committee will make recommendations for prioritizing the expenditure of river use fees collected under the Salmon Rivers Recreation Fee Project. The subcommittee will present the information and make recommendations to the Coeur d'Alene District Resource Advisory Council at a later date. More information is available at *www.blm.gov/rac/id/id_index.htm.*

All meetings are open to the public. The public may present written comments to the Council in advance of or at the meeting. Each Council meeting will also have time allocated for receiving public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided above.

Dated: April 30, 2007.

Lewis M. Brown,

District Manager.

[FR Doc. E7–8592 Filed 5–3–07; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW137666]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Loco for competitive oil and gas lease WYW137666 for land in Natrona County, Wyoming. The petition was

filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163.00 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW137666 effective November 1, 2006, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E7–8616 Filed 5–3–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–5870–EU; N–66278, N–77446, N–66128]

Notice of Realty Action; Competitive Sale of Public Land; Humboldt and Pershing Counties, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Three parcels of land, one 1,909.58 acres (Parcel N–66278) and one 1,160 acres (Parcel N–77446) located in northeast Humboldt County, Nevada, and one parcel of land, equaling 798.04 acres (Parcel N–66128) located in southeast Pershing County, Nevada, totaling 3,867.62 acres of Federal public land, have been examined and found suitable for disposal utilizing competitive sale procedures. The authority for the sale is sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701, 1713 and 1719).

DATES: Comments regarding the proposed sale must be received by the Bureau of Land Management (BLM) on or before June 18, 2007. In order to purchase the land, BLM will accept sealed bids from bidders up to July 12, 2007, and accept oral bids at a public auction scheduled July 13, 2007.

ADDRESSES: Comments regarding the proposed sale, as well as sealed bids, must be submitted to BLM, and addressed as follows: Field Manager, BLM, Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445. The address for oral bidding registration and the location of the public auction is: Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445.

FOR FURTHER INFORMATION CONTACT: Information regarding the competitive sale instructions, procedures, documents, including environmental documents, maps, and materials to submit a bid can be obtained at the public reception desk at the BLM, Winnemucca Field Office from 7:30 a.m. to 4:30 p.m., Monday through Friday (except Federal holidays), or by contacting Bob Edwards, Supervisory Realty Specialist, at the above address, or at (775) 623–1500 or by e-mail at *redwards@nv.blm.gov.* For general information on BLM's public land sale procedures, refer to the following Web address: *http://www.blm.gov/nhp/what/lands/realty/sales.htm.*

SUPPLEMENTARY INFORMATION: Parcel N–66278 is located approximately twenty-three miles west of Winnemucca, Nevada, and has physical and legal access via a county-maintained gravel road to the south (N–53607), and dirt roads on the east and west sides.

Mount Diablo Meridian, Nevada

T. 36 N., R. 34 E.,
Sec. 20, all;
Sec. 28, all;
Sec. 32, lots, 1, 2, 3, 4, NE¼, S½.

The area described contains 1,909.58 acres, more or less in Humboldt County.

This parcel of public land, west of Winnemucca, Nevada, is proposed for sale at no less than the appraised fair market value (FMV) of $143,000.00, as determined by the authorized officer after appraisal. An appraisal report has been prepared by a state certified appraiser for the purposes of establishing FMV.

Parcel N–77446 is located approximately 6 miles northeast of Winnemucca, Nevada, and has physical access via various dirt roads to the east of the parcel.

Mount Diablo Meridian, Nevada

T. 37 N., R. 39 E.,
Sec. 26, W½NE¼, SE¼NE¼, W½, SE¼;
Sec. 28, E½, E½NW¼, SW¼NW¼, SW¼.

The area described contains 1,160.00 acres, more or less in Humboldt County.

This parcel of public land, northeast of Winnemucca, Nevada, is proposed for sale at no less than the appraised fair market value (FMV) of $90,000.00, as determined by the authorized officer after appraisal. An appraisal report has been prepared by a state certified appraiser for the purposes of establishing FMV.

Parcel N–66128 is located approximately 44 miles south of Winnemucca, Nevada, in Pershing County and has physical access via various dirt roads to the east of the parcel.

Mount Diablo Meridian, Nevada

T. 27 N., R. 38 E.,
Sec. 2, Lots 3, 4, SW¼NW¼, SW¼SE¼;
Sec. 3, E½SE¼;
Sec. 10, E½NE¼, NE¼SW¼, W½SE¼;
Sec. 11, NE¼SW¼;
Sec. 14, SW¼NW¼, NW¼SW¼;
Sec. 15, S½SE¼;
Sec. 22, NE¼.

The area described contains 798.04 acres, more or less in Pershing County.

This parcel of public land is proposed for sale at no less than the appraised fair market value (FMV) of $52,000.00, as determined by the authorized officer after appraisal. An appraisal report has been prepared by a state certified appraiser for the purposes of establishing FMV.

None of the parcels are required for any Federal purpose and all parcels have been identified for disposal in the Sonoma-Gerlach Management Framework Plan, approved January 15, 1999. The parcels, therefore, meet the disposal qualification of section 205 of the Federal Land Transaction Facilitation Act of July 25, 2000 (43 U.S.C. 2304) (hereinafter FLTFA). The proceeds from the sale of the land will be deposited into the Federal Land Disposal Account for Nevada pursuant to FLTFA.

These lands meet the criteria for sale under 43 CFR 2710.0–3(a)(3), in that disposal (sale) of the parcel is appropriate because their location or other characteristics make it difficult and uneconomic to manage them as part of the public lands. All of these lands are located in relatively isolated areas of rural Nevada. These lands are either isolated parcels surrounded by private lands or are intermingled with private lands thereby making them difficult to manage for any Federal purpose. Parcel N–66278 consists of three sections intermingled with private lands. Parcels N–77446 and N–66128 consist of fragmented parcels that are surrounded by private lands and have no legal access across those private lands. The land contains no other known public

values. The subject parcels have not been identified for transfer to the State or any other local government or nonprofit organization. The parcels will be offered through competitive sale procedures pursuant to 43 CFR 2711.3–1.

As stated, both sealed bids and oral bids will be accepted in conducting this sale. Sealed bids must be received by the BLM not later than 4:30 p.m. PDT, July 12, 2007. Sealed bid opening is to begin at 10 a.m. PDT, July 13, 2007. The subject lands proposed for sale will be put up for purchase and sale, at public auction, beginning at 10 a.m. PDT, July 13, 2007. Registration for oral bidding will begin at 8 a.m. PDT, July 13, 2007.

Pursuant to 43 CFR 2711.3–1(c), each sealed bid shall be accompanied by a certified check, postal money order, bank draft or cashier's check made payable to the Bureau of Land Management, for not less than 20 percent of the amount of the sealed bid. The highest qualified sealed bid will become the starting bid at the oral auction, provided it is higher than the approved, appraised FMV. If no sealed bids are received, oral bidding will begin at the FMV, as determined by the authorized officer.

If any sealed bid presented to BLM prior to the auction is not declared the high-bidder, the money will be returned at the auction upon proof of identification. If the bidder does not attend the auction, the money will be returned according to instructions of the bidder.

The highest qualifying bid, whether sealed or oral in excess of the appraised fair market value will be declared the high bid. The apparent high bidder, if an oral bidder, must submit a deposit pursuant to 43 CFR 2711.3–1(d), which is not less than one-fifth (20%) of the apparent high bid, by 2 p.m. PDT, on the day of the sale in the form of cash, personal check, bank draft, cashier's check, money order or any combination thereof, made payable in U.S. dollars to the Bureau of Land Management. Payment must be made at the Winnemucca Field Office, 5100 E. Winnemucca Blvd., Winnemucca, Nevada 89445. This deposit will be forfeited to the BLM if the successful high bidder fails to submit the full bid price to the BLM prior to the expiration of 180 days from the date of sale, as required by 43 CFR 2711.3–1(d).

Other deadlines dates for the receipt of payments, and arranging for certain payments to be made by electronic transfer, are specified below.

The Environmental Assessment (EA), conducted pursuant to the National Environmental Policy Act, was made available for public review prior to publication of this notice of realty action. The comment period for the EA closed on June 5, 2006. Comments received during the comment period for the EA have been considered and incorporated into the EA and Decision Record. The EA, Number NV–020–06–EA–10, Decision Record, Environmental Site Assessment, map, and approved appraisal report covering the proposed sale, are available at the BLM, Winnemucca Field Office, Winnemucca, Nevada.

If the parcels of land are sold, the locatable mineral interests of no known value therein will be sold simultaneously as part of the sale. The unreserved mineral interests have been determined to have no known mineral value pursuant to 43 CFR 2720.2(a). An offer to purchase the parcels at auction will constitute an application for conveyance of the locatable mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50.00 non-refundable filing fee for processing the conveyance of the locatable mineral interests.

Segregation:

Publication of this Notice in the **Federal Register** segregates the subject lands from all appropriations under the public land laws, including the general mining laws, except sale under the Federal Land Policy and Management Act of 1976. The segregation will terminate upon issuance of the patent, or upon publication in the **Federal Register** of a termination of the segregation or May 4, 2009 which ever occurs first.

Terms And Conditions Of Sale:

Upon successful completion of the sale, the patent issued would contain the following numbered reservations, covenants, terms and conditions:

1. Oil, gas, and geothermal resources are reserved on the land sold; permittees, licensees, and lessees retain the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

2. A right-of-way thereon for ditches and canals constructed by authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

3. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (43 U.S.C. 1761) for an access road granted to Humboldt County, its successor or assignees, by right-of-way N–53607 for Parcel N–66278.

4. The parcels are subject to valid existing rights.

5. The purchaser/patentee, by accepting patent, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind arising from the past, present, or future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or a third part arising out of, or in connection with, the patentee's use and/or occupancy of the patented real property resulting in: (1) Violations of Federal, state, and local laws and regulations that are now, or in the future become, applicable to the real property; (2) judgments, claims, or demands of any kind assessed against the United States; (3) costs, expenses, or damages of any kind incurred by the United States; (4) releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or state environmental laws, off, on, into, or under land, property, and other interests of the United States; (5) other activities by which solids or hazardous substances or wastes, as defined by Federal and state environmental laws are generated, released, stored, used, or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or waster; or (6) natural resource damages as defined by Federal and state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

6. Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), (42 U.S.C. 9620(h)), as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat. 1670), notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances has been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

No warranty of any kind, expressed or implied, is given by the United States as to the title, physical condition or potential uses of the parcels of land proposed for sale, and the conveyance of any such parcel will not be on a contingency basis. It is the buyer's responsibility to be aware of all applicable federal, state, or local government laws, regulations, or policies that may affect the subject lands or their future uses. It is also the buyer's

responsibility to be aware of existing or prospective uses of nearby properties. Any land lacking access from a public road and highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

The sale will be subject to FLPMA, and BLM land sale and mineral conveyance regulations at 43 CFR Parts 2710 and 2720. Maps, the approved appraisal reports, the environmental assessment (EA) and other supporting documentation are available at the Winnemucca Field Office, Winnemucca, Nevada. Information is also available on line at *http://www.nv.blm.gov*.

The successful bidder must submit the remainder of the full bid price, whether sealed or oral, within 180 calendar days of the competitive sale date in the form of a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the Bureau of Land Management. Personal checks will not be accepted. Arrangements for Electronic Fund Transfer (EFT) to BLM for the balance which is due on or before January 9, 2008, must be made a minimum of 2 weeks prior to the date you wish to make payment. Failure to pay the full bid price within the 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM under 43 CFR 2711.3–1(d).

If not sold, the parcels described above in this Notice may be identified for sale at a later date and/or at another location without further legal notice.

Federal law requires bidders to be U.S. citizens 18 years of age or older, a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to acquire and own real property, or an entity including, but not limited to, associations or partnerships legally capable of holding property or interests therein under the laws of the State of Nevada. Certification of bidder qualification must accompany the deposit.

Public Comments:

The subject parcels of land will not be offered for sale prior to 60 days after publication of this Notice of Realty Action. For a period until June 18, 2007, interested parties may submit written comments to the BLM Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445. Facsimiles, telephone calls, and electronic mails are unacceptable means of notification. Comments including names and street addresses of respondents will be available for public review at the BLM Winnemucca Field Office during regular business hours, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Any adverse comments will be reviewed by the Nevada State Director, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of timely filed objections, this notice of realty action will become the final determination of the Department of the interior.

(Authority: 43 CFR 2711.1–2(a) and (c))

Editorial Note: This document was received at the Office of the Federal Register on April 30, 2007.

Dated: December 11, 2006.

Rodger Bryan,

Acting Field Manager, Winnemucca.

[FR Doc. E7–8502 Filed 5–3–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before April 21, 2007. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by May 21, 2007.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ARKANSAS

Carroll County

Green Forest Water Tower, (New Deal Recovery Efforts in Arkansas MPS) SE jct. of S. Springfield St. and E. Second St., Green Forest, 07000470

Columbia County

Waldo Water Tower, (New Deal Recovery Efforts in Arkansas MPS) E. Main St. W of the N. Skimmer and E. Main intersection, Waldo, 07000472

Howard County

Mineral Springs Waterworks, (New Deal Recovery Efforts in Arkansas MPS) S. of W. Runnels and S. Hall interesection, Mineral Springs, 07000473

Jefferson County

St. Louis Southwestern Railway (Cotton Belt Route) Relief Train, 1700 Port Rd., Pine Bluff, 07000471

Washington County

Beely-Johnson American Legion Post 139, (New Deal Recovery Efforts in Arkansas MPS) 200 N. Spring St., Springdale, 07000474

ILLINOIS

Du Page County

Coonley, Avery, School, 1400 Maple Ave., Downers Grove, 07000477

La Salle County

Westclox Manufacturing Plant Historic District, 300–315 5th St., Peru, 07000475

Williamson County

Williamson County Jail, 105 S. Van Buren St., Marion, 07000476

MICHIGAN

Ingham County

Prudden Wheel Company Building, 707 Prudden St., Lansing, 07000478

Iron County

Chicago, Milwaukee and Saint Paul Railway Iron River Depot, (Iron County MRA) 50 Fourth Ave., Iron, 07000479

MISSOURI

St. Francois County

East Columbia Historic District (Boundary Increase), 202 E. Columbia St., Farmington, 07000482

NEW YORK

Delaware County

Burns Family Farm, Crescent Valley Rd., Bovina, 07000486

Dutchess County

Warren Maonic Lodge #32, 1144 Centre Rd., Schultzville, 07000491

Erie County

Parke Apartments, 33 Gates Circle, Buffalo, 07000492

Kings County

House at 216–264 Ovington Ave., 216–264 Ovington Ave., Brooklyn, 07000488
Saitta House, 1135 84th St., Brooklyn, 07000480

Livingston County

Dansville Downtown Historic District, Main St., Ossian St., Dansville, 07000485

New York County

Ganesvoort Market Historic District, Roughly bounded by W 16th St., Ninth Ave., and Hudston St., Gansevoort St.; West St. and Eleventh Ave., New York, 07000487
House at 20 W. 16th St., 20 W. 16th St., New York, 07000484
St. Luke's Evangelical Lutheran Church, 208 W. 46th St., New York, 07000483

Niagara County

Bacon-Merchant-Moss House, (Stone Buildings of Lockport, New York MPS) 32 Cottage St., Lockport, 07000481
Carter, John, Farmstead, 206 Lake Rd., Youngstown, 07000490
Walter, Peter D., House, (Stone Buildings of Lockport, New York MPS) 127 Ontario St., Lockport, 07000489

OREGON

Deschutes County

Goodwillie—Allen—Rademacher House, 875 NW Brooks St., Bend, 07000493

TEXAS

Colorado County

Eagle Lake commercial Historic District, 100–416 E. Main St., 101–108 W. Main St., 101–124 Commerce St., 101–201 N. McCarty Ave., 100–203 E. Post Office St., Eagle Lake, 07000494

Matagorda County

South Side Residential Historic District, Roughly bounded by Ave. F, 2nd St., Ave. G, Ave. K, 4th St., Ave J, 5th St., 4th St., Bay City, 07000496

McLennan County

Castle Heights Historic District, Roughly bounded by Waco Dr., Oriental Rd., Franklin Ave. and 39th St., Waco, 07000495

VERMONT

Chittenden County

LeFarriere House, (Burlington, Vermont MPS AD) 171–173 Intervale Ave., Burlington, 07000499
Mintzer House, (Burlington, Vermont MPS AD) 175–177 Intervale Ave., Burlington, 07000498
Normand House, (Burlington, Vermont MPS AD) 163–165, 165 rear Intervale Ave., Burlington, 07000497

WISCONSIN

Pierce County

Freeman, Roscius S. and Lydia R., House, 220 N. Third St., River Falls, 07000501

Washington County

Messer-Mayer Mill, 4399 Pleasant Hill Rd., Richfield, 07000500

[FR Doc. E7–8588 Filed 5–3–07; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Labor Advisory Committee for Trade Negotiations and Trade Policy

ACTION: Meeting notice.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiation and Trade Policy. Date, time, place: June 22, 2007; 10 a.m.–12 Noon; USTR Annex Building, Rooms 1 and 2, 1724 F St., NW., Washington, DC.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to 19 U.S.C. 2155(f) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public. See section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app., and section (c)(9)(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B).

FOR FURTHER INFORMATION CONTACT: Gregory Schoepfle, Director, Office of Trade and Labor Affairs; Phone: (202) 693–4887.

Signed at Washington, DC, the 1st day of May 2007.

James Carter,

Deputy Undersecretary, International Labor Affairs.

[FR Doc. E7–8526 Filed 5–3–07; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0035]

Crawler Locomotive and Truck Cranes; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its proposal to extend OMB approval of the information collection requirements specified in its Standard on Crawler Locomotive and Truck Cranes (29 CFR 1910.180).

DATES: Comments must be submitted (postmarked, sent, or received) by July 3, 2007.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2007–0035, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2007–0035). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the

docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 et seq.) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Standard specifies several paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of each of these requirements is to prevent employees from using unsafe cranes and ropes, thereby reducing their risk of death or serious injury caused by a crane or rope failure during material handling.

(A) Inspection of and Certification Records of Cranes (§ 1910.180(d)(4) and (d)(6))

Paragraph 1910.180(d) specifies that employers must prepare a written record to certify that the monthly inspection of critical items in use on cranes (such as brakes, crane hooks, and ropes) has been performed. The certification record must include the inspection date, the signature of the person who conducted the inspection, and the serial number (or other identifier) of the inspected crane. Employers must keep the certificate readily available. The certification record provides employers, employees, and OSHA compliance officers with assurance that critical items on cranes have been inspected, and that the equipment is in good operating condition so that the crane and rope will not fail during material handling. These records also enable OSHA to determine that an employer is complying with the Standard.

(B) Rated Load Tests (§ 1910.180(e)(2))

This provision requires employers to make available written reports of load-rating tests showing test procedures and confirming the adequacy of repairs or alterations, and to make readily available any rerating test reports. These reports inform the employer, employees, and OSHA compliance officers of a crane's lifting limitations, and provide information to crane operators to prevent them from exceeding these limits and, thereby causing crane failure.

(C) Inspection of and Certification Records for Ropes (§ 1910.180(g)(1) and (g)(2)(ii))

Paragraph (g)(1) requires employers to thoroughly inspect any rope in use at least once a month. The authorized person conducting the inspection must observe any deterioration resulting in appreciable loss of original strength and determine whether or not the condition is hazardous. Before reusing a rope that has not been used for at least a month because the crane housing the rope is shut down or in storage, paragraph (g)(2)(ii) specifies that employers must have an appointed or authorized person inspect the rope for all types of deterioration. Employers must prepare a certification record for the inspections required by paragraphs (g)(1) and (g)(2)(ii). These certification records must include the inspection date, the signature of the person conducting the inspection, and the identifier for the inspected rope; paragraph (g)(1) states that employers must keep the certificates "on file where readily available," while paragraph (g)(2)(ii) requires that certificates "be * * * kept readily available." The certification records assure employers, employees, and OSHA that the inspected ropes are in good condition.

(D) Disclosure of Crane and Rope Inspection Certification Records

The disclosure of certification records provide the most efficient means for OSHA compliance officers to determine that an employer is complying with the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Crawler Locomotive and Truck Cranes (29 CFR 1910.180). The Agency is requesting to retain its current burden hour total of 174,062 associated with this Standard. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Crawler Locomotive and Truck Cranes (29 CFR 1910.180).

OMB Number: 1218–0221.

Affected Public: Business or other for-profit.

Number of Respondents: 20,000.

Frequency: On occasion; Monthly, Semi-annually.

Average Time per Response: Varies from 5 minutes (.08 hour) to disclose certification records to 1 hour to conduct rated load tests.

Estimated Total Burden Hours: 174,062.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2007–0035). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 et seq.) and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on April 30, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7–8569 Filed 5–3–07; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 11—Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* On occasion. New applications, certifications, and amendments may be submitted at any time. Applications for renewal are submitted every 5 years.

5. *Who will be required or asked to report:* Employees (including applicants for employment), contractors and consultants of NRC licensees and contractors whose activities involve access to or control over special nuclear material at either fixed sites or in transportation activities.

6. *An estimate of the number of annual responses:* 1.

7. *The estimated number of annual respondents:* 5 NRC licensees.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1.25 hours (approximately 0.25 hours annually per response).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* NRC regulations in 10 CFR Part 11 establish requirements for access to special nuclear material, and the criteria and procedures for resolving questions concerning the eligibility of individuals to receive special nuclear material access authorization. Personal history information which is submitted on applicants for relevant jobs is provided to the Office of Personnel Management (OPM), which conducts investigations. NRC reviews the results of these investigations and makes determinations of the eligibility of the applicants for access authorization.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 4, 2007. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Margaret A. Malanoski,
Office of Information and Regulatory Affairs (3150–0062), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Margaret_A._Malanoski@omb.eop.gov* or submitted by telephone at (202) 395–3122.

The NRC Clearance Officer is Margaret A. Janney, (301) 415–7245.

Dated at Rockville, Maryland, this 26th day of April, 2007.

For the Nuclear Regulatory Commission.

Margaret A. Janney,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–8553 Filed 5–3–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 25—Access Authorization for Licensee Personnel.

3. *The form number if applicable:* N/A..

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* NRC-regulated facilities and other organizations requiring access to NRC-classified information.

6. An estimate of the number of annual responses 1,594 {1,516 Total Responses for reporting + 78 Recordkeepers}.

7. *The estimated number of annual respondents:* 78.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 417 hours (371 hours for reporting and 46 hours for recordkeeping) or approximately .26 hours per response.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. Abstract: NRC-regulated facilities and other organizations are required to provide information and maintain records to ensure that an adequate level of protection is provided NRC-classified information and material.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 4, 2007. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Margaret A. Malanoski, Office of Information and Regulatory Affairs (3150–0046), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Margaret_A._Malanoski@omb.eop.gov* or submitted by telephone at (202) 395–3122.

The NRC Clearance Officer is Margaret A. Janney, (301) 415–7245.

Dated at Rockville, Maryland, this 26th day of April, 2007.

For the Nuclear Regulatory Commission.

Margaret A. Janney,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–8554 Filed 5–3–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 95—Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* NRC-regulated facilities and other organizations requiring access to NRC-classified information.

6. *An estimate of the number of annual responses:* 308 responses (298 plus 10 recordkeepers).

7. *The estimated number of annual respondents:* 16.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 954 hours (805 hours reporting [3 hrs per response] and 149 hours recordkeeping [15 hrs per recordkeeper]).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* NRC-regulated facilities and other organizations are required to provide information and maintain records to ensure that an adequate level of protection is provided to NRC-classified information and material.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 4, 2007. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Margaret A. Malanoski,
Office of Information and Regulatory Affairs (3150–0047), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Margaret_A._Malanoski@omb.eop.gov* or submitted by telephone at (202) 395–3122.

The NRC Clearance Officer is Margaret A. Janney, (301) 415–7245.

Dated at Rockville, Maryland, this 26th day of April, 2007.

For the Nuclear Regulatory Commission.

Margaret A. Janney,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–8559 Filed 5–3–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255–LT; ASLBP No. 07–853–01–LT–BD01]

Consumers Energy Company, Nuclear Management Company, LLC, Entergy Nuclear Palisades, LLC, and Entergy Nuclear Operations, INC.; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.313(a)(2),

2.318, 2.1300, and 2.1319(a), notice is hereby given that a member of the Atomic Safety and Licensing Board Panel is being designated as Presiding Officer in the following proceeding in compliance with the Commission's directions in its Memorandum and Order dated April 26, 2007 (CLI–07–18):

Consumers Energy Company, Nuclear Management Company, LLC, Entergy Nuclear Palisades, LLC, and Entergy Nuclear Operations, Inc. (Palisades Nuclear Power Plant)

This proceeding, which will be conducted pursuant to 10 CFR Part 2 Subpart M of the Commission's Regulations, "Procedures for Hearings on License Transfer Applications," concerns a Notice of Consideration of Approval of Transfer of Facility Operating License and Conforming Amendment and Opportunity for a Hearing published in the **Federal Register** at 71 FR 66,805 (Nov. 16, 2006). The Commission is considering issuing an order approving the transfer of Facility Operating License No. DPR–20 for Palisades Nuclear Plant currently held by Consumers Energy Company and Nuclear Management Company, LLC to Entergy Nuclear Palisades, LLC and Entergy Nuclear Operations, Inc. As relevant here, in CLI–07–18 (slip op. at 4), the Commission determined that petitioners Van Buren County and Covert Township have standing in this proceeding. The Commission deferred ruling on the admissibility of the contentions proffered by the County and the Township, but it granted their request for access to proprietary information redacted by the applicants from the license transfer application (*id.* at 14). The Commission directed the applicants to provide the County and Township access to the unredacted version of the application pursuant to a confidentiality agreement (*id.* at 16–17). Unless and until directed otherwise by the Commission, the Presiding Officer's responsibilities shall be limited to resolving any disputes regarding the County's and Township's access to proprietary information in the application (*id.* at 17, 18).

The Presiding Officer is: Administrative Judge Michael C. Farrar, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials relating to disputes regarding the County's and Township's access to proprietary information in the application shall be filed with the Presiding Officer in accordance with 10 CFR 2.302.

Issued at Rockville, Maryland, this 30th day of April 2007.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E7–8549 Filed 5–3–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[EA–07–074]

In the Matter of All Research and Test Reactor Licensees Identified in Attachment 1; Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to All Research and Test Reactor Licensees Identified in Attachment 1 (Effective Immediately)

I

The Licensees identified in Attachment 1 [1] to this Order hold licenses as research and test reactors (RTRs) issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC or Commission). On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is permitted unescorted access to a utilization facility, which includes the RTRs listed in Attachment 1 to this Order.

II

Prior to September 11, 2001, the Commission established physical protection requirements applicable to RTRs, which included storing and using the special nuclear material in controlled access areas, monitoring the controlled access areas for unauthorized activities, and ensuring a response to all unauthorized activities.

Subsequent to the terrorist events of September 11, 2001, the NRC took various actions to ensure the acceptability of individuals for unescorted access to RTRs. RTRs were advised to consider taking additional precautions including observation of activities within their facility, and licensee precautions were evaluated at specific RTR sites in the remainder of 2001. From 2002 through 2004, RTRs implemented compensatory measures (CMs), which included site-specific background investigations or checks. Additionally, in January 2003, NRC sent the names of and information on all individuals with unescorted access at RTRs to U.S. intelligence agencies for review. This review found no issues. Individuals with unescorted access since January 2003 have undergone site-specific background investigations or checks, which were implemented as part of CMs implemented at RTRs in response to NRC initiatives.

The RTR site-specific background investigations and checks were established using a graded approach, considering the specific configuration, uses and radiological risk of each facility, to provide acceptable protection of the nuclear material and any associated radioactive materials. The background investigations and checks at a minimum verify identity, nationality, immigration status (if applicable), and determine whether the individual demonstrates a pattern of trustworthy and reliable behavior through facility-specific verification of various aspects of a person's background. These verifications include consideration of educational, military, employment and criminal histories. With regard to criminal history, some of the RTR facilities use FBI fingerprint-based criminal history records checks, while others use either State fingerprint-based criminal history records checks or criminal history records checks which do not include fingerprints. These background investigations or checks, through a combination of various elements, have provided additional assurance for the protection of the specific facility from potential radiological risk from insider threats.

Further, RTRs are required by Orders dated September 29, 2006, to have FBI fingerprint-based identification and criminal history records checks for persons allowed access to Safeguards Information.[2] These individuals are those who are allowed access to the details of security plans or procedures at the specific facility and, therefore, have actual knowledge and ability to affect the facility security. Therefore, those Orders provide additional assurance that security information and associated RTRs facilities are adequately protected.

Previously, AEA Section 149 only required fingerprinting and criminal history records checks of persons

[1] Attachment 1 contains sensitive information and will not be released to the public.

[2] "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information (Effective Immediately)," (EA–06–203) dated September 29, 2006, (71 FR 59140, Oct. 6, 2006) (ML061510049).

seeking unescorted access to facilities licensed under Sections 103 and 104b of the AEA, e.g., power reactors. Power reactors are required by 10 CFR 73.57 to have fingerprint-based criminal history records checks performed as part of granting unescorted access to the facility. RTRs have not been subject to this requirement, and have only been required to control access to authorized persons and screen those persons for access in accordance with their security plans or procedures.

Congress left intact the Commission's authority to relieve persons by rule from the fingerprinting, identification, and criminal history records check requirements of AEA Section 149 "if the Commission finds that such action is consistent with its obligations to promote the common defense and security and to protect the health and safety of the public." [3] Currently, the NRC has no rule that would provide relief from or require the implementation of AEA section 149 for fingerprinting for unescorted access to RTRs.

The NRC is planning a rulemaking to reexamine the extent of fingerprint-based criminal history records checks for unescorted access to RTRs that it finds to be necessary to ensure adequate protection of the public health and safety and common defense and security. In the interim, the NRC has decided to implement this requirement, in part, prior to the completion of the rulemaking to provide acceptable, additional assurance that an individual with unescorted access to a RTR facility will not adversely impact the common defense and security or the public health and safety. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing the FBI criminal history records check requirements, as set forth in this Order, including Attachment 2 to this Order, on all Licensees identified in Attachment 1 to this Order. These requirements will remain in effect until the Commission determines otherwise.

The AEA requires fingerprint-based criminal history records checks at utilization facilities. Section 11cc of The AEA defines utilization facility as

(1) any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or

(2) any important component part especially designed for such equipment or device as determined by the Commission.

The Commission's rules, in 10 CFR 50.2, define a "[u]tilization facility" as "any nuclear reactor other than one designed or used primarily for the formation of plutonium or U–233." Further, "Nuclear reactor" is defined as "an apparatus, other than an atomic weapon, designed or used to sustain nuclear fission in a self-supporting chain reaction." These definitions include the RTRs listed in Attachment 1.

For purposes of this Order, an individual who is granted "unescorted access" could exercise physical control over the special nuclear material possessed by the licensee, which would be of significance to the common defense and security or would adversely affect the health and safety of the public, such that the special nuclear material could be used or removed in an unauthorized manner without detection, assessment, or response by systems or persons designated to detect, assess or respond to such unauthorized use or removal. At RTRs, such individuals include those with the capability and knowledge to use the special nuclear material in the utilization facility or remove the special nuclear material from the utilization facility in an unauthorized manner without detection, assessment and response by the physical protection system or related provisions or persons.

In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 53, 104, 149, 161b, 161i, 161o, 182, and 186 of the AEA of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 50 and 10 CFR Part 73, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT ALL LICENSEES IDENTIFIED IN ATTACHMENT 1 TO THIS ORDER SHALL COMPLY WITH THE REQUIREMENTS SET FORTH IN THIS ORDER.

A. All licensees identified in Attachment 1 to this Order shall comply with the following requirements:

1. The Licensee shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program for unescorted access that meets the requirements of Attachment 2 to this Order.

2. The Licensee shall, in writing, within twenty (20) days of the date of this Order, notify the Commission (1) of receipt and confirmation that compliance with the Order will be achieved or (2) if it is unable to comply with any of the requirements described in Attachment 2, or (3) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

B. In accordance with the NRC's "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information (Effective Immediately)" (EA–06–203) issued on September 29, 2006, (71 FR 59140, October 6, 2006), only the NRC-approved reviewing official shall review results from a FBI criminal history records check. In accordance with all other applicable requirements and the evaluation of the results of the FBI criminal history records check as specified in this Order, the reviewing official shall determine whether an individual may have, or continue to have, unescorted access. No person may have access to Safeguards Information or unescorted access to any utilization facility, or radioactive material or property subject to regulation by the NRC if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to SGI or that the person may not have unescorted access to a utilization facility, or radioactive material or property subject to regulation by the NRC.

C. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 2 to this Order. Individuals who have been fingerprinted and granted access to SGI by the NRC-approved reviewing official in accordance with EA–06–203 (September 29, 2006), do not need to be fingerprinted again for purposes of authorizing unescorted access. In addition, individuals who have a favorably decided U.S. Government criminal history records check within the last five (5) years, or who have an active Federal security clearance have satisfied the EPAct fingerprinting requirement and need not be

[3] AEA § 149.b.

fingerprinted again, provided in each case that the appropriate documentation is made available to the Licensee's reviewing official. However, all other applicable requirements must be satisfied to allow any individual unescorted access to the facility.

D. The Licensee may allow any individual who currently has unescorted access, in accordance with applicable requirements, to continue to have unescorted access, pending a decision by the reviewing official (based on fingerprinting and a FBI criminal history records check) that the individual may continue to have unescorted access. The licensee shall complete implementation of the requirements of Attachment 2 to this Order by July 30, 2007.

Licensee responses to Condition A.2. shall be submitted to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Material Litigation and Enforcement at the same address, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified above in Section III shall be final twenty (20) days from the date of this Order without further Order or proceedings.

If an extension of time for requesting a hearing has been approved, the provisions as specified above in Section III shall be final when the extension expires, if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated this 30th day of April 2007.

For the Nuclear Regulatory Commission.

James T. Wiggins,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 07–2207 Filed 5–3–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Report to Congress on Abnormal Occurrences Fiscal Year 2006; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974 (Public Law 93–438) defines an abnormal occurrence (AO) as an unscheduled incident or event which the U.S. Nuclear Regulatory Commission (NRC) determines to be significant from the standpoint of public health or safety. The Federal Reports Elimination and Sunset Act of 1995 (Public Law 104–66) requires that AOs be reported to Congress annually. During fiscal year 2006, nine events that occurred at facilities licensed or otherwise regulated by the NRC and/or Agreements States were determined to be AOs. The report describes three events at facilities licensed by the NRC. The three AOs at NRC-licensed facilities included a spill of high-enriched uranium solution at a fuel fabrication facility, a medical event, and an unintended dose to an mbryo/fetus. The report also addresses six AOs at facilities licensed by Agreement States. [Agreement States are those States that have entered into formal agreements with the NRC pursuant to Section 274 of the Atomic Energy Act (AEA) to regulate certain quantities of AEA licensed material at facilities located within their borders.] Currently, there are 34 Agreement States. During Fiscal Year 2006, Agreement States reported six events that occurred at Agreement State-licensed facilities, including four medical events, one unintended dose to an embryo/fetus, and one industrial event. As required by Section 208, the discussion for each event includes the date and place, the nature and probable consequences, the cause or causes, and the action taken to prevent recurrence. Each event is also being described in NUREG–0090, Vol. 29, "Report to Congress on Abnormal Occurrences, Fiscal Year 2006." This report is available electronically at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/*.

Nuclear Power Plants

During this period, no events at U.S. nuclear power plants were significant enough to be reported as AOs.

* * * * *

Fuel Cycle Facilities

(Other Than Nuclear Power Plants)

During this reporting period, one event at an NRC-licensed fuel fabrication facility was significant

enough to be reported as an AO based on the criteria in Appendix A to this report.

06–01 Spill of High-Enriched Uranium Solution at Nuclear Fuel Services in Erwin, Tennessee.

Date and Place—March 6, 2006, Erwin, Tennessee.

Nature and Probable Consequences—In a facility authorized to process high-enriched uranium (HEU), a transfer of HEU solution through a transfer line resulted in a portion of the HEU solution, approximately 35 liters, leaking into a glovebox where criticality was possible and subsequently to the floor where criticality was also possible because of the presence of an elevator pit.

Immediately before the event, the facility operator decided to move the unused filter glovebox to another location. Workers opened and drained the filters so that the filter glovebox could be moved. After draining the filters, workers failed to reseal the system tightly. During the next transfer of HEU solution through the line, HEU solution leaked into the filter glovebox. On several occasions before the event, workers had reported signs of a yellowish liquid in the filter glovebox. Supervisors had failed to fully investigate the reports because they assumed the yellowish liquid was natural uranium solution which had been used to initially test the process.

Criticality was possible in the filter glovebox because of the size and shape of the glovebox and because there were no controls in the filter glovebox to prevent accumulation of solution. The solution leaked out of the filter glovebox through uncontrolled drains to the floor. Investigation of the event revealed that the floor contained an uncontrolled accumulation point, an elevator pit, where criticality was also possible. In different circumstances, the total volume of the transfer would have been more than enough for criticality to be possible in the filter glovebox or the elevator pit. If a criticality accident had occurred in the filter glovebox or the elevator pit, it is likely that at least one worker would have received an exposure high enough to cause acute health effects or death. The NRC conducted a team inspection to determine the root causes of the event and performed a series of three readiness reviews before allowing this portion of the facility to restart. The NRC issued an order to the licensee delineating specific actions designed to address this and other performance issues at the facility.

Cause(s)—Failure to maintain configuration control of facility equipment and failure to comply with procedures.

Actions Taken to Prevent Recurrence—The operator stopped all processing of HEU in the affected processing area, removed the enclosure and associated piping, filled in an uncontrolled accumulation point (the elevator pit) with concrete, and conducted an extensive review to identify any similar configuration issues.

* * * * *

Other NRC Licensees

(Industrial Radiographers, Medical Institutions, etc.)

During this reporting period, two events at NRC-licensed or regulated facilities were significant enough to be reported as AOs based on the criteria in Appendix A to this report.

06–02 Medical Event at Bozeman Deaconess Hospital in Bozeman, Montana.

Date and Place—May 9, 2006, Bozeman, Montana.

Nature and Probable Consequences—The licensee reported that a patient was prescribed a brachytherapy treatment of 145 Gy (14,500 rad) to the prostate gland for prostate cancer using 82 iodine-125 seeds, but instead received a 130 Gy (13,000 rad) dose to an unintended treatment site. The brachytherapy seeds were implanted under ultrasound guidance; however, a post-treatment computerized tomography scan confirmed that only 10 seeds were implanted in the prescribed location of the prostate, resulting in a dose of 8.6 Gy (860 rad) delivered to the intended treatment site. Concerning the 72 seeds not in the intended treatment site, the urologist was able to recover 3 seeds and determined that 69 seeds were implanted inferior to the prostate in the wrong treatment site. The referring physician and the patient were informed of this event and were advised that the patient may experience discomfort during urination. The NRC staff conducted a reactive onsite inspection on May 16, 2006. An NRC contracted medical consultant experienced in radiation oncology reviewed the case and agreed with the licensee's analysis and conclusions. An NRC inspection report has been issued.

Cause(s)—This medical event was caused by human error because the licensee did not verify that the sources were positioned in the proper location in the prostate. The urologist misidentified the anatomy viewed under the ultrasound guidance procedure.

Actions Taken to Prevent Recurrence—The licensee revised its procedures, requiring a fluoroscopic examination early in the implant procedure to ensure that the seeds are placed in the correct location, thus resolving any questions concerning ultrasound images prior to commencing with the implant. The licensee also implemented additional staff training.

* * * * *

06–03 Dose to an Embryo/Fetus at Munson Medical Center in Traverse City, Michigan.

Date and Place—May 3, 2006, Traverse City, Michigan.

Nature and Probable Consequences—The licensee reported an unintended dose to an embryo/fetus. On May 3, 2006, the licensee administered a therapy dosage of 5.55 GBq (150 mCi) of I–131 to a 26-year-old female patient who had affirmed in writing that she was not pregnant. On May 22, 2006, the patient informed the licensee that she had been approximately 10 to 14 days pregnant at the time of the administration. Based on this new information, the licensee estimated that the dose to the embryo/fetus was approximately 400 mSv (40 rem). The referring physician and patient were informed of this event. The NRC-contracted medical consultant agreed with the licensee's dose estimate and concluded that this event should result in no harm to the embryo because the administration occurred during a stage of development when the thyroid does not take up iodine. The medical consultant recommended that a complete thyroid evaluation be performed after delivery.

Cause(s)—This medical event was caused by the patient's incorrect written statement that she was not pregnant prior to receiving the therapy dosage. The licensee did not require an independent pregnancy test for women of child-bearing age prior to administering the dosage.

Actions Taken to Prevent Recurrence—The licensee implemented a procedure that requires pregnancy tests for all women of childbearing age prior to any therapy dosage of radioactive material, a checklist to ensure that the pregnancy test is ordered, and staff training.

* * * * *

Agreement State Licensees

During this reporting period, six events at Agreement State-licensed facilities were significant enough to be reported as AOs based on the criteria in Appendix A to this report.

AS 06–01 Industrial Radiography Occupational Overexposure at Anvil

International in North Kingston, Rhode Island.

Date and Place—March 3, 2006, North Kingston, Rhode Island.

Nature and Probable Consequences—The licensee reported that a radiographer and a trainee received unintended radiation exposures in excess of those specified in the AO criteria. The incident occurred at a permanent radiography facility and involved an iridium-192 source with an activity of 3.44 TBq (93 Ci). After performing surveys outside a dedicated radiography cell, where radiation levels confirmed that radiography was in process in the cell, the radiographer and the trainee went to an alternate location and performed equipment maintenance and training. They were joined by a third radiographer, who was performing radiography inside the cell. All three radiography personnel entered the cell to view the radiography setup and examine the guide tube for training purposes. However, they entered without a survey meter and were unaware that the source was still exposed. As a result, the first radiographer and the trainee handled the collimator and guide tube (which contained the source) for approximately 15–60 seconds. The first radiographer received a dose to the left hand ranging from 1.4 to 2.8 Sv (140 rem to 280 rem). The trainee received a dose to the left hand ranging from 11 Sv to 85 Sv (1,100 rem to 8,500 rem). The third radiographer did not receive a dose in excess of regulatory exposure limits, since he did not handle the equipment.

Cause(s)—This event was caused by the failure of radiography personnel to follow safety procedures and use survey meters inside the cell.

Actions Taken to Prevent Recurrence.

Licensee—The licensee provided additional training to the personnel. The licensee also solicited the assistance of a medical physicist and the source manufacturer in determining the dose to the radiographers. The licensee also committed to keep the State updated on the medical conditions of the radiographer and trainee until they are released from medical oversight.

State Agency—On March 7, 2006, the State issued a suspension letter to the licensee. On March 8 and March 16, 2006, the State, accompanied by NRC Region I staff, conducted an investigation of the event. On April 13, 2006, the State issued a Notice of Violation and on November 3, 2006, terminated the license after an onsite inspection to confirm decommissioning actions.

AS 06–02 Medical Event at 21st Oncology, Inc., in Coral Springs, Florida.

Date and Place—March 31 through April 7, 2006, Coral Springs, Florida.

Nature and Probable Consequences—The licensee reported that an 80-year-old female patient received 100 Gy (10,000 rad) to an unintended area of approximately 2 cm (0.8 in) that was three times the prescribed dose for the mammosite brachytherapy procedure, using a high dose rate (HDR) afterloader containing an iridium-192 source with an activity of 240.5 GBq (6.5 Ci). The patient received less than 30 percent of the prescribed dose to the prescribed treatment site. The source stopped 6 cm (2.4 in) short of the intended position. The patient visited the attending physician for followup on May 2, 2006. The physician discovered that the patient's skin was abnormally red. The referring physician, patient, and patient's family were notified of the incident. The patient was treated for erythema (skin reddening) and moist desquamation (skin thinning and weeping).

Cause(s)—This medical event was caused by human error. The authorized user entered an incorrect distance into the computer entry data.

Actions Taken to Prevent Recurrence.

Licensee—The licensee developed new procedures requiring the authorized user to verify the source wire distances during HDR treatments and provided additional training in these procedures.

State Agency—The State reviewed and accepted the licensee's corrective actions.

* * * * *

AS 06–03 Medical Event at the McKay Dee Hospital, Inc., in Ogden, Utah.

Date and Place—June 19, 2006, Ogden, Utah.

Nature and Probable Consequences—The licensee reported that a patient undergoing treatment for hyperthyroidism received 1.08 GBq (29.3 mCi) of I–131 instead of the prescribed dosage of 0.56 GBq (15 mCi). On June 19, 2006, two patients were scheduled to receive I–131 treatments at the same time. However, the first patient was administered the second patient's prescribed dosage resulting in the patient receiving a higher than intended dose. The error was identified by the licensee prior to the administration of I–131 to the second patient. The administration resulted in a thyroid dose of 1,066 Gy (106,600 rad). The patient and referring physician were notified of the error. No negative health effects from this administration are expected. On July 17, 2006, the licensee sent a letter to the State confirming that a medical event had occurred.

Cause(s)—This medical event was caused by human error. The licensee failed to verify the prescribed dosage for a specific patient.

Actions Taken to Prevent Recurrence.

Licensee—Corrective actions taken by the licensee included revising procedures to improve patient identification techniques and not scheduling patients with similar treatments at concurrent times.

State Agency—The State reviewed and accepted the licensee's corrective actions.

* * * * *

AS 06–04 Medical Event at Central Arkansas Radiation Therapy Institute in Little Rock, Arkansas.

Date and Place—March 28, 2006, Little Rock, Arkansas.

Nature and Probable Consequences—The licensee reported that a patient undergoing implant brachytherapy for prostate cancer received a radiation dose to an unintended area during an I–125 prostate-seed implant procedure. The patient was prescribed 108 Gy (10,800 rad) to the base of the prostate gland with 84 I–125 seeds but it was delivered 4 cm (1.6 in) inferior to the intended treatment site. The post-implant dose calculation confirmed that the dose was delivered to the wrong treatment site. The patient will require further brachytherapy treatment. The patient did not incur adverse health effects as a result of the medical event. The patient and referring physician were notified of the medical event.

Cause(s)—This medical event was caused by human error. The urologist was not able to clearly identify the base of the prostate gland during the ultrasound used to view the target organ during the treatment.

Actions Taken to Prevent Recurrence.

Licensee—The licensee implemented a new policy to ensure that the urologist clearly defines the base of the prostate and urethra.

State Agency—The State reviewed and accepted the licensee's corrective actions.

* * * * *

AS 06–05 Medical Event at Children's Memorial Medical Center in Chicago, Illinois.

Date and Place—July 24, 2006, Chicago, Illinois.

Nature and Probable Consequences—The licensee reported that a patient received a higher than intended dosage of 74 MBq (2 mCi) of I–131 instead of the prescribed dosage of 0.19 MBq

(0.005 mCi). The physician did not prepare a written directive. The authorized user noted the error on July 25, 2006. The licensee estimated a whole body dose of 0.0189 Sv (1.89 rem) and a dose to the thyroid of 41.4 Sv (4,140 rem), based on a 59.2-percent uptake. Using the same assumptions, the intended dosage of 0.19 MBq (0.005 mCi) would have given the patient a thyroid dose of 0.104 Sv (10.4 rem). The patient and referring physician were notified of the medical event. The patient incurred no adverse health effects from the medical event.

Cause(s)—This medical event was caused by inadequate verbal communications between the nuclear medicine technologist (NMT) and the physician and the lack of a written directive.

Actions Taken to Prevent Recurrence.

Licensee—The licensee reviewed previous administrations of radioiodine to confirm that this event was an isolated occurrence. The licensee added additional procedures to ensure proper oversight by a physician during all future radioidodine administrations.

State Agency—The State investigated the event and concurred with the licensee's dose estimates. The State issued a Notice of Violation to the licensee.

* * * * *

06–06 Dose to an Embryo/Fetus at McLeod Regional Medical Center in Florence, South Carolina.

Date and Place—May 26, 2006, Florence, South Carolina.

Nature and Probable Consequences—The licensee reported an unintended dose to an embryo/fetus. The licensee administered 555 MBq (15 mCi) of technetium-99m on May 24, 2006, and 518 KBq (0.014 mCi) of I–131 on May 25 as a prelude to a thyroid ablation to a patient. Prior to the administrations and following a detailed explanation provided by the physician, the patient signed an informed consent indicating that she was not pregnant. The licensee's radioactive materials license requires that a pregnancy test be done on any female of child-bearing age undergoing radiation therapy. However, the patient convinced the attending NMT that she could not possibly be pregnant. The NMT did not perform the pregnancy test and on May 26, 2006, administered 0.548 GBq (14.8 mCi) of I–131 to the patient for a thyroid ablation. At approximately 32—34 weeks of pregnancy, the patient visited an obstetrician and mentioned that she had undergone a thyroid ablation procedure when she was approximately 17 weeks pregnant. The obstetrician notified the licensee on October 3, 2006. The licensee estimated that the fetus received a whole body dose of 0.0517 Gy (5.17 rad) and a thyroid dose of 139.2 Gy (13,920 rad). The child was born in November 2006. The newborn appears to have no apparent problems resulting from the radiation exposure with the exception of an underactive thyroid gland (hypothyrodism). The child is currently receiving a small amount of thyroid supplement. The referring physician and patient were notified of the event.

Cause(s)—This event was caused by human error. At the time of the administration, the patient indicated that she was not pregnant, and the licensee failed to perform the required pregnancy test.

Actions Taken To Prevent Recurrence.

Licensee—The licensee provided instructions to staff emphasizing its policy to administer a pregnancy test to female patients of child-bearing age prior to undergoing radiation therapy.

State Agency—The State reviewed and approved the corrective actions taken by the licensee and will followup at the next inspection. The State is in the process of issuing a Notice of Violation.

Dated at Rockville, Maryland this 20th day of April 2007.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. E7–8551 Filed 5–3–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Special 301 Report: Identification of Countries That Deny Adequate Protection, or Market Access, for Intellectual Property Rights Under Section 182 of the Trade Act of 1974

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Trade Representative (USTR) has submitted its 2007 "Special 301 Report," an annual report on the identification of those foreign countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection, to the Committee on Finance of the United States Senate and the Committee on Ways and Means of the United States House of Representatives, pursuant to section 182 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2242).

DATES: The 2007 Special 301 Report was released on April 30, 2007. The 2007 Special 301 Report is available on USTR's Web site at *http://www.ustr.gov.*

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Jennifer Choe Groves, Director for Intellectual Property and Chair of the Special 301 Committee at (202) 395–4510.

SUPPLEMENTARY INFORMATION: Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act (enacted in 1994), under Special 301 provisions, USTR must identify those countries that deny adequate and effective protection for intellectual property rights (IPR) or deny fair and equitable market access for persons that rely on intellectual property protection. Countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on the relevant U.S. products must be designated as "Priority Foreign Countries."

Priority Foreign Countries are potentially subject to an investigation under the Section 301 provisions of the Trade Act of 1974. USTR may not designate a country as a Priority Foreign Country if it is entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of IPR.

USTR must decide whether to identify countries within 30 days after issuance of the annual National Trade Estimate Report. In addition, USTR may identify a trading partner as a Priority Foreign Country or remove such identification whenever warranted.

USTR has created a "Priority Watch List" and "Watch List" under Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons relying on intellectual property. Countries placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

Additionally, under Section 306, USTR monitors a country's compliance with bilateral intellectual property agreements that are the basis for

resolving an investigation under Section 301. USTR may apply sanctions if a country fails to satisfactorily implement an agreement.

The interagency Trade Policy Staff Committee that advises USTR on the implementation of Special 301 obtains information from and holds consultations with affected industry groups and other private sector representatives, foreign governments, Congressional leaders, and interagency coordination within the United States Government, among other sources.

The Special 301 Report is available on USTR's Web site at *http://www.ustr.gov.*

Following extensive research and analysis, the USTR has designated 43 countries in the categories of Priority Watch List, Watch List, and/or Section 306 Monitoring status. The Report affirms the Administration's continuing commitment to address weak IPR protection and enforcement, particularly in Russia and China.

With respect to Russia, the Special 301 Report describes the Bilateral Market Access Agreement between the United States and Russia, concluded in November 2006, which includes a letter setting out important commitments that will strengthen IPR protection and enforcement in Russia. The Report continues heightened scrutiny of Russia by maintaining Russia on the Priority Watch List and announcing plans for an Out-of-Cycle Review in 2007.

With respect to China, the Special 301 Report describes the United States' plan to maintain China on the Priority Watch List, to continue Section 306 Monitoring, and to pursue World Trade Organization dispute settlement with China on a number of IPR protection and enforcement issues. In addition, the Report contains a section entitled "Special Provincial Review of China," in which the Administration reports on IPR protection and enforcement at China's provincial level following an unprecedented review conducted over the past year.

USTR again designates Paraguay for Section 306 monitoring to ensure its compliance with the commitments made to the United States under bilateral intellectual property agreements.

In the Report, USTR also announces the placement of 12 trading partners on the Priority Watch List: China, Russia, Argentina, Chile, Egypt, India, Israel, Lebanon, Thailand, Turkey, Ukraine, and Venezuela. In addition, USTR places 30 trading partners on the Watch List: Belarus, Belize, Bolivia, Brazil, Canada, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Hungary, Indonesia, Italy, Jamaica, Kuwait, Lithuania, Malaysia, Mexico, Pakistan, Peru, Philippines, Poland, Republic of Korea, Romania, Saudi Arabia, Taiwan, Tajikistan, Turkmenistan, Uzbekistan, and Vietnam. The Report announces that several countries are being removed from the Special 301 list completely: Bahamas, Bulgaria, Croatia, European Union, and Latvia. Finally, the Report notes that USTR will conduct Out-of-Cycle Reviews of Brazil, the Czech Republic, Pakistan, and Russia.

Victoria Espinel,

Assistant U.S. Trade Representative for Intellectual Property and Innovation.

[FR Doc. E7–8496 Filed 5–3–07; 8:45 am]

BILLING CODE 3190–W7–P

PEACE CORPS

New System of Records

ACTION: Notice to add a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) the Peace Corps is giving notice of a new system of records, PC–22, titled *Financial Management System.*

DATES: This action will be effective without further notice on June 18, 2007 unless comments are received by June 4, 2007 that would result in a contrary determination.

ADDRESSES: You may submit comments by e-mail to *sglasow@peacecorps.gov.* You may also submit comments by mail to Suzanne Glasow, Office of the General Counsel, Peace Corps, Suite 8200, 1111 20th Street, NW., Washington, DC 20526. Contact Suzanne Glasow for copies of comments.

FOR FURTHER INFORMATION CONTACT: Suzanne Glasow, Associate General Counsel, 202–692–2150, *sglasow@peacecorps.gov.*

SUPPLEMENTARY INFORMATION: Section 552a provides that the public be given a 30-day period in which to comment on the new system. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review the proposed system. In accordance with 5 U.S.C. 552a, Peace Corps has provided a report on this system to OMB and the Congress.

System name: PC–22, Financial Management System (FMS).

SYSTEM LOCATION:

The financial system is located at the Peace Corps Headquarters. Authorized staff in Peace Corps offices, including those overseas, can access the automated system or its components. The Peace Corps office locations include Headquarters; Regional Recruitment offices; and Peace Corps overseas Posts. The number of Peace Corps recruiting offices is 11. The number of overseas offices (posts) fluctuates, from about 67 to about 71.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals the Peace Corps owes money to or who receives a payment from the Peace Corps and those who owe money to the United States. These individuals consist of current and former Employees; Peace Corps Volunteers, Crisis Corps Volunteers; United Nations Volunteers; and returned Volunteers; Personal Services (PSC) and Other Contractors, Consultants, and Vendors who travel or perform certain services for PC; Donors; and Individuals whom Peace Corps Volunteers and Crisis Corps Volunteers have designated to receive their W–2 forms.

CATEGORIES OF RECORDS IN THE SYSTEM:

When applicable, information in the system includes, but is not limited to: Name, address, country of assignment, employee number, vendor number, social security number; Taxpayer Identification Number (TIN), including background and supporting documentation for most categories of individuals; banking data, PSC vendor Data Universal Numbering System (DUNS) number; contract numbers and contracts, invoice and payment records; travel payment records; Peace Corps, Crisis Corps, and United Nations Volunteer ID number, telephone numbers; date of birth, contacts, account numbers and payment records; claims, donors (Federal and non-federal), donor numbers and donation history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM (INCLUDES ANY REVISIONS OR AMENDMENTS):

Budget and Accounting Procedures Act of 1950; Federal Managers Financial Integrity Act; and the Office of Management and Budget (OMB) Circular A–127, The Peace Corps Act, 22 U.S.C. 2501, et seq., Debt Collection Improvement Act of 1996.

PURPOSE:

To support the financial functions required to track financial events, provide financial information significant to the financial management of Peace Corps and/or required for the preparation of financial statements and other federally-mandated reports and for the issuance of payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

Peace Corps general routine uses A, B, C, D, E, F, G, H, I, J, K and L apply to this system. Records may also be disclosed to:

1. The Department of Treasury for disbursements to vendors and travelers; or

2. The Department of State for disbursements to vendors and travelers.

3. The Department of Treasury for debt collection and to conduct a computer matching program in order to collect debts.

4. The Internal Revenue Service for tax reporting and submission of W–2 and 1099 information.

5. General Services Administration for Federal Procurement Data System (FPDS) reporting on contracts awarded.

6. Other Federal agencies with whom PC has established Interagency/ Reimbursable Agreements.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In a computerized database with background documentation or reports available on paper.

RETRIEVABILITY:

By name, Volunteer ID number, SSN, contract or purchase order number, invoice number, payment batch number, customer number or vendor number, DUNS number. Paper records are retrieved according to Volunteer name, country location code, purchase order number, contract number, project number, vendor name, and SF1166 Schedule of Payments number.

SAFEGUARDS:

Computerized records are maintained in a secure, password-protected computer system. These records are available to Peace Corps employees and contractors with assigned duties requiring work with the records on a day-to-day basis. The office supervisors authorize the appropriate level of FMS record access for each user. FMS databases are backed up nightly. The domestic back-up media is stored in a data center until delivered to GSA/DOD-approved facilities for offsite storage. Back-up media in overseas PC offices is stored on site in fire-proof containers. Paper records are maintained in lockable file cabinets. The paper records and computer media are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Computerized records are stored within the FMS database and are being retained for a minimum of 8 years. The paper records of vouchers, contracts (with award amounts greater than $25,000), procurement files, and schedules of payments are retained for up to 6 years and 3 months after the fiscal year of the award or after the final payment has been issued; Volunteers/ Trainees records are retained up to 7 years and 3 months after the Volunteer/ Trainee has terminated or closed service; and records of donors are held for up to 7 years unless they are no longer needed.

SYSTEM MANAGER:

Chief Financial Officer, Office of the Chief Financial Officer, U.S. Peace Corps, 1111 20th St., NW., Washington, DC 20526–0001.

PROCEDURES FOR NOTIFICATION, ACCESS, AND CONTESTING:

Any individual who wants to know whether this system of records contains a record about himself or herself, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager or Privacy Act Officer. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification procedures may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD SOURCE CATEGORIES:

Record subject and Peace Corps staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: May 1, 2007.

Wilbert Bryant,

Associate Director—Management.

[FR Doc. 07–2211 Filed 5–3–07; 8:45 am]

BILLING CODE 6015–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27808; 812–13373]

The Gabelli Equity Trust Inc., et al.; Notice of Application

April 30, 2007.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act and for an order under section 17(d) of the Act and rule 17d–1 thereunder.

APPLICANTS: The Gabelli Equity Trust Inc. (the "Trust"), The Gabelli Healthcare & Wellness^{RX} Trust (the "Healthcare Trust"), and Gabelli Funds, LLC ("Gabelli").

SUMMARY OF APPLICATION: Applicants seek an order to permit the Trust to transfer a portion of its assets to the Healthcare Trust, a newly formed, wholly-owned subsidiary that is a registered closed-end investment company, and to distribute to the Trust's shareholders the shares of the Healthcare Trust.

FILING DATES: The application was filed on April 2, 2007 and amended on April 16, 2007 and April 26, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 21, 2007, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC, 20549–1090; Applicants, c/o Rose F. DiMartino, Esq., Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019–6099.

FOR FURTHER INFORMATION CONTACT: Shannon Conaty, Senior Counsel, at (202) 551–6827, or Julia K. Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC, 20549–0102 (tel. (202) 551–8090).

Applicants' Representations

1. The Trust is a non-diversified, closed-end management investment

company registered under the Act. The Healthcare Trust was formed on February 20, 2007, and filed a notification of registration on Form N–8A on February 28, 2007 to register under the Act as a non-diversified, closed-end management investment company. The Healthcare Trust will file a registration statement under the Act on Form N–2 within 90 days after the filing of the Form N–8A. Application will be made to list the Healthcare Trust's common shares for trading on the New York Stock Exchange. Gabelli is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as the investment adviser to the Trust and the Healthcare Trust.

2. The Trust owns a single share of the Healthcare Trust's common shares of beneficial interest which was issued in consideration of the Trust's contribution to the Healthcare Trust of the $8 initial net asset value. Five of the eight persons who currently serve as the Trust's directors are also trustees of the eight-member Healthcare Trust's board of directors and four of the Trust's principal executive officers hold the same offices with the Healthcare Trust.

3. The Board of Directors ("Board") of the Trust has approved, subject to the requested relief and subsequent shareholder approval, the contribution of a segment of the Trust's net assets having a value of approximately $70 million to the Healthcare Trust in exchange for additional shares of common stock of the Healthcare Trust, which together with the share currently held by the Trust, will constitute all of the shares of common stock of the Healthcare Trust. It is anticipated that the contributed assets will consist largely or exclusively of cash and short-term fixed income instruments. All the common shares of the Healthcare Trust then will be distributed by the Trust as a dividend to its shareholders at a rate of one share of the Healthcare Trust common share for every 20 common shares held of the Trust. The contribution of the Trust assets to the Healthcare Trust and the subsequent distribution of the Healthcare Trust common shares to the Trust shareholders are referred to as the "Transaction."

4. The Board, including all of the directors who are not "interested persons" as defined by section 2(a)(19) of the Act (the "Disinterested Directors"), concluded, among other things, that the Transaction will result in the following benefits to Trust shareholders: (a) Shareholders will receive shares of an investment company with a different risk-return profile than the Trust; (b) shareholders will acquire the Healthcare Trust common shares at a much lower transaction cost than is typically the case for a newly-organized closed-end equity fund since there will be no underwriting discounts or commissions; and (c) shareholders will be able to seek capital appreciation opportunities presented by the Healthcare Trust market segment.

5. The Trust does not expect that it will recognize significant taxable gain on its contribution of cash and securities to the Healthcare Trust in exchange for shares of the Healthcare Trust. The Healthcare Trust has been advised by counsel that the distribution of shares of the Healthcare Trust to Trust shareholders likely will be a taxable event for Trust shareholders and, under certain circumstances, will be a taxable event for the Trust. However, the Transaction is not expected to increase significantly the total amount of taxable distributions received by the Trust's common shareholders for the year in which the Transaction is consummated and is not expected to result in the recognition of significant taxable gain by the Trust. The Board, including all of the Disinterested Directors, considered the tax consequences of the Transaction and believes that the benefits of the Transaction outweigh any adverse tax consequences to the Trust and its shareholders.

6. The costs of organizing the Healthcare Trust and effecting the distribution of the Healthcare Trust's shares to the Trust's shareholders, including the fees and expense of counsel and accountants and printing, listing, and registration fees, are estimated to be approximately $700,000 and will be borne by the Trust. The Trust will bear the costs of soliciting its shareholders' approval of the Transaction and the costs incurred in connection with this application for exemptive relief. In addition, the Healthcare Trust will incur operating expenses on an ongoing basis, including legal, auditing, transfer agency, and custodian expenses that, when aggregated with the fees payable by the Trust for similar services after the distribution, will likely exceed the fees currently payable by the Trust for those services. The Board, including the Disinterested Directors, concluded that it is appropriate for the Trust to bear the Transaction's cost inasmuch as the benefits of the Transaction will be for the Trust's common shareholders and because absorption of such expenses will eliminate any decrease in the net asset value of the Healthcare Trust's shares in comparison to the amount of the distribution, which may support the pricing of the Healthcare Trust shares on the New York Stock Exchange. It is not expected that the Transaction will have significant effect on the annual expenses of the Trust as a percentage of its assets.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose voting securities are directly or indirectly owned controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by, or under common control with, the other person. The Trust may be viewed as an affiliated person of the Healthcare Trust under section 2(a)(3) since the Trust will own 100 percent of the Healthcare Trust's voting securities until the consummation of the Transaction. The Healthcare Trust may similarly be considered an affiliated person of the Trust since 100 percent of the Healthcare Trust's voting securities will be owned by the Trust. The Trust and the Healthcare Trust also may be viewed as affiliated persons of each other to the extent that they may be deemed to be under the common control of Gabelli and because five of the same persons serve as the directors and four of the same persons serve as officers of both companies. As a result of the affiliation between the Trust and the Healthcare Trust, section 17(a) would prohibit the Transaction.

2. Applicants request an exemption pursuant to section 17(b) of the Act from the provisions of section 17(a) in order to permit the Trust to effect the Transaction. Section 17(b) authorizes the Commission to issue such an exemptive order if the Commission finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any persons concerned, and the proposed transaction is consistent with the policy of each registered investment company and the general purposes of the Act.

3. Applicants assert that the terms of the Transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching by any person concerned.

Applicants state that the proposed sale by the Trust of a portion of its assets to the Healthcare Trust in exchange for the securities of the Healthcare Trust will be based on the fair value of those assets computed on the day of the proposed transfer in the same manner as for purposes of the daily net asset valuation for the Trust. Applicants further state that such assets are anticipated to consist largely or exclusively of cash and short-term fixed income instruments and thus will likely pose few, if any, issues with respect to valuation. The Healthcare Trust shares distributed by the Trust in the Transaction will be valued based on the value of the Healthcare Trust's assets. "Value" for those purposes will be determined in accordance with the provisions of section 2(a)(41) of the Act and rule 2a–4 under the Act.

4. With respect to the Transaction, each of the Trust's Board and the Healthcare Trust's Board, including a majority of the Disinterested Directors of each Board, determined that the participation in the Transaction is in the best interests of the Trust or the Healthcare Trust, as applicable, and that the interests of the existing shareholders of the Trust or the Healthcare Trust, as applicable, will not be diluted as a result of the Transaction. These findings, and the basis upon which the findings were made, will be recorded fully in the minute book of the Trust or the Healthcare Trust, as applicable.

5. Applicants state that the Transaction will be consistent with the stated investment policies of the Trust and the Healthcare Trust as disclosed to shareholders. The distribution of the Healthcare Trust shares will not initially change the position of the Trust's shareholders with respect to the underlying investments that they then own. A proxy statement/prospectus of the Trust and the Healthcare Trust is being used to solicit the approval of the Trust's shareholders of the Transaction at a vote to take place following the issuance of the exemptive order. The Trust's shareholders will have the opportunity to vote on the Transaction after having received disclosure concerning the Transaction.

6. Applicants also seek an order under section 17(d) of the Act and rule 17d–1 under the Act. Section 17(d) and rule 17d–1 prohibit affiliated persons from participating in joint arrangements with a registered investment company unless authorized by the Commission. In passing on applications for these orders, rule 17d–1 provides that the Commission will consider whether the participation of the investment company is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of the other participants. Applicants request an order pursuant to rule 17d–1 to the extent that the participation of the applicants in the Transaction may be deemed to constitute a prohibited joint transaction.

7. Applicants state that the Transaction will not place any of the Trust, the Healthcare Trust, or existing shareholders of the Trust in a position less advantageous than that of any other person. As noted, the value of the Trust's assets transferred to the Healthcare Trust (and the common shares received in return) will be based on their fair value as computed on the day of the transfer in accordance with the requirements of the Act. The shares of the Healthcare Trust will be distributed as a dividend to the shareholders, leaving the shareholders in the same investment posture immediately following the Transaction as before, subject only to changes in market price of the underlying assets subsequent to the Transaction.

8. Applicants assert that the Transaction has been proposed in order to benefit the shareholders of the Trust as well as the Healthcare Trust, and neither Gabelli nor any other affiliated person of the Trust or the Healthcare Trust will receive fees solely as a result of the Transaction. The fee indirectly payable to Gabelli by the Healthcare Trust's shareholders will be the same as the fee currently indirectly payable to Gabelli by the Trust's shareholders. In addition, by creating the Healthcare Trust through the Transaction, the Trust is effectively enabling its shareholders to receive securities without the costs associated with a public offering.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8504 Filed 5–3–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27807; 812–13286]

Old Westbury Funds, Inc. and Bessemer Investment Management LLC; Notice of Application

April 27, 2007.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

APPLICANTS: Old Westbury Funds, Inc. (the "Corporation") and Bessemer Investment Management LLC (the "Adviser").

FILING DATES: The application was filed on April 24, 2006, and amended on April 26, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 22, 2007, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities & Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o Robert M. Kurucza, Morrison & Foerster LLP, 2000 Pennsylvania Avenue, NW., Suite 5500, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817 or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Corporation, a Maryland corporation, is registered under the Act as an open-end management investment company. The Corporation currently is comprised of seven series (each a "Fund" and collectively, the "Funds"), each with separate investment

objectives, policies and restrictions.[1] The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and serves as investment adviser to each of the Funds pursuant to an investment advisory agreement ("Advisory Agreement") with the Corporation. The Advisory Agreement has been approved by the Corporation's board of directors (the "Board"), including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Corporation or the Adviser ("Independent Directors"), as well as by the shareholders of each Fund.

2. Under the terms of the Advisory Agreement, the Adviser provides investment advisory services to each Fund, supervises the investment program for each Fund, and has the authority, subject to Board approval, to enter into investment subadvisory agreements ("Subadvisory Agreements") with one or more subadvisers ("Subadvisers"). Each Subadviser is registered under the Advisers Act. The Adviser monitors and evaluates the Subadvisers and recommends to the Board their hiring, retention or termination. Subadvisers recommended to the Board by the Adviser are selected and approved by the Board, including a majority of the Independent Directors. Each Subadviser has discretionary authority to invest the assets or a portion of the assets of a particular Fund. The Adviser compensates each Subadviser out of the fees paid to the Adviser under the Advisory Agreement.

3. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Corporation or of the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds ("Affiliated Sub-Adviser").

[1] Applicants also request relief with respect to future series of the Corporation and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Adviser, (b) uses the management structure described in the application; and (c) complies with the terms and conditions of the application (included in the term "Funds"). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant. All references to the term "Adviser" include: (a) the Adviser, and (b) any entity controlling, controlled by, or under common control with the Adviser. If the name of any Fund contains the name of a Subadviser (as defined below), the name of the Adviser will precede the name of the Subadviser.

4. Applicants also request an exemption from the various disclosure provisions described below that may require a Fund to disclose fees paid by the Adviser to each Subadviser. An exemption is requested to permit the Corporation to disclose for each Fund (as both a dollar amount and as a percentage of each Fund's net assets): (a) The aggregate fees paid to the Adviser and any Affiliated Subadvisers; and (b) the aggregate fees paid to Subadvisers other than Affiliated Subadvisers (collectively "Aggregate Fee Disclosure"). For any Fund that employs an Affiliated Subadviser, the Fund will provide separate disclosure of any fees paid to the Affiliated Subadviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 14(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 ("1934 Act"). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of the "terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Subadvisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that the shareholders are relying on the Adviser's experience to select the Subadviser best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement and any Subadvisory Agreement with an Affiliated Subadviser will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that some Subadvisers use a "posted" rate schedule to set their fees. Applicants state that while Subadvisers are willing to negotiate fees that are lower than those posted on the schedule, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief will benefit Fund shareholders because it would improve the Adviser's ability to negotiate the fees paid to the Subadvisers.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined

in the Act, or, in the case of a Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund's shares to the public.

2. Each Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility, subject to oversight by the Board, to oversee Subadvisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of a new Subadviser, the affected Fund shareholders will be furnished all the information about the new Subadviser that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of the new Subadviser. To meet this obligation, the Fund will provide shareholders within 90 days of the hiring of a new Subadviser with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Directors, and the nomination of new or additional Independent Directors will be placed within the discretion of the then-existing Independent Directors.

6. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Directors, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets, and, subject to review and approval of the Board, will: (a) Set each Fund's overall investment strategies, (b) evaluate, select and recommend Subadvisers to manage all or a part of a Fund's assets, (c) allocate and, when appropriate, reallocate a Fund's assets among multiple Subadvisers; (d) monitor and evaluate the performance of the Subadvisers, and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with each relevant Fund's investment objective, policies and restrictions.

8. No director or officer of the Funds or the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser, except for: (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

9. The Adviser will provide the Board, no less frequently than quarterly, with information about the Adviser's profitability on a per-Fund basis. Such information will reflect the impact on the profitability of the hiring or termination of any Subadviser during the applicable quarter.

10. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

11. The requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.

12. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the Adviser's profitability.

13. Independent legal counsel, as defined in rule 0–1(a)(6) under the 1940 Act, will be engaged to represent the Independent Directors. The selection of such counsel will be within the discretion of the then existing Independent Directors.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8506 Filed 5–3–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55676; File No. SR–CBOE–2007–40]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Duration of CBOE Rule 6.45A(b) Pertaining to Orders Represented in Open Outcry

April 27, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 25, 2007, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the CBOE. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission.[5] 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 CBOE proposes to extend the duration of CBOE Rule 6.45A(b) (the "Rule"), relating to the allocation of orders represented in open outcry in equity option classes designated by the Exchange to be traded on the CBOE Hybrid Trading System ("Hybrid") through July 31, 2007. No other changes are being made to the Rule. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and (*http://www.cboe.org/Legal*).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange has asked the Commission to waive the 30-day operative delay required by Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii). *See* discussion *infra* Section III.

proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In March 2005, the Commission approved revisions to CBOE Rule 6.45A related to the introduction of Remote Market-Makers.[6] Among other things, the Rule, pertaining to the allocation of orders represented in open outcry in equity options classes traded on Hybrid, was amended to clarify that only in-crowd market participants would be eligible to participate in open outcry trade allocations. In addition, the Rule was amended to limit the duration of the Rule until September 14, 2005. The duration of the Rule was thereafter extended through April 30, 2007.[7] As the duration period expires on April 30, 2007, the Exchange proposes to extend the effectiveness of the Rule through July 31, 2007.[8]

2. Statutory Basis

Extension of the duration of the Rule will allow the Exchange to continue to operate under the existing allocation parameters for orders represented in open outcry in Hybrid on an uninterrupted basis. Accordingly, CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder.[13]

A proposed rule change filed under Commission Rule 19b–4(f)(6)[14] normally does not become operative prior to thirty days after the date of filing. The CBOE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change to become operative immediately to allow the Exchange to continue to operate under the existing allocation parameters for orders represented in open outcry in Hybrid on an uninterrupted basis. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the CBOE to continue to operate under the Rule without interruption. For these reasons, the Commission designates the proposed rule change as operative upon filing.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2007–40 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2007–40. 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

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[6] *See* Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (SR–CBOE–2004–75).

[7] *See* Securities Exchange Act Release Nos. 52423 (September 14, 2005), 70 FR 55194 (September 20, 2005) (SR–CBOE–2005–76) (extending the duration of the Rule through December 14, 2005); 52957 (December 15, 2005), 70 FR 76085 (December 22, 2005) (SR–CBOE–2005–102) (extending the Rule through March 14, 2006); 53524 (March 21, 2006), 71 FR 15235 (March 27, 2006) (SR–CBOE–2006–22) (extending the duration of the Rule through July 14, 2006); 54164 (July 17, 2006), 71 FR 42143 (July 25, 2006) (SR–CBOE–2006–60) (extending the duration of the Rule through October 31, 2006); 54680 (November 1, 2006), 71 FR 65554 (November 8, 2006) (SR–CBOE–2006–86) (extending the duration of the Rule through January 31, 2007); and 55219 (February 1, 2007), 72 FR 6305 (February 9, 2007) (SR–CBOE–2007–10) (extending the duration of the Rule through April 30, 2007).

[8] In order to effect proprietary transactions on the floor of the Exchange, in addition to complying with the requirements of the Rule, members are also required to comply with the requirements of Section 11(a)(1) of the Act, 15 U.S.C. 78k(a)(1), or qualify for an exemption. Section 11(a)(1) restricts securities transactions of a member of any national securities exchange effected on that exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account over which the member or a person associated with the member exercises discretion, unless a specific exemption is available. The Exchange has issued regulatory circulars to members informing them of the applicability of these Section 11(a)(1) requirements each time the duration of the Rule was extended. *See* CBOE Regulatory Circulars RG05–103 (November 2, 2005), RG06–001 (January 3, 2006), RG06–34 (April 7, 2006), RG06–79 (July 31, 2006), RG06–115 (November 8, 2006) and RG07–21 (February 8, 2007). The Exchange represents that it expects to issue a similar regulatory circular to members reminding them of the applicability of the Section 11(a)(1) requirements with respect to the proposed rule change.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] Pursuant to Rule 19b–4(f)(6)(iii), the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change. *See* 17 CFR 240.19b–4(f)(6)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CBOE–2007–40 and should be submitted on or before May 25, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8505 Filed 5–3–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55418; File No. SR–CBOE–2007–22]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Increase the Class Quoting Limit in the Option Class NYSE Group, Inc. (NYX); Republication

March 7, 2007.

Editorial Note: FR Doc. E7–4589 originally published at pages 11924–11925 in the issue of Wednesday, March 14, 2007. The original publication contained footnote omissions. As a result, the corrected document is being republished in its entirety.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 23, 2007, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(1) thereunder, which renders it effective upon filing with the Commission.[4] 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

CBOE proposes to increase the class quoting limit in the option class NYSE Group, Inc. (NYX). The text of the proposed rule change is available at the CBOE, the Commission's Public Reference Room, and *http://www.cboe.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The 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

CBOE Rule 8.3A, Maximum Number of Market Participants Quoting Electronically per Product, establishes class quoting limits ("CQLs") for each class traded on the Hybrid Trading System.[5] A CQL is the maximum number of quoters that may quote electronically in a given product and the current levels are established from 25–40, depending on the trading activity of the particular product.

Rule 8.3A, Interpretation .01(c) provides a procedure by which the President of the Exchange may increase the CQL for a particular product. In this regard, the President of the Exchange may increase the CQL in exceptional circumstances, which are defined in the rule as "* * * substantial trading volume, whether actual or expected."[6] The effect of an increase in the CQL is procompetitive in that it increases the number of market participants that may quote electronically in a product. The purpose of this filing is to increase the CQL in the option class NYSE Group, Inc. (NYX) from its current limit of 40 to 45.[7]

Increasing the CQL in NYX options will enable the Exchange to enhance the liquidity offered, thereby offering deeper and more liquid markets.

2. Statutory Basis

CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange 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 written comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective pursuant to Section 19(b)(3)(A)[10] and Rule 19b–4(f)(1)

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Rule 8.3A.01.

[6] "Any actions taken by the President of the Exchange pursuant to this paragraph will be submitted to the SEC in a rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act." Rule 8.3A.01(c).

[7] The Exchange is requesting this increase in the CQL due to increased trading volume in NYX. Telephone conversation between Angela Muehr, Attorney, Division of Market Regulation, Commission, and Patrick Sexton, Associate General Counsel, CBOE, on March 7, 2007.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

thereunder.[11] 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2007–22 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2007–22. 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 will also be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR–CBOE–2007–22 and should be submitted on or before April 4, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–4589 Filed 3–13–07; 8:45 am]

Editorial Note: FR Doc. E7–4589 originally published at pages 11924–11925 in the issue of Wednesday, March 14, 2007. The original publication contained footnote omissions. As a result, the corrected document is being republished in its entirety.

[FR Doc. R7–4589 Filed 5–3–07; 8:45 am]

BILLING CODE 1505–01–D

[11] 17 CFR 240.19b–4(f)(1).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5778]

Biometric Visa Program Transition to Ten Fingerscans

AGENCY: State Department.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ron Acker, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1205 or e-mail *ackerrl@state.gov*.

SUMMARY: This public notice announces the change in the standard for fingerscans of the Biometric Visa Program from two fingerscans to ten fingerscans. The establishment of the Biometric Visa Program was announced to the public in December 2004 as a response to the requirements established by the Enhanced Border Security and Visa Entry Reform Act of 2002. When the program began, available technology only allowed for efficient capture and comparisons of two fingerscans. Now, improvements in technology allow the Program to incorporate a ten fingerscan standard.

Why is the Department planning to take ten fingerscans from visa applicants?

The Biometric Visa Program works closely with the US–VISIT Program of the Department of Homeland Security (DHS). Both programs currently require aliens to submit two fingerscans as part of their respective application procedures. In consultation with DHS and the Department of Justice, the Department is instituting the ten fingerscan standard to improve our ability to detect and thwart persons ineligible for visas by raising the accuracy rate in matching fingerscans.

Will this change affect all visa applicants?

Visa applicants subject to the Biometric Visa Program will be required to provide ten fingerscans with their first visa application following the transition.

When will this change take place?

The Department plans to begin deployment of the ten fingerscan system to all visa issuing consular posts abroad beginning in April 2007, with completion scheduled for the end of 2007.

Dated: April 2, 2007.

Maura Harty,

Assistant Secretary, Consular Affairs, Department of State.

[FR Doc. E7–8604 Filed 5–3–07; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF VETERANS AFFAIRS

Fund Availability Under the VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is announcing the availability of funds for applications for assistance under the Capital Grant component of VA's Homeless Providers Grant and Per Diem Program. This notice contains information concerning the program, funding priorities, application process, and amount of funding available.

DATES: An original completed and collated capital grant application (plus three completed collated copies) for assistance under the VA's Homeless Providers Grant and Per Diem Program must be received in the Grant and Per Diem Field Office, by 4 p.m. Eastern Time on June 28, 2007. Applications may not be sent by facsimile (FAX). In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

For a Copy of the Application Package: Download directly from VA's Grant and Per Diem Program Web page at: *http://www.va.gov/homeless/page.cfm?pg=3* or *http://*

www.grants.gov/. Questions should be referred to the Grant and Per Diem Program at (toll-free) 1–877–332–0334. For a document relating to the VA Homeless Providers Grant and Per Diem Program, see the final rule published in the **Federal Register** on September 26, 2003.

Submission of Application: An original completed and collated grant application (plus three copies) and a cover letter clearly stating under which funding priority applicants wish to be considered must be submitted to the following address:

VA Homeless Providers Grant and Per Diem Field Office, 10770 N. 46th Street, Suite C–200, Tampa, FL 33617. Applications must be received in the Grant and Per Diem Field office by the application deadline. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected or not funded.

FOR FURTHER INFORMATION CONTACT: Dr. Guy Liedke, VA Homeless Providers Grant and Per Diem Program, Department of Veterans Affairs, 10770 N. 46th Street, Suite C–200, Tampa, FL 33617; (toll-free) 1–877–332–0334.

SUPPLEMENTARY INFORMATION: This notice announces the availability of capital funds for assistance under VA's Homeless Providers Grant and Per Diem Program for eligible entities to: (1) Expand existing transitional housing projects; or (2) develop new transitional housing programs. Supportive service centers will only be considered under funding priority 3. Funding applied for under the capital grant component may be used for: (1) Remodeling or alteration of existing buildings; (2) acquisition of buildings; (3) acquisition and rehabilitation of buildings; (4) new construction; and (5) acquisition of vans (in connection with a new or existing Grant and Per Diem Grant project) for outreach and transportation for homeless veterans. Funding applied for under this notice is authorized by Public Law 109–461, § 703, known as the Veterans Benefit, Health Care and Information Technology Act of 2006, codified at 38 U.S.C. 2011, 2012, 2061, 2064, and may be used for aid for supportive housing and service centers. For eligibility criteria please refer to the final rule published in the **Federal Register** on September 26, 2003.

Capital grant applicants may not receive assistance to replace funds provided by any State or local government to assist homeless persons. A proposal for an existing project that seeks to shift its focus by changing the population being served or the precise mix of services being offered is not eligible for consideration. No more than 25 percent of housing and services available in projects funded through this grant program may be provided to clients who are not receiving those services as veterans.

VA is pleased to issue this notice of Fund Availability (NOFA) for the Homeless Providers Grant and Per Diem Program. The Department expects to award approximately $14 million under the capital grant component.

Funding available under this NOFA is being offered to help offset the capital expenses of existing state and local governments, Indian Tribal governments, faith-based, and community-based organizations that are capable of creating and providing supported transitional housing for homeless veterans. The District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, are considered eligible entities under the definition of "State" in the final rule, § 61.1 Definitions.

Per diem for these programs is requested in the grant application and may be paid at the time of grant project completion. It should be noted that VA per diem payment is limited to the applicant's cost of care per eligible veteran minus other sources of payments to the applicant for furnishing services to homeless veterans up to the per day rate VA pays for State Home Domiciliary care. Awardees will be required to support their request for per diem payment with adequate fiscal documentation as to program income and expenses.

Interested organizations should know that the vast majority of homeless veterans in this country suffer from mental illness or substance abuse disorders or are dually diagnosed with both mental illness and substance abuse disorders. In addition, many homeless veterans have serious medical problems. Collaboration with VA medical centers, VA community-based outpatient clinics or other health care providers as well as with VA and other benefit providers is an important aspect of assuring that homeless veterans have access to appropriate health care services. VA considers this program an important part of our effort to end chronic homelessness among veterans.

It is important to be aware that VA places great emphasis on responsibility and accountability. VA has procedures in place to verify the completion of the capital grant as well as monitor services provided to homeless veterans and outcomes associated with the services provided in grant and per diem-funded programs. Applicants should be aware of the following:

All awardees that are conditionally selected in response to *this NOFA* must meet the Life Safety Code of the National Fire Protection Association as it relates to their specific facility. Applicants should note that all facilities are to be sprinkled unless they are specifically exempted under the Life Safety Code and make consideration of this when submitting their capital grant applications. VA will conduct an inspection prior to awardees being able to submit request for per diem payment to ensure this requirement is met.

Upon capital grant completion each program seeking per diem will have a liaison appointed from a nearby VA medical facility to provide oversight and monitor services provided to homeless veterans in the per diem-funded program.

Monitoring will include at a minimum an annual review of each per diem program's progress toward meeting internal goals and objectives in helping veterans attain housing stability, adequate income support, and self sufficiency as identified in each per diem program's original application. Monitoring will also include a review of the agency's income and expenses as they relate to this project to ensure per diem payment is accurate.

Each per diem-funded program will participate in VA's national program monitoring and evaluation system administered by VA's Northeast Program Evaluation Center (NEPEC). NEPEC's monitoring procedures will be used to determine successful accomplishment of these housing outcomes for each per diem-funded program.

Authority: Funding applied for under this notice is authorized by Public Law 109–461, § 703, known as the Veterans Benefit, Health Care and Information Technology Act of 2006, codified at 38 U.S.C. 2011, 2012, 2061, 2064, and may be used for aid for supportive housing. The program is implemented by the final rule codified at 38 CFR part 61.0. The final rule was published in the **Federal Register** on September 26, 2003, the regulations can be found in their entirety in 38 CFR 61.0 through 61.82. Funds made available under this notice are subject to the requirements of those regulations.

Allocation: Approximately $14 million is available for the capital grant component. Capital grant awards will be limited to transitional housing projects, (service center programs will only be considered in this round under funding priority 3).

Vans must be directly connected to a new or existing Grant and Per Diem

Grant project and will be limited to one per project. These van awards do not count against the one per tax identification number for non-profit entitles or state and local government entities. Per diem payments to capital grant recipients are subject to the recipients maintaining the program for which the grant was awarded.

Funding Priorities: VA is offering to eligible applicants funding priorities for transitional housing and services to homeless women veterans and homeless women who have care of their dependent children, housing and services in area's experiencing the lingering effects of Hurricane's Katrina and Rita, and service centers for Indian Tribal Governments. Additionally, VA is encouraging interested state and local governments, Indian tribal governments, and faith-based and community-based organizations to apply for funding under this NOFA. In this round of capital grant funding, VA expects to award funding to create approximately 900 community-based supported housing beds.

Funding priority 1. VA is offering the opportunity for providers who are willing to create new projects for women and women with care of dependent children. Of those eligible entities in the first funding priority that are legally fundable, the highest scoring applicants will be funded first until approximately $1.5 million is awarded. Applicants not funded in this priority will be considered in the fourth funding priority.

Funding priority 2. VA is offering the opportunity for providers who are willing to create new or expand existing projects for homeless veterans due to the lingering effects of Hurricanes Katrina and Rita. Applicants whose projects are physically located in FEMA designated disaster declaration parishes or counties, that were eligible for "Individual Assistance", as outlined in the tables below, that are eligible entities, will be considered in the second funding priority. Of those eligible entities in the second funding priority, that are legally fundable, the highest scoring applicants will be funded first until approximately $2.5 million is awarded. Applicants not funded in this priority will be placed in the fourth funding priority. Should not enough eligible projects be funded under the second funding priority, funds not expended in this priority will fall to the fourth funding priority.

Funding priority 3. Indian tribal governments that wish to establish service centers for homeless veterans will be considered in the third funding priority as applicable. Of those eligible entities in the third funding priority that are legally fundable, the highest scoring applicants will be funded first until approximately $1 million is awarded. Applicants not funded in this priority will be placed in the fourth funding priority. Should not enough eligible projects be funded under the third funding priority, funds not expended in this priority will fall to the fourth funding priority.

Funding priority 4. VA is encouraging interested, state and local governments, Indian tribal governments, and faith-based and community-based organizations to apply for funding under this NOFA to create transitional housing and services for all homeless veterans. Eligible entities that are state and local governments, Indian Tribal governments, faith-based, and community-based organizations, will be considered in the fourth funding priority as applicable. Of those eligible entities that are legally fundable, the highest-ranked applications for which funding is available, will be conditionally selected for eligibility to receive a capital grant in accordance with their ranked order until funding is expended (approximately $9 million).

Hurricane Katrina	
FEMA–1605–DR, Alabama	Declaration Date: August 29, 2005.
Baldwin, Marengo, Mobile, Pickens, Greene, Hale, Tuscaloosa, and Washington Counties.	
FEMA–1603–DR, Louisiana	Declaration Date: August 29, 2005.
The parishes of Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Pointe Coupee, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, and West Feliciana.	
FEMA–1604–DR, Mississippi	Declaration Date: August 29, 2005.
Adams, Amite, Attala, Claiborne, Choctaw, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Holmes, Humphreys, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Lowndes, Madison, Marion, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Rankin, Scott, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, Winston, and Yazoo Counties.	
Hurricane Rita	
FEMA–1607–DR, Louisiana	Declaration Date: September 24, 2005.
The parishes of Acadia, Allen, Ascension, Cameron, Calcasieu, Beauregard, Evangeline, Iberia, Jefferson, Jefferson Davies, Lafayette, Lafourche, Livingston, Plaquemines, Sabine, St. Landry, St. Martin, St. Mary, Terrebonne, Vermilion, Vernon, and West Baton Rouge.	
FEMA–1606–DR, Texas	Declaration Date: September 24, 2005.
The counties of Angelina, Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, and Walker.	

Methodology: VA will review all capital grant applications in response to this notice of funding availability as follows: VA will group the applicants into the funding priorities categories. Applicants will then be ranked within their respective funding category based on score and any ranking criteria set forth in that funding category only if the applicant scores at least 600 cumulative points and receives points under the criteria in paragraphs (b), (c), (d), (e) and (i) of § 61.13.

The highest-ranked application for which funding is available, within the

highest funding category, will be conditionally selected in accordance with their ranked order until VA reaches the projected amount of funding for each category. If funds are still available after selection of those applications in the highest priority group VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in the final rule § 61.14.

Application Requirements: Applicants must include a cover letter clearly stating under which funding priority they wish to be considered. The grant application requirements will be specified in the application package. Applicants should be careful to complete the proper application package. Submission of the incorrect or incomplete application package will result in the application being rejected at threshold. The packages include all required forms and certifications. Selections will be made based on criteria described in the application, final rule, and NOFA. Applicants who are conditionally selected will be notified of any additional information needed to confirm or clarify information provided in the application. Applicants will then be notified of the deadline to submit such information. If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other grant and per diem applicants.

Dated: April 30, 2007.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E7–8528 Filed 5–3–07; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
May 4, 2007

Part II

Department of Health and Human Services

Centers for Medicare and Medicaid Services

42 CFR Part 484

Medicare Program; Home Health Prospective Payment System Refinement and Rate Update for Calendar Year 2008; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 484

[CMS–1541–P]

RIN 0938–AO32

Medicare Program; Home Health Prospective Payment System Refinement and Rate Update for Calendar Year 2008

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would set forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health services, effective on January 1, 2008. As part of this proposed rule, we are also proposing to rebase and revise the home health market basket to ensure it continues to adequately reflect the price changes of efficiently providing home health services. This proposed rule also would set forth the refinements to the payment system. In addition, this proposed rule would establish new quality of care data collection requirements.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 3, 2007.

ADDRESSES: In commenting, please refer to file code CMS–1541–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking*. Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1541–P, P.O. Box 8012, Baltimore, MD 21244–8012.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1541–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the "Collection of Information Requirements" section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Randy Throndset, (410) 786–0131.

General Issues: Sharon Ventura, (410) 786–1985.

Clinical (OASIS) Issues: Kathy Walch, (410) 786–7970.

Quality Issues: Doug Brown, (410) 786–0028.

Market Basket Update Issues: Mollie Knight, (410) 786–7948; and Heidi Oumarou, (410) 786–7942.

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–1541–P and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.cms.hhs.gov/eRulemaking*. Click on the link "Electronic Comments on CMS Regulations" on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Table of Contents

I. Background

[If you choose to comment on issues in this section, please include the caption "BACKGROUND" at the beginning of your comments.]

A. Requirements of the Balanced Budget Act of 1997 for Updating the Prospective Payment System for Home Health Services

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) enacted on August 5, 1997, significantly changed the way Medicare pays for Medicare home health services. Until the implementation of a home health prospective payment system (HH PPS) on October 1, 2000, home health agencies (HHAs) received payment under a cost-based reimbursement system. Section 4603 of the BBA governed the development of the HH PPS.

Section 4603(a) of the BBA provides the authority for the development of a PPS for all Medicare-covered home health services provided under a plan of care that were paid on a reasonable cost basis by adding section 1895, entitled "Prospective Payment For Home Health Services," to the Social Security Act (the Act).

Section 1895(b)(1) of the Act requires the Secretary to establish a PPS for all costs of home health services paid under Medicare.

Section 1895(b)(3)(A) of the Act requires that (1) The computation of a standard prospective payment amount include all costs for home health services covered and paid for on a reasonable cost basis and be initially based on the most recent audited cost report data available to the Secretary, and (2) the prospective payment amounts be standardized to eliminate the effects of case-mix and wage levels among HHAs.

Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the home health applicable increase percentage as specified in the statute.

Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of an appropriate case-mix adjustment factor that explains significant variation in costs among different units of services. Similarly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages, and wage-related costs applicable to home health services furnished in a geographic area compared to the applicable national average level. These wage-adjustment factors may be used by the Secretary for the different geographic wage levels for purposes of section 1886(d)(3)(E) of the Act.

Section 1895(b)(5) of the Act gives the Secretary the option to make additions or adjustments to the payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. Total outlier payments in a given fiscal year (FY) may not exceed 5 percent of total payments projected or estimated.

In accordance with the statute, we published a final rule (65 FR 41128) in the **Federal Register** on July 3, 2000 to implement the HH PPS legislation. This final rule established requirements for the new PPS for home health services as required by section 4603 of the BBA, and as subsequently amended by section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act (OCESAA) for Fiscal Year 1999, (Pub. L. 105–277), enacted on October 21, 1998; and by sections 302, 305, and 306 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act (BBRA) of 1999, (Pub. L. 106–113), enacted on November 29, 1999. The requirements include the implementation of a PPS for home health services, consolidated billing requirements, and a number of other related changes. The HH PPS described in that rule replaced the retrospective reasonable-cost-based system that was used by Medicare for the payment of home health services under Part A and Part B.

For a complete and full description of the HH PPS as required by the BBA, see the July 2000 HH PPS final rule.

B. Deficit Reduction Act of 2005

On February 8, 2006, the Deficit Reduction Act (DRA) of 2005 (Pub. L. 109–171) was enacted. This legislation affected updates to HH payment rates for CY 2006. The DRA also introduces home health care quality data and its effects on payments to HHAs beginning in CY 2007.

Specifically, section 5201 of the DRA changed the CY 2006 update from the applicable home health market basket percentage increase minus 0.8 percentage point to a 0 percent update.

In addition, section 5201 of the DRA amends section 421(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003). The amended section 421(a) of the MMA requires that for home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act) on or after January 1, 2006 and before January 1, 2007, that the Secretary increase the payment amount otherwise made under section 1895 of the Act for home health services by 5 percent. The statute waives budget neutrality for purposes of this increase since it specifically states that the Secretary must not reduce the standard prospective payment amount (or amounts) under section 1895 of the Act applicable to home health services furnished during a period to offset the increase in payments resulting in the application of this section of the statute.

The 0 percent update to the payment rates and the rural add-on provisions of the DRA were implemented through Pub. L. 100–20, One Time Notification, Transmittal 211 issued on February 10, 2006.

In addition, section 5201 of the DRA requires HHAs to submit data for purposes of measuring health care quality. This requirement is applicable for CY 2007 and each subsequent year. If an HHA does not submit quality data, the home health market basket percentage increase will be reduced 2 percentage points.

C. Updates to the HH PPS

As required by section 1895(b)(3)(B) of the Act, we have historically updated the HH PPS rates annually in a separate **Federal Register** document. In those documents, we also incorporated the legislative changes to the system required by the statute after the BBA, specifically the MMA. On November 9, 2006, we published a final rule titled "Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2007 and Deficit Reduction Act of 2005 Changes

to Medicare Payment for Oxygen Equipment and Capped Rental Durable Medical Equipment; Final Rule" (CMS–1304–F) (71 FR 65884) in the **Federal Register** that updated the 60-day national episode rates and the national per-visit amounts under the Medicare PPS for home health services for CY 2007. In addition, this final rule ended the one-year transition period that consisted of a blend of 50 percent of the new area labor marker designations' wage index and 50 percent of the previous area labor market designations' wage index. We also revised the fixed dollar loss ratio, which is used in the calculation of outlier payments. According to section 5201(c)(2) of the DRA, this final rule also reduced, by 2 percentage points, the home health market basket percentage increase to HHAs that did not submit required quality data, as determined by the Secretary.

D. System for Payment of Home Health Services

Generally, Medicare makes payment under the HH PPS on the basis of a national standardized 60-day episode payment rate that is adjusted for case-mix and wage index. The national standardized 60-day episode payment rate includes the six home health disciplines (skilled nursing, home health aide, physical therapy, speech-language pathology, occupational therapy, and medical social services) and medical supplies. Durable medical equipment covered under home health is paid for outside the HH PPS payment. To adjust for case mix, the HH PPS uses an 80-category case-mix classification to assign patients to a home health resource group (HHRG). Clinical, functional, and service utilization are computed from responses to selected data elements in the OASIS assessment instrument.

For episodes with four or fewer visits, Medicare pays on the basis of a national per-visit amount by discipline, referred to as a LUPA. Medicare also adjusts the national standardized 60-day episode payment rate for certain intervening events that are subject to a partial episode payment adjustment (PEP adjustment) or a significant change in condition adjustment (SCIC adjustment). For certain cases that exceed a specific cost threshold, an outlier adjustment may also be available.

E. Summary of Home Health Payment Research

The objective of a prospective payment system that is case-mix adjusted is to predict resource costs of providing care to similar types of patients and to align payments to those costs. As MEDPAC points out in their December 2005 Report to Congress, if the case-mix is not aligned appropriately to resource costs, then the PPS may overpay for some services and underpay for others.

Since the July 3, 2000 final rule, we have stated our intention to monitor the new PPS and make refinements to the system as needed. We believe refinements are now needed to improve the performance and appropriateness of the HH PPS, which has not undergone major refinements since its implementation in October of 2000. The general goal of any refinements would be to ensure that the payment system continues to produce appropriate compensation for providers while retaining opportunities to manage home health care efficiently. Also important in any refinement is maintaining an appropriate degree of operational simplicity. The analytic goals of our refinement research included improving the accuracy of the case-mix model, understanding the descriptive characteristics of the program and the use of payment adjusters, understanding variations in HHA margins, and the simulation of potential changes to payment methodology.

We contracted with Abt Associates, Inc., of Cambridge, Massachusetts to conduct several analyses in order to achieve these objectives. In particular, the Abt Associates analyses focused on the resource needs of long stay patients; alternatives to the current therapy threshold; the potential for a more extensive set of variables to improve the accuracy of the Clinical on Top (COT) model used to define the HHRG; alternative ways to account for non-routine medical supplies (NRS); utilization and episode characteristics; and HHA margins. In order to conduct these analyses, Abt Associates primarily used data files created from a 20 percent sample of claims data collected between 2001 and 2004, Outcome and Assessment Information Set (OASIS) data linked to claims, and cost reports. For measures of resource use, Abt Associates used weighted minutes for the case-mix refinements research. For research on accounting for nonroutine supplies costs, Abt Associates analyzed supplies charges reported on claims after adjusting them using cost-to-charge ratios from selected cost reports. These analyses are described in more detail in section II.A.

In addition to these analyses, two Technical Expert Panel (TEP) meetings were conducted, under contract with Abt Associates, on December 15, 2005, and March 14, 2006. These TEP meetings provided an opportunity for experts, industry representatives, and practitioners in the field of home health care to provide feedback on Abt's research examining the HH PPS and exploration of payment policy alternatives. Abt considered this feedback when developing recommendations for refinements to the HH PPS. The refinements to the HH PPS described in the following sections are the culmination of substantial research efforts focusing on several areas identified for possible improvements.

II. Provisions of the Proposed Regulation

[If you choose to comment on issues in this section, include the caption "PROVISIONS OF THE PROPOSED REGULATIONS" at the beginning of your comments.]

A. Refinements to the Home Health Prospective Payment System

The Medicare HH PPS has been in effect since October 1, 2000. As set forth in the final rule published July 3, 2000 in the **Federal Register** (65 FR 41128), the unit of payment under the Medicare HH PPS is a national standardized 60-day episode payment rate. As set forth in 42 CFR 484.220, we adjust the national standardized 60-day episode payment rate by a case-mix grouping and a wage index value based on the site of service for the beneficiary. Since the July 3, 2000 final rule, we have stated our intention to monitor the new PPS and make refinements to the system as needed. We believe refinements are now required to improve the performance and appropriateness of payment for the HH PPS. After implementation of the HH PPS, we received a number of public comments suggesting ways in which the payment system could be improved. We took those comments into consideration as we proceeded to explore the HH PPS for potential areas for refinement. This proposed rule sets forth the first major refinements to the HH PPS since its implementation in October of 2000. This proposed rule identifies seven major areas of the HH PPS that were identified as possible areas for refinement. Those areas are: (1) The case mix model; (2) changes in case mix coding; (3) the PEP adjustment; (4) the LUPA; (5) the SCIC adjustment; (6) method of accounting for NRS, and (7) the outlier adjustment. While this proposed rule proposes to implement all of refinements discussed in this rule effective January 1, 2008, we recognize that there may be operational considerations, affecting CMS or the

industry, which could necessitate an implementation schedule that results in certain refinements becoming effective on different dates (a split-implementation). We would like to solicit suggestions and comments from the public on this matter.

1. Current Payment Model

On July 3, 2000, we published a final rule (65 FR 41128) in the **Federal Register**. In that rule, we described a system for home health case-mix adjustment developed under a research contract with Abt Associates, Inc., of Cambridge, Massachusetts. Using selected data elements from the OASIS and an additional data element measuring receipt of at least 10 visits for therapy services, the case-mix system projects patient resource use based on patient characteristics. These data elements were selected because they were shown to influence home health resource utilization upon statistical analysis of data from approximately 30,000 episodes. This model used data from first episodes only and a relatively small set of clinical, functional, and service utilization variables. Clinical judgment, the relative predictive value of potential case-mix variables, their susceptibility to gaming and subjectivity, and administrative implications were considered in the final resolution of the elements retained in the final model.

The data elements are organized into three dimensions to capture clinical severity factors, functional severity factors, and services utilization factors influencing case-mix. In the clinical and functional dimensions, each data element is assigned a score value derived from multiple regression analysis of the Abt research data. The score value measures the impact of the data element on total resource use. Scores are also assigned to data elements in the services utilization dimension. To find a patient's case-mix group, the case-mix grouper software sums the patient's scores within each of the three dimensions. The resulting sum is used to assign the patient to a severity level in each dimension. There are four clinical severity levels, five functional severity levels, and four services utilization severity levels. Thus, there are 80 possible combinations of severity levels across the three dimensions. Each combination defines one of the 80 HHRGs in the case-mix system. For example, a patient with high clinical severity, moderate functional severity, and low services utilization severity is placed in the same group with all other patients whose summed scores place them in the same set of severity levels for the three dimensions.

We summarized the performance of the final PPS model for the PPS using the R-squared statistic. An initial episode was defined as the first home health episode of care for a given beneficiary in a sequence of adjacent episodes. For the purposes of our analysis, we defined a sequence of adjacent episodes for a beneficiary as a series of claims with no more than 60 days without home care between the end of one episode, which is the 60th day (except for episodes that have been PEP-adjusted), and the beginning of the next episode. At the time, based on data from the model development sample, this model's R-squared statistic was 0.34. In other words, the model explained 34 percent of the variation in resource use.

2. Refinements to the Case-Mix Model

Extensive research has been conducted to investigate ways to improve the performance of the case-mix model. We found that the addition of separate regression equations to account for later episodes and multiple therapy thresholds (replacing the current threshold of 10 therapy visits) significantly improved the fit and performance of the case-mix model. Further, we expanded the set of variables to include new diagnosis groups, comorbidities, and interactions, yielding models that performed better in simulations. We feel that these changes would improve the HH PPS by allowing more accurate case-mix adjustment without providing incentives for providers to distort appropriate patterns of care.

As with the original case-mix model, the general approach to developing a case-mix model was to use patient data and other appropriate data to create a regression model for resource use over the course of a 60-day episode. Case-mix refinement analysis focused on investigating resource use in episodes that occur later in treatment as well as the initial episode; testing additional clinical, functional, and demographic variables; exploring the effect of comorbidities; and testing new therapy thresholds.

The basis for selecting these areas of analysis will be described in sections II.2.a., II.2.b., and II.2.c.

As with our case-mix studies that resulted in the case-mix methodology discussed in the July 3, 2000 HH PPS final rule, the dependent variable in these refinement studies is an estimate of cost known as resource cost. To derive the resource cost estimate, the total minutes reported on the claim for each discipline's visits are converted to a resource cost. Resource cost results from weighting each minute by the national average labor market hourly rate for the individual discipline that provided the minutes of care. Bureau of Labor Statistics data are used to derive the hourly rate. The sum of the weighted minutes is the total resource cost estimate for the claim. This method standardizes the resource cost for all episodes in the analysis file.

Based on the findings of our analysis of the case-mix adjustment under HH PPS, which we describe in section II.A.2, we propose that the case-mix adjustment be refined to incorporate an expanded set of case-mix variables to capture the additional clinical conditions and comorbidities; four separate regression models that recognize four different types of episodes; and a graduated, three-threshold approach to accounting for therapy utilization. We refer to the four separate regression models in this proposed case-adjustment system as the four-equation model. The first regression equation is for low-therapy episodes (less than 14 therapy visits) that occur as the first or second episode in a series of adjacent episodes (Episodes are considered to be "adjacent" if they are separated by no more than a 60-day period between claims). The second regression equation is for high-therapy episodes (14 or more therapy visits) occurring as the first or second episode in a series of adjacent episodes. The third equation is for low-therapy episodes (under 14 therapy visits) occurring after the second episode in a series of adjacent episodes. And the fourth equation is for high-therapy episodes (14 or more therapy visits) occurring after the second episode in a series of adjacent episodes. As described in further detail below, these equations incorporate a graduated, three-threshold approach to accounting for therapy utilization. The 153 case mix groups created from the results of the four-equation model are also described below, as is the method we used to form the groups.

a. Analysis of Later Episodes

As a starting point for our analysis, we examined the performance of our original model using data, derived from the National Claims History, reflecting the period after the HH PPS was initiated. These data from the period after the commencement of the HH PPS, a large random sample of claims from CY 2003, indicate the performance of the case-mix model differs from the original estimate, which reflected data from the time of the Abt case-mix study.

The more recent data reflect both the inclusion of episodes beyond the first episode as well as behavioral changes of health care providers under the HH PPS. The R-squared statistic estimated from the more recent data is approximately 0.21. An appropriate comparison with the initial R-square statistic (0.34) is the R-squared value estimated from the more recent data's initial episodes, which is 0.29. We therefore believe the data reflect a more modest reduction in model performance of 0.05. However, the value of the R-squared statistic calculated on all the data, 0.21, is an indication that the case-mix model does not fit non-initial episodes as well as it fits initial episodes. Therefore, one focus of our refinement work was to investigate resource use in episodes that occurred later in treatment as well as early episodes.

Based on exploratory analysis, we defined "early" episodes to include, not only the initial episode in a sequence of adjacent episodes, but also the next adjacent episode, if any, that followed the initial episode. "Later" episodes were defined as all adjacent episodes beyond the second episode. When we analyzed the performance of the case-mix model for later episodes, we determined there were two important differences for episodes occurring later in the home health treatment compared to earlier episodes: higher resource use per episode and a different relationship between clinical conditions and resource use.

Using a large, random sample of episodes, we found that the estimated resource cost of early episodes is approximately 7 percent lower than the estimated resource cost of later episodes. The current case-mix model weights all episodes equally.

Furthermore, our exploratory regression models indicated that the relationships between case-mix variables and resource use differed between earlier and later episodes. This suggested that a scoring system that differed for earlier and later episodes could potentially perform better than a single scoring system. The system of four separate regression equations allows the scores to differ according to whether the episode is early or later. We recognize that this approach introduces more complexity into the case-mix adjustment system. However, less complex approaches that did not depend on separate equations did not perform as well in terms of predictive accuracy; for example, we explored using one equation in which we modeled additional lump-sum costs due to the timing of an episode in a sequence of adjacent episodes. This proved to be unsatisfactory because it addressed only one of the two important differences presented by later episodes, that is, their generally higher cost level.

For the purposes of payment, we propose to make changes to the OASIS (see section III. Collection of Information Requirements), by adding a new OASIS item to capture whether an episode is an early or later episode. If an HHA is uncertain as to whether the episode is an early or later episode, we propose to base payment as though the episode were an early episode. Most patients do not have more than one episode in a year. Consequently, we believe that selecting early as the default is the best guess as to the eventual outcome of whether an episode is early or later.

b. Addition of Variables

Since the system for case-mix adjustment was first implemented, we have received comments suggesting ways in which case-mix adjustment may be improved. Most of these comments requested that we add specific variables or conditions to the case-mix model. We were also asked to examine the appropriateness of including additional diagnosis groups, comorbidities in general and specific comorbidities, for instance, heart conditions, additional wound-related indicators, and other patient characteristics. We considered these comments as we proceeded to explore potential case-mix changes. We also considered comments received during the initial rulemaking process, such as comments pertaining to clinical issues and social characteristics such as caregiver availability.

We evaluated variables for inclusion in a refined case-mix model in much the same way that we did for the 2000 final rule, in that we analyzed the relationship between resource use and patient characteristics. Whereas the original case-mix study required us to collect logs from a sample of episodes for the measure of resource use, for this analysis, we were able to measure resource use directly from the claims sample. The measures of patient characteristics come from OASIS assessments. Under a contract with Fu Associates of Arlington, Virginia, Standard Analytical Claims Files from the National Claims History were cleaned, edited, and linked to the OASIS assessment associated with the beginning of each claim period. Abt Associates subsequently used these analytic files to draw large samples of claims for analysis.

In the course of refining the current case-mix model, we continued to monitor the performance of two special variables in explaining resource use. These variables are dual-eligibility for Medicare and Medicaid and caregiver support. The two variables are of interest to some agencies because of their perceived impact on resource use and overall profitability. Patients dually eligible for Medicare and Medicaid may have health care needs that exceed the average needs due to the health status and utilization differences associated with low-income populations. Some agencies with caseloads containing large numbers of dual eligibles have commented that they are penalized under the HH PPS system because of their willingness to serve a disadvantaged population without payments explicitly recognizing such agencies' higher costs. We have also received comments that episodes involving patients without a caregiver were underpaid by the HH PPS, and that some agencies would be reluctant to admit such patients because of financial implications. These commenters believe that the low admission rate of patients without caregivers (about 2 percent of all episodes) is evidence of this reluctance.

During our development of the original case-mix model implemented in the July 2000 final rule, using the Abt Associates case-mix study sample, we tested the Medicaid variable (which indicates whether Medicaid was among the patient's payment sources). At that time, we found that it did not contribute meaningfully in explaining variation in resource use. Similarly, we tested the caregiver variable and it did not contribute to explaining variation in resource cost, either. Regarding the caregiver variable, we recognized in the July 3, 2000, final rule that adjusting payment in response to the presence or absence of a caregiver may be seen as inequitable. To the extent that availability of caregiver services, particularly privately paid services, reflects socioeconomic status differences, we indicated that reducing payment for patients who have caregiver assistance may be particularly sensitive in view of Medicare's role as an insurance program rather than a social welfare program. Furthermore, we stated that adjusting payment for caregiver factors would risk introducing new and negative incentives into family and patient behavior. In the discussion in the July 3, 2000 final rule (65 FR 41145), we also indicated our belief that it is questionable whether Medicare should adopt a payment policy that could weaken informal familial supports currently benefiting patients at times when they are most vulnerable.

In our analysis for this proposed rule, we again tested variables for dual eligibility and caregiver support. We operationalized the Medicaid variable from the OASIS, using the presence of a Medicaid number on the assessment as the indicator for Medicaid eligibility. We found that Medicaid remains a marginal predictor at best, with a very low score, after accounting for a broad range of clinical and functional variables that predict resource use. We believe adding a Medicaid variable is not justified in view of these results, especially considering the added administrative burdens for both agencies and Medicare that using such a variable would entail. These include costs of ascertaining whether the reported Medicaid number is correct and whether the eligibility status as reported on the assessment is current.

We also operationalized a variable for support from a caregiver from the OASIS assessment, item M0350, Assisting persons other than home health agency staff. This variable identified patients without any caregiver. While analyzing the payment adequacy of the four-equation model (as explained further below) for patients without a caregiver we found that, on average, episodes without caregivers would be "underpaid". However, the score to be gained by adding the variable is not large (5 to 13 points, depending on the episode), and the overall ability of the four-equation model to explain resource costs is improved only minimally by adding this variable.

Therefore, we are not proposing that this variable be added to the case-mix model. We continue to believe that including this kind of variable in the case-mix system raises significant policy concerns. We maintain that a case-mix adjustment should not discourage assistance from family members of home care patients, nor should it make patients feel there is some financial stake in how they report their familial supports during their convalescence.

We continue to believe that adjusting payment in response to the absence of a caregiver would introduce negative incentives with adverse affects on home health Medicare beneficiaries. Furthermore, we are doubtful that today's low rate of episodes without a caregiver (2 to 3 percent) reflects access barriers for these patients and nothing more. We believe part of the reason for the low rate may be that under a bundled payment system agencies are more careful about ascertaining whether support is available and encourage use of caregivers within the beneficiary's home.

For exploratory modeling of case-mix in our refinement work, in addition to using existing case-mix variables from the OASIS, new variables were created. Diagnosis codes reported on both the claims and the OASIS were used extensively to form new or revised diagnosis groups for inclusion in case-mix models. As a result, developmental models included many new variables, including an expanded set of primary and secondary diagnoses, as well as interaction terms that describe the effect of combinations of patient conditions or characteristics on resource cost. Using these new analytic files, it was possible to explore some conditions that were too infrequent to study in the original case-mix sample. For example, as suggested by commenters, Abt's analysis tested the impact on resource use of having multiple conditions from M0250, which reports on therapies received at home, including intravenous infusion, and enteral and parenteral nutrition. The results showed that a variable indicating the simultaneous presence of multiple conditions from OASIS item M0250 did not improve the accuracy of the case-mix model. However, we did find that having separate scores for parenteral nutrition and IV therapy were not necessary.

Abt's case-mix analysis focused on various issues, such as changes to the list of conditions forming our diagnosis groups, additions of comorbidities, prediction of therapy resources, and interactions. The performance of each variable was scrutinized based on several criteria. First, variables were assessed for statistical performance. Variables that did not enhance the accuracy of the model were marked for exclusion.

Variables were also assessed for policy appropriateness. Some statistically significant variables were excluded if they offered incentives for providers to distort patterns of good care or posed excessive administrative burden on HHAs. In addition, some statistically weak variables considered important for clinical or policy reasons were added back to the model for further analysis.

We note we excluded a variable from this proposal, based in part on concerns of excessive administrative burden. We propose to exclude OASIS item M0175, which the case-mix system uses to identify the patient's pre-admission location, from the case-mix models. Under this proposal, there would be no case-mix score for M0175. Operational experience with M0175 revealed that some agencies have encountered difficulties in ascertaining precise information about the patient's pre-admission location during the initial assessment. These difficulties, suggestive of unforeseen administrative complexities, contributed to our proposal to eliminate M0175 from the case-mix model.

In addition, the M0175 item did not perform well in the four-equation model. We found that the results differed across the equations in ways that were difficult to interpret. Moreover, the results showed that the impact of including information from M0175 was small, both in terms of case-mix scores and the overall payment accuracy of the case-mix model.

In weighing the indications of administrative complexities due to M0175 against the limited performance of M0175 in our analysis, we do not find that the contribution of this item in explaining case-mix justifies the operational challenge of achieving perfectly accurate reporting for payment. Thus, as noted above, we are proposing to eliminate it from the case-mix model. However, we continue to believe that it is necessary for the conditions of participation and the OASIS to require that agencies establish the patient's recent history of health care before determining the plan of care. This determination must be made with sufficient accuracy to allow appropriate planning, even if precise dates and institutional certifications are not exactly known. For example, it will be important to know the amount and types of rehabilitation treatment the patient has received, the type of institution that delivered the treatment, and how recently it was delivered.

The final set of proposed clinical conditions resulting from our exploratory series of analyses covers more types of conditions than were used in the original case-mix model (Tables 2a and 2b). We identified conditions from diagnosis codes on both claims and OASIS in a linked sample of claims from FY 2003 (OASIS items M0230 and M0240, Diagnoses and Severity Index). For example, heart and mental conditions are now assigned case-mix scores. More wound conditions are assigned scores, based on results from adding variables to indicate wound-related diagnosis codes beyond those in the current HH PPS case-mix model. (See Table 2b for diagnosis codes that define each condition in the model.)

We also propose to assign scores to certain secondary diagnoses, used to account for cost-increasing effects of comorbidities. An example is secondary cancer diagnoses, whose cost-increasing effects are not as large as those for primary cancer diagnoses. However, with most diagnosis groups, we did not

make a distinction in the final model between primary placement and secondary placement of a condition in the reported list of diagnoses. We made case-by-case decisions on this question based on differences in the impact on resource cost between the primary diagnosis and secondary diagnosis. If differences were small, we combined cases reporting the conditions, regardless of whether the listed position of the diagnosis was primary or secondary. We believe this is an important protection against unintended and undesirable incentive effects that could arise if agencies perceive opportunities to change the placement of the diagnosis due to nonclinical reasons. In a few instances, the reason for combining the primary or secondary diagnoses was to improve the robustness of the scores.

Finally, we also propose that a small number of interactions—combinations of conditions in the same episode—be assigned scores, to capture the synergistic effect on resource use of certain conditions that coexist in the episode. In some instances, a condition appears as an interaction with a functional limitation or a treatment variable such as parenteral therapy. In Table 2a, the interaction scores are added to the case-mix score whenever the two conditions defining the interaction occur together in the episode. Interaction scores, therefore, do not substitute for scores of other variables in Table 2a that involve either only one or the other of the two conditions.

As noted earlier, we also found that, compared to early episodes, later episodes could exhibit a different relationship between resource costs and a condition. This is reflected in Table 2a by the absence of a condition-related score from one or more of the four equations, or a score that differs from one equation to another.

During the later phases of testing alternative formulations of an expanded list of clinical conditions, we followed two rules in our formation of diagnosis groups. These rules would ultimately affect the operation of the case-mix grouper which would be created pursuant to the revisions being proposed in this proposed rule. First, if an episode record in our sample file listed both primary and secondary diagnoses from the same diagnosis group, the model estimation procedure recognized the primary diagnosis variable for that case but not the secondary diagnosis variable. This means that an episode would not be eligible to earn more than one score for the same diagnosis group. The primary reason for this rule is that we are aware of diagnosis coding conventions that would produce repeated instances of the same or similar codes in the diagnosis list, and these conventions would build redundancy into the modeling process. A major goal of the exploratory modeling process was to investigate the impact of comorbidities by recognizing secondary diagnoses, but redundancy inhibits our achievement of that goal. Consequently, we sought to reduce this type of redundancy. A further reason for adhering to this rule is to inhibit a future decline in model performance, which might come about through changes in coding behavior. If agencies were to perceive that redundant coding boosts the episode score, they might engage in it more in the future. The result would be a degradation in the ability of the case-mix model to provide for accurate payment.

The second rule we used affected how we define the interactions between conditions. The second rule is that, for purposes of forming diagnosis groups to test interactions between conditions, cases with either a primary or secondary diagnosis from the same diagnosis group are combined into a single group. This means that mention of a given diagnosis anywhere in the diagnosis list puts episodes in a single group for that diagnosis, for purposes of analyzing interactions between conditions. We believe this rule is consistent with our goal of isolating effects of comorbidities. Specifically, because the reason for studying interactions is to identify the effects of combinations of conditions, we believe it is appropriate to measure the combinations, regardless of the placement (that is, primary or secondary) of a diagnosis on the claim. Further, combining the primary and secondary diagnoses within groups increases the ability of the modeling process to uncover meaningful interaction effects. The second rule also works to keep the model as simple as possible. Simplicity helps to limit the risk that the model would not fit well for later data sets. Simplicity also limits the amount of added administrative burden that could come from using a more-complex model.

Changes to the OASIS are needed to enable agencies to report secondary case-mix diagnosis codes. Specifically, the addition of secondary diagnoses to the case-mix system (see Table 2a, case-mix adjustment variables and scores) requires that the OASIS allow for reporting of instances in which a V-code is coded in place of a case-mix diagnosis other than the primary diagnosis. A case-mix diagnosis is a diagnosis that determines the HH PPS case-mix group. Currently, the OASIS allows for reporting of instances of displacement involving primary diagnosis only (M0245). Consequently, because of the nature and significance of the changes needed, we are proposing to delete the OASIS item M0245 and replace it with a new OASIS item. (see section III. Collection of Information Requirements).

c. Addition of Therapy Thresholds

As set forth in the July 3, 2000 final rule (65 FR 1128), patients were grouped according to their therapy utilization status in order to ensure that patients who required therapy would maintain access to appropriate services. Specifically, we defined a therapy threshold of at least 8 hours of combined physical, speech, or occupational therapy over the 60-day episode, to identify "high" therapy cases. The 8-hour threshold was converted to a threshold of 10 therapy visits because the average visit length for therapy noted in our data was approximately 48 minutes. We instituted the threshold based on clinical judgment about the level of therapy that reflects a clear need for rehabilitation services and that would reasonably be expected to result in meaningful treatment over the course of 60 days.

Since the implementation of the therapy threshold in the HH PPS, we have received comments from the public requesting that we study and refine this approach to accounting for rehabilitation needs in the case-mix system. Commenters have suggested that a single therapy threshold did not fairly reflect the variation in therapy utilization and need. Some commenters requested that we re-examine the 10-visit threshold. Other commenters recommended that we work to eliminate the therapy threshold, in part due to concerns that the therapy threshold might introduce incentives to distort service delivery patterns for payment purposes.

Our data analysis revealed evidence of undesirable incentives from the 10-visit therapy threshold. Our analysis suggested that the 10-visit therapy threshold might have distorted service delivery patterns. In our analysis sample, of all episodes at or above the threshold, half were concentrated in the range of 10 to 13 therapy visits. This range had the highest concentration of therapy episodes among episodes with at least one therapy visit. In contrast, a large analysis sample from a period immediately preceding the HH PPS indicated that the highest concentration of therapy episodes was in a range

below the 10-visit threshold—approximately 5 to 7 therapy visits. Under the HH PPS, there were two peaks in the graphic depiction of numbers of episodes according to the number of therapy visits delivered during the episode. One peak was below the therapy threshold and the other was the 10 to 13 visit peak above the therapy threshold. In the pre-PPS sample, there was only one peak in the depiction, and it was the concentration of episodes at 5 to 7 therapy visits—below the current 10-visit therapy threshold. All of these results suggested that the 10-visit threshold was responsible for a marked shift in rehabilitation services delivery under the HH PPS, a shift that we believe would probably not have occurred in the absence of the therapy threshold. Commenters have reinforced our belief that the impact of the single 10-visit threshold on therapy provision frequently distorted the clinically based decision-making that should drive the delivery of rehabilitation services.

In our early efforts to address problems inherent in using a therapy threshold, we conducted analyses to identify new predictors of therapy resource use, with the goal of achieving large gains in explanatory power that would render the therapy threshold unnecessary. We used predictor variables including pre-admission status on activities of daily living (ADL), more diagnoses with a focus on conditions such as stroke, and more OASIS variables. However, models that included these particular explanatory variables predicted the probability of using therapy, but not how much therapy would be used.

Successive studies to account for therapy resources followed the goal of reducing the impact of a therapy threshold on the payment weights. The main conclusion from these studies was that therapy resources cannot be predicted with sufficient accuracy to eliminate the need for therapy thresholds in the HH PPS case-mix system. Although we tried several alternative approaches, no approach added sufficient predictive power to the case-mix model. Therefore, continued analysis focused primarily on refining the therapy threshold approach to reduce undesirable incentives. This work involved experimentation with alternative sets of thresholds consisting of more than one threshold.

After testing several sets of thresholds, and in consideration of the comments received, we proceeded to construct case-mix models with thresholds at 6, 14, and 20 therapy visits. We used these thresholds based on data analysis and, in part, on policy considerations.

Data analysis suggested it would be appropriate to add new thresholds both below and above the 10-visit level. One reason was that our review of data from the HH PPS period showed agencies provided large numbers of episodes with therapy visits in an interval below 10 visits. Moreover, data analysis suggested that, of all episodes with numbers of therapy visits below the 10-visit therapy threshold, some subsets did not receive an appropriate case-mix weight under the HH PPS. Specifically, episodes with 6 to 9 therapy visits had resource costs that seemingly exceeded the payment proxied in our analysis by the predicted resource cost under the current case mix model. However, we now believe that several common treatment plans require only about 6 visits, for example, assessments and treatment of certain types of patients at high risk for falls. We are therefore proposing that one threshold be added at 6 therapy visits.

In considering thresholds above the current 10-visit threshold, we observed that nearly half of episodes involving therapy comprise episodes with 6 to 13 therapy visits. Therefore, we are proposing a second threshold at 14 therapy visits, which would have two advantages. First, this range covers the two peaks (that is, the one we observed below the 10-visit therapy threshold and the one we observed above the 10-visit threshold) in the distribution of therapy visits under the HH PPS. By avoiding a therapy threshold within this range, we hope to reduce the influence of payment incentives on treatment decisions. Second, we believe that the interval of 6 to 13 therapy visits represents a reasonable range of treatment levels for most rehabilitation episodes. For example, the range of 6 to 13 therapy visits encompasses typical treatment plans for both knee- and hip-replacement patients. As we describe later in this section, we propose to use further steps to address payment accuracy, by adding payment gradations within the intervals bounded by the three thresholds we are proposing.

We further observed that only a relatively small fraction of patients use 14 or more therapy visits. While no bright-line tests are available to distinguish a 14-visit case, we have received comments indicating that medical review staff at the fiscal intermediaries will have less difficulty judging appropriateness of treatment plans at this level, because such plans are intensive and not the norm.

Additionally, although few episodes require 20 or more therapy visits, we set the third therapy threshold at 20 visits. Our concern is to ensure access to appropriate treatment in the rare cases where such intensive treatment is necessary. Our analysis suggested that these episodes are extremely costly for agencies, so a payment adjustment to accommodate this service level is appropriate. Furthermore, commenters indicated that, because only rare cases should warrant this high number of therapy visits, monitoring of claims to prevent abuse of this payment provision, using our medical review resources, is feasible operationally.

Adding therapy thresholds in the revised case-mix regression model improves the ability of the model to predict resource use. The R-squared values for a three-therapy threshold model increased substantially for both early and later episodes over the R-squared values for a single therapy threshold model. In other words, using additional therapy thresholds clearly improved the case-mix system's ability to classify episodes into homogeneous cost groups.

The combined effect of the new therapy thresholds and payment gradations (to be described below) is expected to reduce the undesirable emphasis in treatment planning on a single therapy visit threshold, and to restore the primacy of clinical considerations in treatment planning for rehabilitation patients.

During the analysis of the therapy threshold, we considered ways to provide for payment gradations between the therapy thresholds. We sought a way to implement a gradual increase in payment (see Table 1) between the proposed first and third therapy thresholds. We believe a case-mix model that increases payment with each added visit between the proposed first and third thresholds would achieve two goals. First, a gradual increase better matches payments to costs than the therapy thresholds alone. Second, a gradual increase avoids incentives for providers to distort patterns of good care created by the increase in payment that would occur at each proposed therapy threshold. However, as a disincentive for agencies to deliver more than the appropriate, clinically determined number of therapy visits, we are also proposing that any per-visit increase incorporate a declining, rather than constant, amount per added therapy visit. We implemented this in the case-mix model by decreasing slightly the added amount per therapy visit as the number of therapy visits grew above the proposed 6-visit threshold. Specifically, we began with a value determined from our sample—the estimated marginal

resource cost incurred by adding a 7th therapy visit to the treatment plan. This is the first additional visit above the proposed six-visit therapy threshold. The estimated marginal cost of adding a 7th therapy visit to an episode with six therapy visits was $36. Using this value as our starting point, we required the case-mix model to add a slightly lower value to the total episode resource cost with each additional therapy visit provided, up to the 19th therapy visit. This proposed approach imposes a deceleration of the growth in payment with each additional therapy visit. However, this proposed approach does not reduce total payments to home health providers, because the regression analysis still predicts the full resource cost of the episode. Table 1 shows the values that we imposed in the four-equation model estimation procedure to implement a deceleration in the added resource cost for individual therapy visits between 6 and 20 therapy visits. The individual values begin at $36 and then decline at a constant rate of one resource cost dollar per therapy visit between 6 and 20 therapy visits. These values represent the score that was imposed in the model for adding each additional therapy visit. The case-mix model that incorporates the imposed scores is called a "restricted regression model." The results of the restricted regression model of the four-equation system, including scores for diagnoses and conditions, and R-squared statistics, exhibited little change from imposing this pattern of deceleration in cost growth due to additional therapy visits.

TABLE 1.—RESOURCE COST VALUES IMPOSING DECELERATION TREND IN FOUR-EQUATION MODEL

Equation and services utilization severity level	Number of therapy visits in severity level	Resource cost values imposed in regression procedure
1st and 2nd Episodes, 6–13 Therapy Visits		
S3	7, 8, 9	36, 35, 34
S4	10	33
S5	11, 12, 13	32, 31, 30
1st and 2nd Episodes, 14–19 Therapy Visits		
S1*	15	28
S2	16, 17	27, 26
S3	18, 19	25, 24
3rd+ Episodes, 6–13 Therapy Visits		
S3	7, 8, 9	36, 35, 34
S4	10	33
S5	11, 12, 13	32, 31, 30
3rd+ Episodes, 14–19 Therapy Visits		
S1*	15	28
S2	16, 17	27, 26
S3	18, 19	25, 24

*For the second and fourth equations of the four equation model, S1 includes 14 therapy visits, but no value was imposed in the regression procedure for a 14th therapy visit because the regression intercept estimate automatically includes the resource cost impact.

The case-mix model at this stage was very detailed, because it included variables incorporating information about thresholds and therapy visit counts. We were concerned that, without streamlining the therapy-related information in the case-mix model, the ultimate system of case-mix groups would contain an excessive number of case-mix groups. We recognize an extremely large number of case-mix groups would make the HH PPS complex to administer. Because the therapy-related details of the case-mix model are based on numbers of therapy visits, another issue would be that many case-mix groups would be differentiated based on visit counts, thereby making the system dependent on visits and less of a bundled system of services. Therefore, in order to form case-mix groups from the results of the case-mix model, we grouped the individual levels of therapy visits into small aggregates (1, 2, or 3 visits) (see Table 1). By doing so, we avoided creating a per-visit schedule of payment to account for therapy visits. We implemented these aggregations as differing severity levels at a subsequent stage of payment system development, the payment regression, which is described later in this section.

The proposed four equation model, with multiple therapy thresholds and payment graduation between those thresholds, adds a certain amount of complexity to the HH PPS. Consequently, in order to group beneficiaries into case-mix groups in this proposed four equation model, we propose to make changes to the OASIS to capture the projected number of total therapy visits for a given episode (see section III. Collection of Information Requirements), as opposed to indicating if there is a projected need for ten or more therapy visits (current OASIS item M0825). Each severity level of the services utilization dimension represents a different number of therapy visits (see also Table 3: Severity Group Definitions: Four-Equation Model).

An additional aspect of our therapy threshold research addressed changing the unit of measurement of therapy thresholds from visits to minutes. In the July 2000 final rule, we indicated our intention to continue study of the appropriate unit of measurement for therapy services.

An important finding of our initial analyses on this question was that the length of therapy visits in minutes, on average, exhibited little change between the period covered by the original Abt Associates case-mix study, and the HH PPS period, based on data through 2003. We also found that the distribution of average therapy visit lengths was highly similar under HH PPS, regardless of the total number of therapy visits in the episode. A possible exception was episodes with 1 to 4 therapy visits, where a relatively high proportion of episodes (about 16 percent) had average therapy visit lengths of 30 minutes or less; no more than 9 percent of remaining episodes (more than four therapy visits) had averages of 30 minutes or less. There was also a slight tendency for these short average visit

lengths to become less frequent as the total therapy visit count per episode grew. Overall, the data indicated that at least 85 percent of episodes with therapy visits involved visits averaging at least 41 minutes. These results suggest that therapy practitioners tend to have consistent session lengths across many types of episodes.

We are proposing no change in the current way in which we measure therapy thresholds, which is based on counting therapy visits, in light of our analysis indicating that individual therapy visits appear to vary little in their length, regardless of the frequency of visits during the 60-day episode, and our analysis indicating that average visit lengths have remained stable since the time of the Abt case-mix study. Additionally, we are concerned incentive issues would arise if we changed the definition. The low variability in visit lengths appears to be an indication that under current practices, therapy session lengths are fairly uniform, regardless of the time period or intensity of the rehabilitation course of treatment. These practices have arisen out of clinical experience in the rehabilitation professions. Introducing a minutes or time standard risks introducing new financial incentives that might influence these widely held practices. We are concerned that changing to a minutes standard might result in financially driven pressures on clinical decisions concerning the number of sessions in a patient's course of treatment, with potentially adverse effects on beneficiary outcomes.

One of our original concerns in proposing a visit-based threshold was that minutes unit reporting on the claims, which was a relatively new requirement at that time, might be unreliable. (Section 1895(c)(2) requires the claim to report the length of each billed visit as measured in 15-minute increments.) Based upon our experiences using the claims data in our research, we have no reason to believe this is a problem. Moreover, we believe the dual requirements to report both visit dates and minutes of each visit on Medicare claims should remain in place because they provide important information for program integrity activities and future research.

Based upon our analysis of the case-model described in section II.A.2, we propose to use four separate equations to derive scores for conditions including the proposed therapy thresholds. The proposed first equation is for early episodes below the 14-visit therapy threshold. The proposed second equation is for early episodes at or above the 14-visit therapy threshold. The proposed third equation is for later episodes below the 14-visit therapy threshold. The proposed fourth equation is for later episodes above the 14-visit therapy threshold. A threshold at 6 visits is accounted for by an indicator variable in the proposed first and third equations, and a threshold at 20 visits is accounted for by an indicator variable in the proposed second and fourth equations. In addition, therapy visit count variables are added to the equations to model the graduated payment with each therapy visit between 6 and 20 visits. Finally, as we explained above, we imposed specific values for the coefficients of the therapy visit count variables. The resulting four-equation model has an improved statistical performance (an R-squared statistic of approximately 0.44) over the current model (an R-squared statistic of 0.21). The primary reason for the improvement in the proposed case-mix model fit (compared to the R-square statistic of 0.21 cited earlier) is the four-equation structure. This structure recognizes cost differences between early and later episodes, and between therapy treatment plans above and below the proposed 14-visit therapy threshold. Additional improvements come from adding other therapy variables to the case-mix model, specifically, the two additional thresholds (6 and 20 visits) and graduated payment—and from the new case-mix variables discussed in section II.A.2.a of this proposed rule.

We believe that in addition to improved statistical performance, the proposed model would provide better incentives for the provision of high-quality home health care without an undue increase in administrative burden. For a more detailed discussion of the technical aspects of the four-equation model go to the CMS Web site (*http://www.cms.hhs.gov/hha.asp*) for a link to Abt's Technical Report.

Table 2a presents the full set of case-mix scores (other than the imposed scores for therapy visits) and all clinical and functional variables we are proposing for the refined case-mix model. In Table 2a, the score is the value of the regression coefficient for the variable; it measures the impact of the data element on total resource cost of the episode. See Table 2b for an inclusive list of ICD–9–CM diagnosis codes applicable for each scored condition variable in Table 2a. These codes define the clinical condition variables in our proposed model. We intend to continue to evaluate the appropriateness of these diagnosis codes in Table 2b. We believe the HH PPS case-mix system should avoid, to the fullest extent possible, nonspecific or ambiguous ICD–9–CM codes, codes that represent general symptomatic complaints in the elderly population, and codes that lack consensus for clear diagnostic criteria within the medical community. We solicit detailed suggestions from the public concerning codes that threaten to move the system away from a foundation of reliable and meaningful diagnosis codes.

Compared to the original four diagnosis groups in the case-mix model, the code groups in Table 2b incorporate additions and new group placements for individual ICD–9–CM diagnosis codes. Two variables from the original case mix system are not proposed: M0175, as noted earlier, and M0610, behavioral problems, which did not perform well in our studies. We believe that several additions to our diagnosis groups, namely, two groups for psychiatric diagnoses, account for the contribution of behavioral problems to resource cost variation.

We are aware that some of the diagnosis codes listed in Table 2b are manifestation codes. The ICD–9–CM Official Guidelines for Coding and Reporting requires that the underlying disease or condition code be sequenced first, followed by the manifestation code. The underlying disease codes associated with the manifestation codes are not listed in Table 2b. However, appropriate sequencing was accounted for in our analysis. When reporting certain conditions that have both an underlying etiology and a body system manifestation due to the underlying etiology, the appropriate sequencing should be followed according to the ICD–9–CM Coding Guidelines.

For purposes of determining final estimates on which to base the data set used in the final rule for CY 2008, we intend to update the dataset used for the four-equation model to CY 2005; as noted above, the proposal to use the four-equation model is based on linked claims and OASIS data from FY 2003. We are aware that adding data from a later period may result in some variations, including some significant changes, in the scores presented in Table 2a. Some changes may occur because, effective October 2003 (FY 2004), diagnosis coding instructions on the OASIS assessment changed to allow for the use of ICD–9–CM V-codes. V-codes, particularly those applicable to home health services, do not in general describe disease states; rather, they describe reasons for using services. The major use of V-codes in the home health setting occurs when a person with current or resolving disease or injury

encounters the health care system for specific aftercare of that disease or injury. For example, V-code V57.21 is reportable when the reason for the visit is "encounter for occupational therapy." As such, V-codes are less specific to the clinical condition of the patient than are numeric diagnosis codes. A single V-code could substitute for various numeric codes, each of which describes a specific, different clinical condition.

Medical review activities revealed an inappropriate utilization of V-codes following the effective date of V-codes on OASIS (October, 2003). In response to RHHI reports of increased provider non-compliance with correct ICD–9–CM coding procedures related to V-codes, we posted OASIS diagnosis training on the CMS Web site and promoted RHHI provider educational efforts. Nonetheless, medical review activities continue to report an excessive utilization of the V–57 codes, signaling a possible non-compliance with correct coding practice related to the V-codes.

We are concerned that more use of V-codes could reduce data adequacy for modeling the impacts of clinical conditions we are proposing to use to predict resource use. One result, for example, might be a markedly different score for some conditions with lower reporting rates under the V-code instructions effective October 2003.

At this time, we do not know whether allowing V-codes on the OASIS, along with the over-use of V-codes revealed by medical review activities, significantly lowered the frequencies of non-V-code, numeric diagnosis codes for the clinical conditions we propose to use in the case mix model. Again, this could have occurred because of the way V-codes can displace a numeric code in the diagnosis list. If we find evidence that numeric codes' frequencies were reduced to the extent that it strongly influenced the scores we present in this proposal, we propose to base the refined system on the data from FY 2003.

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Table 2a: Case-Mix Adjustment Variables and Scores					
	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
	CLINICAL DIMENSION				
1	Primary Diagnosis = Cancer, selected benign neoplasms	4	11	4	8
2	Primary Diagnosis = Diabetes	5	11	2	9
3	Primary Diagnosis = Neuro 1 - Brain disorders and paralysis	3	5	5	5
4	Primary Diagnosis = Psych 1 - Affective and other psychoses, depression	6	13	2	5
5	Primary Diagnosis = Psych 2 - Degenerative and other organic psychiatric disorders	1	1		
6	Primary Diagnosis = Skin 1 - Traumatic wounds, burns, and post-operative complications	10	20	7	15
7	Primary or Other Diagnosis = Blindness/Low Vision	2	2	4	4
8	Primary or Other Diagnosis = Blood disorders	1	4		
9	Primary or Other Diagnosis = Dysphagia ***AND*** Primary or Other Diagnosis = Neuro 3 - Stroke	1	6	1	6
10	Primary or Other Diagnosis = Dysphagia **AND** M0250 (Therapy at home) = 3 (Enteral)	2			
11	Primary or Other Diagnosis = Gastrointestinal disorders	2	5	1	5
12	Primary or Other Diagnosis = Gastrointestinal disorders	3	3		

Table 2a: Case-Mix Adjustment Variables and Scores					
	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
	AND M0550 (ostomy)= 1 or 2				
13	Primary or Other Diagnosis = Gastrointestinal disorders ***AND*** Primary or Other Diagnosis = Neuro 1 - Brain disorders and paralysis, OR Neuro 2 - Peripheral neurological disorders, OR Neuro 3 - Stroke, OR Neuro 4 - Multiple Sclerosis	1	1	3	3
14	Primary or Other Diagnosis = Heart Disease OR Hypertension	3	6	1	6
15	Primary or Other Diagnosis = Heart Disease ***AND*** M0250 (Therapy at home) = 1 (IV/Infusion) or 2(Parenteral)			4	
16	Primary or Other Diagnosis = Neuro 1 - Brain disorders and paralysis ***AND*** M0530 (Urinary incontinence) = 1 or 2			1	
17	Primary or Other Diagnosis = Neuro 1 - Brain disorders and paralysis **AND AT LEAST ONE OF THE FOLLOWING:** M0690 (Transferring) = 2 or more OR M0700 (Ambulation) = 3 or more	4	2	4	2

Table 2a: Case-Mix Adjustment Variables and Scores					
	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
18	Primary or Other Diagnosis = Neuro 1 - Brain disorders and paralysis OR Neuro 2 - Peripheral neurological disorders ***AND*** M0680 (Toileting) = 2 or more	1	6	3	3
19	Primary or Other Diagnosis = Neuro 3 - Stroke **AND AT LEAST ONE OF THE FOLLOWING:** M0690 (Transferring) = 1 OR M0680 (Toileting) = 2 or more		4		2
20	Primary or Other Diagnosis = Neuro 3 - Stroke **AND AT LEAST ONE OF THE FOLLOWING:** M0690 (Transferring) = 2 or more OR M0700 (Ambulation) = 3 or more	1	4	1	2
21	Primary or Other Diagnosis = Neuro 4 - Multiple Sclerosis **AND AT LEAST ONE OF THE FOLLOWING:** M0670 (bathing) = 2 or more OR M0680 (Toileting) = 2 or more	2	2	9	9
22	Primary or Other Diagnosis = Neuro 4 - Multiple Sclerosis **AND AT LEAST ONE OF THE FOLLOWING:** M0690 (Transferring) = 2 or more OR M0700 (Ambulation) = 3 or more	4	4	7	7

Table 2a: Case-Mix Adjustment Variables and Scores

	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
23	Primary or Other Diagnosis = Ortho 1 - Leg Disorders or Gait Disorders **AND** M0460 (most problematic pressure ulcer stage)= 1, 2, 3 or 4	1			
24	Primary or Other Diagnosis = Ortho 1 - Leg OR Ortho 2 - Other orthopedic disorders ***AND*** M0250 (Therapy at home) = 1 (IV/Infusion) or 2 (Parenteral)	6	6	3	
25	Primary or Other Diagnosis = Pulmonary disorders		4		4
26	Primary or Other Diagnosis = Pulmonary disorders ***AND*** M0700 (Ambulation) = 1 or more	2			
27	Primary or Other Diagnosis = Skin 1 -Traumatic wounds, burns, and post-operative complications OR Skin 2 - Ulcers and other skin conditions ***AND*** M0250 (Therapy at home) = 1 (IV/Infusion) or 2 (Parenteral)	2	2	5	
28	Primary or Other Diagnosis = Skin 2 - Ulcers and other skin conditions	5	7	3	7
29	Other Diagnosis = Cancer, selected benign neoplasms	2	5	2	2

Table 2a: Case-Mix Adjustment Variables and Scores					
	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
30	Other Diagnosis = Diabetes	2	4	1	4
31	Other Diagnosis = Psych 1 - Affective and other psychoses, depression	3	5	2	5
32	Other Diagnosis = Skin 1 - Traumatic wounds, burns, post-operative complications	5	8	4	8
33	M0250 (Therapy at home) = 1 (IV/Infusion) or 2 (Parenteral)	9	15	4	15
34	M0250 (Therapy at home) = 3 (Enteral)	3	12	1	6
35	M0390 (Vision) = 1 or more	1			
36	M0420 (Pain)= 2 or 3	1	1	1	1
37	M0450 = Two or more pressure ulcers at stage 3 or 4	4	4	5	5
38	M0460 (Most problematic pressure ulcer stage)= 1 or 2	5	10	5	10
39	M0460 (Most problematic pressure ulcer stage)= 3 or 4	14	22	11	18
40	M0476 (Stasis ulcer status)= 2	7	13	7	13
41	M0476 (Stasis ulcer status)= 3	11	13	11	13
42	M0488 (Surgical wound status)= 2			3	7
43	M0488 (Surgical wound status)= 3	6	6	6	6
44	M0490 (Dyspnea) = 2, 3, or 4	2	3		2
45	M0530 (Urinary incontinence) = 1 or 2	1	1		
46	M0540 (Bowel Incontinence) = 2 to 5	1	3	1	3
47	M0550 (Ostomy)= 1 or 2	3	6	2	6
48	M0800 (Injectable Drug Use) = 0, 1, or 2	1	1	1	3
	FUNCTIONAL DIMENSION				

Table 2a: Case-Mix Adjustment Variables and Scores

	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
49	M0650 or M0660 (Dressing upper or lower body)= 1, 2, or 3	2	3	3	6
50	M0670 (Bathing) = 2 or more	3	4	6	6
51	M0680 (Toileting) = 2 or more	1	1	1	1
52	M0690 (Transferring) = 1		1		1
53	M0690 (Transferring) = 2 or more	1	4	1	5
54	M0700 (Ambulation) = 1 or 2			1	
55	M0700 (Ambulation) = 3 or more		2	3	

Note: The data for the regression equations come from a 40 percent random sample of episodes from FY 2003. The sample excludes LUPA episodes and episodes with SCIC or PEP adjustments.

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TABLE 2B.—ICD–9–CM DIAGNOSES INCLUDED IN THE DIAGNOSTIC CATEGORIES FOR CASE-MIX ADJUSTMENT VARIABLES

Diagnostic category	ICD–9–CM code**	Manifestation*	Short description of ICD–9–CM code
Blindness and low vision	369.0	.....	PROFOUND BLIND BOTH EYES
	369.1	.....	MOD/SEV W PROFND IMPAIR
	369.2	.....	MOD/SEV IMPAIR-BOTH EYES
	369.3	.....	BLINDNESS NOS, BOTH EYES
	369.4	.....	LEGAL BLINDNESS-USA DEF
	950	.....	INJURY TO OPTIC NERVE AND PATHWAYS
Blood disorders	281	.....	OTHER DEFICIENCY ANEMIAS
	282	.....	HEREDITARY HEMOLYTIC ANEMIAS
	283	.....	ACQUIRED HEMOLYTIC ANEMIAS
	284	.....	APLASTIC ANEMIA
	285	.....	OTHER AND UNSPECIFIED ANEMIAS
	286	.....	COAGULATION DEFECTS
	287	.....	PURPURA&OTHER HEMORRHAGIC CONDS
	288	.....	DISEASES OF WHITE BLOOD CELLS
	289	.....	OTH DISEASES BLD&BLD-FORMING ORGANS
Cancer and selected benign neoplasms	140	.....	MALIGNANT NEOPLASM OF LIP
	141	.....	MALIGNANT NEOPLASM OF TONGUE
	142	.....	MALIG NEOPLASM MAJOR SALIV GLANDS
	143	.....	MALIGNANT NEOPLASM OF GUM
	144	.....	MALIGNANT NEOPLASM FLOOR MOUTH
	145	.....	MALIG NEOPLSM OTH&UNSPEC PART MOUTH
	146	.....	MALIGNANT NEOPLASM OF OROPHARYNX
	147	.....	MALIGNANT NEOPLASM OF NASOPHARYNX
	148	.....	MALIGNANT NEOPLASM OF HYPOPHARYNX
	149	.....	OTH MALIG NEO LIP-MOUTH-PHARYNX
	150	.....	MALIGNANT NEOPLASM OF ESOPHAGUS
	151	.....	MALIGNANT NEOPLASM OF STOMACH
	152	.....	MALIG NEOPLSM SM INTEST INCL DUODUM
	153	.....	MALIGNANT NEOPLASM OF COLON
	154	.....	MAL NEO RECT RECTOSIGMOID JUNC&ANUS
	155	.....	MALIG NEOPLASM LIVER&INTRAHEP BDS
	156	.....	MALIG NEOPLSM GALLBLADD&XTRAHEP BDS
	157	.....	MALIGNANT NEOPLASM OF PANCREAS
	158	.....	MALIG NEOPLASM RETROPERITON&PERITON
	159	.....	MAL NEO DIGES ORGANS&PANCREAS OTH
	160	.....	MAL NEO NASL CAV/MID EAR&ACSS SINUS
	161	.....	MALIGNANT NEO LARYNX*
	162	.....	MALIGNANT NEO TRACHEA/LUNG*

TABLE 2B.—ICD–9–CM DIAGNOSES INCLUDED IN THE DIAGNOSTIC CATEGORIES FOR CASE-MIX ADJUSTMENT VARIABLES—Continued

Diagnostic category	ICD–9–CM code**	Manifestation*	Short description of ICD–9–CM code
	163		MALIGNANT NEOPL PLEURA*
	164		MAL NEO THYMUS/MEDIASTIN*
	165		OTH/ILL-DEF MAL NEO RESP*
	170		MALIG NEOPLASM BONE&ARTICLR CART
	171		MALIG NEOPLSM CNCTV&OTH SOFT TISSUE
	172		MALIGNANT MELANOMA OF SKIN
	173		OTHER MALIGNANT NEOPLASM OF SKIN
	174		MALIGNANT NEOPLASM OF FEMALE BREAST
	175		MALIGNANT NEOPLASM OF MALE BREAST
	176		KAPOSIS SARCOMA
	179		MALIG NEOPLASM UTERUS PART UNSPEC
	180		MALIGNANT NEOPLASM OF CERVIX UTERI
	181		MALIGNANT NEOPLASM OF PLACENTA
	182		MALIGNANT NEOPLASM BODY UTERUS
	183		MALIG NEOPLSM OVRY&OTH UTERN ADNEXA
	184		MALIG NEOPLSM OTH&UNS FE GENIT ORGN
	185		MALIGNANT NEOPLASM OF PROSTATE
	186		MALIGNANT NEOPLASM OF TESTIS
	187		MAL NEOPLSM PENIS&OTH MALE GNT ORGN
	188		MALIGNANT NEOPLASM OF BLADDER
	189		MAL NEO KIDNEY&OTH&UNS URIN ORGN
	190		MALIGNANT NEOPLASM OF EYE
	192.0		MALIGNANT NEOPLASM, CRANIAL NERVES
	192.8		MALIGNANT NEOPLASM OTHER NERV SYS
	192.9		MALIGNANT NEOPLASM, UNS PART NERV SYS
	193		MALIGNANT NEOPLASM OF THYROID GLAND
	194		MAL NEO OTH ENDOCRN GLND&REL STRCT
	195		MALIG NEOPLASM OTH&ILL-DEFIND SITES
	196		SEC&UNSPEC MALIG NEOPLASM NODES
	197		SEC MALIG NEOPLASM RESP&DIGESTV SYS
	198		SEC MALIG NEOPLASM OTHER SPEC SITES
	199		MALIG NEOPLASM WITHOUT SPEC SITE
	200		LYMPHOSARCOMA AND RETICULOSARCOMA
	201		HODGKINS DISEASE
	202		OTH MAL NEO LYMPHOID&HISTCYT TISS
	203		MX MYELOMA&IMMUNOPROLIFERAT NEOPLSM
	204		LYMPHOID LEUKEMIA
	205		MYELOID LEUKEMIA
	206		MONOCYTIC LEUKEMIA
	207		OTHER SPECIFIED LEUKEMIA
	208		LEUKEMIA OF UNSPECIFIED CELL TYPE
	213		BEN NEOPLASM BONE&ARTICLR CARTILAGE
	225.1		BEN NEOPLSM CRANIAL NERVES
	225.8		BEN NEOPLSM OTH SPEC SITES
	225.9		BEN NEOPLSM UNSPEC PART NERV SYS
	230		CA IN SITU—DIGEST
	231		CA IN SITU—RESP
	232		CARCINOMA IN SITU OF SKIN
	233		CA IN SITU—BREAST AND GU
	234		CA IN SITU—OTH
Diabetes	250		DIABETES MELLITUS
	357.2	M	POLYNEUROPATHY IN DIABETES
	362.01	M	BACKGROUND DIABETIC RETINOPATHY
	362.02	M	PROLIFERATIVE DIABETIC RETINOPATHY
	366.41	M	DIABETIC CATARACT
Dysphagia	787.2		DYSPHAGIA
Gait Abnormality	781.2		ABNORM GAIT
Gastrointestinal disorders	002		TYPHOID AND PARATYPHOID FEVERS
	003		OTHER SALMONELLA INFECTIONS
	004		SHIGELLOSIS
	005		OTHER FOOD POISONING
	006		AMEBIASIS
	007		OTHER PROTOZOAL INTESTINAL DISEASES
	008		INTESTINAL INFS DUE OTH ORGANISMS
	009		ILL-DEFINED INTESTINAL INFECTIONS
	530		DISEASES OF ESOPHAGUS
	531		GASTRIC ULCER
	532		DUODENAL ULCER
	533		PEPTIC ULCER, SITE UNSPECIFIED
	534		GASTROJEJUNAL ULCER

TABLE 2B.—ICD–9–CM DIAGNOSES INCLUDED IN THE DIAGNOSTIC CATEGORIES FOR CASE-MIX ADJUSTMENT VARIABLES—Continued

Diagnostic category	ICD–9–CM code**	Manifestation*	Short description of ICD–9–CM code
	535	.....	GASTRITIS AND DUODENITIS
	536	.....	DISORDERS OF FUNCTION OF STOMACH
	537	.....	OTHER DISORDERS OF STOMACH&DUODENUM
	540	.....	ACUTE APPENDICITIS
	541	.....	APPENDICITIS, UNQUALIFIED
	542	.....	OTHER APPENDICITIS
	543	.....	OTHER DISEASES OF APPENDIX
	555	.....	REGIONAL ENTERITIS
	556	.....	ULCERATIVE COLITIS
	557	.....	VASCULAR INSUFFICIENCY OF INTESTINE
	558	.....	OTH NONINF GASTROENTERITIS&COLITIS
	560	.....	INTEST OBST W/O MENTION HERN
	562	.....	DIVERTICULA OF INTESTINE
	564	.....	FUNCTIONAL DIGESTIVE DISORDERS NEC
	567	M	PERITONITIS
	568	.....	OTHER DISORDERS OF PERITONEUM
	569	.....	OTHER DISORDERS OF INTESTINE
	570	.....	ACUTE&SUBACUTE NECROSIS OF LIVER
	571	.....	CHRONIC LIVER DISEASE AND CIRRHOSIS
	572	.....	LIVER ABSC&SEQUELAE CHRON LIVR DZ
	573	M	OTHER DISORDERS OF LIVER
	574	.....	CHOLELITHIASIS
	575	.....	OTHER DISORDERS OF GALLBLADDER
	576	.....	OTHER DISORDERS OF BILIARY TRACT
	577	.....	DISEASES OF PANCREAS
	578	.....	GASTROINTESTINAL HEMORRHAGE
	579	.....	INTESTINAL MALABSORPTION
	783.2	.....	ABNORMAL LOSS OF WEIGHT
Heart Disease	410	.....	ACUTE MYOCARDIAL INFARCTION
	411	.....	OTH AC&SUBAC FORMS ISCHEMIC HRT DZ
	428	.....	HEART FAILURE
Hypertension	401	.....	ESSENTIAL HYPERTENSION
	402	.....	HYPERTENSIVE HEART DISEASE
	403	.....	HYPERTENSIVE RENAL DISEASE
	404	.....	HYPERTENSIVE HEART&RENAL DISEASE
	405	.....	SECONDARY HYPERTENSION
Neuro 1—Brain disorders and paralysis	013	.....	TB MENINGES&CNTRL NERV SYS
	047	.....	MENINGITIS DUE TO ENTEROVIRUS
	046	.....	SLOW VIRUS INFECTION CNTRL NERV SYS
	048	.....	OTH ENTEROVIRUS DZ CNTRL NERV SYS
	049	.....	OTH NON-ARTHROPOD BORNE VIRL DX-CNS
	191	.....	MALIGNANT NEOPLASM OF BRAIN
	192.2	.....	MALIG NEOPLSM SPINAL CORD
	192.3	.....	MALIG NEOPLSM SPINAL MENINGES
	225.0	.....	BEN NEOPLSM BRAIN
	225.2	.....	BEN NEOPLSM BRAIN MENINGES
	225.3	.....	BEN NEOPLSM SPINAL CORD
	225.4	.....	BEN NEOPLSM SPINAL CORD MENINGES
	320.0	.....	HEMOPHILUS MENINGITIS
	320.1	.....	PNEUMOCOCCAL MENINGITIS
	320.2	.....	STREPTOCOCCAL MENINGITIS
	320.3	.....	STAPHYLOCOCCAL MENINGITIS
	320.7	M	MENINGITIS OTH BACT DZ CLASS ELSW
	320.81	.....	ANAEROBIC MENINGITIS
	320.82	.....	MENINGITIS DUE GM-NEG BACTER NEC
	320.89	.....	MENINGITIS DUE OTHER SPEC BACTERIA
	320.9	.....	MENINGITIS DUE UNSPEC BACTERIUM
	321.0	M	CRYPTOCOCCAL MENINGITIS
	321.1	M	MENINGITIS IN OTHER FUNGAL DISEASES
	321.2	M	MENINGITIS DUE TO VIRUSES NEC
	321.3	M	MENINGITIS DUE TO TRYPANOSOMIASIS
	321.4	M	MENINGITIS IN SARCOIDOSIS
	321.8	M	MENINGITIS-OTH NONBCTRL ORGNISMS CE
	322	.....	MENINGITIS OF UNSPECIFIED CAUSE
	323.0	M	ENCEPHALITIS VIRAL DZ CLASS ELSW
	323.1	M	ENCEPHALIT RICKETTS DZ CLASS ELSW
	323.2	M	ENCEPHALIT PROTOZOAL DZ CLASS ELSW
	323.4	M	OTH ENCEPHALIT DUE INF CLASS ELSW
	323.5	.....	ENCEPHALIT FOLLOW IMMUNIZATION PROC
	323.6	M	POSTINFECTIOUS ENCEPHALITIS

TABLE 2B.—ICD–9–CM DIAGNOSES INCLUDED IN THE DIAGNOSTIC CATEGORIES FOR CASE-MIX ADJUSTMENT VARIABLES—Continued

Diagnostic category	ICD–9–CM code**	Manifestation*	Short description of ICD–9–CM code
	323.7	M	TOXIC ENCEPHALITIS
	323.8		OTHER CAUSES OF ENCEPHALITIS
	323.9		ENCEPHALITUS NOS
	324		INTRACRANIAL&INTRASPINAL ABSCESS
	325		PHLEBIT&THRMBOPHLB INTRACRAN VENUS
	326		LATE EFF INTRACRAN ABSC/PYOGEN INF
	330.0		LEUKODYSTROPHY
	330.1		CEREBRAL LIPIDOSES
	330.2	M	CEREB DEGEN IN LIPIDOSIS
	330.3	M	CERB DEG CHLD IN OTH DIS
	330.8		CEREB DEGEN IN CHILD NEC
	330.9		CEREB DEGEN IN CHILD NOS
	334.1		HERED SPASTIC PARAPLEGIA
	335		ANTERIOR HORN CELL DISEASE
	336.1		VASCULAR MYELOPATHIES
	336.2	M	SUBACUTE COMB DEGEN SPINL CRD DZ CE
	336.3	M	MYELOPATHY OTH DISEASES CLASS ELSW
	336.8		OTHER MYELOPATHY
	336.9		UNSPECIFIED DISEASE OF SPINAL CORD
	337.3		AUTONOMIC DYSREFLEXIA
	344.1		PARAPLEGIA
	344.8		LOCKED-IN STATE
	344.9		PARALYSIS UNSPECIFIED
	348		OTHER CONDITIONS OF BRAIN
	349.82		OTH&UNSPEC DISORDERS NERVOUS SYSTEM
	336.0		SYRINGOMYELIA AND SYRINGOBULBIA
	344.0		QUADRAPLEGIA
	741		SPINA BIFIDA
	780.01		COMA
	780.03		PERSISTENT VEGETATIVE STATE
	806		FX VERT COLUMN W/SPINAL CORD INJURY
	851		CEREBRAL LACERATION AND CONTUSION
	852		SUBARACH SUB&XTRADURL HEMOR FLW INJ
	853		OTH&UNS INTRACRAN HEMOR FLW INJURY
	854		INTRACRAN INJURY OTH&UNSPEC NATURE
	907.0		LATE EFF INTRACRANIAL INJURY
	907.1		LATE EFFECT OF INJURY TO CRANIAL NERVE
	907.2		LATE EFFECT OF SPINAL CORD INJURY
	907.3		LATE EFFECT OF INJURY TO NERVE ROOT(S), SPINAL PLEXUS(ES), AND OTHER NERVES OF TRUNK
	907.4		LATE EFFECT OF INJURY TO PERIPHERAL NERVE OF SHOULDER GIRDLE AND UPPER LIMB
	907.5		LATE EFFECT OF INJURY TO PERIPHERAL NERVE OF PELVIC GIRDLE AND LOWER LIMB
	907.9		LATE EFFECT OF INJURY TO OTHER AND UNSPECIFIED NERVE
	952		SP CRD INJR W/O EVIDENCE SP BN INJR
Neuro 2—Peripheral neurological disorders	045		ACUTE POLIOMYELITIS
	332		PARKINSONS DISEASE
	333		OTH XTRAPYRAMIDAL DZ&ABN MOVMNT D/O
	334.0		FRIEDREICH'S ATAXIA
	334.2		PRIMARY CEREBELLAR DEGEN
	334.3		CEREBELLAR ATAXIA NEC
	334.4	M	CEREBEL ATAX IN OTH DIS
	334.8		SPINOCEREBELLAR DIS NEC
	334.9		SPINOCEREBELLAR DIS NOS
	337.0		IDIOPATH PERIPH AUTONOM NEUROPATHY
	337.1	M	PRIPHERL AUTONOMIC NEUROPTHY D/O CE
	337.20		UNSPEC REFLEX SYMPATHETIC DYSTROPHY
	337.21		REFLX SYMPATHET DYSTROPHY UP LIMB
	337.22		REFLX SYMPATHET DYSTROPHY LOW LIMB
	337.29		REFLX SYMPATHET DYSTROPHY OTH SITE
	337.9		UNSPEC DISORDER AUTONOM NERV SYSTEM
	343		INFANTILE CEREBRAL PALSY
	344.2		DIPLEGIA OF BOTH UPPER LIMBS
	352		DISORDERS OF OTHER CRANIAL NERVES
	353.0		BRACHIAL PLEXUS LESION
	353.1		LUMBOSACRAL PLEXUS LESION
	353.5		NEURALGIC AMYLOTROPHY
	354.5		MONONEURITIS MULTIPLEX

TABLE 2B.—ICD–9–CM DIAGNOSES INCLUDED IN THE DIAGNOSTIC CATEGORIES FOR CASE-MIX ADJUSTMENT VARIABLES—Continued

Diagnostic category	ICD–9–CM code**	Manifestation*	Short description of ICD–9–CM code
	355.2	.....	OTHER LESION OF FEMORAL NERVE
	355.9	.....	LESION OF SCIATIC NERVE
	356	.....	HEREDIT&IDIOPATH PERIPH NEUROPATHY
	357.0	.....	ACUTE INFECTIVE POLYNEURITIS
	357.1	M	POLYNEUROPATHY COLL VASC DISEASE
	357.3	M	POLYNEUROPATHY IN MALIGNANT DISEASE
	357.4	M	POLYNEUROPATHY OTH DZ CLASS ELSW
	357.5	.....	ALCOHOLIC POLYNEUROPATHY
	357.6	.....	POLYNEUROPATHY DUE TO DRUGS
	357.7	.....	POLYNEUROPATHY DUE OTH TOXIC AGENTS
	357.82	.....	CRIT ILLNESS NEUROPATHY
	357.89	.....	INFLAM/TOX NEUROPATHY
	357.9	.....	UNSPEC INFLAM&TOXIC NEUROPATHY
	358.00	.....	MYASTHENIA GRAVIS W/O ACUTE
	358.01	.....	MYASTHENIA GRAVIS W/ACUTE
	358.1	M	MYASTHENIC SYNDROMES DZ CLASS ELSW
	358.2	.....	TOXIC MYONEURAL DISORDERS
	358.9	.....	UNSPECIFIED MYONEURAL DISORDERS
	359.0	.....	CONGEN HEREDIT MUSCULAR DYSTROPHY
	359.1	.....	HEREDITARY PROGRESSIVE MUSC DYSTROPH
	359.3	.....	FAMILIAL PERIODIC PARALYSIS
	359.4	.....	TOXIC MYOPATHY
	359.5	M	MYOPATHY ENDOCRINE DZ CLASS ELSW
	359.6	M	SX INFLAM MYOPATHY DZ CLASS ELSW
	359.8	.....	OTHER MYOPATHIES
	359.9	.....	UNSPECIFIED MYOPATHY
	386.0	.....	MENIERE'S DISEASE
	386.2	.....	VERTIGO OF CENTRAL ORIGIN
	386.3	.....	LABYRINTHITIS
	392	.....	RHEUMATIC CHOREA
	953	.....	INJURY TO NERVE ROOTS&SPINAL PLEXUS
	954	.....	INJR OTH NRV TRNK NO SHLDR&PLV GIRD
	955.8	.....	INJR PERIPH NRV SHLDR GIRDL&UP LIMB
	956.0	.....	INJR TO SCIATIC NERVE
	956.1	.....	INJ TO FEMORAL NERVE
	956.8	.....	INJR TO MULTIPLE PELVIC AND LE NERVES
Neuro 3—Stroke	342	.....	HEMIPLEGIA AND HEMIPARESIS
	344.3	.....	MONOPLEGIA OF LOWER LIMB
	344.4	.....	MONOPLEGIA OF UPPER LIMB
	344.6	.....	UNSPECIFIED MONOPLEGIA
	430	.....	SUBARACHNOID HEMORRHAGE
	431	.....	INTRACEREBRAL HEMORRHAGE
	432	.....	OTH&UNSPEC INTRACRANIAL HEMORRHAGE
	433.01	.....	OCCLUSION&STENOSIS BASILAR ART W INFARC
	433.11	.....	OCCLUSION&STENOSIS CAROTID ART W INFARC
	433.21	.....	OCCLUSION&STENOSIS VERTEBRAL ART W INFARC
	433.31	.....	OCCLUSION&STENOSIS MULT BILAT ART W INFARC
	433.81	.....	OCCLUSION&STENOSIS OTH PRECER ART W INFARC
	434.01	.....	CEREBRAL THROMBOSIS W INFARCTION
	434.11	.....	CEREBRAL EMBOLISM W INFARCTION
	781.8	.....	NEURO NEGLECT SYNDROME
	436	.....	ACUT BUT ILL-DEFINED CEREBRVASC DZ
	438	.....	LATE EFF CEREBROVASCULAR DZ
	435	.....	TRANSIENT CEREBRAL ISCHEMIA
Neuro 4—Multiple Sclerosis	340	.....	MULTIPLE SCLEROSIS
	341	M	OTH DEMYELINATING DZ CNTRL NERV SYS
Ortho 1—Leg Disorders	711.05	.....	PYOGEN ARTHRITIS-PELVIS
	711.06	.....	PYOGEN ARTHRITIS-L/LEG
	711.07	.....	PYOGEN ARTHRITIS-ANKLE
	711.15	M	REITER ARTHRITIS-PELVIS
	711.16	M	REITER ARTHRITIS-L/LEG
	711.17	M	REITER ARTHRITIS-ANKLE
	711.25	M	BEHCET ARTHRITIS-PELVIS
	711.26	M	BEHCET ARTHRITIS-L/LEG
	711.27	M	BEHCET ARTHRITIS-ANKLE
	711.35	M	DYSENTER ARTHRIT-PELVIS
	711.36	M	DYSENTER ARTHRIT-L/LEG
	711.37	M	DYSENTER ARTHRIT-ANKLE
	711.45	M	BACT ARTHRITIS-PELVIS
	711.46	M	BACT ARTHRITIS-L/LEG

TABLE 2B.—ICD–9–CM DIAGNOSES INCLUDED IN THE DIAGNOSTIC CATEGORIES FOR CASE-MIX ADJUSTMENT VARIABLES—Continued

Diagnostic category	ICD–9–CM code**	Manifestation*	Short description of ICD–9–CM code
	711.47	M	BACT ARTHRITIS-ANKLE
	711.55	M	VIRAL ARTHRITIS-PELVIS
	711.56	M	VIRAL ARTHRITIS-L/LEG
	711.57	M	VIRAL ARTHRITIS-ANKLE
	711.65	M	MYCOTIC ARTHRITIS-PELVI
	711.66	M	MYCOTIC ARTHRITIS-L/LEG
	711.67	M	MYCOTIC ARTHRITIS-ANKLE
	711.75	M	HELMINTH ARTHRIT-PELVIS
	711.76	M	HELMINTH ARTHRIT-L/LEG
	711.77	M	HELMINTH ARTHRIT-ANKLE
	711.85	M	INF ARTHRITIS NEC-PELVI
	711.86	M	INF ARTHRITIS NEC-L/LEG
	711.87	M	INF ARTHRITIS NEC-ANKLE
	711.95		INF ARTHRIT NOS-PELVIS
	711.96		INF ARTHRIT NOS-L/LEG
	711.97		INF ARTHRIT NOS-ANKLE
	712.15	M	DICALC PHOS CRYST-PELVI
	712.16	M	DICALC PHOS CRYST-L/LEG
	712.17	M	DICALC PHOS CRYST-ANKLE
	712.25	M	PYROPHOSPH CRYST-PELVIS
	712.26	M	PYROPHOSPH CRYST-L/LEG
	712.27	M	PYROPHOSPH CRYST-ANKLE
	712.35	M	CHONDROCALCIN NOS-PELVI
	712.36	M	CHONDROCALCIN NOS-L/LEG
	712.37	M	CHONDROCALCIN NOS-ANKLE
	712.85		CRYST ARTHROP NEC-PELVI
	712.86		CRYST ARTHROP NEC-L/LEG
	712.87		CRYST ARTHROP NEC-ANKLE
	712.95		CRYST ARTHROP NOS-PELVI
	712.96		CRYST ARTHROP NOS-L/LEG
	712.97		CRYST ARTHROP NOS-ANKLE
	716.05		KASCHIN-BECK DIS-PELVIS
	716.06		KASCHIN-BECK DIS-L/LEG
	716.07		KASCHIN-BECK DIS-ANKLE
	716.15		TRAUM ARTHROPATHY-PELVIS
	716.16		TRAUM ARTHROPATHY-L/LEG
	716.17		TRAUM ARTHROPATHY-ANKLE
	716.25		ALLERG ARTHRITIS-PELVIS
	716.26		ALLERG ARTHRITIS-L/LEG
	716.27		ALLERG ARTHRITIS-ANKLE
	716.35		CLIMACT ARTHRITIS-PELVIS
	716.36		CLIMACT ARTHRITIS-L/LEG
	716.37		CLIMACT ARTHRITIS-ANKLE
	716.45		TRANS ARTHROPATHY-PELVIS
	716.46		TRANS ARTHROPATHY-L/LEG
	716.47		TRANS ARTHROPATHY-ANKLE
	716.55		POLYARTHRITIS NOS-PELVIS
	716.56		POLYARTHRITIS NOS-L/LEG
	716.57		POLYARTHRITIS NOS-ANKLE
	716.67		MONOARTHRITIS NOS-ANKLE
	716.85		ARTHROPATHY NEC-PELVIS
	716.86		ARTHROPATHY NEC-L/LEG
	716.87		ARTHROPATHY NEC-ANKLE
	716.95		ARTHROPATHY NOS-PELVIS
	716.96		ARTHROPATHY NOS-L/LEG
	716.97		ARTHROPATHY NOS-ANKLE
	717		INTERNAL DERANGEMENT OF KNEE
	718.05		ART CARTIL DISORDER PELVIS AND THIGH
	718.06		ART CARTIL DISORDER LOWER LEG
	718.07		ART CARTIL DIS ANKLE FOOT
	718.25		PATHOLOGIC DISLOCATION PELVIS AND THIGH
	718.26		PATHOLOGIC DISLOCATION LOWER LEG
	718.27		PATHOLOGIC DISLOCATION ANKLE FOOT
	718.35		RECURRENT DISLOCATION PELVIS AND THIGH
	718.36		RECURRENT DISLOCATION LOW LEG
	718.37		RECURRENT DISLOCATION ANKLE FOOT
	718.45		CONTRACTURE PELVIS AND THIGH
	718.46		CONTRACTURE LOWER LEG
	718.47		CONTRACTURE OF JOINT ANKLE FOOT
	718.55		ANKYLOSIS OF PELVIS AND THIGH

TABLE 2B.—ICD–9–CM DIAGNOSES INCLUDED IN THE DIAGNOSTIC CATEGORIES FOR CASE-MIX ADJUSTMENT VARIABLES—Continued

Diagnostic category	ICD–9–CM code**	Manifestation*	Short description of ICD–9–CM code
	718.56	.....	ANKYLOSIS OF LOWER LEG
	718.57	.....	ANKYLOSIS OF JOINT ANKLE FOOT
	718.85	.....	OTHER DERANGEMENT OF PELVIS AND THIGH
	718.86	.....	OTHER DERANGEMENT OF JOINT OF LOWER LEG
	718.87	.....	OTH DERANGMENT JT NEC ANKLE FOOT
	719.15	.....	HEMARTHROSIS PELVIS AND THIGH
	719.16	.....	HEMARTHROSIS LOWER LEG
	719.17	.....	HEMARTHROSIS ANKLE AND FOOT
	719.25	.....	VILLONODULAR SYNOVITIS PELVIS AND THIGH
	719.26	.....	VILLONODULAR SYNOVITIS LOWER LEG
	719.27	.....	VILLONODULAR SYNOVITIS ANKLE AND FOOT
	719.35	.....	PALANDROMIC RHEUMATISM PELVIS AND THIGH
	719.36	.....	PALANDROMIC RHEUMATISM LOWER LEG
	719.37	.....	PALANDROMIC RHEUMATISM ANKLE AND FOOT
	727.65	.....	RUPTURE OF TENDON QUADRACEPS
	727.66	.....	RUPTURE OF TENDON PATELLAR
	727.67	.....	RUPTURE OF TENDON ACHILLES
	727.68	.....	RUPTURE OTHER TENDONS FOOT AND ANKLE
	730.05	.....	AC OSTEOMYELITIS-PELVIS
	730.06	.....	AC OSTEOMYELITIS-L/LEG
	730.07	.....	AC OSTEOMYELITIS-ANKLE
	730.15	.....	CHR OSTEOMYELIT-PELVIS
	730.16	.....	CHR OSTEOMYELIT-L/LEG
	730.17	.....	CHR OSTEOMYELIT-ANKLE
	730.25	.....	OSTEOMYELITIS NOS-PELVI
	730.26	.....	OSTEOMYELITIS NOS-L/LEG
	730.27	.....	OSTEOMYELITIS NOS-ANKLE
	730.35	.....	PERIOSTITIS-PELVIS
	730.36	.....	PERIOSTITIS-L/LEG
	730.37	.....	PERIOSTITIS-ANKLE
	730.75	M	POLIO OSTEOPATHY-PELVIS
	730.76	M	POLIO OSTEOPATHY-L/LEG
	730.77	M	POLIO OSTEOPATHY-ANKLE
	730.85	M	BONE INFECT NEC-PELVIS
	730.86	M	BONE INFECT NEC-L/LEG
	730.87	M	BONE INFECT NEC-ANKLE
	730.95	.....	BONE INFECT NOS-PELVIS
	730.96	.....	BONE INFECT NOS-L/LEG
	730.97	.....	BONE INFECT NOS-ANKLE
	733.14	.....	PATHOLOGIC FRACTURE OF NECK OF FEMUR
	733.15	.....	PATHOLOGIC FRACTURE OF FEMUR
	733.16	.....	PATHOLOGIC FRACTURE OF TIBIA OR FIBULA
	733.42	.....	ASEPTIC NECROSIS OF HEAD AND NECK OF FEMUR
	733.43	.....	ASEPTIC NECROSIS OF MEDIAL FEMORAL CONDYLE
	808	.....	FRACTURE OF PELVIS
	820	.....	FRACTURE OF NECK OF FEMUR
	821	.....	FRACTURE OTHER&UNSPEC PARTS FEMUR
	822	.....	FRACTURE OF PATELLA
	823	.....	FRACTURE OF TIBIA AND FIBULA
	824	.....	FRACTURE OF ANKLE
	825	.....	FRACTURE 1/MORE TARSAL&MT BNS
	827	.....	OTH MX&ILL-DEFINED FX LOWER LIMB
	828	.....	MX FX LEGS-LEG W/ARM-LEGS W/RIBS
	835	.....	DISLOCATION OF HIP
	836	.....	DISLOCATION OF KNEE
	897	.....	TRAUMATIC AMPUTATION OF LEG
	928	.....	CRUSHING INJURY OF LOWER LIMB
Ortho 2—Other Orthopedic disorders	711.01	.....	PYOGEN ARTHRITIS-SHLDER
	711.02	.....	PYOGEN ARTHRITIS-UP/ARM
	711.03	.....	PYOGEN ARTHRITIS-FOREAR
	711.04	.....	PYOGEN ARTHRITIS-HAND
	711.08	.....	PYOGEN ARTHRITIS NEC
	711.09	.....	PYOGEN ARTHRITIS-MULT
	711.10	M	REITER ARTHRITIS-UNSPEC
	711.11	M	REITER ARTHRITIS-SHLDER
	711.12	M	REITER ARTHRITIS-UP/ARM
	711.13	M	REITER ARTHRITIS-FOREAR
	711.14	M	REITER ARTHRITIS-HAND
	711.18	M	REITER ARTHRITIS NEC
	711.19	M	REITER ARTHRITIS-MULT

TABLE 2B.—ICD–9–CM DIAGNOSES INCLUDED IN THE DIAGNOSTIC CATEGORIES FOR CASE-MIX ADJUSTMENT VARIABLES—Continued

Diagnostic category	ICD–9–CM code**	Manifestation*	Short description of ICD–9–CM code
	711.20	M	BEHCET ARTHRITIS-UNSPEC
	711.21	M	BEHCET ARTHRITIS-SHLDER
	711.22	M	BEHCET ARTHRITIS-UP/ARM
	711.23	M	BEHCET ARTHRITIS-FOREAR
	711.24	M	BEHCET ARTHRITIS-HAND
	711.28	M	BEHCET ARTHRITIS NEC
	711.29	M	BEHCET ARTHRITIS-MULT
	711.30	M	DYSENTER ARTHRIT-UNSPEC
	711.31	M	DYSENTER ARTHRIT-SHLDER
	711.32	M	DYSENTER ARTHRIT-UP/ARM
	711.33	M	DYSENTER ARTHRIT-FOREAR
	711.34	M	DYSENTER ARTHRIT-HAND
	711.38	M	DYSENTER ARTHRIT NEC
	711.39	M	DYSENTER ARTHRIT-MULT
	711.40	M	BACT ARTHRITIS-UNSPEC
	711.41	M	BACT ARTHRITIS-SHLDER
	711.42	M	BACT ARTHRITIS-UP/ARM
	711.43	M	BACT ARTHRITIS-FOREARM
	711.44	M	BACT ARTHRITIS-HAND
	711.48	M	BACT ARTHRITIS NEC
	711.49	M	BACT ARTHRITIS-MULT
	711.50	M	VIRAL ARTHRITIS-UNSPEC
	711.51	M	VIRAL ARTHRITIS-SHLDER
	711.52	M	VIRAL ARTHRITIS-UP/ARM
	711.53	M	VIRAL ARTHRITIS-FOREARM
	711.54	M	VIRAL ARTHRITIS-HAND
	711.58	M	VIRAL ARTHRITIS NEC
	711.59	M	VIRAL ARTHRITIS-MULT
	711.60	M	MYCOTIC ARTHRITIS-UNSPE
	711.61	M	MYCOTIC ARTHRITIS-SHLDE
	711.62	M	MYCOTIC ARTHRITIS-UP/AR
	711.63	M	MYCOTIC ARTHRIT-FOREARM
	711.64	M	MYCOTIC ARTHRITIS-HAND
	711.68	M	MYCOTIC ARTHRITIS NEC
	711.69	M	MYCOTIC ARTHRITIS-MULT
	711.70	M	HELMINTH ARTHRIT-UNSPEC
	711.71	M	HELMINTH ARTHRIT-SHLDER
	711.72	M	HELMINTH ARTHRIT-UP/ARM
	711.73	M	HELMINTH ARTHRIT-FOREAR
	711.74	M	HELMINTH ARTHRIT-HAND
	711.78	M	HELMINTH ARTHRIT NEC
	711.79	M	HELMINTH ARTHRIT-MULT
	711.80	M	INF ARTHRITIS NEC-UNSPE
	711.81	M	INF ARTHRITIS NEC-SHLDE
	711.82	M	INF ARTHRITIS NEC-UP/AR
	711.83	M	INF ARTHRIT NEC-FOREARM
	711.84	M	INF ARTHRITIS NEC-HAND
	711.88	M	INF ARTHRIT NEC-OTH SIT
	711.89	M	INF ARTHRITIS NEC-MULT
	711.90		INF ARTHRITIS NOS-UNSPE
	711.91		INF ARTHRITIS NOS-SHLDE
	711.92		INF ARTHRITIS NOS-UP/AR
	711.93		INF ARTHRIT NOS-FOREARM
	711.94		INF ARTHRIT NOS-HAND
	711.98		INF ARTHRIT NOS-OTH SIT
	711.99		INF ARTHRITIS NOS-MULT
	712.10	M	DICALC PHOS CRYST-UNSPE
	712.11	M	DICALC PHOS CRYST-SHLDE
	712.12	M	DICALC PHOS CRYST-UP/AR
	712.13	M	DICALC PHOS CRYS-FOREAR
	712.14	M	DICALC PHOS CRYST-HAND
	712.18	M	DICALC PHOS CRY-SITE NE
	712.19	M	DICALC PHOS CRYST-MULT
	712.20	M	PYROPHOSPH CRYST-UNSPEC
	712.21	M	PYROPHOSPH CRYST-SHLDER
	712.22	M	PYROPHOSPH CRYST-UP/ARM
	712.23	M	PYROPHOSPH CRYST-FOREAR
	712.24	M	PYROPHOSPH CRYST-HAND
	712.28	M	PYROPHOS CRYST-SITE NEC
	712.29	M	PYROPHOS CRYST-MULT

TABLE 2B.—ICD–9–CM DIAGNOSES INCLUDED IN THE DIAGNOSTIC CATEGORIES FOR CASE-MIX ADJUSTMENT VARIABLES—Continued

Diagnostic category	ICD–9–CM code**	Manifestation*	Short description of ICD–9–CM code
	712.30	M	CHONDROCALCIN NOS-UNSPE
	712.31	M	CHONDROCALCIN NOS-SHLDE
	712.32	M	CHONDROCALCIN NOS-UP/AR
	712.33	M	CHONDROCALC NOS-FOREARM
	712.34	M	CHONDROCALCIN NOS-HAND
	712.38	M	CHONDROCALC NOS-OTH SIT
	712.39	M	CHONDROCALCIN NOS-MULT
	712.80		CRYST ARTHROP NEC-UNSPE
	712.81		CRYST ARTHROP NEC-SHLDE
	712.82		CRYST ARTHROP NEC-UP/AR
	712.83		CRYS ARTHROP NEC-FOREAR
	712.84		CRYST ARTHROP NEC-HAND
	712.88		CRY ARTHROP NEC-OTH SIT
	712.89		CRYST ARTHROP NEC-MULT
	712.90		CRYST ARTHROP NOS-UNSPE
	712.91		CRYST ARTHROP NOS-SHLDR
	712.92		CRYST ARTHROP NOS-UP/AR
	712.93		CRYS ARTHROP NOS-FOREAR
	712.94		CRYST ARTHROP NOS-HAND
	712.98		CRY ARTHROP NOS-OTH SIT
	712.99		CRYST ARTHROP NOS-MULT
	713.0	M	ARTHROP W ENDOCR/MET DI
	713.1	M	ARTHROP W NONINF GI DIS
	713.2	M	ARTHROPATH W HEMATOL DI
	713.3	M	ARTHROPATHY W SKIN DIS
	713.4	M	ARTHROPATHY W RESP DIS
	713.5	M	ARTHROPATHY W NERVE DIS
	713.6	M	ARTHROP W HYPERSEN REAC
	713.7	M	ARTHROP W SYSTEM DIS NE
	713.8	M	ARTHROP W OTH DIS NEC
	714		RA&OTH INFLAM POLYARTHROPATHIES
	715.15		OSTEOARTHROSIS, LOCALIZED, PRIMARY, PELVIS AND THIGH
	715.16		OSTEOARTHROSIS, LOCALIZED, PRIMARY, LOWER LEG
	715.25		OSTEOARTHROSIS, LOCALIZED, SECONDARY, PELVIS AND THIGH
	715.26		OSTEOARTHROSIS, LOCALIZED, SECONDARY, LOWER LEG
	715.35		OSTEOARTHROSIS, LOCALIZED, NOT SPEC PRIMARY OR SECONDARY, PELVIS AND THIGH
	715.36		OSTEOARTHROSIS, LOCALIZED, NOT SPEC PRIMARY OR SECONDARY, LOWER LEG
	715.95		OSTEOARTHROSIS, UNSPECIFIED, PELVIS AND THIGH
	715.96		OSTEOARTHROSIS, UNSPECIFIED, LOWER LEG
	716.00		KASCHIN-BECK DIS-UNSPEC
	716.01		KASCHIN-BECK DIS-SHLDER
	716.02		KASCHIN-BECK DIS-UP/ARM
	716.03		KASCHIN-BECK DIS-FOREARM
	716.04		KASCHIN-BECK DIS-HAND
	716.08		KASCHIN-BECK DIS NEC
	716.09		KASCHIN-BECK DIS-MULT
	716.10		TRAUM ARTHROPATHY-UNSPEC
	716.11		TRAUM ARTHROPATHY-SHLDER
	716.12		TRAUM ARTHROPATHY-UP/ARM
	716.13		TRAUM ARTHROPATH-FOREARM
	716.14		TRAUM ARTHROPATHY-HAND
	716.18		TRAUM ARTHROPATHY NEC
	716.19		TRAUM ARTHROPATHY-MULT
	716.20		ALLERG ARTHRITIS-UNSPEC
	716.21		ALLERG ARTHRITIS-SHLDER
	716.22		ALLERG ARTHRITIS-UP/ARM
	716.23		ALLERG ARTHRITIS-FOREARM
	716.24		ALLERG ARTHRITIS-HAND
	716.28		ALLERG ARTHRITIS NEC
	716.29		ALLERG ARTHRITIS-MULT
	716.30		CLIMACT ARTHRITIS-UNSPEC
	716.31		CLIMACT ARTHRITIS-SHLDER
	716.32		CLIMACT ARTHRITIS-UP/ARM
	716.33		CLIMACT ARTHRIT-FOREARM
	716.34		CLIMACT ARTHRITIS-HAND

TABLE 2B.—ICD–9–CM DIAGNOSES INCLUDED IN THE DIAGNOSTIC CATEGORIES FOR CASE-MIX ADJUSTMENT VARIABLES—Continued

Diagnostic category	ICD–9–CM code**	Manifestation*	Short description of ICD–9–CM code
	716.38	.....	CLIMACT ARTHRITIS NEC
	716.39	.....	CLIMACT ARTHRITIS-MULT
	716.40	.....	TRANS ARTHROPATHY-UNSPEC
	716.41	.....	TRANS ARTHROPATHY-SHLDER
	716.42	.....	TRANS ARTHROPATHY-UP/ARM
	716.43	.....	TRANS ARTHROPATH-FOREARM
	716.44	.....	TRANS ARTHROPATHY-HAND
	716.48	.....	TRANS ARTHROPATHY NEC
	716.49	.....	TRANS ARTHROPATHY-MULT
	716.50	.....	POLYARTHRITIS NOS-UNSPEC
	716.51	.....	POLYARTHRITIS NOS-SHLDER
	716.52	.....	POLYARTHRITIS NOS-UP/ARM
	716.53	.....	POLYARTHRIT NOS-FOREARM
	716.54	.....	POLYARTHRITIS NOS-HAND
	716.58	.....	POLYARTHRIT NOS-OTH SITE
	716.59	.....	POLYARTHRITIS NOS-MULT
	716.60	.....	MONOARTHRITIS NOS-UNSPEC
	716.61	.....	MONOARTHRITIS NOS-SHLDER
	716.62	.....	MONOARTHRITIS NOS-UP/ARM
	716.63	.....	MONOARTHRIT NOS-FOREARM
	716.64	.....	MONOARTHRITIS NOS-HAND
	716.65	.....	UNSPECIFIED MONOARTHRITIS, PELVIS AND THIGH
	716.66	.....	UNSPECIFIED MONOARTHRITIS, LOWER LEG
	716.68	.....	MONOARTHRIT NOS-OTH SITE
	716.80	.....	ARTHROPATHY NEC-UNSPEC
	716.81	.....	ARTHROPATHY NEC-SHLDER
	716.82	.....	ARTHROPATHY NEC-UP/ARM
	716.83	.....	ARTHROPATHY NEC-FOREARM
	716.84	.....	ARTHROPATHY NEC-HAND
	716.88	.....	ARTHROPATHY NEC-OTH SITE
	716.89	.....	ARTHROPATHY NEC-MULT
	716.90	.....	ARTHROPATHY NOS-UNSPEC
	716.91	.....	ARTHROPATHY NOS-SHLDER
	716.92	.....	ARTHROPATHY NOS-UP/ARM
	716.93	.....	ARTHROPATHY NOS-FOREARM
	716.94	.....	ARTHROPATHY NOS-HAND
	716.98	.....	ARTHROPATHY NOS-OTH SITE
	716.99	.....	ARTHROPATHY NOS-MULT
	718.01	.....	ART CARTIL DISORDER SHOULDER
	718.02	.....	ART CARTIL DIS UPPER ARM
	718.03	.....	ART CARTIL DIS FOREARM
	718.04	.....	ART CARTIL DIS HAND
	718.08	.....	ART CART DIS OTH SITES
	718.09	.....	ART CART DIS MULT
	718.1	.....	LOOSE BODY IN JT
	718.20	.....	PATHOLOGIC DISLOCATION UNSPEC SITE
	718.21	.....	PATHOLOGIC DISLOCATION SHOULDER
	718.22	.....	PATHOLOGIC DISLOCATION UPPER ARM
	718.23	.....	PATHOLOGIC DISLOCATION FOREARM
	718.24	.....	PATHOLOGIC DISLOCATION HAND
	718.28	.....	PATHOLOGIC DISLOCATION OTH LOC
	718.29	.....	PATHOLOGIC DISLOCATION MULT LOC
	718.30	.....	RECURRENT DISLOCATION UNSPEC SITE
	718.31	.....	RECURRENT DISLOCATION SHOULDER
	718.32	.....	RECURRENT DISLOCATION UPPER ARM
	718.33	.....	RECURRENT DISLOCATION FOREARM
	718.34	.....	RECURRENT DISLOCATION HAND
	718.38	.....	RECURRENT DISLOCATION OTH LOC
	718.39	.....	RECURRENT DISLOCATION MULT LOC
	718.40	.....	CONTRACTURE OF JOINT UNSPEC SITE
	718.41	.....	CONTRACTURE SHOULDER
	718.42	.....	CONTRACTURE OF JOINT UPPER ARM
	718.43	.....	CONTRACTURE OF JOINT FOREARM
	718.44	.....	CONTRACTURE OF JOINT HAND
	718.48	.....	CONTRACTURE OF JOINT OTH LOC
	718.49	.....	CONTRACTURE OF JOINT MULT LOC
	718.50	.....	ANKYLOSIS OF JOINT UNSPEC SITE
	718.51	.....	ANKYLOSIS OF SHOULDER
	718.52	.....	ANKYLOSIS OF JOINT UPPER ARM
	718.53	.....	ANKYLOSIS OF JOINT FOREARM

TABLE 2B.—ICD–9–CM DIAGNOSES INCLUDED IN THE DIAGNOSTIC CATEGORIES FOR CASE-MIX ADJUSTMENT VARIABLES—Continued

Diagnostic category	ICD–9–CM code**	Manifestation*	Short description of ICD–9–CM code
	718.54	.....	ANKYLOSIS OF JOINT HAND
	718.58	.....	ANKYLOSIS OF JOINT OTH LOC
	718.59	.....	ANKYLOSIS OF JOINT MULT LOC
	718.60	.....	UNSPED 'INTRAPELVIC PROTRUSION ACETAB
	718.7	.....	DEV DISLOC JOINT
	718.80	.....	OTH DERANGMENT JT NEC UNSPEC SITE
	718.81	.....	OTHER DERANGEMENT OF SHOULDER
	718.82	.....	OTH DERANGMENT JT NEC UPPER ARM
	718.83	.....	OTH DERANGMENT JT NEC FOREARM
	718.84	.....	OTH DERANGMENT JT NEC HAND
	718.88	.....	OTH DERANGMENT JT NEC OTH LOC
	718.89	.....	OTH DERANGMENT JT NEC MULT LOC
	718.9	.....	UNSPEC DERANGMENT JT
	719.1	.....	HEMARTHROSIS UNSPECIFIED SITE
	719.11	.....	HEMARTHROSIS SHOULDER
	719.12	.....	HEMARTHROSIS UPPER ARM
	719.13	.....	HEMARTHROSIS FOREARM
	719.14	.....	HEMARTHROSIS HAND
	719.18	.....	HEMARTHROSIS OTHER SPECIFIED
	719.19	.....	HEMARTHROSIS MULTIPLE SITES
	719.2	.....	VILLONODULAR SYNOVITIS UNSPECIFIED SITE
	719.21	.....	VILLONODULAR SYNOVITIS SHOULDER
	719.22	.....	VILLONODULAR SYNOVITIS UPPER ARM
	719.23	.....	VILLONODULAR SYNOVITIS FOREARM
	719.24	.....	VILLONODULAR SYNOVITIS HAND
	719.28	.....	VILLONODULAR SYNOVITIS OTHER SITES
	719.29	.....	VILLONODULAR SYNOVITIS MULTIPLE SITES
	719.3	.....	PALANDROMIC RHEUMATISM UNSPECIFIED SITE
	719.31	.....	PALANDROMIC RHEUMATISM SHOULDER
	719.32	.....	PALANDROMIC RHEUMATISM UPPER ARM
	719.33	.....	PALANDROMIC RHEUMATISM FOREARM
	719.34	.....	PALANDROMIC RHEUMATISM HAND
	719.38	.....	PALANDROMIC RHEUMATISM OTHER SITES
	719.39	.....	PALANDROMIC RHEUMATISM MULTIPLE SITES
	720.0	.....	ANKYLOSING SPONDYLITIS
	720.1	.....	SPINAL ENTHESOPATHY
	720.2	.....	SACROILIITIS NEC
	720.8	M	OTHER INFLAMMATORY SPONDYLOPATHIES
	720.81	M	SPONDYLOPATHY IN OTH DI
	720.89	.....	OTHER INFLAMMATORY SPONDYLOPATHIES
	720.9	.....	UNSPEC INFLAMMATORY SPONDYLOPATHY
	721	.....	SPONDYLOSIS AND ALLIED DISORDERS
	722.0	.....	DISPLACEMENT OF CERVICAL INTERVERTEBRAL DISC WITHOUT MYELOPATHY
	722.1	.....	DISPLACEMENT OF THORACIC OR LUMBAR INTERVERTEBRAL DISC WITHOUT MYELOPATHY
	722.2	.....	DISPLACEMENT OF INTERVERTEBRAL DISC, SITE UNSPECIFIED, WITHOUT MYELOPATHY
	722.4	.....	DEGENERATION OF CERVICAL INTERVERTEBRAL DISC
	722.5	.....	DEGENERATION OF THORACIC OR LUMBAR INTERVERTEBRAL DISC
	722.6	.....	DEGENERATION OF INTERVERTEBRAL DISC, SITE UNSPECIFIED
	722.7	.....	INTERVERTEBRAL DISC DISORDER WITH MYELOPATHY
	722.8	.....	POSTLAMINECTOMY SYNDROME
	722.9	.....	OTHER AND UNSPECIFIED DISC DISORDER
	723.0	.....	SPINAL STENOSIS OF CERVICAL REGION
	723.1	.....	CERVICALGIA
	723.2	.....	CERVICOCRANIAL SYNDROME
	723.3	.....	CERVICOBRACHIAL SYNDROME
	723.4	.....	BRACHIA NEURITIS OR RADICULITIS
	723.5	.....	TORTICOLLIS, UNSPECIFIED
	723.6	.....	PANNICULITIS SPECIFIED AS AFFECTING NECK
	723.7	.....	OSSIFICATION OF POSTERIOR LONGITUDINAL LIGAMENT IN CERVICAL REGION
	723.8	.....	OTHER SYNDROMES AFFECTING CERVICAL REGION
	723.9	.....	UNSPEC MUSCULOSKEL SX OF NECK
	724	.....	OTHER&UNSPECIFIED DISORDERS OF BACK
	725	.....	POLYMYALGIA RHEUMATICA
	726.0	.....	ADHESIVE CAPSULITIS

TABLE 2B.—ICD–9–CM DIAGNOSES INCLUDED IN THE DIAGNOSTIC CATEGORIES FOR CASE-MIX ADJUSTMENT VARIABLES—Continued

Diagnostic category	ICD–9–CM code**	Manifestation*	Short description of ICD–9–CM code
	726.10	.....	DISORDERS OF BURSAE AND TENDONS
	726.11	.....	CALCIFYING TENDINITIS
	726.12	.....	BICIPITAL TENOSYNOVITIS
	726.19	.....	ROTATOR CUFF SYNDROME OTHER
	727.61	.....	COMPLETE RUPTURE OF ROTATOR CUFF
	728.0	.....	INFECTIVE MYOSITIS
	728.10	.....	CALCIFICATION AND OSSIFICATION, UNSPECIFIED
	728.11	.....	PROGRESSIVE MYOSITIS OSSIFICANS
	728.12	.....	TRAUMATIC MYOSITIS OSSIFICATIONS
	728.13	.....	POST OP HETEROTOPIC CALCIFICATION
	728.19	.....	OTHER MUSCULAR CALCIFICATION AND OSSIFICATION
	728.2	.....	MUSCULAR WASTING AND DISUSE ATROPHY
	728.3	.....	OTHER SPECIFIC MUSCLE DISORDERS
	728.4	.....	LAXITY OF LIGAMENT
	728.5	.....	HYPERMOBILITY SYNDROME
	728.6	.....	CONTRACTURE OF PALMAR FASCIA
	730.00	.....	AC OSTEOMYELITIS-UNSPEC
	730.01	.....	AC OSTEOMYELITIS-SHLDER
	730.02	.....	AC OSTEOMYELITIS-UP/ARM
	730.03	.....	AC OSTEOMYELITIS-FOREAR
	730.04	.....	AC OSTEOMYELITIS-HAND
	730.08	.....	AC OSTEOMYELITIS NEC
	730.09	.....	AC OSTEOMYELITIS-MULT
	730.10	.....	CHR OSTEOMYELITIS-UNSP
	730.11	.....	CHR OSTEOMYELIT-SHLDER
	730.12	.....	CHR OSTEOMYELIT-UP/ARM
	730.13	.....	CHR OSTEOMYELIT-FOREARM
	730.14	.....	CHR OSTEOMYELIT-HAND
	730.18	.....	CHR OSTEOMYELIT NEC
	730.19	.....	CHR OSTEOMYELIT-MULT
	730.20	.....	OSTEOMYELITIS NOS-UNSPE
	730.21	.....	OSTEOMYELITIS NOS-SHLDE
	730.22	.....	OSTEOMYELITIS NOS-UP/AR
	730.23	.....	OSTEOMYELIT NOS-FOREARM
	730.24	.....	OSTEOMYELITIS NOS-HAND
	730.28	.....	OSTEOMYELIT NOS-OTH SIT
	730.29	.....	OSTEOMYELITIS NOS-MULT
	730.30	.....	PERIOSTITIS-UNSPEC
	730.31	.....	PERIOSTITIS-SHLDER
	730.32	.....	PERIOSTITIS-UP/ARM
	730.33	.....	PERIOSTITIS-FOREARM
	730.34	.....	PERIOSTITIS-HAND
	730.38	.....	PERIOSTITIS NEC
	730.39	.....	PERIOSTITIS-MULT
	730.70	M	POLIO OSTEOPATHY-UNSPEC
	730.71	M	POLIO OSTEOPATHY-SHLDER
	730.72	M	POLIO OSTEOPATHY-UP/ARM
	730.73	M	POLIO OSTEOPATHY-FOREAR
	730.74	M	POLIO OSTEOPATHY-HAND
	730.78	M	POLIO OSTEOPATHY NEC
	730.79	M	POLIO OSTEOPATHY-MULT
	730.80	M	BONE INFECT NEC-UNSPEC
	730.81	M	BONE INFECT NEC-SHLDER
	730.82	M	BONE INFECT NEC-UP/ARM
	730.83	M	BONE INFECT NEC-FOREARM
	730.84	M	BONE INFECT NEC-HAND
	730.88	M	BONE INFECT NEC-OTH SIT
	730.89	M	BONE INFECT NEC-MULT
	730.90	.....	BONE INFEC NOS-UNSP SIT
	730.91	.....	BONE INFECT NOS-SHLDER
	730.92	.....	BONE INFECT NOS-UP/ARM
	730.93	.....	BONE INFECT NOS-FOREARM
	730.94	.....	BONE INFECT NOS-HAND
	730.98	.....	BONE INFECT NOS-OTH SIT
	730.99	.....	BONE INFECT NOS-MULT
	731.0	.....	OSTEITIS DEFORMANS W/O BN TUMR
	731.1	M	OSTEITIS DEFORMANS DZ CLASS ELSW
	731.2	.....	HYPERTROPH PULM OSTEOARTHROPATHY
	731.8	M	OTH BONE INVOLVEMENT DZ CLASS EL
	732	.....	OSTEOCHONDROPATHIES

TABLE 2B.—ICD–9–CM DIAGNOSES INCLUDED IN THE DIAGNOSTIC CATEGORIES FOR CASE-MIX ADJUSTMENT VARIABLES—Continued

Diagnostic category	ICD–9–CM code**	Manifestation*	Short description of ICD–9–CM code
	733.10	.....	PATHOLOGIC FRACTURE UNSPEC
	733.11	.....	PATHOLOGIC FRACTURE HUMERUS
	733.12	.....	PATHOLOGIC FRACTURE DISTAL RADIUS ULNA
	733.13	.....	PATHOLOGIC FRACTURE OF VERTEBRAE
	733.19	.....	PATHOLOGIC FRACTURE OTH SPEC SITE
	800	.....	FRACTURE OF VAULT OF SKULL
	801	.....	FRACTURE OF BASE OF SKULL
	802	.....	FRACTURE OF FACE BONES
	803	.....	OTHER&UNQUALIFIED SKULL FRACTURES
	804	.....	MX FX INVLV SKULL/FACE W/OTH BNS
	805	.....	FX VERT COLUMN W/O SP CRD INJR
	807	.....	FRACTURE RIB STERNUM LARYNX&TRACHEA
	809	.....	ILL-DEFINED FRACTURES BONES TRUNK
	810	.....	FRACTURE OF CLAVICLE
	811	.....	FRACTURE OF SCAPULA
	812	.....	FRACTURE OF HUMERUS
	813	.....	FRACTURE OF RADIUS AND ULNA
	814	.....	FRACTURE OF CARPAL BONE
	815	.....	FRACTURE OF METACARPAL BONE
	816	.....	FRACTURE ONE OR MORE PHALANGES HAND
	817	.....	MULTIPLE FRACTURES OF HAND BONES
	818	.....	ILL-DEFINED FRACTURES OF UPPER LIMB
	819	.....	MX FX UP LIMBS&LIMBS W/RIB&STERNUM
	831	.....	DISLOCATION OF SHOULDER
	832	.....	DISLOCATION OF ELBOW
	833	.....	DISLOCATION OF WRIST
	837	.....	DISLOCATION OF ANKLE
	838	.....	DISLOCATION OF FOOT
	846	.....	SPRAINS&STRAINS SACROILIAC REGION
	847	.....	SPRAINS&STRAINS OTH&UNS PART BACK
Psych 1—Affective and other psychoses, depression.	295	.....	SCHIZOPHRENIA
	296	.....	AFFECTIVE PSYCHOSES
	297	.....	DELUSIONAL DIS
	298	.....	OTH PSYCHOSES
	311	.....	DEPRESSIVE DISORDER NEC
Psych 2—Degenerative and other organic psychiatric disorders.	331.0	.....	ALZHEIMER'S DISEASE
	331.11	.....	PICK'S DISEASE
	331.19	.....	OTH FRONTO-TEMPORAL DEMENTIA
	331.2	.....	SENILE DEGENERAT BRAIN
	331.3	.....	COMMUNICAT HYDROCEPHALUS
	331.4	.....	OBSTRUCTIV HYDROCEPHALUS
	331.7	M	CEREB DEGEN IN OTH DIS
	331.81	.....	REYE'S SYNDROME
	331.82	.....	DEMENTIA WITH LEWY BODIES
	331.89	.....	CEREB DEGENERATION NEC
	331.9	.....	CEREB DEGENERATION NOS
	290.0	M	SENILE DEMENTIA, UNCOMPLICATED
	290.10	M	PRESENILE DEMENTIA UNCOMP
	290.11	M	PRESENILE DEMENTIA WITH DELIRIUM
	290.12	M	PRESENILE DEMENTIA WITH DELUSIONAL FEATURES
	290.13	M	PRESENILE DEMENTIA WITH DEPRESSIVE FEATURES
	290.20	M	SENILE DEMENTIA WITH DELUSIONAL FEATURES
	290.21	M	SENILE DEMENTIA WITH DEPRESSIVE FEATURES
	290.3	M	SENILE DEMENTIA WITH DELIRIUM
	290.40	M	VASCULAR DEMENTIA, UNCOMPLICATED
	290.41	M	VASCULAR DEMENTIA, WITH DELIRIUM
	290.42	M	VASCULAR DEMENTIA, WITH DELUSIONS
	290.43	M	VASCULAR DEMENTIA, WITH DEPRESSED MOOD
	291.1	.....	ALCOHOL PSYCHOSIS
	291.2	.....	ALCOHOL DEMENTIA
	292.8	.....	DRUG PSYCHOSES
	294.0	M	AMNESTIC DISORD OTH DIS
	294.1	M	DEMENTIA
	294.8	.....	MENTAL DISOR NEC OTH DIS
	294.9	.....	MENTAL DISOR NOS OTH DIS
Pulmonary disorders	491	.....	CHRONIC BRONCHIT
	492	.....	EMPHYSEMA
	493.2	.....	ASTHMA

TABLE 2B.—ICD–9–CM DIAGNOSES INCLUDED IN THE DIAGNOSTIC CATEGORIES FOR CASE-MIX ADJUSTMENT VARIABLES—Continued

Diagnostic category	ICD–9–CM code**	Manifestation*	Short description of ICD–9–CM code
	496	.....	CHRONIC AIRWAY OBSTRUCTION NEC
Skin 1—Traumatic wounds, burns and post-operative complications.	870	.....	OPEN WOUND OF OCULAR ADNEXA
	872	.....	OPEN WOUND OF EAR
	873	.....	OTHER OPEN WOUND OF HEAD
	874	.....	OPEN WOUND OF NECK
	875	.....	OPEN WOUND OF CHEST
	876	.....	OPEN WOUND OF BACK
	877	.....	OPEN WOUND OF BUTTOCK
	878	.....	OPEN WND GNT ORGN INCL TRAUMAT AMP
	879	.....	OPEN WOUND OTH&UNSPEC SITE NO LIMBS
	880	.....	OPEN WOUND OF SHOULDER&UPPER ARM
	881	.....	OPEN WOUND OF ELBOW FOREARM&WRIST
	882	.....	OPEN WOUND HAND EXCEPT FINGER ALONE
	883	.....	OPEN WOUND OF FINGER
	884	.....	MX&UNSPEC OPEN WOUND UPPER LIMB
	885	.....	TRAUMATIC AMPUTATION OF THUMB
	886	.....	TRAUMATIC AMPUTATION OTHER FINGER
	887	.....	TRAUMATIC AMPUTATION OF ARM&HAND
	890	.....	OPEN WOUND OF HIP AND THIGH
	891	.....	OPEN WOUND OF KNEE, LEG , AND ANKLE
	892	.....	OPEN WOUND OF FOOT EXCEPT TOE ALONE
	893	.....	OPEN WOUND OF TOE
	894	.....	MX&UNSPEC OPEN WOUND LOWER LIMB
	895	.....	TRAUMATIC AMPUTATION OF TOE
	896	.....	TRAUMATIC AMPUTATION OF FOOT
	941	.....	BURN OF FACE, HEAD, AND NECK
	942	.....	BURN OF TRUNK
	943	.....	BURN UPPER LIMB EXCEPT WRIST&HAND
	944	.....	BURN OF WRIST AND HAND
	945	.....	BURN OF LOWER LIMB
	946	.....	BURNS OF MULTIPLE SPECIFIED SITES
	948	.....	BURN CLASS ACCORD-BODY SURF INVOLVD
	949	.....	BURN, UNSPECIFIED SITE
	927	.....	CRUSHING INJURY OF UPPER LIMB
	951	.....	INJURY TO OTHER CRANIAL NERVE
	955.0	.....	INJURY TO AXILLARY NERVE
	955.1	.....	INJURY TO MEDIAN NERVE
	955.2	.....	INJURY TO ULNAR NERVE
	955.3	.....	INJURY TO RADIAL NERVE
	955.4	.....	INJURY TO MUSCULOCUTANEOUS NERVE
	955.5	.....	INJURY TO CUTANEOUS SENSORY NERVE, UPPER LIMB
	955.6	.....	INJURY TO DIGITAL NERVE
	955.7	.....	INJURY TO OTHER SPECIFIED NERVE(S) SHOULDER GIRDLE AND UPPER LIMB
	955.9	.....	INJURY TO UNSPEC NERVE(S) SHOULDER GIRDLE AND UPPER LIMB
	956.2	.....	INJURY TO POSTERIOR TIBIAL NERVE
	956.3	.....	INJURY TO PERONEAL NERVE
	956.4	.....	INJURY TO CUTANEOUS SENSORY NERVE, LOWER LIMB
	956.5	.....	INJURY TO OTHER SPECIFIED NERVE(S) OF PELVIC GIRDLE AND LOWER LIMB
	956.9	.....	INJURY TO UNSPECIFIED NERVE OF PELVIC GIRDLE AND LOWER LIMB
	998.1	.....	HEMORR/HEMAT/SEROMA COMP PROC NEC
	998.2	.....	ACC PUNCT/LACRATION DURING PROC NEC
	998.3	.....	DISRUPTION OF OPERATION WOUND NEC
	998.4	.....	FB ACC LEFT DURING PROC NEC
	998.5	.....	POSTOPERATIVE INFECTION NEC
	998.6	.....	PERSISTENT POSTOPERATIVE FIST NEC
	998.83	.....	NON-HEALING SURGICAL WOUND NEC
Skin 2—Ulcers and other skin conditions	440.23	.....	ATHEROSCLER-ART EXTREM W/ULCERATION
	707.1	.....	ULCER LOWER LIMBS EXCEPT DECUBITUS
	707.8	.....	CHRONIC ULCER OTHER SPECIFIED SITE
	707.9	.....	CHRONIC ULCER OF UNSPECIFIED SITE
	681	.....	CELLULITIS&ABSCESS OF FINGER&TOE
	683	.....	ACUTE LYMPHADENITIS
	684	.....	IMPETIGO
	685	.....	PILONIDAL CYST
	686	.....	OTH LOCAL INF SKIN&SUBCUT TISSUE

TABLE 2B.—ICD–9–CM DIAGNOSES INCLUDED IN THE DIAGNOSTIC CATEGORIES FOR CASE-MIX ADJUSTMENT VARIABLES—Continued

Diagnostic category	ICD–9–CM code**	Manifestation*	Short description of ICD–9–CM code
	440.24	.....	ATHERSCLER-ART EXTREM W/GANGRENE
	785.4	M	GANGRENE
	565	.....	ANAL FISSURE AND FISTULA
	566	.....	ABSCESS OF ANAL AND RECTAL REGIONS
	682	.....	OTHER CELLULITIS AND ABSCESS
	680	.....	CARBUNCLE AND FURUNCLE

*We are aware that some of these codes or code categories involve manifestation codes. The ICD–9–CM Official Guidelines for Coding and Reporting requires that the underlying disease or condition code be sequenced first followed by the manifestation code. The underlying disease codes associated with the manifestation codes are not listed in Table 2b, and these underlying codes were not specified in the analysis process. However, when reporting certain conditions that have both an underlying etiology and body system manifestations due to the underlying etiology, the appropriate sequencing must be followed according to the ICD–9–CM Coding Guidelines. Equally important, the reported etiology must be valid for the manifestation specified.

****Note:** "ICD–9–CM Official Guidelines for Coding and Reporting" dictate that a three-digit code is to be used only if it is not further subdivided. Where fourth-digit subcategories and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. Codes with three digits are included in ICD–9–CM as the heading of a category of codes that may be further subdivided by the use of fourth and/or fifth digits, which provide greater detail. The category codes listed in Table 2b include all the related 4- and 5-digit codes.

d. Determining the Case-Mix Weights

In the case-mix model adopted in July 2000, we examined the sum of scores for the clinical dimension of the system, and the sum of scores for the functional dimension, and determined ranges of scores to assign a severity level. For example, in the original case-mix model adopted in July 2000, severity levels ranged from minimum to high for the clinical dimension. Severity levels were used to derive regression coefficients for calculating case-mix relative weights. The calculated coefficients from this regression, which we call the payment regression, were displayed in the July 3, 2000 **Federal Register** (65 FR 41201) ("Regression Coefficients for Calculating Case-Mix Relative Weights").

Now using the proposed four-equation case-mix model, we again derived severity levels for the clinical, functional, and services utilization dimensions. We classified activities of daily living variables as functional variables, diagnostic, interaction, and other OASIS variables as clinical variables, and therapy-related variables (threshold variables and visit count variables) as services utilization variables. For each episode in the sample, we summed the variables' scores by dimension. Then, we examined the range of summed scores within each equation and threshold group of the sample, in order to determine severity level intervals. We determined how many severity levels to define for each of the equation/threshold groups based on the relative number of episodes in a potential severity level, and on the clustering of summed scores. In addition, for the services utilization dimension, which is based only on therapy visit utilization, we defined severity intervals based on relatively small aggregates (ones, twos, and threes) of therapy visits above the six-visit threshold up to 13 visits (equations 1 and 3) and above the 14-visit therapy threshold, up to 19 therapy visits (equations 2 and 4). Our goal was to ensure payment graduation due to added numbers of therapy visits between thresholds, without creating too many severity levels.

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Table 3: Severity Group Definitions: Four-Equation Model

Dimension		1st & 2nd Episodes		3rd+ Episodes		All Episodes
		0 to 13 therapy visits	14 to 19 therapy visits	0 to 13 therapy visits	14 to 19 therapy visits	20+ therapy visits
	Equation->	1	2	3	4	(2&4)
	Severity Levels:					
Clinical	C1	0 to 4	0 to 4	0 to 2	0 to 4	0 to 4
	C2	5 to 9	5 to 12	3 to 4	5 to 12	5 to 12
	C3	10+	13+	5+	13+	13+
Functional	F1	0 to 3	0 to 5	0 to 8	0 to 8	0 to 5
	F2	4 to 5	6 to 8	9 to 13	9 to 13	6 to 8
	F3	6+	9+	14+	14+	9+
Services Utilization (number of therapy visits)	S1	0 to 5	14 to 15	0 to 5	14 to 15	20+ (One Group)
	S2	6	16 to 17	6	16 to 17	
	S3	7 to 9	18 to 19	7 to 9	18 to 19	
	S4	10		10		
	S5	11 to 13		11 to 13		

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We derived the relative payment weights for the proposed four-equation model using the same kind of payment regression we employed in July 2000. The sample episodes were classified into severity levels as just described. We defined indicator variables for the payment regression based on these severity classifications. The major difference between the July 2000 payment regression and the one in this

proposal is that additional indicator variables were defined to identify the episodes classified into each equation of the four-equation model, as well as certain thresholds and therapy visit intervals. Including the indicator variables allows us to combine information derived from the four-equation model into a single payment regression equation. For example, an indicator variable was created for the group of later episodes below 14 therapy visits and, within this group, indicator variables were created for the six-visit therapy threshold and successive therapy-visit aggregates. See the table of regression coefficients (Table 4) for the remaining indicator variables; the indicator variables for the underlying four equations are denoted by the terms "constant" and "intercept." An additional indicator variable denoted by a constant was used for all episodes with at least 20 therapy visits; it is explained further below.

As with the original HH PSS rule, regression coefficients in Table 4 represent the average addition to resource cost due to each severity level. (To show the coefficients in actual, as opposed to resource cost, dollars, the coefficients were scaled by a multiplier representing the ratio of the HH PPS average payment level to the Abt Associates average resource cost level.) However, the severity level coefficients in Table 4 are specific to the classification of the episode in the four-equation model; for example, only for early episodes below 14 therapy visits are the severity level coefficients $861.74 for the third clinical severity level, and $219.44 for the second functional severity level.

The lowest-severity case-mix group is the base group for the payment regression, whose predicted cost is the regression intercept value of $1,265.18. This group consists of the lowest clinical, functional, and services utilization severity levels for episodes classified as early episodes below the 14-visit therapy threshold (Equation 1 of the four-equation model). The service severity level for this group is severity level 1 (S1), which comprises episodes of 0 to 5 therapy visits.

To use the results of the payment regression for determining payments, find the severity level coefficients for the applicable equation and add those amounts to the regression intercept and to the constant for the applicable equation. There is no constant for the first equation/group, the early episodes below the 14-visit therapy threshold; for this group, the constant is the regression intercept. For example, later episodes below the 14-visit therapy threshold with clinical severity level 2, functional severity level 1, and service severity level 2 have the following scaled coefficients summed to represent the resource cost: $1,265.18 for the regression intercept; $139.26 for the second clinical severity level; $645.90 for the second service severity level (6 therapy visits); and $210.94, a constant amount for all later episodes below 14 therapy visits. The constant incorporates the predicted average resource cost for the lowest functional severity group. The predicted average resource cost, $2,261.28, is the sum of these four coefficients from the regression. Table 5 shows the results of the computational procedure for all combinations of severity levels within each equation/threshold group.

TABLE 4.—REGRESSION COEFFICIENTS FOR CALCULATING CASE-MIX RELATIVE WEIGHTS

Intercept (constant for all case mix groups)	$1,265.18
1st and 2nd Episodes, 0 to 13 Therapy Visits	
C2	380.66
C3	861.74
F2	219.44
F3	379.06
S2 (6 therapy visits)	499.96
S3 (7–9 therapy visits)	935.02
S4 (10 therapy visits)	1,375.38
S5 (11–13 therapy visits)	1,755.92
1st and 2nd Episodes, 14 to 19 Therapy Visits	
Constant	2,171.56
C2	534.70
C3	1,246.47
F2	268.36
F3	425.68
S2 (16–17 therapy visits)	425.49
S3 (18–19 therapy visits)	698.92
3rd+ Episodes, 0 to 13 Therapy Visits	
Constant	210.94
C2	139.26
C3	613.76
F2	414.74
F3	818.25
S2 (6 therapy visits)	645.90
S3 (7–9 therapy visits)	1,083.30
S4 (10 therapy visits)	1,507.60
S5 (11–13 therapy visits)	1,890.78
3rd+ Episodes, 14 to 19 Therapy Visits	
Constant	2,178.93
C2	672.65
C3	1,392.59
F2	390.72
F3	687.07
S2 (16–17 therapy visits)	292.06
S3 (18–19 therapy visits)	712.62
All Episodes, 20+ Therapy Visits	
Constant	3,996.82
C2	578.49
C3	1,383.67
F2	485.73
F3	1,043.13

Note: Regression coefficients were scaled by multiplier representing the ratio of the HH PS average payment level to the Abt Associates average resource cost level.

The payment regression in Table 4 reflects a decision to group together early and later episodes for purposes of deriving the payment regression coefficients for episodes at or above the 20-visit therapy threshold. This has the advantage of producing a lower number of case-mix groups than we would have had without grouping. Earlier analysis had revealed that the coefficients, predicted average resource cost, and relative weights of the case-mix groups for episodes of 20 or more therapy visits in Equations 2 (early episodes) and 4 (later episodes) had very similar values. Specifically, of the 9 case groups defined for these noted episodes in each equation (a total of 18 groups), the relative weights did not differ by more than 3.5 percent for 7 pairs of groups; in the remaining two pairs of groups, the difference was slightly more than 7 percent. Because of the virtually identical values, we specified our payment regression procedure to produce a single set of case-mix groups for all episodes in the 20-visit threshold group, with the result that the relative case-mix weights do not differ according to whether the episode is early or later. This final step produced a total of 153 case-mix groups.

The predicted average resource cost for each case-mix group is shown in Table 5. As with the coefficients in Table 4, these values are scaled up from the resource cost values used to model the case-mix, using a single multiplier. The multiplier allows us to report the coefficients and the predicted average resource cost using dollars of the same magnitude as the payments we would make. It does not change the relationships among the predicted average resource costs, which are the values that determine the relative case mix weights.

We used the predicted average resource costs for the 153 case-mix groups to calculate the relative case-mix weights. The relative case-mix weight for a case-mix group is simply the predicted average resource cost for the group divided by the sample's overall

average resource cost. Table 5 shows the final relative case-mix weights, after we applied two further adjustments, the budget neutrality adjustment and the adjustment for nominal changes in case-mix coding, which are explained further in this section II.A.2.c.

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Table 5: Case Mix Groups, Average Cost, and Case Mix Weight

Severity Level for Each Dimension				
Clinical	Functional	Services Utilization	Average Cost	Case mix weight
1st and 2nd Episodes, 0 to 13 Therapy Visits+C47				
C1	F1	S1	$1,265.18	0.5549
C1	F1	S2	$1,765.14	0.7742
C1	F1	S3	$2,200.21	0.9650
C1	F1	S4	$2,640.57	1.1582
C1	F1	S5	$3,021.10	1.3251
C1	F2	S1	$1,484.63	0.6512
C1	F2	S2	$1,984.59	0.8705
C1	F2	S3	$2,419.65	1.0613
C1	F2	S4	$2,860.01	1.2544
C1	F2	S5	$3,240.54	1.4213
C1	F3	S1	$1,644.25	0.7212
C1	F3	S2	$2,144.20	0.9405
C1	F3	S3	$2,579.27	1.1313
C1	F3	S4	$3,019.63	1.3244
C1	F3	S5	$3,400.16	1.4914
C2	F1	S1	$1,645.84	0.7219
C2	F1	S2	$2,145.80	0.9412
C2	F1	S3	$2,580.86	1.1320
C2	F1	S4	$3,021.22	1.3251
C2	F1	S5	$3,401.76	1.4921
C2	F2	S1	$1,865.28	0.8181
C2	F2	S2	$2,365.24	1.0374
C2	F2	S3	$2,800.30	1.2282
C2	F2	S4	$3,240.66	1.4214
C2	F2	S5	$3,621.20	1.5883
C2	F3	S1	$2,024.90	0.8881
C2	F3	S2	$2,524.86	1.1074
C2	F3	S3	$2,959.92	1.2983
C2	F3	S4	$3,400.28	1.4914
C2	F3	S5	$3,780.82	1.6583
C3	F1	S1	$2,126.92	0.9329
C3	F1	S2	$2,626.88	1.1522
C3	F1	S3	$3,061.95	1.3430
C3	F1	S4	$3,502.30	1.5362
C3	F1	S5	$3,882.84	1.7031
C3	F2	S1	$2,346.36	1.0291
C3	F2	S2	$2,846.32	1.2484
C3	F2	S3	$3,281.39	1.4393
C3	F2	S4	$3,721.75	1.6324
C3	F2	S5	$4,102.28	1.7993

C3	F3	S1	$2,505.98	1.0992
C3	F3	S2	$3,005.94	1.3184
C3	F3	S3	$3,441.01	1.5093
C3	F3	S4	$3,881.36	1.7024
C3	F3	S5	$4,261.90	1.8693
1st and 2nd Episodes, 14 to 19 Therapy Visits				
C1	F1	S1	$3,436.74	1.5074
C1	F1	S2	$3,862.24	1.6940
C1	F1	S3	$4,135.66	1.8140
C1	F2	S1	$3,705.10	1.6251
C1	F2	S2	$4,130.60	1.8117
C1	F2	S3	$4,404.02	1.9317
C1	F3	S1	$3,862.42	1.6941
C1	F3	S2	$4,287.92	1.8807
C1	F3	S3	$4,561.34	2.0007
C2	F1	S1	$3,971.44	1.7419
C2	F1	S2	$4,396.94	1.9285
C2	F1	S3	$4,670.36	2.0485
C2	F2	S1	$4,239.80	1.8596
C2	F2	S2	$4,665.29	2.0463
C2	F2	S3	$4,938.72	2.1662
C2	F3	S1	$4,397.12	1.9286
C2	F3	S2	$4,822.61	2.1153
C2	F3	S3	$5,096.04	2.2352
C3	F1	S1	$4,683.21	2.0541
C3	F1	S2	$5,108.71	2.2407
C3	F1	S3	$5,382.14	2.3607
C3	F2	S1	$4,951.57	2.1718
C3	F2	S2	$5,377.07	2.3584
C3	F2	S3	$5,650.49	2.4784
C3	F3	S1	$5,108.89	2.2408
C3	F3	S2	$5,534.39	2.4274
C3	F3	S3	$5,807.81	2.5474
3rd+ Episodes, 0 to 13 Therapy Visits				
C1	F1	S1	$1,476.12	0.6474
C1	F1	S2	$2,122.02	0.9307
C1	F1	S3	$2,559.43	1.1226
C1	F1	S4	$2,983.72	1.3087
C1	F1	S5	$3,366.90	1.4768
C1	F2	S1	$1,890.87	0.8294
C1	F2	S2	$2,536.77	1.1127
C1	F2	S3	$2,974.17	1.3045
C1	F2	S4	$3,398.46	1.4906
C1	F2	S5	$3,781.65	1.6587

C1	F3	S1	$2,294.37	1.0063
C1	F3	S2	$2,940.27	1.2896
C1	F3	S3	$3,377.68	1.4815
C1	F3	S4	$3,801.97	1.6676
C1	F3	S5	$4,185.16	1.8357
C2	F1	S1	$1,615.38	0.7085
C2	F1	S2	$2,261.28	0.9918
C2	F1	S3	$2,698.68	1.1837
C2	F1	S4	$3,122.98	1.3698
C2	F1	S5	$3,506.16	1.5378
C2	F2	S1	$2,030.13	0.8904
C2	F2	S2	$2,676.03	1.1737
C2	F2	S3	$3,113.43	1.3656
C2	F2	S4	$3,537.72	1.5517
C2	F2	S5	$3,920.91	1.7198
C2	F3	S1	$2,433.63	1.0674
C2	F3	S2	$3,079.53	1.3507
C2	F3	S3	$3,516.93	1.5426
C2	F3	S4	$3,941.23	1.7287
C2	F3	S5	$4,324.41	1.8967
C3	F1	S1	$2,089.88	0.9166
C3	F1	S2	$2,735.78	1.1999
C3	F1	S3	$3,173.18	1.3918
C3	F1	S4	$3,597.48	1.5779
C3	F1	S5	$3,980.66	1.7460
C3	F2	S1	$2,504.63	1.0986
C3	F2	S2	$3,150.53	1.3819
C3	F2	S3	$3,587.93	1.5737
C3	F2	S4	$4,012.22	1.7598
C3	F2	S5	$4,395.41	1.9279
C3	F3	S1	$2,908.13	1.2755
C3	F3	S2	$3,554.03	1.5588
C3	F3	S3	$3,991.43	1.7507
C3	F3	S4	$4,415.73	1.9368
C3	F3	S5	$4,798.91	2.1049
3rd+ Episodes, 14 to 19 Therapy Visits				
C1	F1	S1	$3,444.11	1.5106
C1	F1	S2	$3,736.18	1.6387
C1	F1	S3	$4,156.74	1.8232
C1	F2	S1	$3,834.83	1.6820
C1	F2	S2	$4,126.89	1.8101
C1	F2	S3	$4,547.46	1.9946
C1	F3	S1	$4,131.18	1.8120
C1	F3	S2	$4,423.25	1.9401

C1	F3	S3	$4,843.81	2.1246
C2	F1	S1	$4,116.76	1.8057
C2	F1	S2	$4,408.83	1.9338
C2	F1	S3	$4,829.39	2.1182
C2	F2	S1	$4,507.48	1.9770
C2	F2	S2	$4,799.54	2.1051
C2	F2	S3	$5,220.10	2.2896
C2	F3	S1	$4,803.83	2.1070
C2	F3	S2	$5,095.89	2.2351
C2	F3	S3	$5,516.45	2.4196
C3	F1	S1	$4,836.70	2.1214
C3	F1	S2	$5,128.77	2.2495
C3	F1	S3	$5,549.33	2.4340
C3	F2	S1	$5,227.42	2.2928
C3	F2	S2	$5,519.48	2.4209
C3	F2	S3	$5,940.04	2.6054
C3	F3	S1	$5,523.77	2.4228
C3	F3	S2	$5,815.83	2.5509
C3	F3	S3	$6,236.39	2.7354
All Episodes, 20+ Therapy Visits				
C1	F1	S1	$5,262.00	2.3080
C1	F2	S1	$5,747.74	2.5210
C1	F3	S1	$6,305.13	2.7655
C2	F1	S1	$5,840.50	2.5617
C2	F2	S1	$6,326.23	2.7748
C2	F3	S1	$6,883.63	3.0192
C3	F1	S1	$6,645.67	2.9149
C3	F2	S1	$7,131.41	3.1279
C3	F3	S1	$7,688.80	3.3724

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***Note:** Case-mix weight is after applying budget neutrality adjustment factor (see text for description of adjustment of the weights). Predicted average cost is calculated from the regression coefficients in Table 4.

The budget neutrality adjustment to the relative case-mix weights is required to achieve no change in outlays when moving from the original case-mix system to the proposed new case-mix system. The process of revising the case-mix system results in relative weights with an average value of 1.0 over all 1,656,551 sample episodes we used to represent the totality of reimbursable episodes in the first year of the new case-mix system. The budget neutrality adjustment restores the average case-mix weight that results from the revision process to the average level observed before implementing the proposed new case-mix system. To implement the budget neutrality adjustment, we used the constant budget neutrality factor to increase the weights for all 153 case-mix groups to the prior average level. The resulting adjusted case-mix weights prevent total payments under the proposed revised HH PPS system from dropping below a budget-neutral level. The budget neutrality adjustment factor is 1.194227193.

Based upon our review of trends in the national average case-mix index (CMI), we are proposing an additional adjustment to the HH PPS national standardized rate to account for case-mix upcoding that is not due to change in the underlying health status of home health users. Section 1895(b)(3)(B)(iv) of the Act specifically provides the Secretary with the authority to adjust the standard payment amount (or amounts) if the Secretary determines that the case-mix adjustments resulted (or would likely result in) a change in aggregate payments that are the result of changes in the coding or classification of different units of services that do not reflect real changes in case-mix. The Secretary may then adjust the payment amount to eliminate the effect of the coding or classification changes that do not reflect real changes in case-mix. To identify whether such an adjustment factor was needed, we first determined the current average case-mix weight per paid episode.

The most recent available data from which to compute an average case-mix weight, or case mix index, under the HH PPS is from 2003. Using the most current available data from 2003, the average case-mix weight per episode for initial episodes is 1.233. To proceed with this analysis, next we determined the baseline year needed to evaluate the trend in the average case-mix per episode.

There are two different baseline years that could be used to measure the increase in case-mix:

1. A Cohort Admitted to Home Care From October 1997 to April 1998 (the Abt Case-Mix Study Sample Which Was Used To Develop the Current Case-Mix Model)

There are several advantages to using data from this period of time as the baseline from which we measure the increase in case-mix. This time period is free from any anticipatory response to the HH PPS, and data from this time period were used to develop the original

HH PPS model. Also, this is the only nationally representative dataset from the 1997–1998 time period that measures patient characteristics using an OASIS assessment form comparable to the one adopted for the HH PPS. Because the Abt case-mix dataset was used to determine the current set of case-mix weights, the average case-mix weight in the sample equals 1.0. The sample's value of 1.0 provides a starting point from which to measure the increase in case-mix. The increase in the average case-mix using this time period as the baseline results in a 23.3 percent increase (from 1.0 to 1.233).

However, agencies included in the sample were volunteers for the study and cannot be considered a perfectly representative, unbiased sample. Furthermore, the response to Balanced Budget Act of 1997 provisions such as the home health interim payment system (HH IPS) during this period might produce data from this sample that reflect a case-mix in flux; for example, venipuncture patients were suddenly no longer eligible, and long-term-care patients were less likely to be admitted. Therefore, we are not confident the trend in the CMI between the time of the Abt Associates study and 2003 reflects only changes in nominal coding practices, as will be explained in more detail further below in this section. Therefore, we are not proposing to use this baseline year to determine the baseline.

2. 12 Months Ending September 30, 2000 (HH IPS Baseline)

Analysis of a 1 percent sample of initial episodes from the 1999–2000 data under the HH IPS revealed an average case-mix weight of 1.125. Standardized to the distribution of agency type (freestanding proprietary, freestanding not-for-profit, hospital-based, government, and SNF-based) that existed in 2003 under the HH PPS, the average weight was 1.134. We note this time period is likely not free from anticipatory response to the HH PPS, because we published our initial HH PPS proposal on October 28, 1999. The increase in the average case-mix using this time period as the baseline results in an 8.7 percent increase (from 1.134 to 1.233; 1.233–1.134=0.099; 0.099/1.134=0.087; 0.087*100=8.7%).

Since the HH IPS, reported severity has increased as episodes have shifted from low severity groups to high severity groups. Concurrently, there has been a reduction in resource utilization. For example, the number of visits per episode has significantly declined under the HH PPS since 1999. This decline is illustrated in Table 6.

TABLE 6.—AVERAGE NUMBER OF HOME HEALTH VISITS PER EPISODE

Year	Total home health hisits (excluding LUPAs)
1997	36.04
1998	31.56
IPS	25.51
2001	21.78
2002	21.44
2003	20.98

We believe that change in case-mix between the time of the Abt Associates case-mix study and the end of the HH IPS period reflected substantial change in real case-mix. First, throughout most of this period, HHAs had no incentive to bring about nominal changes in case-mix because case-mix was not a part of the payment system at that time.

Dramatic changes in the home health benefit also became evident under the HH IPS as a result of provisions of the Balanced Budget Act of 1997. Venipuncture patients were suddenly no longer eligible; members of this group often had multiple comorbidities and commonly used substantial amounts of personal care. In addition, according to a study in the literature, beneficiaries age 85 and older, as well as beneficiaries dually eligible for Medicare and Medicaid, were slightly less likely to be admitted to home care (McCall *et al.*, 2003). Both of these groups are associated with high needs for personal care services, suggesting that long-term care patients were less likely to be admitted under the HH IPS. The agency closure rates in States associated with high utilization (for example, Louisiana, Oklahoma, and Texas) also suggests that admissions among long-term care patients experienced decline. The OASIS data comparing the case-mix sample and the HH IPS period exhibit some consistency with these ideas, in that they indicate substantial decline in admission of the kinds of patients likely to be long-term homebound beneficiaries with chronic medical care needs—patients with diabetes, impaired vision, parenteral nutrition, bowel and urinary incontinence, behavioral problems, toileting dependency, and more-severe transferring dependency.

Various studies are consistent with the incentives created by the HH IPS per-beneficiary cost cap—particularly an incentive to admit many different patients with low care needs and/or for short periods to keep per-beneficiary costs low (MedPac, 1999; GAO, 1998; GAO, 1999; Smith *et al.*, 1999).

An important implication of these studies and our comparative OASIS data is that patients with intensive or lengthy needs for nursing and personal care services as opposed to short-term or rehabilitative needs were less likely to be found in the national home care caseload as a result of the HH IPS. This would mean that a larger share of patients in the caseload would have acute, post-acute, and rehabilitative needs. Practice patterns began to change concomitantly with the share of visits shifting towards rehabilitation services and, to a lesser extent skilled nursing. In 1997 through 1998, the average number of therapy visits per 60-day period was about 3, whereas by the last year of the HH IPS, it rose to 4.4, with growth moderating thereafter. Skilled nursing visits declined from more than 12 at the beginning of the HH IPS, and stabilized at slightly more than 9 under the HH PPS. Aide visits declined by 44 percent from 1997 to 2000, the last year of the HH IPS, and continued to decline at a slower rate under the HH PPS. An issue in interpreting these trends in the utilization data is the uncertainty about how much of the startling change in therapy provision was driven by patient case-mix, and how much was driven by an anticipatory response of the practice pattern itself to our proposals for the original HH PPS case-mix system. By using a 10-visit therapy threshold, the proposal installed a substantial payment increase for high-therapy episodes. If providers started responding to the incentives in the anticipated HH PPS even before it became effective, then our measure of case-mix change between the time of the Abt Associates case-mix study sample and the HH IPS baseline is affected by provider behavioral change that is not strictly reflective of the case-mix of the treated population.

In contrast to the 13.4 percent increase that we consider a real case-mix change, we believe that the 8.7 percent increase in the national case-mix index between the HH IPS baseline and CY 2003 cannot be considered a real increase in case-mix. The trend data on visits (Table 6), resource data (presented below), and our analysis of changes in rates of health characteristics on OASIS assessments and changes in reporting practices (presented in section II.A.3.c of this proposed rule) all lead to the conclusion that the underlying case-mix of the population of home health users actually was essentially stable between the IPS baseline and CY 2003. Our research shows that HHAs have reduced services (see Tables 6 and 7) while the CMI continued to rise (see Table 7). We would normally expect

growth in the CMI to be accompanied by more consumption of services; but, to the contrary, we measure slightly lower resource consumption. This is indicated by the data in Table 7 that illustrates, by quarter, the average resource cost per episode as well as the average CMI for initial (admissions) episodes and all episodes. (Note: In Table 7, the CMI data for the HH IPS quarters are not adjusted for distribution of agency types; that is, they do not reflect the adjustment to the HH IPS baseline that we cited earlier, which caused the HH IPS baseline to increase to 1.134 from 1.125). In addition, in Table 7, the average resource cost is not adjusted for wage inflation. If the average resource cost had been adjusted for wage inflation, there would be an even larger reduction in resource cost between the HH IPS and HH PPS.)

TABLE 7.—AVERAGE RESOURCE COST AND CMI

Period	Average resources	CMI admissions	CMI all
HH IPS:			
1999Q4	$477.06	1.1278	1.0823
2000Q1	467.70	1.1074	1.0815
2000Q2	466.59	1.1223	1.0982
2000Q3	469.52	1.1453	1.1138
HH PPS:			
2000Q4	N/A	N/A	N/A
2001Q1	432.84	1.1841	1.1622
2001Q2	440.73	1.1910	1.1774
2001Q3	445.59	1.1965	1.1724
2001Q4	446.93	1.2003	1.1818
2002Q1	452.48	1.2052	1.1800
2002Q2	453.89	1.1999	1.1835
2002Q3	456.69	1.2099	1.1832
2002Q4	460.10	1.2213	1.1957
2003Q1	453.74	1.2152	1.1889
2003Q2	459.97	1.2295	1.2018
2003Q3	458.86	1.2302	1.2002
2003Q4	462.59	1.2465	1.2159

According to the data in Table 7, in Year 2 (2002) of HH PPS, home health resources per episode for new admissions were approximately 2 percent lower than they were in the year immediately before implementation of HH PPS. At the same time, the national case-mix index for new admissions rose by approximately 0.02 per year. (The national case-mix index for all episodes, new and continuing, rose by approximately 0.01 per year.) By Year 3 (2003) of the HH PPS, home health resources per admission episode rose slightly above the Year 2 level, and then stabilized at levels similar to the HH IPS. The national CMI for new admissions continued to rise by about 0.02 per year (with the CMI for all episodes rising by about 0.01 per year).

Therefore, based upon our trend analysis described above, we believe the change in the case-mix index between the Abt case-mix sample (a cohort admitted between October 1997 and April 1998) and the HH IPS period (the 12 months ending September 30, 2000) is due to real case-mix change. We take this view, even though we understand that there may be some issue as to whether this period was affected by nominal case-mix change due to providers' anticipating, in the last year of HH IPS, the forthcoming case-mix system, with its incentives to intensify rehabilitation services. This change from these two periods is from 1.00 to 1.134, an increase of 13.4 percent. However, we are not proposing to adjust for case-mix change based on this change in values. However, we are proposing that the 8.7 percent of case-mix change that occurred between the 12 months ending September 30, 2000 (HH IPS baseline, CMI=1.134), and the most recent available data from 2003 (CMI=1.233), be considered a nominal change in the CMI that does not reflect a "real" change in case-mix.

In addition to the trend analysis above, we conducted several additional kinds of analyses of data and documentary materials related to home health case mix coding change. These analyses are described in detail in section II.A.3.e. The results support our view that the change in the CMI since the HH IPS baseline mostly reflects provider responses to the changes that accompanied the HH PPS, including particulars of the payment system itself and changes to OASIS reporting requirements. Our analyses indicated generally modest changes in overall OASIS health characteristics between the two periods noted above, a specific pattern of changes in scaled OASIS responses that is not indicative of material worsening of presenting health status, various changes in the OASIS reporting instructions that help account for numerous coding changes we observe, and a large increase in post-surgical patients with their traditionally lower case-mix index.

Our past experience establishing other prospective payment systems also led us to believe a proposal to make this adjustment for nominal change in case-mix is warranted. In other systems, Medicare payments were almost invariably found to be affected by nominal case-mix change. We are considering several options for implementing this case-mix adjustment. These options include incorporating the entire −8.7 percent adjustment in CY 2008, incorporating an adjustment of −5.0 percent in CY 2008 and an adjustment of −2.7 percent in CY 2009, and incorporating an adjustment of −4.35 percent in CY 2008 and an adjustment of −4.35 percent in CY 2009. However, because of the potential impact our proposed adjustment may have on providers, we are proposing and requesting comment on whether to adjust for the nominal increase in national average CMI by gradually reducing the national standardized 60-day episode payment rate over 3 years. During that period we would continue to update our estimate of nominal case-mix change and adjust the national standardized 60-day episode payment

rate accordingly for any nominal change in case-mix that might occur. We propose to implement a 3-year phase-in of the total downward adjustment for nominal changes in case-mix by reducing the national standardized 60-day episode payment rate by 2.75 percent each year up to and including CY 2010. This annual reduction percent is based on our current estimate of the nominal change in case-mix that has occurred between the HH IPS baseline (+0.099) and 2003. However, if, at the time of publication of the final CY 2008 HH PPS rule, updates of the national claims data to 2005 indicate that the nominal change in case-mix between the HH IPS baseline and 2005 is not +0.099, we would revise the percentage reduction in the next year's update. The revision would be determined by the ratio of the updated 3-year annual reduction factor to the previous year's annual reduction factor. For example, the scheduled annual reduction factor is now estimated to be 0.9725 (equivalent to a 2.75 percent reduction); for CY 2008 we would multiply this reduction factor by the ratio of the updated reduction factor to 0.9725. For the CY 2010 rule, which governs the third and final year of the case-mix adjustment transition period, we would obtain the CY 2007 national average CMI to compute the updated value for nominal case-mix adjustment. Again, we would form the ratio of the updated adjustment factor to the previous year's effective adjustment factor. The annual updating procedure avoids a large reduction for the final year of the phase-in, in the event that the CY 2007 national average case-mix index reflects continued growth since CY 2005. The calculation of the adjusted national prospective 60-day episode payment rate for case-mix and area wage levels is set forth in § 484.220. We are proposing to revise § 484.220 to address changes to case-mix that are not a real change in case-mix.

CMS proposes to adjust the national prospective 60-day episode payment rate to account for the following:

- HHA case-mix using a case-mix index to explain the relative resource utilization of different patients. To address changes to the case-mix that were a result of changes in the coding or classification of different units of service that did not reflect real changes in case-mix, the national prospective 60-day episode payment rate will be adjusted downward as follows:

—For CY 2008 the adjustment is 2.75 percent.

—For CY 2009 and CY 2010, the adjustment is 2.75 percent in each year.

- Geographic differences in wage levels using an appropriate wage index based on the site of service of the beneficiary.

We plan to continue to monitor changes in the national average CMI to determine if any adjustment for nominal change in case-mix is warranted in the future.

Accordingly, based upon our analysis and conclusions, we are proposing a new set of case-mix weights that reflect the four-equation model and a payment adjustment for the nominal change in the case-mix index described above. We arrived at these weights, listed in Table 5, by first determining relative weights for each of the 153 groups using the four-equation model and the payment regression. The definition for each of these groups based on clinical, functional, and service severity levels is described in Table 5. Each of these relative weights was adjusted by multiplying it by an adjustment factor to make the proposed payments budget-neutral to current estimated payments for CY 2008. This budget neutrality factor raised the proposed average case-mix weight to the case-mix index reflected by the most recent data available from 2003. The proposed budget-neutrality factor for 2008 is 1.194227193. Each budget neutral, adjusted, weight in Table 5 was calculated in the following manner: Relative Weight × 1.194227193. References to literature cited in this section:

N. McCall *et al.*, "Utilization of Home Health Services before and after the Balanced Budget Act of 1997: What Were the Initial Effects?" Health Services Research, Feb. 2003: 85–106.

MedPac, Report to the Congress: Selected Medicare Issues, June 1999: 105–115.

General Accounting Office (GAO), "Medicare Home Health Benefit: Impact of Interim Payment System and Agency Closures on Access to Services," GAO/HEHS–98–238, Sept. 1998.

General Accounting Office (GAO), "Medicare Home Health Agencies: Closures Continue, with Little Evidence Beneficiary Access Is Impaired," GAO/HEHS–99–120, May 1999.

B.M. Smith *et al.*, "An Examination of Medicare Home Health Services: A Descriptive Study of the Effects of the Balanced Budget Act Interim Payment System on Access to and Quality of Care," Center for Health Services Research and Policy, George Washington University, Sept. 1999.

3. Description and Analysis of Case-Mix Coding Change under the HH PPS

As stated in section II.A.2.c of this proposed rule, under section 1895(b)(3)(B)(iv) of the Act, we are proposing a reduction in HH PPS national standardized 60-Day episode payment rate to offset a change in coding practice that has resulted in significant growth in the national case-mix index (CMI) since the inception of the HH PPS that is not related to "real" change in case mix. The factor was determined by calculating the change in the national CMI between the HH IPS and the HH PPS.

In this section II.A.3, for purposes of illuminating the sources of CMI increase in terms of the case-mix system itself, we identify the severity levels with the largest growth between the two periods. We will provide, in Table 8, the percentage change in volume for each of the 80 case-mix groups, and summary statistics of the changes. Table 9 shows the rates of all OASIS assessment items in the two time periods. We will explain below our inferences from Table 9 about the comparative health status of the populations treated in the two time periods. Subsequent to that, we will explain our analysis of the changes to OASIS reporting instructions that were likely to have affected reported case mix. We also describe analyses we performed to quantify the effect on the CMI of increases in post-surgical episodes in the national caseload, and our interpretation of the analyses. We conclude with a summary and interpretation of our key findings from the descriptive analysis of OASIS assessment data, analysis of OASIS reporting instructions, and analysis of changes in post-surgical volume.

In making these analyses, we reviewed data from two samples. The first, the HH IPS sample, is the same sample used in section II.A.2.c of this proposed rule for determining the IPS baseline that we used to determine the proposed adjustment for nominal change in case-mix. The HH IPS sample is a 1 percent random sample of claims (total number of 18,480) with its matched start of care OASIS assessments from the 12 months immediately preceding HH PPS. We matched the assessments to determine what the patient's case-mix group would have been had HH PPS been in effect. To simulate 60-day episodes from actual claims we used the same method that was used to create the initial development sample for the HH PPS case-mix system. In performing the simulation, we took into account the timing of the start of care in relation to previous service periods, and used only 60-day periods that would have corresponded to initial episodes in a sequence of adjacent episodes that consisted of one or more simulated episodes. We considered initial episodes as the first episodes that follow

periods of at least 60 days without receiving home health service.

The second sample is a 20 percent sample of FY 2003 claims for initial episodes again matched to start of care OASIS assessments. In both samples, we corrected any initial errors in determining the beneficiary's pre-admission location that affected the HHRG before determining the HHRG. We made the correction by consulting the sample member's claims history for information about previous inpatient stays.

a. Change in Case-Mix Group Frequencies

Table 8 presents the share of the population assigned to each severity level of the case-mix system's three dimensions (clinical, functional, and service). The table indicates there was a strong shift away from the lowest-severity case-mix groups towards higher severity level between the two sample periods. Growth of the two highest severity levels of the clinical domain was approximately 23 percent; for every 100 beneficiaries, 8 additional beneficiaries were classified to the highest two clinical dimensions in 2003 compared to the HH IPS period.

Growth of the functional severity levels F2 and F3 totaled 12 percent. The 12 percent growth in share was concentrated in F2. Share growth for F2 and F3 was offset by a decline for the two lowest functional severity levels and, potentially, a tiny decline in share for the severest functional level, F4. Notwithstanding the small decrease in the share assigned to F4, for every hundred beneficiaries, about 7 additional beneficiaries were classified to the higher severity levels F2 and F3.

The data also indicate that the proportion of patients with a prior SNF or rehabilitation facility discharge in the 14 days before admission, but no hospital discharge in that period, grew by 25 percent for episodes below the 10-visit therapy threshold, and 64 percent for episodes above the 10-visit therapy threshold. These patients receive a higher case-mix score than patients from all other pre-admission locations on the OASIS (including inpatient discharge).

In addition, the table indicates growth in the high-therapy groups (levels S2 and S3) of 30 percent. This means that for every hundred beneficiaries, 8 additional beneficiaries were assigned to receive at least 10 therapy visits in 2003 compared to the HH IPS period. Under the HH PPS, approximately 35 percent of patients in their initial episode received at least 10 therapy visits.

TABLE 8.—COMPARISON OF SEVERITY LEVEL PREVALENCE, HH IPS SAMPLE AND 2003 HH PPS SAMPLE

		HH IPS (percent)	HH PPS 2003 (percent)	Difference
All C0	Min	29.69	22.07	-7.62
All C1	Low	36.49	36.19	-0.31
All C2	Mod	28.91	35.50	6.58
All C3	High	4.91	6.25	1.34
All F0	Min	9.27	6.15	-3.12
All F1	Low	28.57	25.40	-3.17
All F2	Mod	45.18	51.30	6.12
All F3	High	10.39	10.83	0.44
All F4	Max	6.60	6.33	-0.27
All S0	Min	65.74	55.87	-9.87
All S1	Low	7.40	9.22	1.83
All S2	Mod	19.94	23.59	3.64
All S3	High	6.92	11.32	4.40

Table 9 shows the shares of total episodes for the complete set of 80 original case-mix groups, during both the HH IPS and the HH PPS FY 2003. Table 9 also displays each group's case-mix weight. Ten groups had no change in their share of episodes between the HH IPS period and the HH PPS period in the table. Of the remaining 70 groups, 38 groups, slightly more than half, had a larger share of total episodes under HH PPS than the HH IPS. However, decline in share of total episodes was associated with minimal or low clinical severity (C0 and C1). Only 8 of 40 groups with moderate (C2) or high (C3) clinical severity had decrease in their share of episodes under HH PPS, with most of the remaining moderate or high clinical severity groups having a share increase. As noted above, growth in functional severity level F2 almost entirely offset the loss of population from groups F0 and F1. Only three of 16 groups in the functional severity level F2 experienced a decline in episode shares, and this was concentrated entirely in the two lowest clinical severity groups.

We summarized the association between case-mix group severity and change in episode share by calculating the rate ratio for growth in episode shares. We sorted the groups by case-mix weight and divided the groups into the top 40 weights of the 80-group case-mix system and the remaining 40 weights. The rate ratio was determined by dividing the growth in total share of the top 40 weights by the growth in total share for the remaining 40 weights. The groups with the 40 smallest weights have mostly reductions in episode shares (24 of 40 have reductions), and the groups with the largest 40 weights have mostly increases in episode shares (24 of 40 groups). The rate ratio for positive changes was 1.71, which means that as a group the top 40 case-mix weights were about 70 percent more likely than the bottom 40 to have an increase in share of total episodes.

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Table 9: Comparison of Case-Mix Group Shares, HH IPS Sample and 2003 HH PPS Sample

Case-mix group	Case-mix description by domains				Relative weight	HH IPS sample population percent	HH PPS 2003 sample population percent	Difference
C0F0S0	Clinical=Min,Functional=Min,Service=Min				0.5265	4.17%	2.44%	-1.73%
C0F0S1	Clinical=Min,Functional=Min,Service=Low				0.6074	0.21%	0.14%	-0.07%
C0F0S2	Clinical=Min,Functional=Min,Service=Mod				1.4847	0.16%	0.09%	-0.07%
C0F0S3	Clinical=Min,Functional=Min,Service=High				1.7364	0.02%	0.02%	0.00%
C0F1S0	Clinical=Min,Functional=Low,Service=Min				0.6213	8.32%	5.79%	-2.53%
C0F1S1	Clinical=Min,Functional=Low,Service=Low				0.7022	0.84%	0.81%	-0.03%
C0F1S2	Clinical=Min,Functional=Low,Service=Mod				1.5796	1.29%	0.94%	-0.35%
C0F1S3	Clinical=Min,Functional=Low,Service=High				1.8313	0.41%	0.40%	-0.01%
C0F2S0	Clinical=Min,Functional=Mod,Service=Min				0.7249	7.80%	5.43%	-2.37%
C0F2S1	Clinical=Min,Functional=Mod,Service=Low				0.8058	1.00%	1.23%	0.23%
C0F2S2	Clinical=Min,Functional=Mod,Service=Mod				1.6831	2.58%	2.23%	-0.35%
C0F2S3	Clinical=Min,Functional=Mod,Service=High				1.9348	0.96%	1.20%	0.24%
C0F3S0	Clinical=Min,Functional=High,Service=Min				0.7629	0.92%	0.48%	-0.44%
C0F3S1	Clinical=Min,Functional=High,Service=Low				0.8438	0.05%	0.09%	0.04%
C0F3S2	Clinical=Min,Functional=High,Service=Mod				1.7212	0.42%	0.36%	-0.06%
C0F3S3	Clinical=Min,Functional=High,Service=High				1.9728	0.14%	0.14%	0.00%
C0F4S0	Clinical=Min,Functional=Max,Service=Min				0.9305	0.22%	0.14%	-0.08%
C0F4S1	Clinical=Min,Functional=Max,Service=Low				1.0114	0.03%	0.02%	-0.01%
C0F4S2	Clinical=Min,Functional=Max,Service=Mod				1.8887	0.11%	0.10%	-0.01%
C0F4S3	Clinical=Min,Functional=Max,Service=High				2.1404	0.04%	0.03%	-0.01%
C1F0S0	Clinical=Low,Functional=Min,Service=Min				0.6221	2.47%	1.73%	-0.74%
C1F0S1	Clinical=Low,Functional=Min,Service=Low				0.703	0.11%	0.09%	-0.02%
C1F0S2	Clinical=Low,Functional=Min,Service=Mod				1.5803	0.08%	0.09%	0.01%
C1F0S3	Clinical=Low,Functional=Min,Service=High				1.832	0.02%	0.02%	0.00%

C1F1S0	Clinical=Low,Functional=Low,Service=Min				0.7169	7.53%	6.52%	-1.01%
C1F1S1	Clinical=Low,Functional=Low,Service=Low				0.7978	0.78%	0.95%	0.17%
C1F1S2	Clinical=Low,Functional=Low,Service=Mod				1.6752	1.48%	1.66%	0.18%
C1F1S3	Clinical=Low,Functional=Low,Service=High				1.9269	0.38%	0.62%	0.24%
C1F2S0	Clinical=Low,Functional=Mod,Service=Min				0.8205	11.06%	10.08%	-0.98%
C1F2S1	Clinical=Low,Functional=Mod,Service=Low				0.9014	1.47%	2.04%	0.57%
C1F2S2	Clinical=Low,Functional=Mod,Service=Mod				1.7787	4.37%	5.37%	1.00%
C1F2S3	Clinical=Low,Functional=Mod,Service=High				2.0304	1.58%	2.74%	1.16%
C1F3S0	Clinical=Low,Functional=High,Service=Min				0.8585	1.92%	1.37%	-0.55%
C1F3S1	Clinical=Low,Functional=High,Service=Low				0.9394	0.25%	0.24%	-0.01%
C1F3S2	Clinical=Low,Functional=High,Service=Mod				1.8168	1.16%	1.12%	-0.04%
C1F3S3	Clinical=Low,Functional=High,Service=High				2.0684	0.32%	0.48%	0.16%
C1F4S0	Clinical=Low,Functional=Max,Service=Min				1.0261	0.88%	0.54%	-0.34%
C1F4S1	Clinical=Low,Functional=Max,Service=Low				1.107	0.04%	0.06%	0.02%
C1F4S2	Clinical=Low,Functional=Max,Service=Mod				1.9843	0.48%	0.36%	-0.12%
C1F4S3	Clinical=Low,Functional=Max,Service=High				2.236	0.11%	0.11%	0.00%
C2F0S0	Clinical=Mod,Functional=Min,Service=Min				0.7965	1.66%	1.26%	-0.40%
C2F0S1	Clinical=Mod,Functional=Min,Service=Low				0.8774	0.07%	0.07%	0.00%
C2F0S2	Clinical=Mod,Functional=Min,Service=Mod				1.7548	0.13%	0.08%	-0.05%
C2F0S3	Clinical=Mod,Functional=Min,Service=High				2.0065	0.01%	0.02%	0.01%
C2F1S0	Clinical=Mod,Functional=Low,Service=Min				0.8914	4.91%	4.69%	-0.22%
C2F1S1	Clinical=Mod,Functional=Low,Service=Low				0.9723	0.48%	0.62%	0.14%
C2F1S2	Clinical=Mod,Functional=Low,Service=Mod				1.8496	1.12%	1.31%	0.19%
C2F1S3	Clinical=Mod,Functional=Low,Service=High				2.1013	0.31%	0.48%	0.17%
C2F2S0	Clinical=Mod,Functional=Mod,Service=Min				0.9949	6.90%	8.43%	1.53%
C2F2S1	Clinical=Mod,Functional=Mod,Service=Low				1.0758	1.19%	1.76%	0.57%
C2F2S2	Clinical=Mod,Functional=Mod,Service=Mod				1.9532	3.38%	5.63%	2.25%
C2F2S3	Clinical=Mod,Functional=Mod,Service=High				2.2048	1.46%	3.02%	1.56%
C2F3S0	Clinical=Mod,Functional=High,Service=Min				1.0329	2.03%	1.98%	-0.05%
C2F3S1	Clinical=Mod,Functional=High,Service=Low				1.1139	0.28%	0.38%	0.10%
C2F3S2	Clinical=Mod,Functional=High,Service=Mod				1.9912	1.48%	1.91%	0.43%

C2F3S3	Clinical=Mod,Functional=High,Service=High		2.2429	0.52%	0.93%	0.41%
C2F4S0	Clinical=Mod,Functional=Max,Service=Min		1.2005	1.73%	1.48%	-0.25%
C2F4S1	Clinical=Mod,Functional=Max,Service=Low		1.2814	0.16%	0.16%	0.00%
C2F4S2	Clinical=Mod,Functional=Max,Service=Mod		2.1588	0.83%	0.95%	0.12%
C2F4S3	Clinical=Mod,Functional=Max,Service=High		2.4105	0.25%	0.34%	0.09%
C3F0S0	Clinical=High,Functional=Min,Service=Min		1.1973	0.17%	0.09%	-0.08%
C3F0S1	Clinical=High,Functional=Min,Service=Low		1.2782	0.00%	0.01%	0.01%
C3F0S2	Clinical=High,Functional=Min,Service=Mod		2.1556	0.01%	0.01%	0.00%
C3F0S3	Clinical=High,Functional=Min,Service=High		2.4073	0.00%	0.00%	0.00%
C3F1S0	Clinical=High,Functional=Low,Service=Min		1.2922	0.61%	0.47%	-0.14%
C3F1S1	Clinical=High,Functional=Low,Service=Low		1.3731	0.05%	0.07%	0.02%
C3F1S2	Clinical=High,Functional=Low,Service=Mod		2.2504	0.04%	0.06%	0.02%
C3F1S3	Clinical=High,Functional=Low,Service=High		2.5021	0.02%	0.02%	0.00%
C3F2S0	Clinical=High,Functional=Mod,Service=Min		1.3957	0.85%	1.14%	0.29%
C3F2S1	Clinical=High,Functional=Mod,Service=Low		1.4766	0.11%	0.23%	0.12%
C3F2S2	Clinical=High,Functional=Mod,Service=Mod		2.354	0.31%	0.45%	0.14%
C3F2S3	Clinical=High,Functional=Mod,Service=High		2.6056	0.15%	0.32%	0.17%
C3F3S0	Clinical=High,Functional=High,Service=Min		1.4337	0.47%	0.61%	0.14%
C3F3S1	Clinical=High,Functional=High,Service=Low		1.5147	0.13%	0.12%	-0.01%
C3F3S2	Clinical=High,Functional=High,Service=Mod		2.392	0.20%	0.39%	0.19%
C3F3S3	Clinical=High,Functional=High,Service=High		2.6437	0.08%	0.22%	0.14%
C3F4S0	Clinical=High,Functional=Max,Service=Min		1.6013	1.11%	1.18%	0.07%
C3F4S1	Clinical=High,Functional=Max,Service=Low		1.6822	0.15%	0.15%	0.00%
C3F4S2	Clinical=High,Functional=Max,Service=Mod		2.5596	0.31%	0.49%	0.18%
C3F4S3	Clinical=High,Functional=Max,Service=High		2.8113	0.14%	0.22%	0.08%

b. Health Characteristics Reported on the OASIS

To further our understanding of the relative roles of case-mix change and coding changes that might be responsible for the .0991 increase of the national HHRG CMI, we analyzed the HH IPS and HH PPS samples' health characteristics, based on the start-of-care OASIS assessment. We compared the proportion of start-of-care assessments that had each OASIS characteristic, using data from our HH IPS and HH PPS 2003 samples. We used the wound-related OASIS data to compute statistics on changes in numbers of wounds. The results are shown in Table 10 and discussed below. (Items scored in the HH PPS 80 group case-mix system are shown in bold.) Table 10: Comparison of rates of response categories on OASIS Start of Care Assessments, HH IPS Sample and 2003 HH PPS Sample

Table 10: Comparison of rates of response categories on OASIS Start of Care Assessments, HH IPS Sample and 2003 HH PPS Sample				
		IPS	PPS 2003	Difference
M0175	Used hospital past 14 Dys:	58%	54%	-4%
M0175	Used inp rehab past 14 Dys	11%	13%	2%
M0175	Used NH Past 14 Dys	5%	9%	4%
M0200	Medical or treatment regimen change past 14 dys	79%	85%	6%
M0220	Prior Cond(1) Urinary Incont	15%	20%	5%
M0220	Prior Cond(2) catheter	2%	2%	0%
M0220	Prior Cond(3) Intractable pain	7%	9%	2%
M0220	Prior Cond(4) Impaired decision making	11%	12%	1%
M0220	Prior Cond(5) Disruptive	1%	1%	0%
M0220	Prior Cond(6) Memory loss	9%	9%	0%
M0220	Prior Cond(7) None of the above	60%	57%	-3%
M0220	Prior Cond (8) Unknown	8%	6%	-2%
M0230	Orthopedic Diagnosis Group	15%	22%	7%
M0230	Diabetes Diagnosis Group	4%	6%	2%
M0230	Neurological Diagnosis Group	8%	8%	0%
M0230	Burns/Trauma Diagnosis Group	4%	2%	-2%
M0230	0 - Asymptomatic, no treatment needed at this time	1%	0%	-1%
M0230	1 - Symptoms well controlled with current therapy	8%	3%	-5%
M0230	2 - Symptoms controlled with difficulty, affecting daily functioning; patient needs ongoing monitoring	62%	61%	-1%

M0230	3 - Symptoms poorly controlled, patient needs frequent adjustment in treatment and dose monitoring	25%	31%	6%
M0230	4 - Symptoms poorly controlled, history of rehospitalizations	5%	5%	0%
M0240	0 - Asymptomatic, no treatment needed at this time	2%	1%	-1%
M0240	1 - Symptoms well controlled with current therapy	22%	12%	-10%
M0240	2 - Symptoms controlled with difficulty, affecting daily functioning	57%	62%	5%
M0240	3 - Symptoms poorly controlled, patient needs frequent adjustment	16%	23%	7%
M0240	4 - Symptoms poorly controlled, history of rehospitalizations	3%	3%	0%
M0250	Therapies received at home: intravenous	2%	2%	0%
M0250	Therapies received at home: parenteral nutrition	0%	0%	0%
M0250	Therapies received at home: enteral nutrition	2%	1%	-1%
M0250	Therapies received at home: none of the above	96%	96%	0%
M0260	Overall prognosis: Poor: little or no recovery is expected	8%	8%	0%
M0260	Overall prognosis: Good/Fair: partial to full recovery is expected	90%	91%	1%
M0260	Overall prognosis: Unknown	3%	2%	-1%
M0270	Rehabilitative prognosis: Guarded	21%	21%	0%
M0270	Rehabilitative prognosis: Good	76%	77%	1%
M0270	Rehabilitative prognosis: Unknown	3%	2%	-1%
M0280	Life expectancy is greater than 6 months	98%	93%	-5%
M0280	Life expectancy is 6 months or fewer	2%	7%	5%
M0290	High risk factors: smoking	8%	7%	-1%
M0290	High risk factors: obesity	12%	14%	2%
M0290	High risk factors: alcoholism	2%	1%	-1%
M0290	High risk factors: drug dependency	0%	1%	1%

M0290	High risk factors: none of the above	76%	76%	0%
M0290	High risk factors: unknown	4%	2%	-2%
M0300	Current residence - Patient's owned or rented residence	78%	78%	0%
M0300	Current residence - Family member's residence	14%	14%	0%
M0300	Current residence - Boarding home or rented room	1%	1%	0%
M0300	Current residence - Board and care or assisted living facility	6%	7%	1%
M0300	Current residence- Other (specify)	1%	1%	0%
M0340	Patient lives alone	32%	30%	-2%
M0340	Patient lives with spouse	37%	37%	0%
M0340	Patient lives with other family	26%	28%	2%
M0340	Patient lives with friend	1%	1%	0%
M0340	Patient lives with paid help	7%	8%	1%
M0340	Patient lives with other	2%	1%	-1%
M0350	Assisting person: relative/friend	52%	54%	2%
M0350	Assisting person: home resident	51%	56%	5%
M0350	Assisting person: paid help	17%	19%	2%
M0350	Assisting person: none of the above	4%	2%	-2%
M0360	Primary caregiver - No one person	17%	16%	-1%
M0360	Primary caregiver - Spouse or significant other	30%	30%	0%
M0360	Primary caregiver - Daughter or son	31%	32%	1%
M0360	Primary caregiver - Other family member	9%	9%	0%
M0360	Primary caregiver - Friend or neighbor or community or church member	3%	3%	0%
M0360	Primary caregiver - Paid help	9%	10%	1%
M0360	Primary caregiver - Unknown	0%	0%	0%
M0370	How often receive primary caregiver assist: Several times during day and night	50%	48%	-2%
M0370	How often receive primary caregiver assist: Several times during day	33%	35%	2%

M0370	How often receive primary caregiver assist: Once daily	6%	7%	1%
M0370	How often receive primary caregiver assist: Three or more times per week	7%	6%	-1%
M0370	How often receive primary caregiver assist: One to two times per week	3%	3%	0%
M0370	How often receive primary caregiver assist: Less often than weekly	1%	1%	0%
M0370	How often receive primary caregiver assist: Unknown	1%	0%	-1%
M0380	Type of primary caregiver assistance: ADL assistance	61%	64%	3%
M0380	Type of primary caregiver assistance: IADL assistance	92%	95%	3%
M0380	Type of primary caregiver assistance: environmental	85%	91%	6%
M0380	Type of primary caregiver assistance: psychosocial	89%	93%	4%
M0380	Type of primary caregiver assistance: medical care	74%	79%	5%
M0380	Type of primary caregiver assistance: financial/legal	27%	25%	-2%
M0380	Type of primary caregiver assistance: health care	23%	21%	-2%
M0380	Type of primary caregiver assistance:			0%
M0390	Vision: Normal vision: sees adequately in most situations	72%	72%	0%
M0390	Vision: Partially impaired: cannot see medication labels or newsprint	25%	25%	0%
M0390	Vision: severely impaired: cannot locate objects without hearing or touching or patient nonresponsive	3%	2%	-1%
M0400	Hearing: No observable impairment	63%	62%	-1%
M0400	Hearing: With minimal difficulty	28%	30%	2%
M0400	Hearing: Has moderate difficulty	6%	6%	0%
M0400	Hearing: Has severe difficulty	2%	2%	0%
M0400	Hearing: Unable to hear and understand familiar words or common expressions	1%	0%	-1%

	consistently, or patient nonresponsive.			
M0410	Speech: Expresses complex ideas, feelings, and needs clearly, completely	69%	68%	-1%
M0410	Speech: Minimal difficulty in expressing ideas and needs	21%	23%	2%
M0410	Speech: Expresses simple ideas or needs with moderate difficulty	6%	6%	0%
M0410	Speech: Has severe difficulty expressing basic ideas or needs and requires maximal assistance or guessing by listener.	3%	2%	-1%
M0410	Speech: Unable to express basic needs even with maximal prompting	1%	1%	0%
M0410	Speech: Patient nonresponsive or unable to speak.	1%	0%	-1%
M0420	Freq of pain: Patient has no pain or pain does not interfere with activity or movement	41%	36%	-5%
M0420	Freq of pain: Less often than daily	12%	12%	0%
M0420	Freq of pain: Daily, but not constantly	39%	44%	5%
M0420	Freq of pain: All of the time	7%	9%	2%
M0430	Intractable pain	10%	13%	3%
M0440	Skin lesion/open wound	36%	51%	15%
M0445	Pressure ulcer	5%	7%	2%
M0450	Num Pressure ulcers: Stage 1 (if patient has any pressure ulcers)			
M0450	0	74%	73%	-1%
M0450	1	19%	20%	1%
M0450	2	5%	5%	0%
M0450	3	1%	1%	0%
M0450	4	1%	1%	0%
M0450	Num Pressure ulcers: Stage 2 (if patient has any pressure ulcers)			
M0450	0	38%	39%	1%
M0450	1	43%	41%	-2%

M0450	2	13%	14%	1%
M0450	3	4%	3%	-1%
M0450	4	2%	3%	1%
M0450	Num Pressure ulcers: Stage 3 (if patient has any pressure ulcers)			
M0450	0	79%	82%	3%
M0450	1	16%	13%	-3%
M0450	2	4%	3%	-1%
M0450	3	1%	1%	0%
M0450	4	0%	0%	0%
M0450	Num Pressure ulcers: Stage 4 (if patient has any pressure ulcers)			
M0450	0	93%	95%	2%
M0450	1	5%	4%	-1%
M0450	2	1%	1%	0%
M0450	3	0%	0%	0%
M0450	4	1%	0%	-1%
M0450	At least one unobserved pressure ulcer (if patient has any pressure ulcers)	7%	9%	2%
M0460	Stage most problematic pressure ulcer: Stage 1	1%	1%	0%
M0460	Stage most problematic pressure ulcer: Stage 2	3%	4%	1%
M0460	Stage most problematic pressure ulcer: Stage 3	1%	1%	0%
M0460	Stage most problematic pressure ulcer: Stage 4	0%	0%	0%
M0460	Stage most problematic pressure ulcer: No observable pressure ulcer	95%	94%	-1%
M0464	Status most problematic pressure ulcer: Fully granulating	1%	1%	0%
M0464	Status most problematic pressure ulcer: Early and partial granulation	3%	3%	0%
M0464	Status most problematic pressure ulcer: Not healing	2%	2%	0%
M0468	Stasis ulcer	3%	2%	-1%

M0470	Num observable stasis ulcers (if patient has any stasis ulcers)			
M0470	0	4%	6%	2%
M0470	1	47%	49%	1%
M0470	2	20%	20%	0%
M0470	3	9%	9%	0%
M0470	4	19%	16%	-3%
M0474	At least one unobserved stasis ulcer (if patient has any stasis ulcers)	4%	6%	2%
M0476	Status most problematic stasis ulcer: Fully granulating	0%	0%	0%
M0476	Status most problematic stasis ulcer: Early and partial granulation	1%	1%	0%
M0476	Status most problematic stasis ulcer: Not healing	1%	1%	0%
M0482	Surgical wound	23%	30%	7%
M0484	No. of observable surgical wounds (if patient has any surgical wounds)			
M0484	0	7%	5%	-2%
M0484	1	60%	63%	3%
M0484	2	15%	14%	-1%
M0484	3	7%	7%	0%
M0484	4	10%	10%	0%
M0486	At least one nonbservable surgical wound (if patient has any surgical wounds)	11%	9%	-2%
M0488	Status most problematic surgical wound: Fully granulating	8%	8%	0%
M0488	Status most problematic surgical wound: Early and partial granulation	12%	18%	6%
M0488	Status most problematic surgical wound: Not healing	1%	2%	1%
M0490	When dyspneic: Never, patient is not short of breath	36%	36%	0%
M0490	When dyspneic: When walking more than 20 feet, climbing stairs	27%	25%	-2%

M0490	When dyspneic: With moderate exertion (e.g., while dressing, using commode or bedpan, walking distances less than 20 feet)	21%	23%	2%
M0490	When dyspneic: With minimal exertion (e.g., while eating, talking, or performing other ADLs) or with agitation	13%	13%	0%
M0490	When dyspneic: At rest (during day or night)	3%	3%	0%
M0500	Respiratory treatments at home: oxygen	11%	12%	1%
M0500	Respiratory treatments at home: ventilator	0%	0%	0%
M0500	Respiratory treatments at home: airway pressure	0%	1%	1%
M0500	Respiratory treatments at home: none	89%	87%	-2%
M0510	Urinary tract infection in past 14 dys: No	90%	91%	1%
M0510	Urinary tract infection in past 14 dys: Yes	8%	8%	0%
M0510	Urinary tract infection in past 14 dys: Patient on prophylactic treatment	0%	1%	1%
M0510	Urinary tract infection in past 14 dys: Unknown	1%	1%	0%
M0520	Urinary incontinence: No incontinence or catheter	73%	66%	-7%
M0520	Urinary incontinence: Patient is incontinent	23%	31%	8%
M0520	Urinary incontinence: Patient requires a urinary catheter	4%	4%	0%
M0530	Urinary incontinence occurs: Timed-voiding defers incontinence	28%	25%	-3%
M0530	Urinary incontinence occurs: During the night only	8%	7%	-1%
M0530	Urinary incontinence occurs: During the day and night	64%	67%	3%
M0540	Bowel incontinence: Very rarely or never has bowel incontinence	88%	87%	-1%
M0540	Bowel incontinence: Less than once weekly	2%	3%	1%
M0540	Bowel incontinence: One to three times weekly	3%	4%	1%

M0540	Bowel incontinence: Four to six times weekly	1%	2%	1%
M0540	Bowel incontinence: On a daily basis	3%	3%	0%
M0540	Bowel incontinence: More often than once daily	1%	1%	0%
M0540	Bowel incontinence: Patient has ostomy for bowel elimination	2%	2%	0%
M0540	Bowel incontinence: Unknown	0%	0%	0%
M0550	Bowel ostomy: Patient does not have an ostomy for bowel elimination.	98%	98%	0%
M0550	Bowel ostomy: not related to an inpatient stay and did not necessitate change in medical or treatment regimen.	1%	1%	0%
M0550	Bowel ostomy: related to an inpatient stay or did necessitate change in medical or treatment regimen.	1%	1%	0%
M0560	Cognitive functioning: Alert/oriented	69%	65%	-4%
M0560	Cognitive functioning: Requires prompting	19%	23%	4%
M0560	Cognitive functioning: Requires assistance and some direction	8%	8%	0%
M0560	Cognitive functioning: Requires considerable assistance	3%	3%	0%
M0560	Cognitive functioning: Totally dependent	1%	1%	0%
M0570	When confused: Never	62%	57%	-5%
M0570	When confused: In new or complex situations only	25%	30%	5%
M0570	When confused: On awakening or at night only	2%	2%	0%
M0570	When confused: During the day and evening, but not constantly	8%	8%	0%
M0570	When confused: Constantly	3%	3%	0%
M0570	When confused: Patient nonresponsive	0%	0%	0%
M0580	When anxious: None of the time	61%	59%	-2%
M0580	When anxious: Less often than daily	22%	23%	1%
M0580	When anxious: Daily, but not constantly	15%	16%	1%
M0580	When anxious: All of the time	1%	2%	1%

M0580	When anxious: Patient nonresponsive	0%	0%	0%
M0590	Depressive feelings reported/observed: mood	19%	21%	2%
M0590	Depressive feelings reported/observed: sense of failure	1%	1%	0%
M0590	Depressive feelings reported/observed: hopelessness	2%	2%	0%
M0590	Depressive feelings reported/observed: recurrent thoughts of death	1%	1%	0%
M0590	Depressive feelings reported/observed: thoughts of suicide	0%	0%	0%
M0590	Depressive feelings reported/observed: none	80%	78%	-2%
M0610	Behaviors demonstrated at least once/week: memory deficit	12%	13%	1%
M0610	Behaviors demonstrated at least once/week: impaired decision-making	10%	13%	3%
M0610	Behaviors demonstrated at least once/week: verbal disruption	1%	1%	0%
M0610	Behaviors demonstrated at least once/week: physical aggression	1%	1%	0%
M0610	Behaviors demonstrated at least once/week: socially inappropriate	1%	1%	0%
M0610	Behaviors demonstrated at least once/week: delusions	1%	1%	0%
M0610	Behaviors demonstrated at least once/week: none of the above	82%	80%	-2%
M0620	Frequency of behavior problems: Never	93%	91%	-2%
M0620	Frequency of behavior problems: Less than once a month	1%	1%	0%
M0620	Frequency of behavior problems: Once a month	0%	0%	0%
M0620	Frequency of behavior problems: Several times each month	1%	1%	0%
M0620	Frequency of behavior problems: Several times a week	2%	2%	0%
M0620	Frequency of behavior problems: At least daily	3%	4%	1%
M0630	Receive psychiatric nursing	2%	1%	-1%

M0640	Current grooming: Able to groom self with or without assistive devices	48%	49%	1%
M0640	Current grooming: Grooming utensils must be placed within reach	21%	24%	3%
M0640	Current grooming: Someone must assist the patient to groom self.	22%	20%	-2%
M0640	Current grooming: Patient dependent in grooming	8%	7%	-1%
M0640	Prior grooming: Able to groom self with or without assistive devices	71%	65%	-6%
M0640	Prior grooming: Grooming utensils must be placed within reach	11%	15%	4%
M0640	Prior grooming: Someone must assist the patient to groom self.	11%	12%	1%
M0640	Prior grooming: Patient dependent in grooming	6%	6%	0%
M0650	Current dress upper body: without assistance.	43%	41%	-2%
M0650	Current dress upper body: no assistance if clothing is laid out or handed to patient	24%	26%	2%
M0650	Current dress upper body: Someone must help the patient	25%	25%	0%
M0650	Current dress upper body: completely dependent	9%	8%	-1%
M0650	Prior dress upper body: without assistance.	69%	62%	-7%
M0650	Prior dress upper body: no assistance if clothing is laid out or handed to patient	12%	15%	3%
M0650	Prior dress upper body: Someone must help the patient	12%	15%	3%
M0650	Prior dress upper body: completely dependent	6%	7%	1%
M0660	Current dress lower body: without assistance.	35%	32%	-3%
M0660	Current dress lower body: no assistance if clothing is laid out or handed to patient	16%	16%	0%
M0660	Current dress lower body: Someone must help the patient	37%	40%	3%
M0660	Current dress lower body: completely	12%	12%	0%

	dependent			
M0660	Prior dress lower body: without assistance.	66%	58%	-8%
M0660	Prior dress lower body: no assistance if clothing is laid out or handed to patient	9%	11%	2%
M0660	Prior dress lower body: Someone must help the patient	15%	20%	5%
M0660	Prior dress lower body: completely dependent	8%	9%	1%
M0670	Current bathing: Able to bathe self in shower or tub independently.	15%	11%	-4%
M0670	Current bathing: With the use of devices, is able to bathe independently	10%	12%	2%
M0670	Current bathing: Able to bathe with assistance of another person	28%	28%	0%
M0670	Current bathing: Participates in bathing self but requires presence of another	21%	24%	3%
M0670	Current bathing: Unable to use shower or tub, is bathed in bed or bedside chair	19%	20%	1%
M0670	Current bathing: Unable to participate and is totally bathed by another	7%	6%	-1%
M0670	Prior bathing: Able to bathe self in shower or tub independently.	51%	40%	-11%
M0670	Prior bathing: With the use of devices, is able to bathe independently	10%	13%	3%
M0670	Prior bathing: Able to bathe with assistance of another person	13%	15%	2%
M0670	Prior bathing: Participates in bathing self but requires presence of another	11%	15%	4%
M0670	Prior bathing: Unable to use shower or tub, is bathed in bed or bedside chair	8%	10%	2%
M0670	Prior bathing: Unable to participate and is totally bathed by another	5%	5%	0%
M0680	Current toileting: Independent with or without a device	66%	63%	-3%
M0680	Current toileting: When reminded or assisted	20%	24%	4%
M0680	Current toileting: Only able to use a bedside commode (with/without assist)	6%	6%	0%

M0680	Current toileting: Only able to use a bedpan/urinal independently	1%	1%	0%
M0680	Current toileting: Is totally dependent in toileting	6%	6%	0%
M0680	Prior toileting: Independent with or without a device	79%	73%	-6%
M0680	Prior toileting: When reminded or assisted	11%	15%	4%
M0680	Prior toileting: Only able to use a bedside commode (with/without assist)	4%	4%	0%
M0680	Prior toileting: Only able to use a bedpan/urinal independently	1%	1%	0%
M0680	Prior toileting: Is totally dependent in toileting	4%	5%	1%
M0690	Current transferring: Able to independently transfer.	40%	29%	-11%
M0690	Current transferring: With minimal assistance or with use of device.	47%	59%	12%
M0690	Current transferring: Unable to transfer but able to bear weight and pivot	7%	7%	0%
M0690	Current transferring: Unable to transfer and is unable to bear weight or pivot	2%	2%	0%
M0690	Current transferring: Bedfast, unable to transfer but can turn, position in bed	1%	1%	0%
M0690	Current transferring: Bedfast, unable to transfer and unable to turn/position	2%	2%	0%
M0690	Prior transferring: Able to independently transfer.	65%	53%	-12%
M0690	Prior transferring: With minimal assistance or with use of device.	25%	36%	11%
M0690	Prior transferring: Unable to transfer but able to bear weight and pivot	4%	5%	1%
M0690	Prior transferring: Unable to transfer and is unable to bear weight or pivot	1%	2%	1%
M0690	Prior transferring: Bedfast, unable to transfer but can turn, position in bed	1%	1%	0%
M0690	Prior transferring: Bedfast, unable to transfer and unable to turn/position	1%	2%	1%
M0700	Current ambulation: needs no human assistance or assistive device	18%	13%	-5%

M0700	Current ambulation: Requires use of a device	58%	61%	3%
M0700	Current ambulation: Able to walk only with supervision/assistance of another	14%	16%	2%
M0700	Current ambulation: Chairfast, unable to ambulate but able to wheel self	3%	4%	1%
M0700	Current ambulation: Chairfast, unable to ambulate and is unable to wheel self	5%	4%	-1%
M0700	Current ambulation: Bedfast, unable to ambulate or be up in a chair	2%	1%	-1%
M0700	Prior ambulation: needs no human assistance or assistive device	49%	40%	-9%
M0700	Prior ambulation: Requires use of a device	36%	41%	5%
M0700	Prior ambulation: Able to walk only with supervision/assistance of another	6%	10%	4%
M0700	Prior ambulation: Chairfast, unable to ambulate but able to wheel self	3%	3%	0%
M0700	Prior ambulation: Chairfast, unable to ambulate and is unable to wheel self	3%	3%	0%
M0700	Prior ambulation: Bedfast, unable to ambulate or be up in a chair	1%	1%	0%
M0710	Current feeding: Able to independently feed self	72%	65%	-7%
M0710	Current feeding: Able to feed self independently but requires assistance	23%	30%	7%
M0710	Current feeding: Unable to feed self and must be assisted throughout the meal	4%	4%	0%
M0710	Current feeding: Able to feed orally and also uses nasogastric tube/gastrostomy	0%	0%	0%
M0710	Current feeding: Unable to feed orally and also uses nasogastric tube or gastrostomy	1%	1%	0%
M0710	Current feeding: Unable to take in nutrients orally or by tube feeding	0%	0%	0%
M0710	Prior feeding: Able to independently feed self	82%	74%	-8%
M0710	Prior feeding: Able to feed self independently but requires assistance	14%	20%	6%
M0710	Prior feeding: Unable to feed self and must be assisted throughout the meal	3%	3%	0%

M0710	Prior feeding: Able to feed orally and also uses nasogastric tube/gastrostomy	0%	0%	0%
M0710	Prior feeding: Unable to feed orally and also uses nasogastric tube or gastrostomy	0%	1%	1%
M0710	Prior feeding: Unable to take in nutrients orally or by tube feeding	0%	0%	0%
M0720	Current meal prep: Plan and prepare all light meals or reheat delivered meals	28%	26%	-2%
M0720	Current meal prep: Unable to prepare light meals on a regular basis	37%	35%	-2%
M0720	Current meal prep: Unable to prepare any meals or reheat delivered meals	35%	38%	3%
M0720	Prior meal prep: Plan and prepare all light meals or reheat delivered meals	59%	51%	-8%
M0720	Prior meal prep: Unable to prepare light meals on a regular basis	17%	19%	2%
M0720	Prior meal prep: Unable to prepare any meals or reheat delivered meals	22%	28%	6%
M0730	Current transport: Able to independently drive a regular or adapted car; or uses a regular or handicap-accessible public bus	2%	1%	-1%
M0730	Current transport: Able to ride in a car only when driven by another; or able to use a bus or handicap van only when assisted or accompanied by another	93%	95%	2%
M0730	Current transport: Unable to ride in a car, taxi, bus, or van, and requires transportation by ambulance.	5%	4%	-1%
M0730	Prior transport: Able to independently drive a regular or adapted car; or uses a regular or handicap-accessible public bus	32%	27%	-5%
M0730	Prior transport: Able to ride in a car only when driven by another; or able to use a bus or handicap van only when assisted or accompanied by another	63%	67%	4%
M0730	Prior transport: Unable to ride in a car, taxi, bus, or van, and requires transportation by ambulance.	4%	4%	0%
M0740	Current laundry: Able to independently take care of all laundry tasks.	5%	4%	-1%

M0740	Current laundry: Able to do only light laundry	22%	20%	-2%
M0740	Current laundry: Unable to do any laundry	72%	76%	4%
M0740	Prior laundry: Able to independently take care of all laundry tasks.	38%	31%	-7%
M0740	Prior laundry: Able to do only light laundry	20%	20%	0%
M0740	Prior laundry: Unable to do any laundry	40%	47%	7%
M0750	Current housekeeping: Able to independently perform all housekeeping tasks	3%	2%	-1%
M0750	Current housekeeping: Able to perform only light housekeeping	20%	20%	0%
M0750	Current housekeeping: Able to perform housekeeping with intermittent assist	6%	5%	-1%
M0750	Current housekeeping: Unable to consistently perform tasks unless assisted	19%	16%	-3%
M0750	Current housekeeping: Unable to effectively participate in any housekeeping	52%	57%	5%
M0750	Prior housekeeping: Able to independently perform all housekeeping tasks	34%	28%	-6%
M0750	Prior housekeeping: Able to perform only light housekeeping	20%	21%	1%
M0750	Prior housekeeping: Able to perform housekeeping with intermittent assist	4%	4%	0%
M0750	Prior housekeeping: Unable to consistently perform tasks unless assisted	9%	8%	-1%
M0750	Prior housekeeping: Unable to effectively participate in any housekeeping	30%	37%	7%
M0760	Current shopping: Able to plan for shopping needs, independently perform	2%	1%	-1%
M0760	Current shopping: Able to go shopping, but needs some assistance	12%	11%	-1%
M0760	Current shopping: Unable to go shopping, but is able to identify items needed, place orders, and arrange home delivery.	48%	51%	3%
M0760	Current shopping: Needs someone to do all shopping and errands	39%	37%	-2%

M0760	Prior shopping: Able to plan for shopping needs, independently perform	33%	27%	-6%
M0760	Prior shopping: Able to go shopping, but needs some assistance	22%	22%	0%
M0760	Prior shopping: Unable to go shopping, but is able to identify items needed, place orders, and arrange home delivery.	19%	22%	3%
M0760	Prior shopping: Needs someone to do all shopping and errands	24%	27%	3%
M0770	Current telephone: Able to dial numbers and answer calls	73%	73%	0%
M0770	Current telephone: Able to use specially adapted phone, call essential numbers	5%	6%	1%
M0770	Current telephone: Able to answer, normal conversation but difficulty placing calls	6%	6%	0%
M0770	Current telephone: Able to answer only some of the time or is able to carry on only a limited conversation	5%	5%	0%
M0770	Current telephone: Unable to answer the telephone at all but can listen if assisted with equipment	3%	3%	0%
M0770	Current telephone: Totally unable to use the telephone	6%	5%	-1%
M0770	Current telephone: Patient does not have a telephone	1%	2%	1%
M0770	Prior telephone: Able to dial numbers and answer calls	77%	75%	-2%
M0770	Prior telephone: Able to use specially adapted phone, call essential numbers	4%	5%	1%
M0770	Prior telephone: Able to answer, normal conversation but difficulty placing calls	5%	5%	0%
M0770	Prior telephone: Able to answer only some of the time or is able to carry on only a limited conversation	4%	4%	0%
M0770	Prior telephone: Unable to answer the telephone at all but can listen if assisted with equipment	3%	3%	0%
M0770	Prior telephone: Totally unable to use the telephone	5%	5%	0%

M0770	Prior telephone: Patient does not have a telephone	1%	2%	1%
M0780	Current oral meds: Able to independently take the correct oral meds and proper dosage at the correct times	44%	43%	-1%
M0780	Current oral meds: Able to take meds at the correct times with help	33%	33%	0%
M0780	Current oral meds: Unable to take medication unless administered by someone else	22%	23%	1%
M0780	Current oral meds: No oral medications prescribed	1%	1%	0%
M0780	Prior oral meds: Able to independently take the correct oral meds and proper dosage at the correct times	58%	52%	-6%
M0780	Prior oral meds: Able to take meds at the correct times with help	22%	23%	1%
M0780	Prior oral meds: Unable to take medication unless administered by someone else	17%	22%	5%
M0780	Prior oral meds: No oral medications prescribed	1%	1%	0%
M0790	Current inhalant meds: Able to independently take the correct medication and proper dosage at the correct times	12%	12%	0%
M0790	Current inhalant meds: Able to take medication at the correct times if helped	6%	6%	0%
M0790	Current inhalant meds: Unable to take meds unless administered by someone else	3%	4%	1%
M0790	Current inhalant meds: No inhalant/mist medications prescribed	79%	79%	0%
M0790	Prior inhalant meds: Able to independently take the correct medication and proper dosage at the correct times	13%	12%	-1%
M0790	Prior inhalant meds: Able to take medication at the correct times if helped	4%	4%	0%
M0790	Prior inhalant meds: Unable to take meds unless administered by someone else	3%	3%	0%
M0790	Prior inhalant meds: No inhalant/mist medications prescribed	78%	78%	0%

M0800	Current injectable meds: Able to independently take the correct medication and proper dosage at the correct times	5%	5%	0%
M0800	Current injectable meds: Able to take medication at the correct times if helped	3%	3%	0%
M0800	Current injectable meds: Unable to take meds unless administered by someone else	7%	8%	1%
M0800	Current injectable meds: No injectable medications prescribed	85%	84%	-1%
M0800	Prior injectable meds: Able to independently take the correct medication and proper dosage at the correct times	6%	5%	-1%
M0800	Prior injectable meds: Able to take medication at the correct times if helped	2%	2%	0%
M0800	Prior injectable meds: Unable to take meds unless administered by someone else	5%	6%	1%
M0800	Prior injectable meds: No injectable medications prescribed	84%	84%	0%
M0810	Patient's equipment management: Independent	3%	3%	0%
M0810	Patient's equipment management: Independent if someone else sets up	3%	4%	1%
M0810	Patient's equipment management: Requires considerable assistance but independently completes portions of the task	2%	2%	0%
M0810	Patient's equipment management: Is only able to monitor equipment and must call someone else to manage the equipment	1%	1%	0%
M0810	Patient's equipment management: Completely dependent	5%	5%	0%
M0810	Patient's equipment management: No equipment of this type used in care	85%	85%	0%
M0820	Caregiver equipment management: Independent	46%	48%	2%
M0820	Caregiver equipment management: Independent if someone else sets up	19%	23%	4%
M0820	Caregiver equipment management: Requires considerable assistance but independently completes significant portions of the task	5%	5%	0%
M0820	Caregiver equipment management: Caregiver is only able to complete small portions of task	4%	4%	0%
M0820	Caregiver equipment management: Completely dependent	8%	8%	0%
M0820	Caregiver equipment management: No caregiver	14%	10%	-4%
M0820	Caregiver equipment management: Unknown	5%	3%	-2%
M0825	Ten or more therapy visits (based on Medicare claims)	27%	35%	8%

In general, the results showed that health characteristics as measured by the OASIS items were stable or changed little. Exceptions to the general findings were indications that the HH PPS population included:

- More post-acute and more post-surgical patients;
- More patients that had a recent history of post-acute institutional care;
- More patients with a recent change in medical or treatment regimen;
- More patients in the orthopedic diagnosis group defined under the PPS system's clinical dimension; and
- More patients assessed with dependencies in Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) as of 14 days before the assessment. The proportion of patients using at least 10 therapy visits also rose noticeably.

Otherwise, the rate comparisons of OASIS items are generally unremarkable. Several measures usually reflective of a more compromised health status, including ADL limitations, incontinence, pain, short life expectancy, and diagnosis severity had a somewhat higher rate in the HH PPS sample than the HH IPS sample.

However, various physiologic measures and risk factors showed little or no change, including urinary tract infection, visual and aural functioning, dyspnea, bowel ostomy, bowel incontinence, obesity, alcoholism, drug dependence, depressive symptoms, behavioral problem frequency, use of home oxygen, infusion therapy, and nutritional therapies. In addition, the probability that a patient used psychiatric nursing was reduced, from 2 percent to 1 percent.

The current HH PPS case-mix system recognizes four types of diagnoses for purposes of assigning patients to case-mix groups: diabetes, orthopedic conditions, neurological conditions, and burns and trauma. These diagnoses were found to be associated with higher-than-average resource costs in the original case-mix research. The data in Table 10 indicate that the share of patients assigned to the four case-mix diagnosis groups grew by 23 percent. This change was due to an additional 7 per hundred patients assigned to the orthopedic diagnosis group, and an additional 2 per hundred assigned to the diabetes diagnosis group. The share of patients assigned to the neurological diagnosis group remained unchanged (at 8 per hundred), and the share of patients assigned to the burns/trauma diagnosis group declined by 2 per hundred.

There are two important reasons why we believe these changes reflect mostly nominal, as opposed to real, underlying case-mix change. First, the notable increase in the proportion of orthopedic diagnoses is due at least in part to the listing of the diagnosis code for abnormality of gait in this diagnosis group. The diagnosis code for abnormality of gait (781.2) is commonly used to indicate that the primary reason for the home health treatment is rehabilitation services (for example, physical therapy). Detailed analysis shows that this use of this code grew by 50 percent between the HH IPS period and the early years of the HH PPS. We believe agencies had an incentive to use this code on Medicare claims to support treatment plans that included large amounts of rehabilitation services. This code could be used even if the underlying condition was not orthopedic. Second, the decline in burns/trauma assignment may be due in part to agencies' early confusion about how to use the ICD–9–CM coding system when a patient has an open wound not due to an injury. We believe traumatic open wounds were thus overreported early in HH PPS. However, with educational efforts initiated by CMS and the home health industry after HH PPS began, understanding and application of the coding instructions for traumatic wound diagnoses improved, resulting in a lower, and more accurate, rate of reported burns/trauma cases, which we believe is now more representative and not an actual change in case-mix.

Other wound-related items varied in the types of change they experienced. The basic wound-related item measuring the presence of a skin disturbance or lesion (M0440) increased by 15 percentage points; however, this measure is general and covers a broad range of both clinically significant and insignificant problems. We note the three detailed series of OASIS items following M0440, that is, surgical wounds, pressure ulcers, and stasis ulcers, had varying results. The proportion of patients with pressure ulcers increased from 5.4 percent to 6.6 percent with more than half of the pressure ulcers at Stage 2. (Pressure ulcers are staged using four levels, 1 to 4, in order of increasing severity.) The average number of pressure ulcers per hundred patients increased from 9.2 to 11.1. Pressure ulcers per 100 persons with any pressure ulcers were 1.70 in the HH IPS sample and 1.68 in HH PPS sample. Excluding the approximately 5 percent of pressure ulcers that were unobservable, the average number of stage 1 and stage 2 pressure ulcers per patient with pressure ulcers did not change; the number of stage 3 and stage 4 pressure ulcers per patient with pressure ulcers declined by 13 percent and 27 percent, respectively. In terms of the overall population, stage 1 and stage 2 pressure ulcers per beneficiary increased by about 23 percent between the HH IPS and HH PPS; stage 3 pressure ulcers per beneficiary increased 7 percent; and stage 4 pressure ulcers decreased by 11 percent. There was no change in the item measuring the healing status of the most problematic pressure ulcer.

Review of these data suggest to us that the population of home health beneficiaries was more likely to include pressure ulcer patients under HH PPS, that such patients had about the same number of pressure ulcers per person in both periods, and that the pressure ulcer stage tended to be of lower severity, on average, under HH PPS compared to the HH IPS. We note that under OASIS coding policy, there is "no reverse staging" of pressure ulcers, which means that a healed pressure ulcer could be recorded and contribute to the statistics. Therefore, because of such policy, from these statistics it is difficult to draw conclusions about change in the burden of care related to pressure ulcers under the HH PPS.

We also found little change in numbers of stasis ulcers reported or their overall seriousness. The proportion of patients with any stasis ulcers was 3 percent under the HH IPS and 2 percent under HH PPS. Furthermore, while some patients have more than one stasis ulcer, the number of stasis ulcers per 100 patients decreased from approximately 5.0 to 4.5. The status of the most problematic stasis ulcer (if any) did not change. The stasis ulcer decline may be attributable in part to improved knowledge among agency clinical staff in distinguishing among different types of ulcers.

Based on the HH IPS and the HH PPS samples, the case-mix of the population of home health beneficiaries clearly shifted towards more post-surgical patients, with a possible indication that the average patient's healing status worsened. The proportion of patients with any surgical wounds increased from 22.7 percent to 30.0 percent. The number of surgical wounds per hundred patients increased from 37.4 to 49.2, due entirely to the increased numbers of post-surgical patients; there was no change in the estimated average number of surgical wounds per person with any surgical wound (our estimate assumed patients recorded as having at least one unobservable surgical wound had only one such wound). There was a 6 percentage point increase in the probability that the most problematic surgical wound's healing status would be in an early stage of healing (indicated on the OASIS by the response category "early/partial granulation," which refers to the type of newly forming tissue which may be visible in a healing wound), and a 1 percentage point increase in the probability that the wound's healing status would be "not healing". This amounts to a 13 percent increase in the share of most-problematic surgical wounds assigned to the two less-favorable healing categories, early and partial granulation or not healing.

Our review of current functional measures also showed mixed results, with some (grooming, upper body dressing, meal preparation, laundry, telephone use, independence with inhalant, and injective medications) exhibiting minor or little change. Other measures experienced negative and sometimes substantial change (transferring, ambulation, feeding, and housekeeping). In both the HH IPS and the HH PPS sample periods, prior functional measures were almost invariably reflective of a better average prior status (as of the 14 days before the assessment) compared to the current status. However, in the HH PPS sample,

the overall difference between prior and current status is less than in the HH IPS sample. In other words, average current status is reported as generally more functionally impaired under HH PPS than under the HH IPS, and accordingly, average prior status reflects a different relationship to current status in the two sample periods. We believe this pattern may reflect better understanding of the definition and interpretation of the prior status items as agencies became more familiar with the assessment.

We also found that quite a few items with scaled responses indicated a decline in the numbers of patients at the best end of the scale (for example, independent in bathing), as well as a decline or stability in the numbers (usually very small numbers) at the worst end of the scale (for example, totally dependent in bathing). Often, the decline in numbers of patients at the best end was offset by increased numbers rated just below the best end of the scale. This pattern was evident with measures of primary and secondary diagnosis symptom severity, cognitive functioning, confusion, hearing, speech, current upper and lower body dressing, current bathing, current toileting, current transferring, current ambulation, and several of the prior function-related items.

Table 10 results indicated a pattern of change in functional severity away from the two lowest severity groups and towards the middle severity group. The shift towards the middle severity group could be explainable by seemingly minimal changes in a person's ADL ratings. The examples below show how an incremental change in reported dependency on a single functional item in the HHRG system could change the case-mix group functional severity to F2 from F1. For a hypothetical individual in the second-lowest functional severity group (F1), a single added limitation (that is, going from independence to a minimal limitation) could result in the individual moving from severity category F1 into severity category F2. Similarly, in the case of transferring or locomotion, a score change that is due only to going from one level of limitation to the next worst level could possibly result in the individual moving from severity category F1 into severity category F2.

The three prognosis-related items also showed mixed results, with the overall and rehabilitative prognosis items changing minimally and the life expectancy item indicating a more than two-fold increase in the proportion of the population of home health beneficiaries with a life expectancy below 6 months. We believe that as agencies increasingly recognized that the life expectancy item was used in measuring adverse events under the Outcome-based Quality Improvement (OBQM) system, which commenced in the early years of HH PPS, agencies became more careful to record the prognosis accurately.

We discuss below some of the influences on the reporting of the OASIS health characteristics since the HH PPS began. Our conclusion from review of the changes in rates of OASIS characteristics, however, is that it is far from certain that the essential health status and service needs of the population of home health beneficiaries changed dramatically under the HH PPS. A very substantial majority of the OASIS characteristics rates noted for 2003 in Table 10 were within 2 percentage points of their initial value at the HH IPS baseline. Also, few OASIS items experienced more than moderate adverse change. Included within our analysis of adverse changes were several items unrelated to the HHRG system, including diagnosis symptom severity, recent regimen or treatment change, feeding, housekeeping, laundry, life expectancy, and various prior functional status items. Items with adverse change that are related to the HHRG system include use of post-acute institutional care, orthopedic cases, incontinence, pain, surgical wound healing status, and transferring.

c. Impact of the Context of OASIS Reporting

As noted above, some items with adverse changes are related to the HHRG system. We believe that some of these changes are a likely result of more care being taken in conducting the assessment. Agencies were exposed to OASIS training and educational initiatives in the early HH PPS period and, beginning with the HH PPS, agencies had an incentive to ensure they did not overlook items that could affect the HHRG. The new emphasis on proper application of OASIS guidelines was later reinforced when CMS began to implement outcome-based quality reporting (OBQI) in early 2002.

We further believe that, to some extent, incentives brought by the payment and quality program changes interacted with the subjective aspects of the assessment process to cause nominal coding change. The process of coding, especially diagnosis coding and determining certain rating scales, entails some discretion by the agency. With diagnosis coding, patients may have more than one diagnosis that can reasonably be called the primary diagnosis. The significant growth in orthopedic diagnosis codes partly reflects the ambiguity in the diagnosis assignment process itself, particularly in the context of a system where financial incentives to choose one diagnosis over another may be operating. Furthermore, scales of ADL functioning can be difficult to apply with some patients because of daily variability in their status and the multiple dimensions of the functional item. This difficulty may also result in a bias towards selecting a more-severe rating in the context of the financial incentives of the HH PPS. We believe that such bias was likely reinforced by the financial incentive created by the 10-visit therapy threshold. As a result of that incentive, high-therapy treatment plans became more common under HH PPS. OASIS coding practices regarding "functional status" could have changed in ways to make coding more harmonious with the new emphasis on therapy in treatment plans.

Not only is the process of coding likely subject to discretion, several issuances providing official guidance on specific OASIS items released early in the HH PPS could have caused some clinicians to downgrade patients in their assessment of the specific item. Instructions regarding the dressing, bathing, toileting, transferring, and locomotion items, assessment items all used in the HH PPS case-mix system, were amended in August 2000 in such a way that the concept of performing the function safely was highlighted prominently in the item-by-item instructions. (See M0650 to M0700 in Chapter 8 at *http://www.cms.hhs.gov/apps/hha/usermanu.asp*).

This change alone arguably emphasized the concept that "safety" is a consideration in assessing the patient's ability to perform the activity and in determining the functional item on the OASIS. Thus, it seems a likely contributing factor in explaining why the OASIS data in Table 10 show a strong tendency for several ADL statistics to shift away from the completely independent level. In terms of impact on the patient's case-mix group, it should be noted that the case-mix score for most of these items becomes a positive value if the assessing clinician selects any response category other than the one indicating that the patient is able to function independently. (Note: Selecting "unknown" does not add to the case-mix score.)

Another change in OASIS instructions affected the pain item, M0420, in August 2000. The section on Assessment Strategies offered additional strategies for assessing pain in a

nonverbal patient, such as facial expression and physiological indicators (for example, perspiration, pallor). If many clinicians were not using these strategies during the HH IPS period, it is likely that fewer patients would have been assessed to have pain. The strategies section also introduced the term "well controlled" in referring to pain assessment, by adding the following sentence: "Pain that is well controlled with treatment may not interfere with activity or movement at all." If, as a result of this guidance, clinicians began taking into account patient adherence to pain medication, one result could have been more patients were assessed with pain. Adherence to pain medication is an important issue in medicine, because many patients experience side effects that may cause them to trade off pain control for diminution of side effects.

The assessment instructions for incontinence were also amended in August 2000. The Assessment Strategies section for M0520 included a new statement: "Urinary incontinence may result from multiple causes, including physiologic reasons, cognitive impairments, or mobility problems." This clarification could have potentially sensitized clinicians to the idea that the definition of incontinence is not simply about physiologic status (that is, bladder control), but instead involves considerations such as mobility and cognition that can intervene to produce wetting on clothing. Because more patients were assessed as incontinent in the HH PPS period according to M0520 (which is not used in the case-mix system), the OASIS skip pattern drew more responses for M0530, the case-mix item used to assess the type of incontinence. A similar change in the Assessment Strategies section was made for M0540, bowel incontinence, with the potentially similar impact of increasing the reported rate.

Finally, two changes to the OASIS manual in August 2000 could have expanded the number of patients reported to have surgical wounds. The first change affecting surgical wounds was to expand the definition to read: "Medi-port sites and other implanted infusion devices or venous access devices are considered surgical wounds." The possible impact on the national case-mix index of broadening this instruction is that more openings in the skin would be considered surgical wounds, requiring more assessments to respond to OASIS item M0488, a case-mix variable, provided that the site is the most problematic surgical wound under the expanded definition. It is possible for the healing status of these types of openings to be "fully granulating" (with no case-mix score available), at a stage of "early or partial granulation" (a score of 7), or even "not healing" (a score of 15). For example, a central line site being held open by the line itself may not reach a fully granulating state, or a site that has become infected may be assessable as "not healing." Before these clarifications, it may not have occurred to many assessing clinicians to classify these device-related sites as surgical wounds, so it seems reasonable to assume that more surgical wounds would be reported after the manual change, and to assume that some of these would add to the higher rates of wounds reported to be not healing or in early healing stages.

The second manual change was a new bulleted item in the OASIS response-specific instructions: "A muscle flap performed to surgically replace a pressure ulcer is a surgical wound and is no longer a pressure ulcer." We note it is not uncommon for home health patients to be admitted after hospitalization for pressure ulcer procedures, such as debridements or grafts. While the OASIS manual change noted that debridements do not change the classification of the pressure ulcer to a surgical wound, the muscle flap does change the classification. Again, we would expect this technical clarification to have added to the reported number of surgical wounds.

Another OASIS manual change added the statement that "A PICC line is not a surgical wound, as it is peripherally inserted, although it is considered a skin lesion (see M0440)." The PICC line is a common method of delivering antibiotic treatment intravenously at home. However, using the same reasoning about the perception of device-related openings before the issuance of the August 2000 manual, we believe it is unlikely that the peripherally inserted central catheters (PICC) line clarification caused reduction in reported surgical wounds as it would not have originally occurred to many assessing clinicians to have classified it as such in the first place.

The changes to the OASIS manual instructions noted in this section present concrete potential causes of increased OASIS reporting rates for case-mix items measuring ADL dependencies, pain, incontinence, and surgical wounds. While it is difficult to know with data available how much of the reported increase is traceable to these clarifications, we believe that in the environment at the time the HH PPS was initiated, which included strong efforts in the public and private sectors to educate home health agencies on the proper application of OASIS, the changes must have had some impact. To the extent that the result was a new approach to classifying patients for purposes of the OASIS items involved, we note the increased item reporting rates may not represent an actual material change in the health status of the population under treatment in home care. Given the potential impact of OASIS reporting instructions on case-mix, we will continue to monitor appropriate requirements in an effort to promote effectiveness in the HH PPS payment methodology. Clarifications to the "OASIS Implementation Manual" are issued administratively through normal operating procedures.

- Impact of more post-surgical patients

We also reviewed the increase in rates of post-surgical patients that occurred under the HH PPS to improve our understanding of how this increase contributed to the growth in the case-mix index between the IPS baseline and the 2003 HH PPS period. Being a patient with a surgical wound does not in and of itself increase the case-mix score. However, if the surgical wound is not assigned to the best healing status on the OASIS assessment, the score will increase. Therefore, an increase in the proportion of post-surgical patients makes more episodes eligible for an addition to the score based on the healing status. Furthermore, data shown in Table 10 indicate that under the HH PPS, post-surgical patients were more likely to be assessed with a healing status that impacts upon a case-mix score. Because surgical patients have historically had other characteristics associated with relatively low resource use, we hypothesized that a higher occurrence of surgical wound patients would not necessarily lead to a rise in the overall CMI.

We analyzed the extent to which the severity of HHRG-related OASIS items is due to the increased presence of post-surgical patients, of whom many would have mobility restrictions, pain, and an evolving surgical wound status in the early post-acute phase. First, we analyzed the relationship between having a surgical wound and having a characteristic indicative of increased severity. Second, we recalculated the average case-mix change under two alternative assumptions: (1) The higher share of post-surgical cases is entirely responsible for the changed CMI; (2) growth in the CMI for post-surgical patients was the same as growth in the CMI for non-surgical patients. The second assumption would reveal the potential effect of a faster worsening of

presenting health status through time among post-surgical patients compared to non-surgical patients.

As expected, post-surgical patients exhibited certain characteristics at different rates. Specifically, compared to non-surgical patients, they were slightly less likely to have no home therapies (M0250), about 40 percent more likely to have frequent pain (M0420), nearly three times as likely to have a bowel ostomy, nearly twice as likely to have come from an inpatient rehabilitation facility and to have intractable pain, and 15 percent less likely to be independent in lower body dressing. Many other characteristics were less prevalent among post-surgical patients, such as having any pressure or stasis ulcers; dyspnea; urinary and bowel incontinence; behavioral problems (M0610); upper body dressing, toileting, and ambulation functional limitations.

If we make the first assumption, that the only cause of change in the national CMI under the HH PPS was the increased share of post-surgical patients in the population of home health users, then the national case-mix under the HH PPS sample should have been slightly below the CMI of the HH IPS sample. This is because the CMI for post-surgical patients is smaller than the CMI for non-surgical patients, and because even under the HH PPS the share of post-surgical patients is a minority of all patients. However, in actuality, as stated in section II.A.2.b of this proposed rule, the national CMI increased by 0.099 between the HH IPS sample and the 2003 HH PPS sample.

Post-surgical patients' CMI grew slightly faster than non-surgical patients' CMI over this period. This may represent a change in the mix of post-surgical patients, or it may represent stronger effects of changed coding practices on post-surgical patients than on non-surgical patients. If we make the second assumption—that the growth rate of post-surgical patients' case mix was the same as the growth rate of non-surgical patients' case mix—then the increase in the national CMI should have been marginally smaller than 0.099 (smaller by about one-half of 1 percent). Because our second assumption caused a very small reduction in the CMI increase, we conclude that only a very small portion of the substantial growth in CMI might be attributable to having more severe surgical patients under HH PPS compared to HH IPS.

We believe one possible contributing factor in the slightly faster growth in the CMI for surgical patients was uncertainty about how to assess the healing status of a surgical wound. As noted above, twice as many surgical wounds judged "most problematic" were assigned a status of "not healing" under the HH PPS than under the HH IPS. Fifty percent more surgical wounds were assigned a status of "early and partial granulation," under the HH PPS. A recent clarification in the guidance for assessing healing status is significant, we believe, in understanding this change. In July 2006 the Wound Ostomy and Continence Nurses Society (WOCN), a national source of expertise in wound assessment, and one that CMS encouraged agencies to consult, issued a change in guidance on surgical wound assessment. Before that time, criteria for a status of "non-healing" in a wound closed by primary intention were the following: "incisional separation OR incisional necrosis OR signs or symptoms of infection OR no palpable healing ridge" (WOCN Society OASIS Guidance Document—Spring 2001). Criteria for a status of "fully granulating/healing" were: "incision well-approximated with complete epithelialization of incision; no signs or symptoms of infection; healing ridge well-defined." The July 2006 revision removed all references to a "healing ridge" due to the lack of scientific evidence supporting its use as a sign of wound healing. Many surgical wounds will not exhibit a healing ridge, though the wound is actually healing. To the extent that assessing clinicians paid heightened attention to the now-outdated WOCN guidance in adapting to the HH PPS, it is likely that they applied the pre-2006 criteria, with the result that the national OASIS rate for the healing status of surgical wounds indicated more wounds "not healing" or at a stage of "early and partial granulation."

In summary, based upon our above discussion of review of the data on OASIS items and our discussion of reasons for coding change, we conclude that growth in the national average CMI reflects, to a very large extent, coding practice changes against a background of new financial incentives. The impact of these forces is evidenced by mostly incremental changes in home health population rates of case-mix relevant items and not to actual changes in health status. Other than the increase in reported numbers of surgical wound patients, changes in numbers and characteristics of wound care patients documented on the OASIS were modest. While there was substantially more use of aggressive treatment plans involving at least 10 therapy visits, the pattern of decline in many ADL, IADL and other scale ratings is suggestive of added numbers of marginally limited patients, not severely limited patients. Moreover, scale ratings for ADL measures, an important part of the case-mix system, were likely affected by the manual changes noted above emphasizing that safety is a consideration in determining the rating. Lastly, we found that the higher rate of reported post-surgical patients does not contribute to CMI change. Accordingly, as noted previously, we are proposing to adjust the national standardized 60-day episode payment amount to reflect the nominal change in the CMI.

4. Partial Episode Payment Adjustment (PEP Adjustment) Review

In our July 3, 2000 final rule (65 FR 41128), we described a PEP adjustment under the PPS. The PEP adjustment provides a simplified approach to the episode definition and accounts for key intervening events in a patient's care defined as a beneficiary elected transfer, or a discharge and return to the same HHA that warrants a new start of care for payment purposes, OASIS, and physician certification of the new plan of care. When a new 60-day episode begins, the original national standardized 60-day episode payment rate is proportionally adjusted to reflect the length of time the beneficiary remained under the agency's care before the intervening event. The proportional payment is the PEP adjustment.

The PEP-adjusted episode is paid based on the span of days including start of care date or first billable service date through and including the last billable service date under the original plan of care before the intervening event. The PEP-adjusted payment is calculated by using the span of days (first billable service date through the last billable service date) under the original plan of care as a proportion of 60. The proportion is then multiplied by the original case-mix and wage-adjusted national standardized 60-day episode payment rate. This method of proration in relation to the span of days between the first and last billable service date assumes that the rate of visits through time is constant during the episode period.

Since the July 2000 final rule, we have received comments and correspondence pertaining to the PEP adjustment. These have guided our research efforts since the HH PPS has been in place. Through a contract with Abt Associates, descriptive analysis has been conducted on a large sample of claims linked to OASIS assessments from the first 3 years of the HH PPS in an effort to better understand the patient characteristics associated with PEP-adjusted episodes and the circumstances under which PEP-

adjusted episodes occur. Analysis of patient characteristics revealed no appreciable differences between patients in normal episodes and patients in PEP episodes with regard to conditions or clinical characteristics. (Normal episodes are defined as home health episodes of care that are not subject to any of the payment systems adjustments (for instance, LUPAs, PEPs, SCICs).) The mix of visits for PEP episodes is similar to that of normal episodes.

Additionally, analysis of a 20 percent sample of 2003 episodes showed that approximately 3 percent of all episodes were PEP-adjusted. Of those, three types of PEP-adjusted episodes were identified: approximately 55 percent of PEP-adjusted episodes involved a discharge and return to the same HHA; about 42 percent involved transfers to other agencies; and approximately 3 percent involved a move to managed care. Regarding the circumstances under which PEP-adjusted episodes occur, analysis showed the incidence of inpatient utilization during the 60 days following the first day of a PEP-adjusted episode was 14.5 percent which is lower than the incidence during normal episodes (21.4 percent). The lower incidence of hospitalizations for patients with PEP-adjusted episodes may indicate that these patients are in better health than the average home health patient. Along with the patient characteristics we examined, this seems to suggest that patients experiencing PEP episodes are not necessarily very different from the overall population of home health beneficiaries.

As part of our research efforts, we also examined the different components that make up PEP episodes. Our analysis showed that PEP-adjusted episodes have significantly shorter service periods on average (approximately 23.4 days) than all episodes other than LUPAs and SCIC episodes (42.0 days). The average of 23.4 days was calculated by dividing PEP episodes into their four components. The number of days between the start of the episode and the first billable visit averaged 0.2 days, or 0.4 percent of a full 60-day episode. The paid days, or the days between the first billable and last billable visit days, averaged 23.4 days or 38.9 percent of a full 60-day episode. The number of days between last billable visit to the new episode from-date averaged 17.9 days, or 29.9 percent of a full 60-day episode. Finally, the number of days between the from-date of the new episode from-date to the first episode's original day 60 averaged 18.5 days or 30.8 percent of a full 60-day episode. Under the current system, payment for a PEP episode is adjusted to reflect the paid days only (23.4 days on average).

We further examined the number of visits that occurred during PEP episodes. We found that an average of 13.8 visits occur during PEP episodes. We recognize that this average represents 75 percent of the average number of visits for normal episodes, while the number of paid days represents less than 40 percent of the normal 60-day episode. Thus, the average proration fraction is about 40 percent of the normal episode payment while the number of visits is approximately 75 percent of the number delivered during the average normal episode. Additionally, the average number of minutes per visit during a PEP episode is slightly longer than that of a normal episode for most types of visits. Both results provide evidence that there is some front-loading of visits compared to normal episodes, causing PEP episodes to have a faster average rate of visits during the span of days used to prorate the episode payment. Because the PEP adjustment proration methodology does not take visit occurrence into account, commenters have argued that, PEP episodes appear to be systematically "underpaid".

As we described in the July 3, 2000 final rule, the decision to use the span of billable visit dates was made because of the HHA's involvement in decisions influencing the intervening events for a beneficiary who elected transfer or discharge and returned to the same HHA during the same 60-day episode period. Agencies have some flexibility in discharge decisions that affect the likelihood of incurring a partial episode, whether or not a hospital stay intervenes. They also have indirect influence on a beneficiary's decision to transfer to another home care provider through the quality of care they provide. Current data suggest that PEP episodes are rare and, therefore, the current PEP policy may be serving as a deterrent to premature discharge. We believe that the PEP adjustment is provided in a manner that maintains the opportunity for Medicare patients to choose the provider with which they feel most comfortable. Therefore, we are proposing that the current system of proportional payments based on billable visit dates continue to be the payment methodology for PEP episodes. It should also be noted that in many cases, an HHA receives payment for an additional full episode which it might not have received had the first episode not been subject to a PEP adjustment. We will continue to research the nature of HHA resource use during and following PEP episodes, as well as explore alternative methodologies for payment adjustment.

At this time, our analysis of PEP episodes does not suggest a more appropriate alternative payment policy. We believe that many alternative proration rules that we could devise would likely introduce adverse incentives into the HH PPS. For example, a proposal to pay PEP episodes amounts proportional to the average visit accrual rate we observe for PEP episodes would provide agencies with a financial incentive to reduce visits in the first few weeks of the episode and/or to time the date discharge in relation to the new, prorated schedule of payments. For many types of patients, such a delivery pattern would likely worsen patient outcomes. We would like to solicit suggestions and comments from the public on this matter to guide our continued efforts to improve the PEP adjustment policy.

5. Low-Utilization Payment Adjustment (LUPA) Review

In our July 3, 2000 final rule (65 FR 4117), we described a low-utilization payment to be implemented under the HH PPS. The LUPA was established to reduce the national standardized 60-day episode payment rate regardless if the episode is adjusted as a PEP adjustment or SCIC adjustment when minimal services are provided during a 60-day episode. LUPAs are episodes with four or fewer visits. Payments under a LUPA episode are made on a per-visit basis by discipline. For the July 2000 final rule, the per-visit rates were determined from the audited cost report sample we used to design the HH PPS. (The same rates were used in calculating the standard episode amount.)

The per-visit amounts include payment for (1) Non-routine medical supplies (NRS) paid under a home health plan of care, (2) NRS possibly unbundled to Part B, and (3) a per-visit ongoing OASIS reporting adjustment as discussed in the July 3, 2000 final rule (65 FR 41180). The LUPA payment rates are not case-mix adjusted. As discussed in the July 3, 2000 HH PPS final rule, a standardization factor used to adjust the LUPAs was calculated using national claims data for episodes containing four or fewer visits. This standardization factor includes adjustments only for the wage index.

The per-visit rates originally listed in the July 2000 rule have been updated in the same manner as the standard episode amount. Additionally, the payments are adjusted by the wage index in the same manner as the standard episode amount.

As part of our ongoing research of the HH PPS and to analyze the general appropriateness of an adjustment for low-utilization episodes, Abt Associates analyzed a 20 percent sample of home health episodes covering more than three years of experience under the HH PPS. The analysis file was the Fu Associates analytical file linking OASIS with home health claims. This allowed the grouping of LUPAs into categories for analysis of patient characteristics. There were approximately 179,845 LUPA episodes in this file, accounting for approximately 13 percent of episodes.

The analysis revealed minor differences between patients in LUPA episodes and patients in normal episodes. Although, overall, patients in LUPA episodes on average had somewhat lower clinical and functional severity, a substantial number of patients were in high severity groups. LUPA episodes were also just as likely as normal episodes to include a hospital stay during the 60-day episode. We believe that some LUPAs result from the hospitalization of the patient before a significant number of visits have been delivered.

One indication from these data is that LUPAs are serving as a low-end outlier payment for certain episodes that incur unexpectedly low costs. Other LUPAs result from expected care patterns for patients with conditions such as neurogenic bladder and pernicious anemia. The incidence of LUPAs has changed little since the HH PPS began, which suggests that LUPA episodes are not excessively vulnerable to incentives to manipulate care plans for payment purposes. However, we continue to believe that the distinction between LUPAs and full episodes requires sustained monitoring through medical review and other activities. Further, we are aware of the potential for inappropriate admissions into LUPA episodes among patients with questionable medical necessity for home health care.

Since the HH PPS went into effect, we have received comments and correspondence pertaining to the LUPA policy. In particular, these have focused on the suggestion that LUPA payment rates do not adequately account for the front-loading of costs in an episode. Further, commenters suggested that because of the small number of visits in a LUPA episode, HHAs have little opportunity to spread the costs of lengthy initial visits over a full episode. CMS has also received comments regarding the appropriateness of the 4-visit threshold for LUPAs. CMS is not proposing to modify the 4-visit threshold for LUPA episodes in this proposed rule. We did look at, and consider, the 4-visit threshold and possible alternatives to that threshold in our analysis of LUPA episodes. Increasing the 4-visit threshold to some number greater than 4 would result in a HH PPS in which we have an even greater percentage of LUPA, which are per-visit reimbursed episodes and could be interpreted as a move closer toward a per-visit payment system. This is not the direction we want to go with a bundled prospective payment system as is the HH PPS. Conversely, decreasing the 4-visit threshold to some number less than 4 would result in an overpayment of episodes, in that episodes with 4 visits would then receive a full episode payment. As a result, we have concentrated our efforts to address the payment of certain types of LUPA episodes, in particular, LUPA episodes occurring as the only episode and circumstances where a LUPA episode is the initial episode in a sequence of adjacent episodes.

To examine this assertion, Abt Associates conducted a descriptive analysis of LUPA episodes. Of particular interest are the findings pertaining to the average visit length of LUPAs occurring in the initial episode of a sequence of adjacent episodes or occurring as the only episode (constituting approximately 59 percent of all LUPA episodes). An examination of visit log data predating the HH PPS, used for the original Abt case-mix study (July 2000 Final Rule), revealed that the average visit length for nursing for an initial assessment is, on average, twice as long as the length for other nursing visits. Likewise, an initial assessment visit made by a physical therapist averaged 25 percent more than other physical therapy visits. These estimates paralleled findings from a 2001 Government Accountability Office (GAO) study that reported that the OASIS added an average of 40 minutes to a typical start of care visit. We found that the average visit lengths in initial and only episode LUPAs are 16 to 18 percent higher than the average visit length in initial non-LUPA episodes. In comparison, the average visit length for LUPA episodes that occurred between initial and ending episodes in a sequence of adjacent episodes (approximately 24 percent of all LUPAs) or at the end of a sequence of adjacent episodes (approximately 17 percent of all LUPAs) is less than or about equal to average visit lengths for corresponding non-LUPA episodes.

The results of this data analysis suggest that initial and only episode LUPAs require longer visits, on average, than non-LUPA episodes, and that the longer average visit length is due to the start of care visit, when the case is opened and the initial assessment takes place. We agree with commenters to the extent that these analyses of initial and only episode LUPA episodes indicate that payments for such episodes may not offset the full cost of initial visits. This is likely due to the fact that the LUPA per-visit payment rates were originally set based on the costs of an average visit, not the costs of the subset of visits incurred by patients receiving four or fewer visits during an initial or only episode LUPA; for these patients, a large share of total visits comprises initial visits. However, the comparisons of average minutes per visit for LUPA episodes occurring within or at the end of a sequence of episodes do not support a proposal for payment increases for those types of LUPAs.

Based upon our initial review that initial or only episode LUPAs may not reflect the full costs incurred for the visits delivered, we then conducted further analysis to determine an appropriate payment increase for initial or only episode LUPAs. Analyzing a 10 percent sample of 2003 episodes, we found that 75 percent of LUPA episodes involved nursing without physical therapy while 15 percent of LUPAs involved physical therapy without skilled nursing. Almost all of the remaining 10 percent of episodes involved a mix of physical therapy and skilled nursing. Although the discipline that delivered the initial visit may not be identified in the sample file, for deriving payment rates based upon our analysis noted above, we have assumed the share of initial assessment visits from skilled nursing is 80 percent and the share of initial assessment visits from physical therapy is 20 percent. We then used these percentages to calculate the estimated value of 40 minutes added to the initial visit for start of care episodes. We relied upon the GAO report noted above, as the basis for the estimate of 40 minutes. For this calculation, we multiplied the current per-visit rate by the percentage increase in the average visit length. The average visit length was calculated from all non-LUPA episodes in the Abt sample file. Specifically, we multiplied, for the value of extra skilled nursing visits, the LUPA base rate of $105.07 for skilled nursing (trended forward from the original rate of $98.85) by the percentage over average skilled nursing visit length (0.860215) and by the share of initial assessment visits from skilled nursing (0.80). The product was $72.31. Next, we multiplied, for the value of

extra physical therapy minutes, the LUPA base rate of $114.89 for physical therapy (trended forward to CY 2008 from the original rate of $108.08) by the percentage over average physical therapy visit length (0.858369) and by the share of initial assessment visits from physical therapy (0.20). The product was $19.72. Finally, we summed these weighted values to calculate a total average value of $92.03 ($72.31 + $19.72 = $92.03).

In the July 3, 2000, HH PPS final rule (65 FR 41187), we adjusted the per-visit rate by 1.05 to account for outlier payments. Therefore, we are proposing to multiply the $92.03 by 1.05 and then reduce this amount to account for the estimated percentage of outlier payments as a result of the current FDL ratio of 0.67 (see section II.A.8. of this proposed regulation), resulting in an amount of $92.63.

Given the findings from the descriptive analysis of LUPA episodes and total average value of excess visit length for initial visits in certain LUPA episodes, we propose an increase of $92.63 for LUPA episodes that occur as the only episode or the initial episode during a sequence of adjacent episodes. Again, as defined in section II.A.2 of this proposed rule, a sequence of adjacent episodes is defined as a series of claims with no more than 60 days between the end of one episode and the beginning of the next episode (except for episodes that have been PEP-adjusted). In § 484.230, we are proposing to add a third, fourth, and fifth sentence after the second sentence to define the term "sequence of adjacent episodes" for the purpose of identifying situations where the LUPA is the beneficiary's only episode or the initial episode in a sequence of adjacent episodes. We propose to pay an additional low-utilization payment adjustment LUPA episodes which are either the only episode or the initial episode in a sequence of adjacent episodes, and note the additional payment for such LUPA episodes will be updated annually by the home health market basket percentage increase. As with the other components of the LUPA methodology, this increase for situations where a LUPA is the only episode or the initial episode in a sequence of adjacent episodes will be wage-adjusted. We believe this increase allows HHAs fair compensation for the cost of lengthier start of care visits in LUPA episodes. To maintain budget neutrality, we further propose that the national standardized 60-day episode payment rate be reduced. We determined the budget neutral national standardized 60-day episode payment rate that compensates for the extra payment of $92.63, as well as for other proposed changes in this proposed rule, from simulating the new payment system on our 2003 claims sample. The results are shown in the section II. D.

We are soliciting comments on our methodology for arriving at an adjustment to achieve fair compensation for the cost of lengthier start of care visits in LUPA episodes. An alternative methodology is basing the estimated additional time on claims-based reports of lengths of the first visit in initial and only episode LUPAs. We expect to test the adequacy of such an alternative methodology using a large, representative CY 2005 claims sample that would be available before the final rule. We are specifically soliciting comments on alternative methodologies.

6. Significant Change in Condition (SCIC) Review

The SCIC adjustment occurs when a beneficiary experiences a SCIC during the 60-day episode that was not envisioned in the original plan of care. In our final rule published July 3, 2000 in the **Federal Register** (65 FR 41128), we established the SCIC adjustment to be the proportional payment adjustment reflecting the time both before and after the patient experienced a SCIC during the 60-day episode. In order to receive a new case-mix assignment for purposes of SCIC payment during the 60-day episode, the HHA must complete an OASIS and obtain the necessary physician orders reflecting the significant change in treatment in the patient's plan of care.

Currently, the SCIC adjustment is calculated in two parts. The first part of the SCIC adjustment reflects the adjustment to the level of payment before the significant change in the patient's condition during the 60-day episode. The second part of the SCIC adjustment reflects the adjustment to the level of payment after the significant change in the patient's condition occurs during the 60-day episode.

The first part of the SCIC adjustment is determined by taking the span of days (first billable service date through the last billable service date) before the patient's SCIC as a proportion of 60 multiplied by the original episode payment amount. The original episode payment level is proportionally adjusted using the span of time the patient was under the care of the HHA before the SCIC that required an OASIS, physician orders indicating the need for a change in the treatment plan, and the new case-mix assignment for the remainder of the 60-day episode.

The second part of the SCIC adjustment reflects the time the patient is under the care of the HHA after the patient experienced a SCIC during the 60-day episode that required the new case-mix assignment. The second part of the SCIC adjustment is a proportional payment adjustment reflecting the time the patient will be under the care of the HHA after the SCIC and continuing until another significant change or until the end of the 60-day episode. Once the HHA completes the OASIS, determines the new case-mix assignment, and obtains the necessary physician change orders reflecting the need for a new course of treatment, the second part of the SCIC adjustment begins. The second part of the SCIC adjustment is determined by taking the span of days (first billable service date through the last billable service date) after the patient experiences the SCIC through the balance of the 60-day episode (or until the next significant change, if any) as a proportion of 60 multiplied by the new episode payment level resulting from the significant change.

Since we proposed the SCIC adjustment in October 1999 (64 FR 58134), we have received comments and correspondence regarding the appropriateness and the complexity of the SCIC adjustment methodology. These suggestions expressed concerns that SCIC adjustments may be difficult to apply appropriately. Additionally, analysis of HHA margins using a sample of approximately 2,500 cost reports suggested that SCIC episodes did not necessarily account for the cost associated with a patient in a SCIC episode. These concerns guided our descriptive analysis of SCIC episodes and our investigation of possible alternatives to SCIC adjustment.

The SCIC policy was designed and implemented primarily to protect HHAs from receiving a lower, inadequate payment for a patient that unexpectedly got worse and became more expensive to the agency during the course of a 60-day episode. While it is also possible that a patient could become unexpectedly better, resulting in a patient needing far fewer resources and costing the agency less, such instances were expected to be few. For patients who experienced an unexpected adverse significant change in condition, but the agency would actually receive lower payments when applying the computation for deriving a SCIC payment, agencies were instructed that they did not have to report a SCIC.

Abt Associates, under contract to CMS to conduct analysis and simulation of refinements to HH PPS, first conducted several descriptive analyses

examining the payment accuracy for SCIC-adjusted episodes. As with the LUPA, they used the Fu Associates' large analytic file consisting of home health claims linked to OASIS. Analyses included examination of trends in rates and other utilization statistics relating to SCIC episodes, OASIS characteristics for SCIC episodes, and estimation of margins for SCIC episodes.

Results of the analyses indicated that SCIC episodes have been declining since HH PPS began. Approximately 3.7 percent of episodes were reported as SCIC episodes in the first quarter of the HH PPS (October 1, 2000, to December 31, 2000); they decreased to 2.1 percent of episodes by the first quarter of CY 2004. SCIC episodes tended to be longer than the average episode (excluding LUPAs), and were more likely to occur in facility-based agencies and rural agencies. There was some evidence that the percentage of episodes in the highest category of the services utilization dimension of the case-mix system increased for SCIC episodes over time. SCIC episodes had a higher likelihood of using at least 10 therapy visits, and this excess grew over time. Overall, patients experiencing SCIC episodes differed little in terms of case-mix characteristics from the average home health patient, except for a higher incidence of dyspnea, ADL limitations, and those recently discharged from acute care.

The margin analysis suggested that, on average, SCIC episodes had negative margins, even though the SCIC payment policy allows agencies to avoid declaring a SCIC if an episode that experiences an adverse significant change in condition would be paid less than the original case-mix adjusted payment. One reason for the negative margin estimate appears to be that in some cases agencies inappropriately applied the SCIC adjustment for patients experiencing a significant adverse change, when in doing so the agency actually received lower payments for those patients. Also, the proportional payment policy, which reduces payment in proportion to the number of days between the last visit before the significant change in condition and the first visit following the significant change, results in increasingly lower payments as the number of days between the last and next visit increases. In contrast, a normal episode payment is not affected by periods when visits do not occur.

As noted above, we believe that HHAs have had difficulty in interpreting when to apply the SCIC adjustment policy. Agencies also reported additional administrative burdens from adhering to the policy. Furthermore, there has been a 2 percent decline in use of the SCIC adjustments since the implementation of the HH PPS. We have received comments that stated eliminating the SCIC policy altogether might be better than having a SCIC policy that is difficult to understand and adhere to. Given these concerns, we decided to focus our analysis on simulating the impact of eliminating the SCIC adjustment policy. We performed this simulation by repricing SCIC claims to use the first HHRG during the episode for determining the payment, and eliminating any proration. We then compared the total expenditures before and after making this change.

The results of eliminating the SCIC policy suggested little impact on outlays—an increase of 0.5 percent of total payments. The difference in total payments was less than one-half of one percent for all categories of agencies (urban versus rural, by size, and ownership).

Based on these findings, we are proposing to eliminate the SCIC adjustment from the HH PPS. Specifically, we are proposing in § 484.205 to remove paragraph (e) concerning the SCIC adjustment policy from the HHA PPS. We are also proposing to redesignate paragraph (f) as paragraph (e). In addition, we are proposing to amend our regulations at § 484.205 by removing paragraph (a)(3) and redesignating paragraph (a)(4) as paragraph (a)(3). Furthermore, we proposing to revise paragraph (b) introductory text to read as follows: "(b) *Episode payment.* The national prospective 60-day episode payment represents payment in full for all costs associated with furnishing home health services previously paid on a reasonable cost basis (except the osteoporosis drug listed in section 1861(m) of the Act as defined in section 1861(kk) of the Act) as of August 5, 1997 unless the national 60-day episode payment is subject to a low-utilization payment adjustment set forth in § 484.230, a partial episode payment adjustment set forth at § 484.235, or an additional outlier payment set forth in § 484.240. All payments under this system may be subject to a medical review adjustment reflecting beneficiary eligibility, medical necessity determinations, and HHRG assignment. DME provided as a home health service as defined in section 1861(m) of the Act continues to be paid the fee schedule amount." We are also proposing to remove § 484.237 relating to the methodology used for the calculation of the significant change in condition payment adjustment.

Episodes that are currently SCIC adjusted would be treated as normal episodes and will receive payment for the entire 60-day period based on the initial, and only, HHRG code. The national standardized 60-day episode payment rate in section II.A.2.c of the proposed rule takes into account this proposed change in SCIC policy and is, therefore, slightly lower than it would have been without proposing this change. We believe the elimination of the SCIC adjustment policy would have a minor impact on home health agency operations and revenues, because SCIC episodes are very infrequent. Our estimate of the cost of eliminating the SCIC policy, implemented in a budget neutral manner as a reduction to the national standardized 60-day payment rate, is presented in section II.D and reported in the accompanying table (Table 23b). The estimated reduction is $15.71. We discussed this proposal at a meeting with the contractor's TEP in March 2006. We received favorable feedback noting that our proposal would be an appropriate simplification of the HH PPS.

7. Non-Routine Medical Supply (NRS) Amounts Review

As described in the HH PPS final rule published in the **Federal Register** (65 FR 41180) and modified in the June 1, 2001, correction notice (66 FR 32777), the NRS amounts included in the per-episode payment and initially paid on a reasonable cost basis under a home health plan of care, were calculated by summing the NRS costs using audited cost reports from 1997. The NRS costs for all the providers in that audited cost report sample were then weighted to represent the national population and updated to FY 2001. That weighted total was divided by the number of episodes for the providers in the audited cost report sample, to obtain the average cost per episode of NRS reported as costs on the cost report. This amount was $43.54.

The possible unbundled NRS, billed under Medicare Part B and not reflected in on the home health cost report, were also included in the HH PPS national standardized 60-day episode payment rate by summing the allowed charges for 176 Healthcare Common Procedure Coding System (HCPCS) codes, reflecting NRS codes, in CY 1998 for beneficiaries under a home health plan of care. That total was divided by the total number of episodes in CY 1998 from the episode database, to obtain the average cost of unbundled NRS per episode. This amount was $6.08.

The total of the two amounts $43.54 and $6.08, or $49.62, was added to the national total prospective payment

amount per 60-day episode for CY 2001 (before standardization). The standardized amount has been subsequently updated annually.

Since the proposal and adoption of this methodology for payment of NRS, we have received comments expressing concern about the cost of supplies for certain patients with "high" supply costs. In particular, commenters were concerned about the adequacy of payment for some patients with pressure ulcers, stasis ulcers, other ulcers, wounds, burns or trauma, cellulitis, and skin cancers.

In general, NRS use is unevenly distributed across episodes of care in home health. While most patients do not use NRS, many use a small amount, and a small number of patients use a large amount of NRS. The payment for NRS included in the HH PPS standardized payment rate does not reflect this distributional variation. Furthermore, the current case-mix adjustment of the standardized amount, which effectively adjusts the NRS payment we originally included, may not be the most appropriate way to account for NRS costs.

In order to investigate the performance of the payment methodology for NRS and to explore an approach to case-mix adjustment of the NRS component of the payment, our contractor, Abt Associates, performed several analyses of the current system. The analysis file was constructed by Abt Associates from a sample of 2001 cost reports, which were needed to determine cost-to-charge ratios. The cost reports were then linked to claims. The claims came from an analytic file constructed by Fu Associates that links home health claims and OASIS.

The cost report sample was analyzed to detect or correct extremely implausible cost data (that is, if cost report erroneously inverted ratio of costs to charges, this was corrected). Many cost reports were dropped after this initial analysis because the cost-to-charge ratio for nonroutine medical supplies was zero. Then, we retrieved Medicare claims for patients admitted to the agencies with remaining cost reports, in order to ensure that the cost report totals for non-routine supplies were consistent with total charges for non-routine supplies that we obtained from the provider's claims. Additional cost reports were dropped from the sample at this step. At the end of this process, from an initial sample of 2,864 cost reports, 1,207 cost reports were considered usable.

The cost report data were then merged with a random sample of data from 496,237 "normal" home health episodes from the same set of agencies used in the sample data. Normal episodes were defined as episodes that did not include additional adjustments such as LUPAs or PEP adjustments. "Cost-to-charge" ratios generated from the cost reports were used to estimate NRS costs for the episodes in the sample.

The exploration of case-mix adjustment for NRS costs was conducted in a manner similar to the way Abt Associates developed the initial case-mix model. We created regression equations that used OASIS measures to predict episode-level NRS costs. One equation used the current case-mix variables. This equation explained approximately 10 percent of the variation in NRS costs in this data sample. This provided a baseline against which to judge the performance of set variables that differ from the set used in the current HH PPS case-mix system.

Models were developed after creating additional variables from OASIS items and targeting certain conditions expected to be predictors of NRS use based on clinical considerations. Many of these conditions were skin-related.

The end result of the model exploration process was two versions of the "best-fitting" variable set. This best fitting variable set consisted of more than two dozen indicators for diagnoses, wound conditions, and certain prosthetics captured on the OASIS. The variables could be used as the basis for improved prediction of NRS costs. These variables represent measurable conditions that have been the subject of extensive education by CMS in its administration of the OASIS system, and by others such as the ICD–9–CM coding committee with its interest in coding accuracy. Therefore, we believe this variable set would be the basis for a methodology to account for NRS costs that is feasible to administer and does not create significant new payment concerns.

The first alternative model using the best-fitting variables divided episodes into two episode groups, with one group containing first and second episodes (early), and the second containing third and later episodes (later). The second alternative model does not distinguish between early and later episodes. These "best fit" models were then used to construct a scoring system. Each condition in the best-fit models was assigned one point for each $5 increment in NRS cost as determined from the model results. For example, if a variable representing a clinical condition predicted a $50 increase in cost, an episode with that variable would be given 10 points. We summed the condition-specific scores for each episode. We then placed those sums into five severity groups. For the model that separated early from later episodes we defined 10 severity groups, five for early episodes and 5 for later episodes. This system explained about 13.7 percent of NRS cost variation in the sample. The model that pooled all episodes had 5 severity groups and explained 13.0 percent of the variation in NRS costs.

We note, because there is a limited performance advantage of the two-episode group model over the single model, we are proposing to use the simpler model that pays all episodes, whether early or later episodes, using the same set of severity groups. Table 11 shows the relative weights and payment weights for the five severity levels in the proposed NRS model, and Table 12a sets forth the NRS scores for the five-group model. We will continue to evaluate the ICD–9–CM codes listed for each group (Table 12b) to ensure as much as possible that condition-related scores are based on ICD–9–CM codes that are specific, unambiguous, and use diagnostic criteria widely accepted within the medical community. In addition to refining the list of conditions contained within each diagnostic group (Table 12b), we intend to continue to study ways of improving the statistical performance of all the variables represented in Table 12a. We solicit public comment to help inform our efforts. We also intend to update the data base upon which our payment proposal for NRS is based. Our ability to update the data files will depend on the quality of data available in claims and cost reports for succeeding years. If the data are not found to be sufficiently complete and accurate, we would use the existing data for any final revisions that result from further analysis and public comments.

In addition to computing the R-square statistic as a summary of the system's performance, we examined the improvements in payment accuracy for NRS costs per episode, according to selected characteristics of the episode. The magnitude of change is difficult to report with a high degree of certainty because of the limited data resources available for these analyses.

We found that under our proposal NRS payments for episodes reporting no NRS charges on the episode claim would better reflect the absence of NRS costs incurred in such an episode, by having their payment for NRS reduced. For the remaining claims—those reporting any amount of NRS costs—on average we estimate that NRS payments would come significantly closer to their estimated NRS costs under the proposed

new system of accounting for NRS. For the subgroups of episodes with the OASIS conditions listed in Table 11, under our proposal, the difference between the estimate of average NRS costs incurred and the proposed amount to account for those NRS costs would decrease in a similar manner, with some differences becoming even smaller.

However, our ability to predict NRS costs remains limited. We have not yet developed a statistical model that has performed with a high degree of predictive accuracy. Some of the reasons for this result include the limited data available to model NRS costs, and the likelihood that OASIS does not have any measures available for some kinds of NRS. Nevertheless, we are proposing to change the payment system because the majority of episodes do not incur any NRS costs, and the current payment system overcompensates these episodes. Further, we believe the proposed approach is appropriate to the extent that we have developed a way to account for NRS costs that is based on measurable conditions, is feasible to administer, and offers HHAs some protection against episodes with extremely high NRS costs. As we noted earlier in this section, we will continue to look into ways to improve the predictive model we are proposing to account for NRS costs. We solicit suggestions and comments from the public on this matter.

In the course of conducting the NRS analysis, we discovered a possible source of error in reporting on claims. Data analysis suggested that enteral nutrition patients were incurring higher NRS costs than average and, in our model, could be assigned a moderate score for NRS cost. However, we did not find evidence from our analyses that any category of NRS other than enteral supplies would systematically account for the NRS finding in the model for enteral nutrition patients. These patients often have a very compromised health status, including skin and other conditions that are already accounted for in our model. Further, we explored other possibilities to determine if information was missing from the model. If available, such information could be added to the model to explain the scores we found for the enteral nutrition variable. However, we did not gather any information that produced any additional hypotheses. An important remaining hypothesis is that some providers are reporting enteral supplies charges for these patients in error; in fact, at least one large provider has indicated this was the case. We are proposing to exclude the enteral nutrition variable from the model to ensure compliance with the statute and regulations governing enteral nutrition, as noted below; but, we welcome comments on this issue.

As we stated in the final HH PPS rule dated July 3, 2000 (65 FR 41139), "Part B services such as parenteral or enteral nutrition are neither currently covered as home health services nor defined as non-routine medical supplies. Parenteral or enteral nutrition would therefore not be subject to the requirements governing home health consolidated billing."

If the patient requires medical supplies that are currently covered and paid for under the Medicare home health benefit during a certified episode under HH PPS, the billing for those medical supplies falls under the auspices of the HHA due to the consolidated billing requirements. As parenteral and enteral nutrition are not covered or paid for under the Medicare home health benefit, they should be billed separately by the supplier or provider. Because we assumed that some providers are reporting these supplies in error, we believe it is important to again note the Medicare coverage requirements for parenteral and enteral nutrition to prevent any potential future reporting errors.

Medicare's coverage guidelines for enteral nutrition state: "Coverage of nutritional therapy as a Part B benefit is provided under the prosthetic device benefit provision which requires that the patient must have a permanently inoperative internal body organ or function thereof. Therefore, enteral and parenteral nutritional therapy is not covered under Part B in situations involving temporary impairments." The National Coverage Decision (NCD) provides guidance in applying the definition of temporary impairment: "Coverage of such therapy, however, does not require a medical judgment that the impairment giving rise to the therapy will persist throughout the patient's remaining years. If the medical record, including the judgment of the attending physician, indicates that the impairment will be of long and indefinite duration, the test of permanence is considered met." (See Medicare National Coverage Determinations [NCD] Manual, Pub. 100–03, Section 180.2, Chapter 1 (Part 3). Section 1842(s) of the Act implements the fee schedule for parenteral and enteral nutrition (PEN) nutrients, equipment and supplies. The general payment rules for PEN effective on or after January 1, 2002, are stipulated in § 414.102 and § 414.104.

The following is the list of HCPCS codes which may be used to claim reimbursement for enteral nutrition. Providers may claim reimbursement for it on the UB–92 claim form if they report the appropriate HCPCS code and revenue center code. Payment is made by the RHHI under the Medicare Fee Schedule.

BILLING CODE 4120–01–P

Enteral Items and Services

A5200	PERCUTANEOUS CATHETER/TUBE ANCHORING DEVICE, ADHESIVE SKIN ATTACHMENT
A9270	NON-COVERED ITEM OR SERVICE
B4034	ENTERAL FEEDING SUPPLY KIT; SYRINGE, PER DAY
B4035	ENTERAL FEEDING SUPPLY KIT; PUMP FED, PER DAY
B4036	ENTERAL FEEDING SUPPLY KIT; GRAVITY FED, PER DAY
B4081	NASOGASTRIC TUBING WITH STYLET
B4082	NASOGASTRIC TUBING WITHOUT STYLET
B4083	STOMACH TUBE - LEVINE TYPE
B4086	GASTROSTOMY / JEJUNOSTOMY TUBE, ANY MATERIAL, ANY TYPE, (STANDARD OR LOW PROFILE), EACH
B4100	FOOD THICKENER, ADMINISTERED ORALLY, PER OUNCE
B4102	ENTERAL FORMULA, FOR ADULTS, USED TO REPLACE FLUIDS AND ELECTROLYTES (E.G. CLEAR LIQUIDS), 500 ML = 1 UNIT
B4103	ENTERAL FORMULA, FOR PEDIATRICS, USED TO REPLACE FLUIDS AND ELECTROLYTES (E.G. CLEAR LIQUIDS), 500 ML = 1 UNIT
B4104	ADDITIVE FOR ENTERAL FORMULA (E.G. FIBER)
B4149	ENTERAL FORMULA, MANUFACTURED BLENDERIZED NATURAL FOODS WITH INTACT NUTRIENTS, INCLUDES PROTEINS, FATS, CARBOHYDRATES, VITAMINS AND MINERALS, MAY INCLUDE FIBER, ADMINISTERED THROUGH AN ENTERAL FEEDING TUBE, 100 CALORIES = 1 UNIT
B4150	ENTERAL FORMULA, NUTRITIONALLY COMPLETE WITH INTACT NUTRIENTS, INCLUDES PROTEINS, FATS, CARBOHYDRATES, VITAMINS AND MINERALS, MAY INCLUDE FIBER, ADMINISTERED THROUGH AN ENTERAL FEEDING TUBE, 100 CALORIES = 1 UNIT
B4152	ENTERAL FORMULA, NUTRITIONALLY COMPLETE, CALORICALLY DENSE (EQUAL TO OR GREATER THAN 1.5 KCAL/ML) WITH INTACT NUTRIENTS, INCLUDES PROTEINS, FATS, CARBOHYDRATES, VITAMINS AND MINERALS, MAY INCLUDE FIBER, ADMINISTERED THROUGH AN ENTERAL FEEDING TUBE, 100 CALORIES = 1 UNIT
B4153	ENTERAL FORMULA, NUTRITIONALLY COMPLETE, HYDROLYZED PROTEINS (AMINO ACIDS AND PEPTIDE CHAIN), INCLUDES FATS, CARBOHYDRATES, VITAMINS AND MINERALS, MAY INCLUDE FIBER, ADMINISTERED THROUGH AN ENTERAL FEEDING TUBE, 100 CALORIES = 1 UNIT
B4154	ENTERAL FORMULA, NUTRITIONALLY COMPLETE, FOR SPECIAL METABOLIC NEEDS, EXCLUDES INHERITED DISEASE OF METABOLISM, INCLUDES ALTERED COMPOSITION OF PROTEINS, FATS, CARBOHYDRATES, VITAMINS AND/OR MINERALS, MAY INCLUDE FIBER, ADMINISTERED THROUGH AN ENTERAL FEEDING TUBE, 100 CALORIES = 1 UNIT
B4155	ENTERAL FORMULA, NUTRITIONALLY INCOMPLETE/MODULAR NUTRIENTS, INCLUDES SPECIFIC NUTRIENTS, CARBOHYDRATES (E.G. GLUCOSE POLYMERS), PROTEINS/AMINO ACIDS (E.G. GLUTAMINE, ARGININE), FAT (E.G. MEDIUM CHAIN TRIGLYCERIDES) OR COMBINATION, ADMINISTERED THROUGH AN ENTERAL FEEDING TUBE, 100 CALORIES = 1 UNIT
B4157	ENTERAL FORMULA, NUTRITIONALLY COMPLETE, FOR SPECIAL METABOLIC NEEDS FOR INHERITED DISEASE OF METABOLISM, INCLUDES PROTEINS, FATS, CARBOHYDRATES, VITAMINS AND MINERALS, MAY INCLUDE FIBER, ADMINISTERED THROUGH AN ENTERAL FEEDING TUBE, 100 CALORIES = 1 UNIT
B4158	ENTERAL FORMULA, FOR PEDIATRICS, NUTRITIONALLY COMPLETE WITH INTACT NUTRIENTS, INCLUDES PROTEINS, FATS, CARBOHYDRATES, VITAMINS AND MINERALS, MAY INCLUDE FIBER AND/OR IRON, ADMINISTERED THROUGH AN ENTERAL FEEDING TUBE, 100 CALORIES = 1 UNIT
B4159	ENTERAL FORMULA, FOR PEDIATRICS, NUTRITIONALLY COMPLETE SOY BASED WITH INTACT NUTRIENTS, INCLUDES PROTEINS, FATS, CARBOHYDRATES, VITAMINS AND MINERALS, MAY INCLUDE FIBER AND/OR IRON, ADMINISTERED THROUGH AN ENTERAL FEEDING TUBE, 100 CALORIES = 1 UNIT
B4160	ENTERAL FORMULA, FOR PEDIATRICS, NUTRITIONALLY COMPLETE CALORICALLY DENSE (EQUAL TO OR GREATER THAN 0.7 KCAL/ML) WITH INTACT NUTRIENTS, INCLUDES PROTEINS, FATS, CARBOHYDRATES, VITAMINS AND MINERALS, MAY INCLUDE FIBER, ADMINISTERED THROUGH AN ENTERAL FEEDING TUBE, 100 CALORIES = 1 UNIT
B4161	ENTERAL FORMULA, FOR PEDIATRICS, HYDROLYZED/AMINO ACIDS AND PEPTIDE CHAIN PROTEINS, INCLUDES FATS, CARBOHYDRATES, VITAMINS AND MINERALS, MAY INCLUDE FIBER, ADMINISTERED THROUGH AN ENTERAL FEEDING TUBE, 100 CALORIES = 1 UNIT
B4162	ENTERAL FORMULA, FOR PEDIATRICS, SPECIAL METABOLIC NEEDS FOR INHERITED DISEASE OF METABOLISM, INCLUDES PROTEINS, FATS, CARBOHYDRATES, VITAMINS AND MINERALS, MAY INCLUDE FIBER, ADMINISTERED THROUGH AN ENTERAL FEEDING TUBE, 100 CALORIES = 1 UNIT
B9000	ENTERAL NUTRITION INFUSION PUMP - WITHOUT ALARM
B9002	ENTERAL NUTRITION INFUSION PUMP - WITH ALARM
B9998	NOC FOR ENTERAL SUPPLIES
E0776	IV POLE

Notwithstanding our proposal to exclude enteral nutrition from the list of conditions included as NRS, we now describe our proposed revision to the payment methodology to account for NRS costs. We propose to account for

NRS costs based on five severity groups and a national conversion factor. Table 12a shows the condition-specific scores derived from the NRS model. Table 12b shows the ICD–9–CM diagnosis codes used to define conditions that are based on diagnosis codes. The sum of scores for each episode is then used to group episodes into one of five severity groups, as follows: Group 0 if the sum is zero; group 1 for 1 to 16; group 2 for 17 to 34; group 3 for 35 to 59; and group 4 for 60 or more. We defined these five scoring levels from examining the distribution of scores in our analysis sample. Most of the episodes (64 percent, see Table 11) fell into the group with a score of zero (that is, no conditions listed in Table 12b were reported on the OASIS assessment). For purposes of payment, relative weights were calculated for each severity group based on the estimated average NRS cost, divided by the overall average in the sample. The relative weights are listed below in Table 11.

To derive payment, each relative weight is multiplied by the conversion factor. We calculated the conversion factor by inflating the original allowance included in the episode base rate ($49.62) by the total percentage increase since October 2000 using the statutory market basket updates. We take the inflated conversion factor of $53.91 and multiply it by 1.05 to account for the initial outlier payment noted in the July 3, 2000 final rule (65 FR 41187). We then take that product and multiply it by 0.958614805 to account for the estimated percentage of outlier payments as a result of the current FDL ratio of 0.67. To further adjust for the nominal change in case-mix, we multiply the $54.26 by 0.9725 for a proposed NRS conversion factor of $52.77. Because the market for most NRS is national, we do not propose to have a geographic adjustment to the conversion factor. We plan to continue to monitor NRS costs to determine if any adjustment for the NRS weights is warranted in the future.

We determined the budget-neutral national standardized 60-day episode payment rate that compensates for the payments for NRS under the proposed new case-mix-adjusted HH PPS as part of the simulation of all proposed changes on our 2003 claims sample. The results are shown in section II.D.

For an example of calculating an HH PPS payment using the NRS proposed payment methodology see section II.D.

We do not propose to apply the five-level NRS payment approach to LUPA episodes. In the original design of the HH PPS, $1.94 was built into the per-visit rates used to pay for visits in a LUPA episode. This amount was the sum of $1.71, the average cost per visit for NRS reported as costs on the cost report, and $.23, the average cost per visit for NRS possibly unbundled and billed separately to Part B and reimbursed on the fee schedule. Recent analysis shows that NRS charges for non-LUPA episodes are almost 3 times higher than that for LUPA episodes. In general, approximately 1 in 5 LUPAs report NRS while 1 in 3 non-LUPA episodes report NRS. Our proposal is to redistribute the $53.96 currently paid to all non-LUPA episodes. Given that LUPA episodes, by nature, are of extremely low visit volume, we do not propose to redistribute that $1.94 now paid to LUPA episodes. We believe an attempt to develop a model for redistributing the small amount of NRS payments ($1.94) paid to LUPA episodes would be unproductive.

Furthermore, we are also concerned that additional payment for LUPAs to account for NRS costs could promote increases in medically unnecessary home health episodes. In proposing refinements for LUPA payments, as discussed in section II.A.5 of this proposed rule, we are aware of the potential for increases in medically unnecessary LUPA episodes that could result from our proposal for increased LUPA payment for only or initial LUPA episodes. Providing for additional NRS payments for such LUPAs could only adversely add to this potential. Consequently, we are not proposing any additional payments for NRS costs for LUPA episodes. However, we are specifically soliciting comment on alternative approaches for NRS payment in LUPAs.

We also considered proposing an outlier policy for NRS costs, but we believe one is not administratively feasible at this time. An outlier policy for NRS costs would depend on having an infrastructure, including a reporting system for the extensive range of nonroutine supplies used in home health care, and a basis for assigning allowable costs for those supply items. At this time, this kind of infrastructure is not sufficiently developed. Many types of NRS cannot be coded under the existing reporting system, the HCPCS system, and reliable cost data are limited. Therefore, at this time, we also believe an outlier policy for NRS cost would be premature. We also recognize the additional administrative burdens on agencies that would exist under such an outlier policy.

While we are not proposing an outlier policy for NRS costs, we nonetheless urge agencies to provide cost data on cost reports and charge data on all claims (including LUPA claims) with the utmost precision for possible future use in developing payment proposals for NRS under the HH PPS.

TABLE 11.—PROPOSED RELATIVE WEIGHTS FOR NON-ROUTINE MEDICAL SUPPLIES

Severity level	Percentage of episodes	Points (scoring)	Relative weight	Payment amount
0	63	0	0.2456	$12.96
1	17	1–16	1.0356	54.65
2	12	17–34	2.0746	109.48
3	5	35–59	4.0776	215.17
4	3	60+	6.9612	367.34

Note: Proposed conversion factor = $52.77.

TABLE 12a.—NRS CASE-MIX ADJUSTMENT VARIABLES AND SCORES

	Description	Score
	SELECTED SKIN CONDITIONS:	
1	Primary diagnosis = Anal fissure, fistula and abscess	19
2	Primary diagnosis = Cellulitis and abscess	13
3	Primary diagnosis = Gangrene	11
4	Primary diagnosis = Malignant neoplasms of skin	16

TABLE 12a.—NRS CASE-MIX ADJUSTMENT VARIABLES AND SCORES—Continued

	Description	Score
5	Primary diagnosis = Non-pressure and non-stasis ulcers	9
6	Primary diagnosis = Other infections of skin and subcutaneous tissue	19
7	Primary diagnosis = Post-operative Complications 1	32
8	Primary diagnosis = Post-operative Complications 2	22
9	Primary diagnosis = Traumatic Wounds and Burns	16
10	Other diagnosis = Anal fissure, fistula and abscess	9
11	Other diagnosis = Cellulitis and abscess	6
12	Other diagnosis = Gangrene	11
13	Other diagnosis = Non-pressure and non-stasis ulcers	8
14	Other diagnosis = Other infections of skin and subcutaneous tissue	7
15	Other diagnosis = Post-operative Complications 1	15
16	Other diagnosis = Post-operative Complications 2	15
17	Other diagnosis = Traumatic Wounds and Burns	7
18	M0450 = 1 pressure ulcer, stage 1 or 2	12
19	M0450 = 2 or 3 pressure ulcers, stage 1 or 2	20
20	M0450 = 4+ pressure ulcers, stage 1 or 2	31
21	M0450 = 1 or 2 pressure ulcers, stage 3 or 4	41
22	M0450 = 3 pressure ulcers, stage 3 or 4	75
23	M0450 = 4+ pressure ulcers, stage 3 or 4	80
24	M0450 = 5+ pressure ulcers, stage 3 or 4	143
25	M0450e = 1(unobserved pressure ulcer(s))	18
26	M0476 = 2 (status of most problematic stasis ulcer: early/partial granulation)	18
27	M0476 = 3 (status of most problematic stasis ulcer: not healing)	28
28	M0488 = 3 (status of most problematic surgical wound: not healing)	18
29	M0488 = 2 (status of most problematic surgical wound: early/partial granulation)	5
	OTHER CLINICAL FACTORS:	
30	M0550 = 1 (ostomy not related to inpt stay/no regimen change)	21
31	M0550 = 2 (ostomy related to inpt stay/regimen change)	35
32	Any “Selected Skin Conditions” (see rows 1 to 29 above) AND M0550=1(ostomy not related to inpt stay/no regimen change).	24
33	Any “Selected Skin Conditions” (see rows 1 to 29 above) AND M0550=2 (ostomy related to inpt stay/regimen change)	8
34	M0250 (Therapy at home) =1 (IV/Infusion)	11
35	M0470 = 2 or 3 (2 or 3 stasis ulcers)	17
36	M0470 = 4 (4 stasis ulcers)	34
37	M0520 = 2 (patient requires urinary catheter)	17

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Table 12b : ICD-9-CM Diagnoses Included in the Diagnostic Categories for the Nonroutine Supplies (NRS) Case-Mix Adjustment Model

Diagnostic Category	ICD-9-CM Code*	Short Description of ICD-9-CM Code
Anal fissure, fistula and abscess	565	ANAL FISSURE AND FISTULA
	566	ABSCESS OF ANAL AND RECTAL REGIONS
Cellulitis and abscess	681	CELLULITIS&ABSCESS OF FINGER&TOE
	682	OTHER CELLULITIS AND ABSCESS
Gangrene	440.24	ATHERSCLER-ART EXTREM W/GANGRENE
	785.4	GANGRENE
Malignant neoplasms of skin	172	MALIGNANT MELANOMA OF SKIN
	173	OTHER MALIGNANT NEOPLASM OF SKIN
Non-pressure and non-stasis ulcers	440.23	ATHEROSCLER-ART EXTREM W/ULCERATION
	707.1	ULCER LOWER LIMBS EXCEPT DECUBITUS
	707.8	CHRONIC ULCER OTHER SPECIFIED SITE
	707.9	CHRONIC ULCER OF UNSPECIFIED SITE
Other infections of skin and subcutaneous tissue	680	CARBUNCLE AND FURUNCLE
	683	ACUTE LYMPHADENITIS

	684	IMPETIGO
	685	PILONIDAL CYST
	686	OTH LOCAL INF SKIN&SUBCUT TISSUE
Post-operative Complications 1	998.1	HEMORR/HEMAT/SEROMA COMP PROC NEC
	998.2	ACC PUNCT/LACERATION DURING PROC NEC
	998.3	DISRUPTION OF OPERATION WOUND NEC
	998.4	FB ACC LEFT DURING PROC NEC
Post-operative Complications 2	998.5	POSTOPERATIVE INFECTION NEC
	998.6	PERSISTENT POSTOPERATIVE FIST NEC
	998.83	NON-HEALING SURGICAL WOUND NEC
Traumatic Wounds and Burns	870	OPEN WOUND OF OCULAR ADNEXA
	872	OPEN WOUND OF EAR
	873	OTHER OPEN WOUND OF HEAD
	874	OPEN WOUND OF NECK
	875	OPEN WOUND OF CHEST
	876	OPEN WOUND OF BACK
	877	OPEN WOUND OF BUTTOCK
	878	OPEN WND GNT ORGN INCL TRAUMAT AMP
	879	OPEN WOUND OTH&UNSPEC SITE NO LIMBS
	880	OPEN WOUND OF SHOULDER&UPPER ARM
	881	OPEN WOUND OF ELBOW FOREARM&WRIST
	882	OPEN WOUND HAND EXCEPT FINGER ALONE
	883	OPEN WOUND OF FINGER
	884	MX&UNSPEC OPEN WOUND UPPER LIMB
	885	TRAUMATIC AMPUTATION OF THUMB
	886	TRAUMATIC AMPUTATION OTHER FINGER
	887	TRAUMATIC AMPUTATION OF ARM&HAND
	890	OPEN WOUND OF HIP AND THIGH
	891	OPEN WOUND OF KNEE, LEG , AND ANKLE
	892	OPEN WOUND OF FOOT EXCEPT TOE ALONE
	893	OPEN WOUND OF TOE
	894	MX&UNSPEC OPEN WOUND LOWER LIMB
	895	TRAUMATIC AMPUTATION OF TOE
	896	TRAUMATIC AMPUTATION OF FOOT
	897	TRAUMATIC AMPUTATION OF LEG
	941	BURN OF FACE, HEAD, AND NECK
	942	BURN OF TRUNK
	943	BURN UPPER LIMB EXCEPT WRIST&HAND
	944	BURN OF WRIST AND HAND
	945	BURN OF LOWER LIMB

	946	BURNS OF MULTIPLE SPECIFIED SITES
	948	BURN CLASS ACCORD-BODY SURF INVOLVD
	949	BURN, UNSPECIFIED SITE

***Note:** "ICD–9–CM Official Guidelines for Coding and Reporting" dictate that a three-digit code is to be used only if it is not further subdivided. Where fourth-digit subcategories and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. Codes with three digits are included in ICD–9–CM as the heading of a category of codes that may be further subdivided by the use of fourth and/or fifth digits, which provide greater detail. The category codes listed in Table 12b include all the related 4- and 5-digit codes.

8. Outlier Payment Review

Section 1895(b)(5) of the Act allows for the provision of an addition or adjustment to the regular 60-day case-mix and wage-adjusted episode payment amount in the case of episodes that incur unusually large costs due to patient home health care needs. This section further stipulates that total outlier payments in a given CY may not exceed 5 percent of total projected estimated HH PPS payments.

In the July 2000 final rule, we described a method for determining outlier payments. Under this system, outlier payments are made for episodes whose estimated cost exceeds a threshold amount. The episode's estimated cost is the sum of the national wage-adjusted per-visit payment amounts for all visits delivered during the episode. The outlier threshold for each case-mix group, PEP adjustment, or total SCIC adjustment is defined as the national standardized 60-day episode payment rate, PEP adjustment, or total SCIC adjustment for that group plus a fixed dollar loss (FDL) amount. Both components of the outlier threshold are wage-adjusted.

The wage-adjusted FDL amount represents the amount of loss that an agency must experience before an episode becomes eligible for outlier payments. The FDL is computed by multiplying the wage-adjusted national standardized 60-day episode payment amount by the FDL ratio, which is a proportion expressed in terms of the national standardized episode payment amount. The outlier payment is defined to be a proportion of the wage-adjusted estimated costs beyond the wage-adjusted threshold. The proportion of additional costs paid as outlier payments is referred to as the loss-sharing ratio. The FDL ratio and the loss-sharing ratio were selected so that the estimated total outlier payments would not exceed the 5 percent level.

For a given level of outlier payments, there is a trade-off between the values selected for the FDL ratio and the loss-sharing ratio. A high FDL ratio reduces the number of episodes that may receive outlier payments, but makes it possible to select a higher loss-sharing ratio and, therefore, increase outlier payments for outlier episodes. Alternatively, a lower FDL ratio means that more episodes may qualify for outlier payments, but outlier payments per episode must be lower. As a result of public comments on the October 28, 1999 proposed rule, and in our July 2000 final rule, we made the decision to attempt to cover a relatively high proportion of the costs of outlier cases for the most expensive episodes that would qualify for outlier payments within the 5 percent constraint.

We chose a value of 0.80 for the loss-sharing ratio, which is relatively high, but preserves incentives for agencies to attempt to provide care efficiently for outlier cases. It was also consistent with the loss-sharing ratios used in other Medicare PPS outlier policies. Having made this decision, we estimated the value of the FDL ratio that would yield estimated total outlier payments that were projected to be no more than 5 percent of total HH PPS payments. The resulting value for the FDL ratio was 1.13.

When the data became available, we performed an analysis of CY 2001 home health claims data. This analysis revealed that outlier episodes represented approximately 3 percent of total episodes and 3 percent of total HH PPS payments. Additionally, we performed the same analysis on CY 2002 and CY 2003 home health claims data and found the number of outlier episodes and payments held at approximately 3 percent of total episodes and total HH PPS payments, respectively. Based on these analyses and comments we received, we decided that an update to the FDL ratio would be appropriate.

To that end, for the October 2004 final rule, we performed data analysis on CY 2003 HH PPS analytic data. The results of this analysis indicated that a FDL ratio of 0.70 is consistent with the existing loss-sharing ratio of 0.80 and a projected target percentage of estimated outlier payments of no more than 5 percent. Consequently, we updated the FDL ratio from the initial ratio of 1.13 to the FDL ratio of 0.70. Our analysis showed that reducing the FDL ratio from 1.13 to 0.70 would increase the percentage of episodes that qualified for outlier episodes from 3.0 percent to approximately 5.9 percent. A FDL ratio of 0.70 also better met the estimated 5 percent target of outlier payments to total HH PPS payments. We believed that this updated FDL ratio of 0.70 preserved a reasonable degree of cost sharing, while allowing a greater number of episodes to qualify for outlier payments.

Our CY 2006 update to the HH PPS rates (70 FR 68132) changed the FDL ratio from 0.70 to 0.65 to allow even more home health episodes to qualify for outlier payments and to better meet the estimated 5 percent target of outlier payments to total HH PPS payments. For the CY 2006 update, we used CY 2004 home health claims data.

In our CY 2007 update to the HH PPS rates (71 FR 65884) we again changed the FDL ratio from 0.65 to 0.67 to better meet the estimated 5 percent target of outlier payments to total HH PPS payments. For the CY 2007 update, we used CY 2005 home health claims data.

Under the HH PPS, outlier payments have thus far not exceeded 5 percent of total HH PPS payments. However, preliminary analysis shows that outlier payments, as a percentage of total HH PPS payments, have increased on a yearly basis. With outlier payments having increased in recent years, and given the unknown effects that the proposed refinements of this rule may have on outliers, we are proposing to maintain the FDL ratio of 0.67. By maintaining the FDL ratio of 0.67, we believe we will continue to meet the statutory requirement of having an outlier payment outlay that does not exceed 5 percent of total HH PPS payments, while still providing for an adequate number of episodes to qualify for outlier payments. Some preliminary analysis shows the FDL ratio could be as low as 0.42 in a refined HH PPS. We believe that analysis of more recent data could indicate that a change in the FDL ratio is appropriate. Consequently for the final rule, we will rely on the latest

data and best analysis available at the time to estimate outlier payments and update the FDL ratio if appropriate.

Because payment for NRS was included in the base rate of the national standardized 60-day episode payment rate, under the refined system proposed in this proposed rule, both the proposed national standardized 60-day episode payment rate and the proposed computed NRS amount contribute towards reaching the outlier threshold in the outlier payment calculation.

B. Rebasing and Revising of the Home Health Market Basket

1. Background

Section 1895(b)(3)(B) of the Act, as amended by section 701(b)(3) of the MMA, requires the standard prospective payment amounts to be adjusted by a factor equal to the applicable home health market basket increase for CY 2008.

Effective for cost reporting periods beginning on or after July 1, 1980, we developed and adopted an HHA input price index (that is, the home health "market basket"). Although "market basket" technically describes the mix of goods and services used to produce home health care, this term is also commonly used to denote the input price index derived from that market basket. Accordingly, the term "home health market basket" used in this document refers to the HHA input price index.

The percentage change in the home health market basket reflects the average change in the price of goods and services purchased by HHAs in providing an efficient level of home health care services. We first used the home health market basket to adjust HHA cost limits by an amount that reflected the average increase in the prices of the goods and services used to furnish reasonable cost home health care. This approach linked the increase in the cost limits to the efficient utilization of resources. For a greater discussion on the home health market basket, see the notice with comment period published in the **Federal Register** on February 15, 1980 (45 FR 10450, 10451), the notice with comment period published in the **Federal Register** on February 14, 1995 (60 FR 8389, 8392), and the notice with comment period published in **Federal Register** on July 1, 1996 (61 FR 34344, 34347). Beginning with the FY 2002 HH PPS payments, we used the home health market basket to update payments under the HH PPS. We last rebased the home health market basket effective with the CY 2005 update. For more information on the HH PPS home health market basket, see our proposed rule published in the **Federal Register** on June 2, 2004 (69 FR 31251, 31255).

The home health market basket is a fixed-weight Laspeyres-type price index; its weights reflect the cost distribution for the base year while current period price changes are measured. The home health market basket is constructed in three steps. First, a base period is selected and total base period expenditures are estimated for mutually exclusive and exhaustive spending categories based upon the type of expenditure. Then the proportion of total costs that each spending category represents is determined. These proportions are called cost or expenditure weights.

The second step essential for developing an input price index is to match each expenditure category to an appropriate price/wage variable, called a price proxy. These proxy variables are drawn from publicly available statistical series published on a consistent schedule, preferably at least quarterly.

In the third and final step, the price level for each spending category is multiplied by the expenditure weight for that category. The sum of these products for all cost categories yields the composite index level in the market basket in a given year. Repeating the third step for other years will produce a time series of market basket index levels. Dividing one index level by an earlier index level will produce rates of growth in the input price index.

We described the market basket as a fixed-weight index because it answers the question of how much more or less it would cost, at a later time, to purchase the same mix of goods and services that was purchased in the base period. As such, it measures "pure" price changes only. The effects on total expenditures resulting from changes in the quantity or mix of goods and services purchased subsequent to the base period are, by design, not considered.

2. Rebasing and Revising the Home Health Market Basket

We believe that it is desirable to rebase the home health market basket periodically so the cost category weights reflect changes in the mix of goods and services that HHAs purchase in furnishing home health care. We based the cost category weights in the current home health market basket on FY 2000 data. We are proposing to rebase and revise the home health market basket to reflect FY 2003 Medicare cost report data, the latest available and most complete data on the structure of HHA costs.

The terms "rebasing" and "revising," while often used interchangeably, actually denote different activities. The term "rebasing" means moving the base year for the structure of costs of an input price index (that is, in this exercise, we are proposing to move the base year cost structure from FY 2000 to FY 2003). The term "revising" means changing data sources, cost categories, and/or price proxies used in the input price index.

For this proposed revising and rebasing, we modified the wages and salaries and benefits cost categories in order to reflect a new data source on the occupational mix of HHAs. We mainly relied on this alternative proposed data source to construct the cost weights for the blended wage and benefit index. We are not proposing any changes to the price proxies used in the HH market basket or the HH blended wage and benefit proxies.

The weights for this proposed revised and rebased home health market basket are based off of the cost report data for freestanding HHAs, whose cost reporting period began on or after October 1, 2002 and before October 1, 2003. Using this methodology allowed our sample to include HHA facilities with varying cost report years including, but not limited to, the federal fiscal or calendar year. We refer to the market basket as a fiscal year market basket because the base period for all price proxies and weights are set to FY 2003. For this proposed rebased and revised market basket, we reviewed HHA expenditure data for the market basket cost categories.

We proposed to maintain our policy of using data from freestanding HHAs because they better reflect HHAs actual cost structure. Expense data for a hospital-based HHA are affected by the allocation of overhead costs over the entire institution (including but not limited to hospital, hospital-based skilled nursing facility, and hospital-based HHA). Due to the method of allocation, total expenses will be correct, but the individual components' expenses may be skewed. Therefore, if data from hospital-based HHAs were included, the resultant cost structure could be unrepresentative of the average HHA costs.

Data on HHA expenditures for nine major expense categories (wages and salaries, employee benefits, transportation, operation and maintenance, administrative and general, insurance, fixed capital, movable capital, and a residual "all other") were tabulated from the FY 2003 Medicare HHA cost reports. As

prescription drugs and DME are not payable under the HH PPS, we excluded those items from the home health market basket and from the expenditures. Expenditures for contract services were also tabulated from these FY 2003 Medicare HHA cost reports and allocated to wages and salaries, employee benefits, administrative and general, and other expenses. After totals for these cost categories were edited to remove reports where the data were deemed unreasonable (for example, when total costs were not greater than zero), we then determined the proportion of total costs that each category represents. The proportions represent the major rebased home health market basket weights.

We determined the weights for subcategories (telephone, postage, professional fees, other products, and other services) within the combined administrative and general and other expenses using the latest available (1997 Benchmark) U.S. Department of Commerce, Bureau of Economic Analysis (BEA) Input-Output (I–O) Table, from which we extracted data for HHAs. The BEA I–O data, which are updated at 5-year intervals, were most recently described in the Survey of Current Business article, "Benchmark Input-Output Accounts of the U.S., 1997" (December 2002). These data were aged from 1997 to 2003 using relevant price changes.

The methodology we used to age the data applied the annual price changes from the price proxies to the appropriate cost categories. We repeated this practice for each year.

This work resulted in the identification of 12 separate cost categories, the same number found in the FY 2000-based home health market basket. The differences between the major categories for the proposed FY 2003-based index and those used for the current FY 2000-based index are summarized in Table 13. We have allocated the contracted services weight to the wages and salaries, employee benefits, and administrative and general and other expenses cost categories in the proposed FY 2003-based index as we did in the FY 2000-based index.

TABLE 13.—COMPARISON OF 2000-BASED AND PROPOSED 2003-BASED HOME HEALTH MARKET BASKETS MAJOR COST CATEGORIES AND WEIGHTS

Cost categories	2000-Based home health market basket	Proposed 2003-based home health market basket
Wages and Salaries, including allocated contract services' labor	65.766	64.484
Employee Benefits, including allocated contract services' labor	11.009	12.598
All Other Expenses including allocated contract services' labor	23.225	22.918
Total	100.000	100.000

The complete proposed 2003-based cost categories and weights are listed in Table 14.

TABLE 14.—COST CATEGORIES, WEIGHTS, AND PRICE PROXIES IN PROPOSED 2003-BASED HOME HEALTH MARKET BASKET

Cost categories	Weight	Price proxy
Compensation, including allocated contract services' labor	77.082	
Wages and Salaries, including allocated contract services' labor	64.484	Proposed Home Health Occupational Wage Index.
Employee Benefits, including allocated contract services' labor	12.598	Proposed Home Health Occupational Benefits Index.
Operations & Maintenance	0.694	CPI–U Fuel & Other Utilities.
Administrative & General & Other Expenses including allocated contract services' labor.	16.712	
Telephone	0.785	CPI–U Telephone Services.
Postage	0.605	CPI–U Postage.
Professional Fees	1.471	ECI for Compensation for Professional and Technical Workers.
Other Products	7.228	CPI–U All Items Less Food and Energy.
Other Services	6.622	ECI for Compensation for Service Workers.
Transportation	2.494	CPI–U Private Transportation.
Capital-Related	3.018	
Insurance	0.510	CPI–U Household Insurance.
Fixed Capital	1.618	CPI–U Owner's Equivalent Rent.
Movable Capital	0.890	PPI Machinery & Equipment.
Total	100.000	**

** Figures may not sum to total due to rounding.

After we computed the FY 2003 cost category weights for the proposed rebased home health market basket, we selected the most appropriate wage and price indexes to proxy the rate of change for each expenditure category. These price proxies are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the following BLS categories:

• *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. They are not affected by shifts in skill mix. ECIs are superior to average hourly earnings as price proxies for input price indexes for two reasons: (a) They measure pure price change; and (b) they are available by occupational groups, not just by industry.

• *Consumer Price Indexes*—Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by the typical consumer. Consumer price indexes are used when the expenditure is more similar to that of a purchase at the retail level rather than at the wholesale level, or if no appropriate Producer Price Indexes (PPIs) were available.

• *Producer Price Indexes*—PPIs are used to measure price changes for goods sold in other than retail markets. For example, a PPI for movable equipment is used rather than a CPI for equipment. PPIs in some cases are preferable price proxies for goods that HHAs purchase at wholesale levels. These fixed-weight indexes are a measure of price change at the producer or at the intermediate stage of production.

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. Widely accepted statistical methods ensure that the data were collected and aggregated in way that can be replicated. Low sampling variability is desirable because it indicates that sample reflects the typical members of the population. (Sampling variability is variation that occurs by chance because a sample was surveyed rather than the entire population.) Timeliness implies that the proxy is published regularly, preferably at least once a quarter. The market baskets are updated quarterly and therefore it is important the underlying price proxies be up-to-date, reflecting the most recent data available. We believe that using proxies that are published regularly (at least quarterly, whenever possible) helps ensure that we are using the most recent data available to update the market basket. We strive to use publications that are disseminated frequently because we believe that this is an optimal way to stay abreast of the most current data available. Availability means that the proxy is publicly available. We prefer that our proxies are publicly available because this will help ensure that our market basket updates are as transparent to the public as possible. In addition, this enables the public to be able to obtain the price proxy data on a regular basis. 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. Therefore, we believe that they continue to be the best measure of price changes for the cost categories to which they would be applied.

As part of the revising and rebasing of the home health market basket, we are proposing to revise and rebase the home health blended wage and salary index and the home health blended benefits index.

We would use these blended indexes as price proxies for the wages and salaries and the employee benefits portions of the proposed FY 2003-based home health market basket, as we did in the FY 2000-based home health market basket. The price proxies for these two cost categories are the same as those used in the FY 2000-based home health market basket but with occupational weights reflecting the FY 2003 occupational mix in HHAs. These proxies are a combination of health industry specific and economy-wide proxies.

3. Price Proxies Used To Measure Cost Category Growth

• Wages and salaries, including an allocation for contract services' labor: For measuring price growth in the FY 2003-based home health market basket, as we did in the FY 2000-based index, five price proxies would be applied to the four occupational subcategories within the wages and salaries component, and would be weighted to reflect the HHA occupational mix. This approach was used because there is not a wage proxy for home health care workers that reflects only wage changes and not both wage and skill mix changes. The professional and technical occupational subcategory is represented by a 50–50 blend of hospital industry and economy-wide price proxies. Therefore, there are five price proxies used for the four occupational subcategories. The percentage change in the blended wages and salaries price is applied to the wages and salaries component of the home health market basket, which is described in Table 15.

TABLE 15.—PROPOSED HOME HEALTH OCCUPATIONAL WAGES AND SALARIES INDEX

[Wages and salaries component of the proposed FY 2003-based home health market basket]

Cost category	2000 weight	2003 weight	Price proxy
Skilled Nursing & Therapists & Other Professional/Technical, including an allocation for contract services' labor.	53.816	50.812	• 50 percent ECI for Wages & Salaries in Private Industry for Professional, Specialty & Technical Workers. • 50 percent ECI for Wages & Salaries for Civilian Hospital Workers.
Managerial/Supervisory, including an allocation for contract services' labor.	7.431	9.007	ECI for Wages & Salaries in Private Industry for Executive, Administrative & Managerial Workers.
Clerical, including an allocation for contract services' labor	6.822	7.596	ECI for Wages & Salaries in Private Industry for Administrative Support, Including Clerical Workers.
Service, including an allocation for contract services' labor	31.931	32.584	ECI for Wages & Salaries in Private Industry Service Occupations.
Total	100.000	100.000	

Beginning with the FY 2001 Medicare cost report, the occupational specific wage and benefit expenditure data was no longer collected in the cost report. Previously, we used these data to estimate weights for the home health blended wage and salary index and the home health blended benefits index. We believed the options to obtain these data were:

• To obtain the home health occupational specific expenditure data from an alternative source, or

• To propose a change to the home health wages and salaries and the home

health benefits proxy used in the market basket.

However, there is no publicly available data source that tracks wage and salary price growth for the home health industry while holding skill mix constant. There is also no publicly available data source that tracks benefit price growth for the home health industry while holding skill mix constant. Therefore, option 2 was not an viable solution. Next, we investigated if there was home health occupational specific expenditure data from an alternative source other than the Medicare cost reports. We believe an alternative source exists in the form of data from the November 2003 National industry-specific occupational employment and wage estimates published by the BLS Office of Occupational Employment Statistics (OES). Accordingly, we propose to use that data to determine weights for the home health specific blended wage and benefits proxy. Detailed information on the methodology for the national industry-specific occupational employment and wage estimates survey can be found at *http://www.bls.gov/oes/current/oes_tec.htm.*

Therefore, the needed data on HHA expenditures for the four occupational subcategories (managerial, professional and technical, service, and clerical) for the wages and salaries component were tabulated from the November 2003 OES data for North American Industrial Classification System (NAICS) 621600, Home Health Care Services. We assigned the occupations to the groups in a manner consistent with the occupational groupings used in the Medicare cost report. Table 16 shows the specific occupational assignments to the four CMS designated subcategories.

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Table 16 shows the specific occupational assignments to the four CMS designated subcategories.

Table 16: CMS Occupational Groupings for NAICS 621600 Home Health Care Services

	MANAGERIAL
11-0000	Management occupations
	P&T AND HOSPITAL
13-0000	Business and financial operations occupations
15-0000	Computer and mathematical occupations
17-0000	Architecture and engineering occupations
19-0000	Life, physical, and social science occupations
21-0000	Community and social services occupations
23-0000	Legal occupations
25-0000	Education, training, and library occupations
27-0000	Arts, design, entertainment, sports, and media occupations
29-0000	Healthcare practitioners and technical occupations
33-0000	Protective service occupations
35-0000	Food preparation and serving related occupations
37-0000	Building and grounds cleaning and maintenance occupations
41-0000	Sales and related occupations
49-0000	Installation, maintenance, and repair occupations
51-0000	Production occupations
53-0000	Transportation and material moving occupations
	CLERICAL
43-0000	Office and administrative support occupations
	SERVICES
31-0000	Healthcare support occupations
39-0000	Personal care and service occupations

Total expenditures by occupation were calculated by taking the OES number of employees multiplied by the OES annual average salary. The wage and salary expenditures were aggregated based on the groupings in table 14. Next, contract labor expenditures were obtained from the 1997 I-O for the home health industry, NAICS 621600 and aged forward to FY 2003 using the PPI for employment services. We then proportionally allocated the contract labor to each of the four subcategories. We determined the proportion of total wage costs (contract wages plus

industry wages) that each subcategory represents. These proportions represent the major rebased and revised home health blended wage and salary index weights.

We did not propose a change from our current blended measure because we believe it reflects the competition between HHAs and hospitals for registered nurses, while still capturing the overall wage trends for professional and technical workers.

• Employee benefits, including an allocation for contract services' labor: For measuring employee benefits price growth in the FY 2003-based home health market basket, price proxies are applied to the four occupational subcategories within the employee benefits component, weighted to reflect the home health occupational mix. The professional and technical occupational subcategory is represented by a blend of hospital industry and economy-wide price proxies. Therefore, there are five price proxies for four occupational subcategories. The percentage change in the blended price of home health employee benefits is applied to this component, which is described in Table 17.

TABLE 17.—PROPOSED HOME HEALTH OCCUPATIONAL BENEFITS INDEX

[Employee benefits component of the proposed 2003-based home health market basket]

Cost category	2000 weight	2003 weight	Price proxy
Skilled Nursing & Therapists & Other Professional/Technical, including an allocation for contract services' labor.	53.492	50.506	• 50 percent ECI for Benefits in Private Industry for Professional, Specialty &Technical Workers. • 50 percent ECI for Benefits for Civilian Hospital Workers.
Managerial/Supervisory, including an allocation for contract services' labor.	7.232	8.766	ECI for Benefits in Private Industry for Executive, Administrative & Managerial Workers.
Clerical, including an allocation for contract services' labor	6.941	7.698	ECI for Benefits in Private Industry for Administrative Support, Including Clerical Workers.
Service, including an allocation for contract services' labor	32.362	33.024	ECI for Benefits in Private Industry Service Occupations.
Total	100.000	100.000	

After conducting research we could find no data source that exists for benefit expenditures by occupation for the home health industry. Thus, to construct weights for the home health occupational benefits index we calculated the ratio of benefits to wages and salaries from the 2000 Home health occupational wages and occupational benefits indices for the four occupational subcategories. We then applied the benefit-to-wage ratios to each of the four occupational subcategories from the 2003 OES wage and salary weights. For example, the ratio of benefits to wages from the 2000 home health occupational wage and benefit indexes for home health managers is 0.973. We apply this ratio to the 2003 OES weight for wages and salaries for home health managers, 9.007, to obtain a benefit weight in the home health occupational benefit index for home health managers of 8.766 percent.

We are proposing to continue to use the same 50-50 split for benefits for professional and technical workers (50 percent hospital workers and 50 percent professional and technical workers) as we did in the FY 2000-based market basket.

• Operations and Maintenance: The percentage change in the price of fuel and other utilities as measured by the Consumer Price Index is applied to this component. The same proxy was used for the FY 2000-based market basket.

• Telephone: The percentage change in the price of telephone service as measured by the Consumer Price Index is applied to this component. The same proxy was used for the FY 2000-based market basket.

• *Postage:* The percentage change in the price of postage as measured by the Consumer Price Index is applied to this component. The same proxy was used for the FY 2000-based market basket.

• *Professional Fees:* The percentage change in the price of professional fees as measured by the ECI for compensation for professional and technical workers is applied to this component. The same proxy was used for the 2000-based market basket.

• *Other Products:* The percentage change in the price for all items less food and energy as measured by the Consumer Price Index is applied to this component. The same proxy was used for the FY 2000-based market basket.

• *Other Services:* The percentage change in the employment cost index for compensation for service workers is applied to this component. The same proxy was used for the FY 2000-based market basket.

• *Transportation:* The percentage change in the price of private transportation as measured by the Consumer Price Index is applied to this component. The same proxy was used for the FY 2000-based market basket.

• *Insurance:* The percentage change in the price of household insurance as measured by the Consumer Price Index is applied to this component. The same proxy was used for the FY 2000-based market basket.

• *Fixed capital:* The percentage change in the price of an owner's equivalent rent as measured by the Consumer Price Index is applied to this component. The same proxy was used for the FY 2000-based market basket.

• *Movable Capital:* The percentage change in the price of machinery and equipment as measured by the Producer Price Index is applied to this component. The same proxy was used for the FY 2000-based market basket.

As we did in the FY 2000-based home health market basket, we allocated the Contract Services' share of home health agency expenditures among wages and salaries, employee benefits, administrative and general and other expenses.

Table 18 summarizes the proposed FY 2003-based proxies and compares them to the FY 2000-based proxies.

TABLE 18.—COMPARISON OF PRICE PROXIES USED IN THE 2000–BASED AND THE PROPOSED 2003–BASED HOME HEALTH MARKET BASKETS

Cost category	2000-Based price proxy	2003-Based proposed price proxy
Compensation, including allocated contract services' labor		
Wages and Salaries, including allocated contract services' labor	Same	Home Health Agency Occupational Wage Index.
Employee Benefits, including allocated contract services' labor	Same	Home Health Agency Occupational Benefits Index.
Operations and Maintenance	Same	CPI–Fuel and Other Utilities.
Administrative & General & Other Expenses, including allocated contract services' labor		
Telephone	Same	CPI–U Telephone.
Postage	Same	CPI–U Postage.
Professional Fees	Same	ECI for Compensation for Professional and Technical Workers.
Other Products	Same	CPI–U for All Items Less Food and Energy.
Other Services	Same	ECI for Compensation for Service Workers.
Transportation	Same	CPI–U Private Transportation.
Capital-Related		
Insurance	Same	CPI–U Household Insurance.
Fixed Capital	Same	CPI–U Owner's Equivalent Rent.
Movable Capital	Same	PPI Machinery and Equipment.
Contract Services	Same	Contained within Wages & Salaries, Employee Benefits, Administrative & General & Other Expenses; see those price proxies.

4. Rebasing Results

A comparison of the yearly changes from CY 2005 to CY 2008 for the FY 2000-based home health market basket and the proposed FY 2003-based home health market basket is shown in Table 19. The average annual increase in the two market baskets is similar, and in no year is the difference greater than 0.1 percentage point.

TABLE 19.—COMPARISON OF THE 2000–BASED HOME HEALTH MARKET BASKET AND THE PROPOSED 2003–BASED HOME HEALTH MARKET BASKET, PERCENT CHANGE, 2005–2008

Fiscal years beginning October 1	Home health market basket, 2000-based	Proposed home health market basket, 2003-based	Difference (proposed 2003-based less 2000-based)
Historical:			
CY 2005	3.1	3.1	0.0
CY 2006	3.2	3.1	−0.1
CY 2007	3.1	3.1	0.0
CY 2008	2.9	2.9	0.0
Average Change: 2005–2008	3.1	3.1	0.0

Source: Global Insights, Inc, 4th Qtr, 2006.

Table 20 shows that the forecasted rate of growth for CY 2008, beginning January 1, 2008, for the proposed rebased and revised home health market basket is 2.9 percent, while the forecasted rate of growth for the current 2000-based home health market basket is also 2.9 percent. As previously mentioned, we rebase the home health market basket periodically so the cost category weights continue to reflect changes in the mix of goods and services that HHAs purchase in furnishing home health care.

TABLE 20.—FORECASTED ANNUAL PERCENT CHANGE IN THE CURRENT AND PROPOSED REVISED AND REBASED HOME HEALTH MARKET BASKETS

Calendar year beginning January 1	Home health market basket, 2000-based	Proposed home health market basket, 2003-based	Difference (proposed 2003-based Less 2000-based)
January 2008, CY 2008	2.9	2.9	0.0

Source: Global Insights, Inc, 4th Qtr, 2006.

Table 21 shows the percent changes for CY 2008 for each cost category in the home health market basket.

TABLE 21.—CY 2008 FORECASTED ANNUAL PERCENT CHANGE FOR ALL COST CATEGORIES IN THE PROPOSED 2003–BASED HOME HEALTH MARKET BASKET

Cost categories	Weight	Price proxy	Forecasted annual percent change for CY 2008
Total	100.00		2.9
Compensation	77.082		3.1
Wages and Salaries	64.484	Proposed Home Health Occupational Wage Index	2.9
Employee Benefits	12.598	Proposed Home Health Occupational Benefits Index	3.8
Operations & Maintenance	0.694	CPI–U Fuel & Other Utilities	3.2
Administrative & General & Other Expenses	16.712		2.6
Telephone	0.785	CPI–U Telephone Services	0.8
Postage	0.605	CPI–U Postage	4.8
Professional Fees	1.471	ECI for Compensation for Professional and Technical Workers.	3.0
Other Products	6.622	CPI–U All Items Less Food and Energy	2.0
Other Services	7.228	ECI for Compensation for Service Workers	3.1
Transportation	2.494	CPI–U Private Transportation	0.5
Capital-Related	3.018		1.8
Insurance	0.510	CPI–U Household Insurance	2.6
Fixed Capital	1.618	CPI–U Owner's Equivalent Rent	2.6
Movable Capital	0.890	PPI Machinery & Equipment	−0.3

Source: Global Insights, Inc, 4th Qtr, 2006.

5. Labor-Related Share

In the 2000-based home health market basket the labor-related share was 76.775 percent while the remaining non-labor-related share was 23.225 percent. In the proposed revised and rebased home health market basket, the labor-related share would be 77.082 percent. The labor-related share includes wages and salaries and employee benefits. The proposed non-labor-related share would be 22.918 percent. The increase in the labor-related share using the FY 2003-based HH market basket is primarily due to the increase in the benefit cost weight. Our preliminary analysis of Medicare cost report data for skilled nursing facilities and acute care hospitals also shows a similar upward trend for the SNF and hospital benefit cost weights from FY 2000 to FY 2003.

Table 22 details the components of the labor-related share for the FY 2000-based and proposed FY 2003-based home health market baskets.

TABLE 22.—LABOR-RELATED SHARE OF CURRENT AND PROPOSED HOME HEALTH MARKET BASKETS

Cost category	2000-based market basket weight	Proposed 2003-based market basket weight
Wages and Salaries	65.766	64.484
Employee Benefits	11.009	12.598
Total Labor Related	76.775	77.082
Total Non-Labor Related	23.225	22.918

C. National Standardized 60-Day Episode Payment Rate

The Medicare HH PPS has been effective since October 1, 2000. As set forth in the final rule published July 3, 2000 in the **Federal Register** (65 FR 41128), the unit of payment under the Medicare HH PPS is a national standardized 60-day episode payment rate. As set forth in § 484.220, we adjust the national standardized 60-day episode payment rate by a case-mix grouping and a wage index value based on the site of service for the beneficiary. The proposed CY 2008 HH PPS rates use the case-mix methodology proposed in section II.A.2 of this proposed rule and application of the wage index adjustment to the labor portion of the HH PPS rates as set forth in the July 3, 2000 final rule. As stated above, we are proposing to rebase and revise the home health market basket, resulting in a revised and rebased labor related share of 77.082 percent and a non-labor portion of 22.918 percent. We multiply the national standardized 60-day episode payment rate by the patient's applicable case-mix weight. We divide the case-mix adjusted amount into a labor and non-labor portion. We multiply the labor portion by the applicable wage index based on the site of service of the beneficiary.

For CY 2008, we are proposing to base the wage index adjustment to the labor portion of the HH PPS rates on the most recent pre-floor and pre-reclassified hospital wage index as discussed in section II.B of this proposed rule (not including any reclassifications under section 1886(d)(8)(B)) of the Act.

As discussed in the July 3, 2000 HH PPS final rule, for episodes with four or

fewer visits, Medicare pays the national per-visit amount by discipline, referred to as a LUPA. We update the national per-visit amounts by discipline annually by the applicable home health market basket percentage. We adjust the national per-visit amount by the appropriate wage index based on the site of service for the beneficiary as set forth in § 484.230. We propose to adjust the labor portion of the updated national per-visit amounts by discipline used to calculate the LUPA by the most recent pre-floor and pre-reclassified hospital wage index, as discussed in section II.D of this proposed rule.

Medicare pays the 60-day case-mix and wage-adjusted episode payment on a split percentage payment approach. The split percentage payment approach includes an initial percentage payment and a final percentage payment as set forth in § 484.205(b)(1) and (b)(2). We may base the initial percentage payment on the submission of a request for anticipated payment and the final percentage payment on the submission of the claim for the episode, as discussed in § 409.43. The claim for the episode that the HHA submits for the final percentage payment determines the total payment amount for the episode and whether we make an applicable adjustment to the 60-day case-mix and wage-adjusted episode payment. The end date of the 60-day episode as reported on the claim determines which CY rates Medicare will use to pay the claim.

We may also adjust the 60-day case-mix and wage-adjusted episode payment based on the information submitted on the claim to reflect the following:

- A LUPA provided on a per-visit basis as set forth in § 484.205(c) and § 484.230.
- A PEP adjustment as set forth in § 484.205(d) and § 484.235.
- An outlier payment as set forth in § 484.205(f) and § 484.240.

Currently, we may also adjust the episode payment by a SCIC adjustment as set forth in § 484.202, but as noted in section II.A.6 of this proposed rule, we are now proposing to remove the SCIC adjustment from HH PPS.

This proposed rule reflects the proposed updated CY 2008 rates that would be effective January 1, 2008.

D. Proposed CY 2008 Rate Update by the Home Health Market Basket Index (With Examples of Standard 60-Day and LUPA Episode Payment Calculations)

Section 1895(b)(3)(B) of the Act, as amended by section 5201 of the DRA, requires for CY 2008 that the standard prospective payment amounts be increased by a factor equal to the applicable home health market basket update for those HHAs that submit quality data as required by the Secretary. The applicable home health market basket update will be reduced by 2 percentage points for those HHAs that fail to submit the required quality data.

• *Proposed CY 2008 Adjustments*

In calculating the annual update for the CY 2008 national standardized 60-day episode payment rates, we are proposing to first look at the CY 2007 rates as a starting point. The CY 2007 national standardized 60-day episode payment rate is $2,339.00.

In order to calculate the CY 2008 national standardized 60-day episode payment rate, we are proposing to first increase the CY 2007 national standardized 60-day episode payment rate ($2,339.00) by the proposed estimated rebased and revised home health market basket update of 2.9 percent for CY 2008.

Given this updated rate, we would then take a reduction of 2.75 percent to account for nominal change in case-mix. We would multiply the resulting value by 1.05 and 0.958614805 to account for *the estimated percentage of outlier payments as a result of the current FDL ratio of 0.67* (that is, $2,339.00 * 1.029 * .9725 * 1.05 * 0.958614805), to yield an updated CY 2008 national standardized 60-day episode payment rate of $2,355.96 for episodes that begin in CY 2007 and end in CY 2008 (see Table 23a). For episodes that begin in CY 2007 and end in CY 2008, the new proposed 153 HHRG case-mix model (and associated Grouper) would not yet be in effect. For that reason, we propose that episodes that begin in CY 2007 and end in CY 2008 be paid at the rate of $2,355.96, and be further adjusted for wage differences and for case-mix, based on the current 80 HHRG case-mix model. We recognize that the annual update for CY 2008 is for all episodes that end on or after January 1, 2008 and before January 1, 2009. By paying this rate ($2,355.96) for episodes that begin in CY 2007 and end in CY 2008, we will have appropriately recognized that these episodes are entitled to receive the CY 2008 home health market, even though the new case-mix model will not yet be in effect.

TABLE 23A.—PROPOSED NATIONAL 60-DAY EPISODE AMOUNTS UPDATED BY THE ESTIMATED HOME HEALTH MARKET BASKET UPDATE FOR CY 2008, BEFORE CASE-MIX ADJUSTMENT, WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY OR APPLICABLE PAYMENT ADJUSTMENT FOR EPISODES BEGINNING IN CY 2007 AND ENDING IN CY 2008

Total CY 2007 national standardized 60-day episode payment rate	Multiply by the proposed estimated home health market basket update (2.9 percent) [1]	Reduce by 2.75 percent for nominal change in case-mix	Adjusted to account for the 5 percent outlier policy	Proposed national standardized 60-day episode payment rate for episodes beginning in CY 2007 and ending in CY 2008
$2,339.00	× 1.029	× 0.9725	× 1.05 × 0.958614805	$2,355.96

[1] The estimated home health market basket update of 2.9 percent for CY 2008 is based on Global Insight, Inc, 4th Qtr, 2006 forecast with historical data through 3rd Qtr, 2006.

Next, in order to establish new rates based on a proposed new case-mix system, we again start with the CY 2007 national standardized 60-day episode payment rate and increase that rate by the proposed estimated rebased and revised home health market basket update (2.9 percent) ($2,339.00 * 1.029 = $2,406.83). We next have to put dollars associated with the outlier targeted estimates back into the base rate. In the 2000 HH PPS final rule (65 FR 41184), we divided the base rate by 1.05 to account for the outlier target policy. Therefore, we are proposing to

multiply the $2,406.83 by 1.05, resulting in $2,527.17. Next we need to reduce this amount to pay for each of our proposed policies. As noted previously, based upon our proposed change to the LUPA payment, the NRS redistribution, the elimination of the SCIC policy, the amounts needed to account for outlier payments, and the reduction accounting for nominal change in case-mix, we would reduce the national standardized 60-day episode payment rate by $6.46, $40.88, $15.71, $94.02, and $69.50, respectively. This results in a proposed CY 2008 updated national standardized 60-day episode payment rate, for episodes beginning and ending in CY 2008, of $2,300.60 (see Table 23b). These episodes would be further adjusted for case-mix based on the proposed 153 HHRG case-mix model for episodes beginning and ending in CY 2008. As we noted in section II.A.2.d., we increased the case-mix weights by a budget neutrality factor of 1.194227193.

TABLE 23b.—PROPOSED NATIONAL 60-DAY EPISODE AMOUNTS UPDATED BY THE ESTIMATED HOME HEALTH MARKET BASKET UPDATE FOR CY 2008, BEFORE CASE-MIX ADJUSTMENT, WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY OR APPLICABLE PAYMENT ADJUSTMENT FOR EPISODES BEGINNING AND ENDING IN CY 2008

Total CY 2007 national standardized 60-day episode payment rate	Multiply by the proposed estimated home health market basket update (2.9 percent) [1]	Adjusted to return the outlier funds to the national standardized 60-day episode payment rate	Updated and outlier adjusted national standardized 60-day episode payment	Changes to account for LUPA adjustment ($6.46), NRS payment ($40.88), elimination of SCIC policy ($15.71), maintaining a 0.67 FDL ratio ($94.02), and 2.75 percent reduction for nominal change in case-mix ($69.50) for episodes beginning and ending in CY 2008	Proposed CY 2008 national standardized 60-day episode payment rate for episodes beginning and ending in CY 2008
$2,339.00	× 1.029	× 1.05	$2,527.17	− $226.57	$2,300.60

[1] The estimated home health market basket update of 2.9 percent for CY 2008 is based on Global Insight, Inc, 4th Qtr, 2006 forecast with historical data through 3rd Qtr, 2006.

Under the HH PPS, NRS payment, which was $49.62 at the onset of the HH PPS, has been updated yearly as part of the national standardized 60-day episode payment rate. As discussed previously in section II.A.7., we propose to remove the current NRS payment amount portion from the national standardized 60-day episode payment rate and add a severity adjusted NRS payment amount subject to case-mix and wage adjustment to the national standardized 60-day episode payment rate. Therefore, to calculate an episode's prospective payment amount, the NRS adjusted payment amount must first be calculated by multiplying the episode's NRS weight (taken from Table 11 of this proposed rule) by the NRS conversion factor. This NRS adjusted payment amount is then added to, and, becomes a part of, the non-adjusted HH PPS standardized prospective payment rate for CY 2008. Then, for any HHRG group, to compute a case-mix adjusted payment, the sum of the non-adjusted national standardized 60-day episode payment rate and the NRS adjusted payment amount are multiplied by the appropriate case-mix weight taken from Table 5. Finally, to compute a wage adjusted national standardized 60-day episode payment rate, that labor-related portion of the national standardized 60-day episode payment rate for CY 2008 is multiplied by the appropriate wage index factor listed in Addendum A. The product of that calculation is added to the corresponding non-labor-related amount. The resulting amount is the national case-mix and wage adjusted national standardized 60-day episode payment rate for that particular episode. The following example illustrates the computation described above:

Example 1. An HHA is providing services to a Medicare beneficiary in Grand Forks, ND. The national standardized payment rate is $2,300.60 (see Table 23). The HHA determines that the beneficiary is in his or her 3rd episode and thus falls under the C1F3S3 HHRG for 3rd+ episodes with 0 to 13 therapy visits (Case Mix Weight = 1.4815). It is also determined that the beneficiary falls under NRS severity level #4. The NRS Severity Level #4 weight = 6.9612 and the NRS Conversion Factor = $52.77 (see Table 11).

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Calculate the Case-Mix Rate:

Case-mix weight from Table 7 for HHRG C1F3S3 for 3rd+ episodes with 0-13 therapy visits

| 1.4815

National Standardized 60-Day Episode Payment Rate without NRS Amount for CY 2008

| $2,300.60

Calculate the Case-Mix Rate:

($2,300.60 * 1.4815) | **$3,408.34**

Calculate the Wage-Adjusted Labor and Non-Labor Portions of the Payment:

Case-Mix adjusted National Standardized 60-Day Episode Payment Rate without NRS Amount:

| $3,408.34

Labor Portion

| 0.77082

Non-labor Portion

Wage Index Value for Grand Forks, North Dakota

| 0.7949

Calculate the labor portion of the Case-Mix adjusted National Standardized 60-Day Episode Payment without NRS Amount:

($3,408.34 * .77082) | $2,627.22

Apply the wage index factor for Grand Forks to the labor potion

($2,627.22 * 0.7949) | **$2,088.38**

Calculate the non-labor portion of the Case-Mix adjusted National Standardized 60-Day Episode Payment without NRS Amount:

($3,408.34 * .22918) | **$781.12**

Calculate the Total Prospective Payment Rate:

Case-Mix adjusted Wage Adjusted Labor Portion of the Rate without NRS Amount

| $2,088.38

Case-Mix Adjusted Non-Labor Portion of the Rate without NRS Amount

| $781.12

Calculate the Total Case-Mix and Wage Adjusted National Standardized 60-Day Episode Payment Rate without NRS Amount

($2,088.38 + $781.12) | **$2,869.50**

Calculate the NRS Amount:

NRS Conversion Factor | $52.77

NRS Severity Level #4 Relative Weight

| 6.9612

Calculate the NRS Amount

($52.77* 6.9612) | **$367.34**

Calculate the Total Case-Mix and Wage Adjusted National Standardized 60-Day Episode Payment Rate including NRS Amount

($2,869.50 + $367.34) | **$3,236.84**

• *National Per-visit Amounts Used to Pay LUPAs and Compute Imputed Costs Used in Outlier Calculations*

As discussed previously in this proposed rule, the policies governing LUPAs and the outlier calculations set forth in the July 3, 2000 HH PPS final rule will continue (65 FR 41128) with an increase of $92.63 for initial and only episode LUPAs during CY 2008. In calculating the proposed CY 2008 national per-visit amounts used to calculate payments for LUPA episodes and to compute the imputed costs in outlier calculations, we are proposing to start with the CY 2007 per-visit amounts. We propose to increase the CY 2007 per-visit amounts for each home health discipline for CY 2008 by the proposed estimated rebased and revised home health market basket update (2.9 percent), then multiply by 1.05 and 0.958614805 to account for the estimated percentage of outlier payments as a result of the current FDL ratio of 0.67 (see Table 24).

TABLE 24.—PROPOSED NATIONAL PER-VISIT AMOUNTS FOR LUPAS (NOT INCLUDING THE INCREASE IN PAYMENT FOR A BENEFICIARY'S ONLY EPISODE OR THE INITIAL EPISODE IN A SEQUENCE OF ADJACENT EPISODES) AND OUTLIER CALCULATIONS UPDATED BY THE ESTIMATED HOME HEALTH MARKET BASKET UPDATE FOR CY 2008, BEFORE WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY

Home health discipline type	Final CY 2007 per-visit amounts per 60-day episode for LUPAs	Multiply by the proposed estimated home health market basket (2.9 percent) [1]	Adjusted to account for the 5 percent outlier policy	Proposed CY 2008 per-visit payment amount per discipline
Home Health Aide	$46.24	× 1.029	× 1.05 × 0.958614805	$47.91.
Medical Social Services	163.68	× 1.029	× 1.05 × 0.958614805	169.53.
Occupational Therapy	112.40	× 1.029	× 1.05 × 0.958614805	116.42.
Physical Therapy	111.65	× 1.029	× 1.05 × 0.958614805	115.63.
Skilled Nursing	102.11	× 1.029	× 1.05 × 0.958614805	105.76.
Speech-Language Pathology	121.22	× 1.029	× 1.05 × 0.958614805	125.55.

[1] The estimated home health market basket update of 2.9 percent for CY 2008 is based on Global Insight, Inc, 4th Qtr, 2006 forecast with historical data through 3rd Qtr, 2006.

Payment for LUPA episodes is changed in that for LUPAs that occur as initial episodes in a sequence of adjacent episodes or as the only episode, we are proposing an increased payment amount (see section II.A.5. of this proposed regulation) to the LUPA payment. Table 24 rates are before that adjustment and are the rates paid to all other LUPA episodes. LUPA episodes that occur as the only episode or initial episode in a sequence of adjacent episodes are adjusted by including the proposed amount of $92.63 to the LUPA payment before adjusting for wage index.

Example 2. An HHA is providing services to a Medicare beneficiary in rural New Hampshire. During the 60-day episode the beneficiary receives only 3 visits. It is the initial episode during a sequence of adjacent episodes for this beneficiary.

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Number of Visits, Visit Type, and Per-Visit Payment Amounts		
1 Skilled Nursing Visit	(per-visit payment amount from Table 24)	$105.76
2 Home Health Aide Visits	(per-visit payment amount from Table 24)	$47.91
Wage Index Value for Rural New Hampshire		1.0853
Increase in LUPA episode payment for only or initial episodes in a sequence of adjacent episodes		$92.63
Calculate the total wage adjusted adjustment amount for only or initial episodes in a sequence of Adjacent episodes:		
Calculate the wage adjusted portion of the $92.63 adjustment for only or initial episodes in a sequence of adjacent episodes: (0.77082 * $92.63)		**$71.40**
Apply the wage index factor from rural New Hampshire from Addendum A: (1.0853 * $71.40)		**$77.49**
Calculate the non-labor portion of the $92.63 adjustment for only or initial episodes in a sequence of adjacent episodes: (0.22198 * $92.63)		**$27.03**
Calculate the total wage adjusted adjustment amount for only or initial episodes in a sequence of Adjacent episodes: ($77.49 + $27.03)		**$104.52**
Calculate the wage adjusted LUPA payment amount for the skilled nursing portion of the payment:		
Calculate the labor portion of the per-visit payment amount for 1 skilled nursing visit: (0.77082 * $105.76)		$81.52
Apply the wage index factor from rural New Hampshire from Addendum A (1.0853 * $81.52)		$88.47
Calculate the non-labor portion of the per-visit payment amount for 1 skilled nursing visit (0.22918 * 105.76)		$30.86
Calculate the wage adjusted LUPA payment amount for 1 skilled nursing visit ($88.47 + $30.86)		$119.33
Calculate the wage adjusted LUPA payment amount for the home health aide portion of the payment		
Calculate the labor portion of the per-visit payment amount for 2 home health aide visits: (0.77082 * ($47.91 + $47.91))		$73.86
Apply the wage index factor from rural New Hampshire from Addendum A (1.0853 * $73.86)		$80.16
Calculate the non-labor portion of the per-visit payment amount for 2 home health aide visits (0.22918 * ($47.91 + $47.91))		$21.96
Calculate the wage adjusted LUPA payment amount for 2 home health aide visits ($80.16 + $21.96)		$102.12
Calculate the LUPA amount for 1-skilled nursing/2-home health aide episode, before applying any increase for the only episode or initial episode in a sequence of adjacent episodes ($119.33 + $102.12)		$221.45
Calculate the Total LUPA payment amount (with proposed increase for an only episode or initial episode in a sequence of adjacent episodes) ($221.45 + $104.52)		**$325.97**

Outlier payments are determined and calculated using the same methodology that has been used since the implementation of the HH PPS.

E. Hospital Wage Index

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require the Secretary to

establish area wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services and to provide appropriate adjustments to the episode payment amounts under the HH PPS to account for area wage differences. We apply the appropriate wage index value to the proposed labor portion (77.082 percent; see Table 22) of the HH PPS rates based on the geographic area where the beneficiary received the home health services. As implemented under the HH PPS in the July 3, 2000 HH PPS final rule, each HHA's labor market area is based on definitions of Metropolitan Statistical Areas (MSAs) issued by the OMB.

In the August 11, 2004 IPPS final rule [69 FR 49206], revised labor market area definitions were adopted at § 412.64(b), which were effective October 1, 2004 for acute care hospitals. The new standards, Core Based Statistical Areas (CBSAs), were announced by OMB in late 2000 and were also discussed in greater detail in the July 14, 2005 HH PPS proposed rule. For the purposes of the HH PPS, the term "MSA-based" refers to wage index values and designations based on the previous MSA designations. Conversely, the term "CBSA-based" refers to wage index values and designations based on the new OMB revised MSA designations which now include CBSAs. In the November 9, 2005 HH PPS final rule (70 FR 68132), we implemented a 1-year transition policy using a 50/50 blend of the CBSA-based wage index values and the MSA-based wage index values for CY 2006. The one-year transition policy ended in CY 2006. For CY 2008, we propose to use a wage index based solely on the CBSA designations.

1. Background

As implemented under the HH PPS in the July 3, 2000 HH PPS final rule, each HHA's labor market is determined based on definitions of MSAs issued by OMB. In general, an urban area is defined as an MSA or New England County Metropolitan Area (NECMA) as defined by OMB. Under § 412.64(b)(1)(ii)(C), a rural area is defined as any area outside of the urban area. The urban and rural area geographic classifications are defined in § 412.64(b)(1)(ii)(A) and § 412.64.(b)(1)(II)(C) respectively, and have been used under the HH PPS since implementation.

Under the HH PPS, the wage index value used is based upon the location of the beneficiary's home. As has been our longstanding practice, any area not included in an MSA (urban area) is considered to be non-urban § 412.64(b)(1)(ii)(C) and receives the statewide rural wage index value (see, for example, 65 FR 41173).

As discussed previously and set forth in the July 3, 2000 final rule, the statute provides that the wage adjustment factors may be the factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustment factors. As discussed in the July 3, 2000 final rule, we are proposing again to use the pre-floor and pre-reclassified hospital wage index data to adjust the labor portion of the HH PPS rates based on the geographic area where the beneficiary receives home health services. We believe the use of the pre-floor and pre-reclassified hospital wage index data results in the appropriate adjustment to the labor portion of the costs as required by statute. For the CY 2008 update to home health payment rates, we would continue to use the most recent pre-floor and pre-reclassified hospital wage index available at the time of publication.

In adopting the CBSA designations, we identified some geographic areas where there are no hospitals, and thus no hospital wage data on which to base the calculation of the home health wage index. Beginning in CY 2006, we adopted a policy that, for urban labor markets without an urban hospital from which a hospital wage index can be derived, all of the urban CBSA wage index values within the State would be used to calculate a statewide urban average wage index to use as a reasonable proxy for these areas. Currently, the only CBSA that would be affected by this policy is CBSA 25980, Hinesville, Georgia. We propose to continue this policy for CY 2008.

2. Update

Currently, the only rural areas where there are no hospitals from which to calculate a hospital wage index are Massachusetts and Puerto Rico. For CY 2006, we adopted a policy in the HH PPS November 9, 2005 final rule (70 FR 68138) of using the CY 2005 pre-floor, pre-reclassified hospital wage index value. In the August 3, 2006 proposed rule, we again proposed to apply the CY 2005 pre-floor/pre-reclassified hospital wage index to rural areas where no hospital wage data is available. In response to commenters' concerns and in recognition that, in the future, there may be additional rural areas impacted by a lack of hospital wage data from which to derive a wage index, we adopted, in the November 9, 2006 final rule (71 FR 65905), the following methodology for imputing a rural wage index for areas where no hospital wage data are available as an acceptable proxy. The methodology that we implemented for CY 2007 imputed an average wage index value by averaging the wage index values from contiguous CBSAs as a reasonable proxy for rural areas with no hospital wage data from which to calculate a wage index. We believe this methodology best meets our criteria for imputing a rural wage index as well as representing an appropriate wage index proxy for rural areas without hospital wage data. Specifically, such a methodology uses pre-floor, pre-reclassified hospital wage data, is easy to evaluate, is updateable from year to year, and uses the most local data available. In determining an imputed rural wage index, we define "contiguous" as sharing a border. For Massachusetts, rural Massachusetts currently consists of Dukes and Nantucket Counties. We determined that the borders of Dukes and Nantucket counties are "contiguous" with Barnstable and Bristol counties. We are again proposing to apply this methodology for imputing a rural wage index for those rural areas without rural hospital wage data. While we continue to believe that this policy could be readily applied to other rural areas that lack hospital wage data (possibly due to hospitals converting to a different provider type (such as a CAH) that does not submit the appropriate wage data), we specifically solicit comments on this issue.

However, as we noted in the HH PPS final rule for CY 2007, we did not believe that this policy was appropriate for Puerto Rico. As noted in the August 3, 2006 proposed rule, there are sufficient economic differences between the hospitals in the United States and those in Puerto Rico, including the fact that hospitals in Puerto Rico are paid on blended Federal/Commonwealth-specific rates, that a separate distinct policy for Puerto Rico is necessary. Consequently, any alternative methodology for imputing a wage index for rural Puerto Rico would need to take into account those differences. Our policy of imputing a rural wage index by using an averaged wage index of CBSAs contiguous to that rural area does not recognize the unique circumstances of Puerto Rico. For CY 2008, we again propose to continue to use the most recent wage index previously available for Puerto Rico which is 0.4047.

The rural and urban hospital wage indexes can be found in Addenda A and B of this proposed rule. For HH PPS rates addressed in this proposed rule, we are using the 2007 pre-floor and pre-reclassified hospital wage index data, as 2008 pre-floor and pre-reclassified hospital wage index data are not yet

available. We propose to use the 2008 pre-floor and pre-reclassified hospital wage index (not including any reclassification under section 1886(d)(8)(B) of the Act) to adjust rates for CY 2008 and will publish those wage index values in the final rule.

F. Home Health Care Quality Improvement

Section 5201(c)(2) of the DRA added section 1895(b)(3)(B)(v)(II) to the Act, requiring that "each home health agency shall submit to the Secretary such data that the Secretary determines are appropriate for the measurement of health care quality. Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this clause." In addition, section 1895(b)(3)(B)(v)(I) of the Act, as also added by section 5201(c)(2) of the DRA, dictates that "for 2007 and each subsequent year, in the case of a home health agency that does not submit data to the Secretary in accordance with subclause (II) with respect to such a year, the home health market basket percentage increase applicable under such clause for such year shall be reduced by 2 percentage points."

The OASIS data currently provide consumers and HHAs with 10 publicly-reported home health quality measures which have been endorsed by the National Quality Forum (NQF). Reporting these quality data have also required the development of several supporting mechanisms such as the HAVEN software used to encode and transmit data using a CMS standard electronic record layout, edit specifications, and data dictionary. The HAVEN software includes the required OASIS data set that has become a standard part of HHA operations. These early investments in data infrastructure and supporting software that CMS and HHAs have made over the past several years in order to create this quality reporting structure have been successful in making quality reporting and measurement an integral component of the HHA industry. The 10 measures are—

- Improvement in ambulation/locomotion;
- Improvement in bathing;
- Improvement in transferring;
- Improvement in management of oral medications;
- Improvement in pain interfering with activity;
- Acute care hospitalization;
- Emergent care;
- Improvement in dyspnea;
- Improvement in urinary incontinence; and
- Discharge to community.

We are proposing to continue to use OASIS data and the current 10 quality measures, and to add two additional quality measures based on those data for the CY 2008 HH PPS quality data reporting requirement. Continuing to use the OASIS instrument ensures that providers will not have an additional burden of reporting through a separate mechanism and that the costs associated with the development and testing of a new reporting mechanism can be avoided. Accordingly, for CY 2008, we propose to continue to use submission of OASIS data to meet the requirement that the HHA submit data appropriate for the measurement of health care quality.

We specifically propose to add the following two additional quality measures as data appropriate for measuring health care quality. Adding new measures to the currently available outcome measures could broaden the patient population we can assess, expand the types of quality care we can measure, and capture an aspect of care directly under providers' control. These two wound measures focus on a prevalent condition among home health beneficiaries. We believe that by adding these two measures, we can address agencies' ability to maintain patients in their homes. These additional NQF endorsed measures that will provide a more complete picture of the level of quality care delivered by HHAs are the following:

- Emergent Care for Wound Infections, Deteriorating Wound Status; and
- Improvement in Status of Surgical Wound.

The data elements used to calculate these measures are already captured by the OASIS instrument and do not require additional reporting or burden to HHAs.

Additionally, section 1895(b)(3)(B)(v)(II) of the Act provides the Secretary with the discretion to submit the required data in a form, manner, and time specified by him. We are proposing for CY 2008 to consider OASIS data submitted by HHAs to CMS for episodes beginning on or after July 1, 2006 and before July 1, 2007 as meeting the reporting requirement for CY 2008. This reporting time period would allow 12 full months of data and would provide us the time necessary to analyze and make any necessary payment adjustments to the CY 2008 payment rates. HHAs that meet the reporting requirement would be eligible for the full home health market basket percentage increase.

We recognize, however, that the home health conditions of participations (CoPs) in (42 CFR part 484) that require OASIS submission also provide for exclusions from the CoP submission requirement. Generally, agencies excluded from the CoP OASIS submission requirement do not receive Medicare payments as they either do not provide services to Medicare beneficiaries or the patients are not receiving Medicare-covered home health services. Under the CoP, agencies are excluded from the OASIS reporting requirement on individual patients if—

- Those patients are receiving only non-skilled services;
- Neither Medicare nor Medicaid is paying for home health care (patients receiving care under a Medicare or Medicaid Managed Care Plan are not excluded from the OASIS reporting requirement);
- Those patients are receiving pre- or post-partum services; and
- Those patients are under the age of 18 years.

We believe that the rationale behind the exclusion of these agencies from submission of OASIS on patients which are excluded from OASIS CoP submission is equally applicable to HHAs for quality purposes. If an agency is not submitting OASIS for patients excluded from OASIS submission for purposes of a CoP, we believe that the submission of OASIS for quality measures for Medicare purposes is likewise not necessary. Therefore, we propose that those agencies do not need to submit quality measures for reporting purposes for those patients who are excluded from the OASIS CoP submission.

Additionally, we propose that agencies newly certified (on or after May 31, 2007 for payments to be made in CY 2008) be excluded from the quality reporting requirement as data submission and analysis would not be possible for an agency certified this late in the reporting time period. We again propose that in future years, agencies that certify on or after May 31 of the preceding year involved be excluded from any payment penalty for quality reporting purposes for the following CY. We note these exclusions only affect quality reporting requirements and do not affect the agency's OASIS reporting responsibilities under the CoP.

We propose to require that all HHAs, unless covered by these specific exclusions, meet the reporting requirement, or be subject to a 2 percent reduction in the home health market basket percentage increase in accordance with section 895(b)(3)(B)(v)(I) of the Act. The 2 percent reduction would apply to all episode payments beginning on or after

January 1, 2008. We provide the proposed reduced payment rates in tables 25 and 26. We would reconcile the OASIS submissions with claims data in order to verify full compliance with the quality reporting requirements.

For episodes that begin in CY 2007 and end in CY 2008, the new proposed 153 HHRG case-mix model (and associated Grouper) would not yet be in effect. For that reason, we propose, for HHAs that do not submit required quality data (for episodes that begin in CY 2007 and end in CY 2008), the following: First, we update the CY 2007 rate of $2,339.00 by the home health market basket percentage update (2.9 percent) minus 2 percent, reduced by 2.75 percent to account for nominal change in case-mix, and multiplied by 1.05 and 0.958614805 to account for *the estimated percentage of outlier payments as a result of the current FDL ratio of 0.67* ($2,339.00 * 1.009 * .9725 * 1.05 * 0.958614805), to yield an updated CY 2008 national standardized 60-day episode payment rate of $2,310.17 for episodes that begin in CY 2007 and end in CY 2008 for HHAs that do not submit required quality data (see Table 25a).

These episodes would be further adjusted for case-mix based on the 80 HHRG case-mix model for episodes beginning in CY 2007 and ending in CY 2008.

TABLE 25A.—FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA-PROPOSED NATIONAL 60-DAY EPISODE AMOUNTS UPDATED BY THE ESTIMATED HOME HEALTH MARKET BASKET UPDATE FOR CY 2008, MINUS 2 PERCENTAGE POINTS, FOR EPISODES THAT BEGIN IN CY 2007 AND END IN CY 2008 BEFORE CASE-MIX ADJUSTMENT, WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY OR APPLICABLE PAYMENT ADJUSTMENT

Total CY 2007 national standardized 60-Day episode payment rate	Multiply by the proposed estimated home health market basket update (2.9 percent)[1] Minus 2 percent	Reduce by 2.75 percent for nominal change in case-mix	Adjusted to account for the 5 percent outlier policy	Proposed national standardized 60-day episode payment rate for episodes beginning in CY 2007 and ending in CY 2008 for HHAs that do not submit required quality data
$2,339.00	× 1.009	× 0.9725	× 1.05 × 0.958614805	$2,310.17

[1] The estimated home health market basket update of 2.9 percent for CY 2008 is based on Global Insight, Inc, 4th Qtr, 2006 forecast with historical data through 3rd Qtr, 2006.

Next, in order to establish new rates based on a proposed new case-mix system, we again start with the CY 2007 national standardized 60-day episode payment rate and increase that rate by the proposed estimated rebased and revised home health market basket update (2.9 percent) minus 2 percent ($2,339.00 * 1.009 = $2,360.05). We next have to put dollars associated with the outlier target estimate back into the base rate. In the 2000 HH PPS final rule (65 FR 41184), we divided the base rate by 1.05 to account for outlier payments. Therefore, we are proposing to multiply the $2,360.05 by 1.05, resulting in $2,478.05. Next we need to reduce this amount to pay for each of our proposed policies. To do this, we take the payment adjustment amount to pay for our proposed policies of this rule, determined in Table 23a of $226.57, multiply it by (1/1.029) to take away the 2.9 percent increase, and multiply that number by 1.009 to impose the 0.9 percent update for episodes where HHAs have not submitted the required quality data. This results in a payment adjustment amount of $222.17. Finally, subtract the payment adjustment amount of $222.17 from $2,478.05, for a final rate of $2,255.88 for HHAs that do not submit quality data, for episodes that begin and end in CY 2008.

These episodes would be further adjusted for case-mix based on the 153 HHRG case-mix model for episodes beginning and ending in CY 2008. As we noted in section II.A.2.d., we increased the case-mix weights by a budget neutrality factor of 1.194227193.

TABLE 25B.—FOR HHAS THAT DO NOT SUBMIT THE REQURIED QUALITY DATA-PROPOSED NATIONAL 60-DAY EPISODE AMOUNTS UPDATED BY THE ESTIMATED HOME HEALTH MARKET BASKET UPDATE FOR CY 2008, MINUS 2 PERCENTAGE POINTS, FOR EPISODES THAT BEGIN AND END IN CY 2008, BEFORE CASE-MIX ADJUSTMENT, WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY OR APPLICABLE PAYMENT ADJUSTMENT

Total CY 2007 national standardized 60-day episode payment rate	Multiply by the proposed estimated home health market basket update (2.9 percent) [1]	Adjusted to return the outlier funds to the national standardized 60-day episode payment rate	Updated and outlier adjusted national standardized 60-day episode payment	Changes to account for LUPA adjustment ($6.46), NRS payment ($40.88), elimination of SCIC policy ($15.71), outlier target ($94.02), and 2.75 percent reduction for nominal change in case-mix ($69.50) = $226.57; minus 2 percentage points off of the home health market basket update (2.9 Percent) [1] for episodes beginning and ending in CY 2008	Proposed CY 2008 national standardized 60-day episode payment rate for episodes beginning and ending in CY 2008
$2,339.00	× 1.009	× 1.05	$2,478.05	−$222.17	$2,255.88

[1] The estimated home health market basket update of 2.9 percent for CY 2008 is based on Global Insight, Inc, 4th Qtr, 2006 forecast with historical data through 3rd Qtr, 2006.

In calculating the proposed CY 2008 national per-visit amounts used to calculate payments for LUPA episodes for HHAs that do not submit required quality data and to compute the imputed costs in outlier calculations for those episodes, we are proposing to start with the CY 2007 per-visit rates. We propose to multiply those amounts by the proposed estimated home health market basket update (2.9 percent) minus 2 percentage points, then multiply by 1.05 and 0.958614805 to account for the estimated percentage of outlier payments as a result of the current FDL ratio of 0.67, to yield the updated per-visit amounts for each home health discipline for CY 2008 for HHAs that do not submit required quality data.

TABLE 26.—FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA-PROPOSED NATIONAL PER-VISIT AMOUNTS FOR LUPAS (NOT INCLUDING THE INCREASE IN PAYMENT FOR A BENEFICIARY'S ONLY EPISODE OR THE INITIAL EPISODE IN A SEQUENCE OF ADJACENT EPISODES) AND OUTLIER CALCULATIONS UPDATED BY THE ESTIMATED HOME HEALTH MARKET BASKET UPDATE FOR CY 2008, MINUS 2 PERCENTAGE POINTS, BEFORE WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY

Home health discipline type	Final CY 2007 per-visit amounts per 60-day episode for LUPAs	Multiply by the proposed estimated home health market basket (2.9 percent) [1]	Adjusted to account for the 5 percent outlier policy	Proposed CY 2008 per-visit payment amount per discipline for a beneficiary who resides in a non-MSA for HHAs that do not submit required quality data
Home Health Aide	$46.24	×1.009	×1.05 ×0.958614805	$46.96
Medical Social Services	163.68	×1.009	×1.05 × 0.958614805	166.23
Occupational Therapy	112.40	×1.009	×10.5 ×0.958614805	114.15
Physical Therapy	111.65	×1.009	× 1.05 ×0.958614805	113.39
Skilled Nursing	102.11	×1.009	×1.05 ×0.958614805	103.70

TABLE 26.—FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA-PROPOSED NATIONAL PER-VISIT AMOUNTS FOR LUPAS (NOT INCLUDING THE INCREASE IN PAYMENT FOR A BENEFICIARY'S ONLY EPISODE OR THE INITIAL EPISODE IN A SEQUENCE OF ADJACENT EPISODES) AND OUTLIER CALCULATIONS UPDATED BY THE ESTIMATED HOME HEALTH MARKET BASKET UPDATE FOR CY 2008, MINUS 2 PERCENTAGE POINTS, BEFORE WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY—Continued

Home health discipline type	Final CY 2007 per-visit amounts per 60-day episode for LUPAs	Multiply by the proposed estimated home health market basket (2.9 percent) [1]	Adjusted to account for the 5 percent outlier policy	Proposed CY 2008 per-visit payment amount per discipline for a beneficiary who resides in a non-MSA for HHAs that do not submit required quality data
Speech-Language Pathology	121.22	×1.009	×1.05 ×0.958614805	123.11

The estimated home health market basket update of 2.9 percent for CY 2008 is based on Global Insight, Inc, 4th Qtr, 2006 forecast with historical data through 3rd Qtr, 2006.

Section 1895(b)(3)(B)(v)(III) of the Act further requires that the "Secretary shall establish procedures for making data submitted under subclause (II) available to the public." Additionally, the statute requires that "such procedures shall ensure that a home health agency has the opportunity to review the data that is to be made public with respect to the agency before such data being made public." To meet the requirement for making such data public, we are proposing to continue to use the *Home Health Compare* Web site whereby HHAs are listed geographically.

Currently, the 10 existing quality measures are posted on the Home Health Compare Web site. The Home Health Compare Web site will also include the two proposed additional measures discussed earlier. Consumers can search for all Medicare-approved home health providers that serve their city or zip code and then find the agencies offering the types of services they need as well as the proposed quality measures. See *http://www.medicare.gov/HHCompare/Home.asp.* HHAs currently have access (through the Home Health Compare contractor) to their own agency's quality data (updated periodically) and we propose to continue this process thus enabling each agency to know how it is performing before public posting of data on the *Home Health Compare Web site.*

Over the next year, we will be testing patient level process measures for HHAs, as well as continuing to refine the current OASIS tool in response to recommendations from a TEP conducted to review the data elements that make up the OASIS tool. We expect to introduce these complementary additional measures during CY 2008 to determine if they should be incorporated into the statutory quality measure reporting requirements. We hope to apply these measures to the CY 2010 reporting period. Before usage in the HH PPS, we will test and refine these measures to determine if they can more accurately reflect the level of quality care being provided at HHAs without being overly burdensome with the data collection instrument. To the extent that evidence-based data are available on which to determine the appropriate measure specifications, and adequate risk-adjustments are made, we anticipate collecting and reporting these measures as part of each agency's home health quality plan. We believe that future modifications to the current OASIS tool, refinements to the possible responses as well as adding new process measures will be made. In all cases, we anticipate that any future quality measures should be evidence-based, clearly linked to improved outcomes, and able to be reliably captured with the least burden to the provider. We are also working on developing measures of patient experience in the home health setting through the development of the Home Health Consumer Assessment of Healthcare Providers and Systems (CAHPS) Survey. We will be working with the Agency for Healthcare Research and Quality (AHRQ) to field test this instrument in summer/fall 2007. We anticipate implementing the Home Health CAHPS Survey in late 2008 for potential application to the CY 2010 pay for reporting requirements.

III. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comments on each of these issues for the information collection requirements discussed below.

To implement the OASIS changes discussed in sections II.A.(2)(a), II.A.(2)(b), and II.A.(2)(c) of this proposed rule, which are currently approved in § 484.55, § 484.205, and § 484.250, a few items in the OASIS will need to be modified, deleted, or added. The requirements and burden associated with the OASIS are currently approved under OMB control number 0938–0760 with an expiration date of August 31, 2007. We are soliciting public comment on each of the proposed changes for the information collection requirements (ICRs) as summarized and discussed below. For the purposes of soliciting public review and comment, we have placed a current draft of the proposed changes to the OASIS on the CMS Web site at: *http://www.cms.hhs.gov/*

PaperworkReductionActof1995/PRAL/list.asp#TopOfPage.

As discussed in section II.A.(2)(a) of this proposed rule, in order for the OASIS to have the information necessary to allow the grouper to price-out the claim, we propose to make the following changes to the OASIS to capture whether an episode is an early or later episode:

The creation of a new OASIS item to capture whether a particular assessment, is for an episode considered to be an early episode or a later episode in the patient's current sequence of adjacent Medicare home health payment episodes. As defined in section II.A.1. of this proposed rule, we defined a sequence of adjacent episodes for a beneficiary as a series of claims with no more than 60-days without home care between the end of one episode, which is the 60th day (except for episode that have been PEP-adjusted), and the beginning of the next episode. This definition holds true regardless of whether or not the same HHA provided care for the entire sequence of adjacent episodes. The HHA will chose from the options: "Early" for single episodes or the first or second episode in a sequence of adjacent episodes, "Later" for third or later episodes, "UK" for unknown if the HHA is uncertain as to whether the episode is an early or later episode (the payment grouper software will default to the definition of an "early" episode), and "NA" for not applicable (no Medicare case-mix group to be defined by this assessment).

As discussed in section II.A.(2)(b) of this proposed rule, we propose to make changes to the OASIS in order to enable agencies to report secondary case-mix diagnosis codes. The proposed changes clarify how to appropriately fill out OASIS items M0230 and M0240, using ICD–9–CM sequencing requirements if multiple coding is indicated for any diagnosis. Additionally, if a V-code is reported in place of a case-mix diagnosis for OASIS item M0230 or M0240, then the new optional OASIS item (which is replacing existing OASIS item M0245) may then be completed. A case-mix diagnosis is a diagnosis that determines the HH PPS case-mix group.

As discussed in section II.A.(2)(c) of this proposed rule, we propose to make changes to the OASIS to capture the projected total number of therapy visits for a given episode. With the projected total number of therapy visits, the payment grouper would be able to group that episode into the appropriate case-mix group for payment. The existing OASIS item M0825 asks an HHA if the projected number of therapy visits would meet the therapy threshold or not. As noted previously, we propose to delete OASIS item M0825 and replace it with a new OASIS item. The OASIS item would ask the following: "In the plan of care for the Medicare payment episode for which this assessment will define a case-mix group, what is the indicated need for therapy visits (total of reasonable and necessary physical, occupational, and speech-pathology visits combined)?" The HHA would provide the total number of projected therapy visits for that Medicare payment episode, unless not applicable (that is, no case-mix group defined by this assessment). The HHA would enter "000" if no therapy visits were projected for that particular episode.

The burden associated with the proposed changes discussed in sections II.A.(2)(a), II.A.(2)(b), and II.A.(2)(c) of this rule includes possible training of staff, the time and effort associated with downloading a new form and replacing previously pre-printed versions of the OASIS, and utilizing updated vendor software. However, as stated above, CMS would be removing or modifying existing questions in the OASIS data set to accommodate the proposed requirements referenced above. In addition, as a result of the proposed changes of this rule, we expect that the claims processing system is expected to automatically adjust the therapy visits, upward and downward on the final claim, according to the information on the final claim.

Consequently, the HHA would no longer have to withdraw and resubmit a revised claim when the number of therapy visits delivered to the patient is higher than the level report on the RAP. Therefore, CMS believes the burden increase associated with these changes is negated by the removal or modification of several current data items.

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements described above. These requirements are not effective until OMB has approved them.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Attn.: Melissa Musotto, CMS–1541–P, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850; and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Carolyn Lovett, CMS Desk Officer, (CMS–1541–P), *carolyn_lovett@omb.eop.gov.* Fax (202) 395–6974.

IV. Response to Comments

Because of the large number of public comments normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this proposed rule, and, when we proceed with subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

[If you choose to comment on issues in this section, please include the caption "REGULATORY IMPACT ANALYSIS" at the beginning of your comments.]

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), 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). This proposed rule would be a major rule, as defined in Title 5, United States Code, section 804(2), because we estimate the impact to the Medicare program, and the annual effects to the overall economy, would be more than $100 million. The update set forth in this proposed rule would apply to Medicare payments under the HH PPS in CY 2008.

Accordingly, the following analysis describes the impact in CY 2008 only. We estimate that the net impact of the proposals in this rule, including a 2.75 percent reduction to the case-mix weights to account for nominal increase in case-mix, is estimated to be

approximately $140 million in CY 2008 expenditures. That estimate incorporates the 2.9 percent home health market basket increase (an estimated additional $410 million in CY 2008 expenditures attributable only to the CY 2008 proposed estimated home health market basket update), an estimated additional $130 million due to the increase in the HH PPS rates as a result of maintaining a FDL ratio of 0.67, and the 2.75 percent decrease (−$400 million for the first year of a 3-year phase-in) to the HH PPS national standardized 60-day episode rate to account for the nominal increase in case-mix under the HH PPS. Given that we allowed for a FDL ratio of 0.67, all HH PPS rates were adjusted slightly upward by a factor of 0.008614805. Column 6 of Table 27 displays a 0.95 percent increase in expenditures when comparing the CY 2007 current system to the proposed revised CY 2008 system. This equates to approximately $140 million and is driven primarily by the adjustment made to maintain the FDL ratio at 0.67 and partially by the difference between the 2.9 percent update and the 2.75 percent reduction to the HH PPS rates.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. For purposes of the RFA, approximately 75 percent of HHAs are considered small businesses according to the Small Business Administration's size standards with total revenues of $11.5 million or less in any 1 year. Individuals and States are not included in the definition of a small entity. As stated above, this proposed rule would have an estimated positive effect upon small entities that are HHAs.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We believe this proposed rule would not mandate expenditures in that amount.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this proposed rule would not have substantial direct effects on the rights, roles, and responsibilities of States.

B. Anticipated Effects

This proposed rule would update the HH PPS rates contained in the CY 2007 final rule (71 FR 65884, November 9, 2006). The impact analysis of this proposed rule presents the refinement related policy changes proposed in this rule. We use the best data available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as days or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare home health benefit, based on the latest available Medicare claims from 2003. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly-legislated general Medicare program funding changes made by the Congress, or changes specifically related to HHAs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, the MMA, the DRA, or new statutory provisions. Although these changes may not be specific to the HH PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon HHAs.

Table 27 represents how home health agencies are likely to be affected by the policy changes described in this rule. For each agency type listed below, Table 27 displays the average case-mix index, both under the current HH PPS case-mix system and the proposed CY 2008 HH PPS case-mix system. For this analysis, we used the most recent data available that linked home health claims and OASIS assessments, a 10 percent sample of episodes occurring in FY 2003. In Table 27, the average case-mix is the same, in the aggregate, between the current HH PPS system and the proposed revised HH PPS system, due to our application of a budget neutrality factor for the case-mix weights. Column one of this table classifies HHAs according to a number of characteristics including provider type, geographic region, and urban versus rural location. Column two displays the average case-mix weight for each type of agency under the current payment system. Column three displays the average case-mix weight for each type of agency incorporating all of the changes/refinements discussed above. The average case-mix weight for proprietary (for profit) agencies is estimated to decrease from 1.2601 to 1.2227. Comparatively, the average case-mix weight for voluntary non-profit agencies is estimated to increase from 1.1404 to 1.1716. Rural agencies are estimated to experience a decrease in their average case-mix from 1.1583 to 1.1417. It is estimated that urban agencies would see a slight increase in their average case-mix weight from 1.2032 to 1.2074. In particular, the New England, Mid-Atlantic, East North Central, Mountain, and West North Central areas of the country are estimated to see their average case-mix increase under the proposed refinements of this rule. Conversely, the West South Central, East South Central, Pacific, and South Atlantic areas of the country are estimated to see their average case-mix decrease as a result of proposed refinements of this rule. Both small and large agencies are estimated to see decreases in their average case-mix under the new proposed case-mix system, the only exception being much larger agencies (200+ first episodes), which are estimated to see an increase of their average case-mix from 1.1769 to 1.1920.

For the purposes of analyzing impacts on payments, we performed three simulations and compared them to each other. The first simulation estimated 2007 payments under the current system. The second simulation estimated 2008 payments as though there would be no changes to the payment system other than the rebased and revised home health market basket increase of 2.9 percent. The second

simulation produces an estimate of what total payments using the sample data would be in 2008 without making any of the proposed changes described in this proposed rule.

The third simulation estimates what total payments would be in 2008, using the proposed case-mix model, the proposed additional payment for initial and only episode LUPA episodes, the proposed removal of SCIC adjustments, and the proposed revised approach to making NRS payments. The third simulation also assumed payments would incorporate the rebased and revised home health market basket increase of 2.9 percent, the current outlier threshold determined by a FDL ratio of 0.67, and the 2.75 percent reduction in the national standardized 60-day episode payment rate to account for the proposed nominal change in case-mix. All three simulations used the same CBSA wage index (we used a crosswalk from the MSA reported on the 2003 claims to the CBSA to determine the appropriate wage index). The results of comparing these simulations are displayed in columns four, five, and six of Table 27.

Column four shows the percentage change in estimated total payments in moving from CY 2007 to a CY 2008 system incorporating none of the proposed refinements to the HH PPS except for the rebased and revised home health market basket increase of 2.9 percent. Column five shows the percentage change in estimated total payments in moving from a CY 2008 system that incorporates none of the proposed changes to the HH PPS except for the rebased and revised home health market basket increase of 2.9 percent to the proposed revised CY 2008 system of this rule. Finally, column six shows the percentage change in estimated total payments in moving from CY 2007 to the proposed revised CY 2008 system of this rule.

In general terms, the percentage change in estimated total payments from CY 2007 to a CY 2008 system that incorporates none of the proposed refinements to the HH PPS except for the rebased and revised home health market basket update of 2.9 percent is approximately the home health market basket increase of 2.9 percent. Some of the classifications of HHAs show a slightly less than 2.9 percent increase in this comparison, which is due to the CY 2007 system incorporating the current labor share, which is slightly less than the labor share being proposed for the CY 2008 system.

When comparing a CY 2008 system that incorporates none of the refinements to the HH PPS except for the rebased and revised home health market basket increase of 2.9 percent with the proposed revised CY 2008 system of this rule, it is estimated that under the proposed revised CY 2008 system of this rule, total estimated payments would decrease by approximately 1.88 percent. Comparatively, the percentage change in estimated total payments from CY 2007 to the proposed revised CY 2008 system of this rule is an increase of just under 1 percent (0.95 percent). All three simulations incorporate a FDL ratio of 0.67. By maintaining the FDL ratio of 0.67, we believe we will continue to meet the statutory requirement of having an outlier payment outlay that does not exceed 5 percent of total HH PPS payments. In maintaining a 0.67 FDL ratio for CY 2008, in order to maintain budget neutrality (other than the 2.75 percent reduction to the HH PPS rates to account for nominal case-mix change), HH PPS rates are increased slightly, as stated earlier in this section.

In general, voluntary non-profit HHAs (3.56 percent), facility-based HHAs (3.50 percent), government owned HHAs (3.04 percent) and free-standing HHAs (0.10 percent) are estimated to see an increase in the percentage change in estimated total payments from CY 2007 to the proposed revised CY 2008 system. Proprietary HHAs, on the other hand are estimated to see a decrease of 1.90 percent in estimated total payments from CY 2007 to the proposed revised CY 2008 system. The major contributor to this decrease of 1.90 percent is the free-standing proprietary HHAs, which are estimated to see a decrease of slightly more than 2 percent in the percentage change in estimated total payment from CY 2007 to the proposed revised CY 2008 system.

We note that some of these impacts are partly explained by practice patterns associated with certain types of agencies. For example, LUPA episodes are relatively common among nonprofit agencies and freestanding government-owned agencies. Our proposal for an additional payment for certain LUPA episodes would tend to increase payments for such classes of agencies with higher-than-average LUPA rates, while tending to decrease payments for agencies with comparatively low LUPA rates. Similarly, the proposed elimination of the SCIC policy would tend to favorably affect total payments for agencies with relatively high rates of SCIC episodes, such as facility-based proprietary agencies and facility-based government agencies. The percentage change in estimated total payments from CY 2007 to a CY 2008 system that incorporates all of the refinements to the HH PPS for rural HHAs is a slight decrease of 0.50 percent, while for urban HHAs an increase of 1.26 percent is expected. Urban agencies have somewhat higher LUPA rates than rural agencies, so urban agencies would be expected to benefit, relative to rural agencies, from the proposal to make an additional payment for certain LUPA episodes. Urban agencies are also more likely to benefit from elimination of the SCIC policy. Urban agencies are less likely to bill a SCIC episode than rural agencies. However, when urban agencies do bill a SCIC episode the payment is reduced more, on average, than when rural agencies bill a SCIC. The net effect of these two components (relative frequency and payment impact per SCIC episode) is a larger expected reduction for urban agencies under the SCIC adjustment policy. Therefore, while both urban and rural agencies benefit from eliminating the SCIC policy, urban agencies benefit more.

HHAs in the North are expected to experience a percentage change increase of 4.33 percent in estimated total payments from CY 2007 to the proposed revised CY 2008 system. The only region estimated to experience a decrease in the percentage change in estimated total payments from CY 2007 to the proposed revised CY 2008 system is the South. That percentage change is an estimated decrease of 1.84 percent. It is estimated that New England and Mid Atlantic area HHAs will experience percentage change increases of slightly more than 4 percent (New England, 4.10 percent and the Mid-Atlantic, 4.45 percent) in estimated total payments from CY 2007 to the proposed revised CY 2008 system. Conversely, West South Central HHAs are expected to experience a decrease (−3.80 percent) in the percentage change in estimated total payments from CY 2007 to the proposed CY 2008 system. In general, smaller HHAs are expected to experience a decrease (ranging from −0.63 percent to −2.76 percent) for their percentage change in estimated total payments from CY 2007 to the proposed revised CY 2008 system. Conversely, larger HHAs are estimated to experience an increase (ranging from 0.59 percent to 2.16 percent) in the percent change in estimated total payments from CY 2007 to the proposed CY 2008 system.

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Table 27: Impact By Agency Type

	Case Mix Index, Current PPS	Case Mix Index, Proposed Revised PPS	Percent Change, from CY 07, Current PPS, to CY08, Current PPS	Percent Change, from CY08, Current PPS, to CY 08, Proposed Revised PPS	Percent Change, from CY 07, Current PPS, to CY 08, Proposed Revised PPS
Type of Facility:					
Unknown	1.3464	1.2868	2.89%	-6.70%	-4.00%
Free-Standing Vol/NP	1.1502	1.1815	2.90%	0.58%	3.50%
Free-Standing Proprietary	1.2641	1.2234	2.88%	-4.85%	-2.11%
Free-Standing Government	1.1565	1.1865	2.86%	0.51%	3.39%
Facility-Based Vol/NP	1.1287	1.1596	2.89%	0.73%	3.65%
Facility-Based Proprietary	1.1794	1.2092	2.87%	0.26%	3.13%
Facility-Based Government	1.1244	1.1441	2.86%	-0.23%	2.63%
Subtotal: Freestanding	1.2155	1.2057	2.89%	-2.71%	0.10%
Subtotal: Facility-Based	1.1320	1.1615	2.88%	0.59%	3.50%
Subtotal: Vol/NP	1.1404	1.1716	2.90%	0.65%	3.56%
Subtotal: Proprietary	1.2601	1.2227	2.88%	-4.65%	-1.90%
Subtotal: Government	1.1417	1.1670	2.86%	0.17%	3.04%
GRAND TOTAL	1.1942	1.1942	2.89%	-1.88%	0.95%
Type of Facility (Rural Only):					
Unknown	1.2479	1.2209	2.89%	-4.60%	-1.84%
Free-Standing Vol/NP	1.1325	1.1386	2.85%	-1.36%	1.45%
Free-Standing Proprietary	1.2212	1.1528	2.83%	-7.49%	-4.87%
Free-Standing Government	1.1274	1.1563	2.84%	0.52%	3.37%
Facility-Based Vol/NP	1.1107	1.1242	2.84%	-0.49%	2.34%
Facility-Based Proprietary	1.1435	1.1552	2.83%	-1.05%	1.75%
Facility-Based Government	1.1133	1.1269	2.84%	-0.71%	2.11%
Type of Facility (Urban Only):					
Free-Standing Vol/NP	1.1525	1.1872	2.91%	0.80%	3.73%
Free-Standing Proprietary	1.2732	1.2383	2.89%	-4.41%	-1.64%
Free-Standing Government	1.1931	1.2244	2.89%	0.50%	3.40%
Facility-Based Vol/NP	1.1340	1.1701	2.90%	1.04%	3.97%
Facility-Based Proprietary	1.2004	1.2407	2.88%	0.89%	3.80%
Facility-Based Government	1.1402	1.1672	2.88%	0.29%	3.17%
Type of Facility: Urban or Rural					
Unknown	1.2479	1.2209	2.89%	-4.60%	-1.84%
Rural	1.1583	1.1417	2.84%	-3.25%	-0.50%
Urban	1.2032	1.2074	2.90%	-1.60%	1.26%
TOTAL	1.1942	1.1942	2.89%	-1.88%	0.95%
Type Facility: Region					
North	1.0978	1.1397	2.92%	1.37%	4.33%
South	1.2495	1.2158	2.86%	-4.40%	-1.66%
Midwest	1.1680	1.2016	2.88%	0.57%	3.47%
West	1.1797	1.1668	2.93%	-2.77%	0.08%
Other	1.2882	1.3136	2.80%	0.08%	2.88%
TOTAL	1.1942	1.1942	2.89%	-1.88%	0.95%
Type of Facility: Area of the Country					
New England	1.0600	1.1000	2.93%	1.14%	4.10%
Mid Atlantic	1.1172	1.1601	2.92%	1.49%	4.45%

	Case Mix Index, Current PPS	Case Mix Index, Proposed Revised PPS	Percent Change, from CY 07, Current PPS, to CY08, Current PPS	Percent Change, from CY08, Current PPS, to CY 08, Proposed Revised PPS	Percent Change, from CY 07, Current PPS, to CY 08, Proposed Revised PPS
South Atlantic	1.2456	1.2351	2.88%	-2.59%	0.21%
East South Central	1.2659	1.2391	2.84%	-4.28%	-1.57%
West South Central	1.2439	1.1817	2.86%	-6.47%	-3.80%
East North Central	1.1858	1.2226	2.89%	0.66%	3.57%
West North Central	1.1134	1.1370	2.86%	0.26%	3.13%
Mountain	1.2295	1.2687	2.87%	0.75%	3.64%
Pacific	1.1575	1.1213	2.95%	-4.02%	-1.19%
Other	1.2882	1.3136	2.80%	0.08%	2.88%
TOTAL	1.1942	1.1942	2.89%	-1.88%	0.95%
Type of Facility: Size (Number of First Episodes)					
Unknown	1.0500	1.0387	2.87%	-2.30%	0.50%
1 to 5	1.1484	1.0993	2.88%	-5.26%	-2.54%
6 to 9	1.1608	1.1140	2.87%	-5.47%	-2.76%
10 to 14	1.1755	1.1438	2.87%	-4.62%	-1.88%
15 to 19	1.1602	1.1268	2.87%	-4.41%	-1.67%
20 to 29	1.1894	1.1678	2.87%	-3.40%	-0.63%
30 to 49	1.2062	1.1840	2.87%	-3.62%	-0.86%
50 to 99	1.2252	1.2221	2.88%	-2.23%	0.59%
100 to 199	1.2029	1.2024	2.88%	-1.93%	0.89%
200 or More	1.1769	1.1920	2.90%	-0.72%	2.16%
TOTAL	1.1942	1.1942	2.89%	-1.88%	0.95%

C. Accounting Statement

As Required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 28 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 HH PPS as a result of the changes presented in this proposed rule based on the data for 8,164 HHAs in our database. All expenditures are classified as transfers to Medicare providers (that is, HHAs).

TABLE 28.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM CY 2007 TO CY 2008

[In millions]

Category	Transfers
Annualized Monetized Transfers	$140.
From Whom to Whom?	Federal Government to HHAs.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 484

Health facilities, Health professions, Medicare, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services would amend 42 CFR chapter IV as set forth below:

PART 484—HOME HEALTH SERVICES

1. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C.1302 and 1395(hh)).

Subpart E—Prospective Payment System for Home Health Agencies

§ 484.205 [Amended]

2. Amend § 484.205 by—

A. Removing paragraph (a)(3).

B. Redesignating paragraph (a)(4) as paragraph (a)(3).

C. Revising paragraph (b) introductory text.

D. Removing paragraph (e).

E. Redesignating paragraph (f) as paragraph (e).

The revisions read as follows:

§ 484.205 Basis of payment.

* * * * *

(b) *Episode payment.* The national prospective 60-day episode payment represents payment in full for all costs associated with furnishing home health services previously paid on a reasonable cost basis (except the osteoporosis drug listed in section 1861(m) of the Act as defined in section 1861(kk) of the Act) as of August 5, 1997 unless the national 60-day episode payment is subject to a low-utilization payment adjustment set forth in § 484.230, a partial episode payment adjustment set forth at § 484.235, or an additional outlier payment set forth in § 484.240. All payments under this system may be

subject to a medical review adjustment reflecting beneficiary eligibility, medical necessity determinations, and HHRG assignment. DME provided as a home health service as defined in section 1861(m) of the Act continues to be paid the fee schedule amount.

* * * * *

3. Revise § 484.220 to read as follows:

§ 484.220 Calculation of the adjusted national prospective 60-day episode payment rate for case-mix and area wage levels.

CMS adjusts the national prospective 60-day episode payment rate to account for the following:

(a) HHA case-mix using a case-mix index to explain the relative resource utilization of different patients. To address changes to the case-mix that are a result of changes in the coding or classification of different units of service that do not reflect real changes in case-mix, the national prospective 60-day episode payment rate will be adjusted downward as follows:

(1) For CY 2008 the adjustment is 2.75 percent.

(2) For CY 2009 and CY 2010, the adjustment is 2.75 percent in each year.

(b) Geographic differences in wage levels using an appropriate wage index based on the site of service of the beneficiary.

4. Amend § 484.230 by adding a third, fourth, and fifth sentence after the second sentence to read as follows:

§ 484.230 Methodology used for the calculation of the low-utilization payment adjustment.

* * * For 2008 and subsequent calendar years, an amount will be added to low-utilization payment adjustments for low-utilization episodes that occur as the beneficiary's only episode or initial episode in a sequence of adjacent episodes. For purposes of the home health PPS, a sequence of adjacent episodes for a beneficiary is a series of claims with no more than 60 days without home care between the end of one episode, which is the 60th day (except for episodes that have been PEP-adjusted), and the beginning of the next episode. This additional amount will be updated annually after 2008 by a factor equal to the applicable home health market basket percentage.

§ 484.237 [Removed]

5. Remove § 484.237.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 15, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: April 2, 2007.

Michael O. Leavitt,

Secretary.

Note: The following addenda will not be published in the Code of Federal Regulations.

ADDENDUM A.—CY 2007 WAGE INDEX FOR RURAL AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX

CBSA code	Nonurban area	Wage index
01	Alabama	0.7592
02	Alaska	1.0661
03	Arizona	0.8909
04	Arkansas	0.7307
05	California	1.1454
06	Colorado	0.9325
07	Connecticut	1.1709
08	Delaware	0.9706
10	Florida	0.8594
11	Georgia	0.7593
12	Hawaii	1.0449
13	Idaho	0.8120
14	Illinois	0.8320
15	Indiana	0.8539
16	Iowa	0.8682
17	Kansas	0.7999
18	Kentucky	0.7769
19	Louisiana	0.7438
20	Maine	0.8443
21	Maryland	0.8927
22	Massachusetts [1]	1.0661
23	Michigan	0.9063
24	Minnesota	0.9153
25	Mississippi	0.7738
26	Missouri	0.7927
27	Montana	0.8590
28	Nebraska	0.8678
29	Nevada	0.8944
30	New Hampshire	1.0853
31	New Jersey [1,2]	
32	New Mexico	0.8333
33	New York	0.8232
34	North Carolina	0.8589
35	North Dakota	0.7216
36	Ohio	0.8659
37	Oklahoma	0.7629
38	Oregon	0.9753
39	Pennsylvania	0.8321
40	Puerto Rico [3]	0.4047
41	Rhode Island [2]	
42	South Carolina	0.8566
43	South Dakota	0.8480
44	Tennessee	0.7827
45	Texas	0.7965
46	Utah	0.8141
47	Vermont	0.9744
48	Virgin Islands	0.8467
49	Virginia	0.7941
50	Washington	1.0263
51	West Virginia	0.7607
52	Wisconsin	0.9553
53	Wyoming	0.9295
65	Guam	0.9611

[1] All counties within the State are classified as rural. No short-term, acute care hospitals are located in the area(s). The rural wage index for Massachusetts is imputed using the methodology discussed in section II.E.2 of this rule.

[2] All counties within the State are classified as urban.

[3] All counties within the State are classified as rural. No short-term, acute care hospitals are located in the area(s). We will continue to use the wage index from CY 2005, which was the last year in which we had ''rural'' hospital wage data for Puerto Rico.

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX

CBSA code	Urban area (constituent counties)	Wage index
10180	Abilene, TX	0.8001
	Callahan County, TX.	
	Jones County, TX.	
	Taylor County, TX.	
10380	Aguadilla-Isabela-San Sebastián, PR	0.3915
	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.	
10420	Akron, OH	0.8654
	Portage County, OH.	
	Summit County, OH.	
10500	Albany, GA	0.8991
	Baker County, GA.	
	Dougherty County, GA.	
	Lee County, GA.	
	Terrell County, GA.	
	Worth County, GA.	
10580	Albany-Schenectady-Troy, NY	0.8720
	Albany County, NY.	
	Rensselaer County, NY.	
	Saratoga County, NY.	
	Schenectady County, NY.	
	Schoharie County, NY.	
10740	Albuquerque, NM	0.9458
	Bernalillo County, NM.	
	Sandoval County, NM.	
	Torrance County, NM.	
	Valencia County, NM.	
10780	Alexandria, LA	0.8006
	Grant Parish, LA.	
	Rapides Parish, LA.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
10900	Allentown-Bethlehem-Easton, PA-NJ	0.9947
	Warren County, NJ.	
	Carbon County, PA.	
	Lehigh County, PA.	
	Northampton County, PA.	
11020	Altoona, PA	0.8812
	Blair County, PA.	
11100	Amarillo, TX	0.9161
	Armstrong County, TX.	
	Carson County, TX.	
	Potter County, TX.	
	Randall County, TX.	
11180	Ames, IA	0.9760
	Story County, IA.	
11260	Anchorage, AK	1.2024
	Anchorage Municipality, AK.	
	Matanuska-Susitna Borough, AK.	
11300	Anderson, IN	0.8681
	Madison County, IN.	
11340	Anderson, SC	0.9017
	Anderson County, SC.	
11460	Ann Arbor, MI	1.0826
	Washtenaw County, MI.	
11500	Anniston-Oxford, AL	0.7770
	Calhoun County, AL.	
11540	Appleton, WI	0.9455
	Calumet County, WI.	
	Outagamie County, WI.	
11700	Asheville, NC	0.9077
	Buncombe County, NC.	
	Haywood County, NC.	
	Henderson County, NC.	
	Madison County, NC.	
12020	Athens-Clarke County, GA	0.9856
	Clarke County, GA.	
	Madison County, GA.	
	Oconee County, GA.	
	Oglethorpe County, GA.	
12060	Atlanta-Sandy Springs-Marietta, GA	0.9762
	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.	
12100	Atlantic City, NJ	1.1831
	Atlantic County, NJ.	
12220	Auburn-Opelika, AL	0.8096

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Lee County, AL.	
12260	Augusta-Richmond County, GA-SC	0.9667
	Burke County, GA.	
	Columbia County, GA.	
	McDuffie County, GA.	
	Richmond County, GA.	
	Aiken County, SC.	
	Edgefield County, SC.	
12420	Austin-Round Rock, TX	0.9344
	Bastrop County, TX.	
	Caldwell County, TX.	
	Hays County, TX.	
	Travis County, TX.	
	Williamson County, TX.	
12540	Bakersfield, CA	1.0726
	Kern County, CA.	
12580	Baltimore-Towson, MD	1.0088
	Anne Arundel County, MD.	
	Baltimore County, MD.	
	Carroll County, MD.	
	Harford County, MD.	
	Howard County, MD.	
	Queen Anne's County, MD.	
	Baltimore City, MD.	
12620	Bangor, ME	0.9712
	Penobscot County, ME.	
12700	Barnstable Town, MA	1.2540
	Barnstable County, MA.	
12940	Baton Rouge, LA	0.8085
	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.	
12980	Battle Creek, MI	0.9763
	Calhoun County, MI.	
13020	Bay City, MI	0.9252
	Bay County, MI.	
13140	Beaumont-Port Arthur, TX	0.8595
	Hardin County, TX.	
	Jefferson County, TX.	
	Orange County, TX.	
13380	Bellingham, WA	1.1105
	Whatcom County, WA.	
13460	Bend, OR	1.0743
	Deschutes County, OR.	
13644	Bethesda-Frederick-Gaithersburg, MD	1.0904
	Frederick County, MD.	
	Montgomery County, MD.	
13740	Billings, MT	0.8713
	Carbon County, MT.	
	Yellowstone County, MT.	
13780	Binghamton, NY	0.8786
	Broome County, NY.	
	Tioga County, NY.	
13820	Birmingham-Hoover, AL	0.8994
	Bibb County, AL.	
	Blount County, AL.	
	Chilton County, AL.	
	Jefferson County, AL.	
	St. Clair County, AL.	
	Shelby County, AL.	
	Walker County, AL.	
13900	Bismarck, ND	0.7240
	Burleigh County, ND.	
	Morton County, ND.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
13980	Blacksburg-Christiansburg-Radford, VA	0.8213
	Giles County, VA.	
	Montgomery County, VA.	
	Pulaski County, VA.	
	Radford City, VA.	
14020	Bloomington, IN	0.8533
	Greene County, IN.	
	Monroe County, IN.	
	Owen County, IN.	
14060	Bloomington-Normal, IL	0.8945
	McLean County, IL.	
14260	Boise City-Nampa, ID	0.9401
	Ada County, ID.	
	Boise County, ID.	
	Canyon County, ID.	
	Gem County, ID.	
	Owyhee County, ID.	
14484	Boston-Quincy, MA	1.1679
	Norfolk County, MA.	
	Plymouth County, MA.	
	Suffolk County, MA.	
14500	Boulder, CO	1.0350
	Boulder County, CO.	
14540	Bowling Green, KY	0.8148
	Edmonson County, KY.	
	Warren County, KY.	
14740	Bremerton-Silverdale, WA	1.0914
	Kitsap County, WA.	
14860	Bridgeport-Stamford-Norwalk, CT	1.2659
	Fairfield County, CT.	
15180	Brownsville-Harlingen, TX	0.9430
	Cameron County, TX.	
15260	Brunswick, GA	1.0165
	Brantley County, GA.	
	Glynn County, GA.	
	McIntosh County, GA.	
15380	Buffalo-Niagara Falls, NY	0.9424
	Erie County, NY.	
	Niagara County, NY.	
15500	Burlington, NC	0.8674
	Alamance County, NC.	
15540	Burlington-South Burlington, VT	0.9475
	Chittenden County, VT.	
	Franklin County, VT.	
	Grand Isle County, VT.	
15764	Cambridge-Newton-Framingham, MA	1.0970
	Middlesex County, MA.	
15804	Camden, NJ	1.0393
	Burlington County, NJ.	
	Camden County, NJ.	
	Gloucester County, NJ.	
15940	Canton-Massillon, OH	0.9032
	Carroll County, OH.	
	Stark County, OH.	
15980	Cape Coral-Fort Myers, FL	0.9343
	Lee County, FL.	
16180	Carson City, NV	1.0026
	Carson City, NV.	
16220	Casper, WY	0.9145
	Natrona County, WY.	
16300	Cedar Rapids, IA	0.8888
	Benton County, IA.	
	Jones County, IA.	
	Linn County, IA.	
16580	Champaign-Urbana, IL	0.9645
	Champaign County, IL.	
	Ford County, IL.	
	Piatt County, IL.	
16620	Charleston, WV	0.8543
	Boone County, WV.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Clay County, WV.	
	Kanawha County, WV.	
	Lincoln County, WV.	
	Putnam County, WV.	
16700	Charleston-North Charleston, SC	0.9145
	Berkeley County, SC.	
	Charleston County, SC.	
	Dorchester County, SC.	
16740	Charlotte-Gastonia-Concord, NC-SC	0.9555
	Anson County, NC.	
	Cabarrus County, NC.	
	Gaston County, NC.	
	Mecklenburg County, NC.	
	Union County, NC.	
	York County, SC.	
16820	Charlottesville, VA	1.0125
	Albemarle County, VA.	
	Fluvanna County, VA.	
	Greene County, VA.	
	Nelson County, VA.	
	Charlottesville City, VA.	
16860	Chattanooga, TN-GA	0.8948
	Catoosa County, GA.	
	Dade County, GA.	
	Walker County, GA.	
	Hamilton County, TN.	
	Marion County, TN.	
	Sequatchie County, TN.	
16940	Cheyenne, WY	0.9060
	Laramie County, WY.	
16974	Chicago-Naperville-Joliet, IL	1.0752
	Cook County, IL.	
	DeKalb County, IL.	
	DuPage County, IL.	
	Grundy County, IL.	
	Kane County, IL.	
	Kendall County, IL.	
	McHenry County, IL.	
	Will County, IL.	
17020	Chico, CA	1.1054
	Butte County, CA.	
17140	Cincinnati-Middletown, OH-KY-IN	0.9601
	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.	
17300	Clarksville, TN-KY	0.8436
	Christian County, KY.	
	Trigg County, KY.	
	Montgomery County, TN.	
	Stewart County, TN.	
17420	Cleveland, TN	0.8110
	Bradley County, TN.	
	Polk County, TN.	
17460	Cleveland-Elyria-Mentor, OH	0.9400
	Cuyahoga County, OH.	
	Geauga County, OH.	
	Lake County, OH.	
	Lorain County, OH.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Medina County, OH.	
17660	Coeur d'Alene, ID	0.9344
	Kootenai County, ID.	
17780	College Station-Bryan, TX	0.9046
	Brazos County, TX.	
	Burleson County, TX.	
	Robertson County, TX.	
17820	Colorado Springs, CO	0.9701
	El Paso County, CO.	
	Teller County, CO.	
17860	Columbia, MO	0.8543
	Boone County, MO.	
	Howard County, MO.	
17900	Columbia, SC	0.8934
	Calhoun County, SC.	
	Fairfield County, SC.	
	Kershaw County, SC.	
	Lexington County, SC.	
	Richland County, SC.	
	Saluda County, SC.	
17980	Columbus, GA-AL	0.8239
	Russell County, AL.	
	Chattahoochee County, GA.	
	Harris County, GA.	
	Marion County, GA.	
	Muscogee County, GA.	
18020	Columbus, IN	0.9318
	Bartholomew County, IN.	
18140	Columbus, OH	1.0107
	Delaware County, OH.	
	Fairfield County, OH.	
	Franklin County, OH.	
	Licking County, OH.	
	Madison County, OH.	
	Morrow County, OH.	
	Pickaway County, OH.	
	Union County, OH.	
18580	Corpus Christi, TX	0.8564
	Aransas County, TX.	
	Nueces County, TX.	
	San Patricio County, TX.	
18700	Corvallis, OR	1.1546
	Benton County, OR.	
19060	Cumberland, MD-WV	0.8447
	Allegany County, MD.	
	Mineral County, WV.	
19124	Dallas-Plano-Irving, TX	1.0076
	Collin County, TX.	
	Dallas County, TX.	
	Delta County, TX.	
	Denton County, TX.	
	Ellis County, TX.	
	Hunt County, TX.	
	Kaufman County, TX.	
	Rockwall County, TX.	
19140	Dalton, GA	0.9093
	Murray County, GA.	
	Whitfield County, GA.	
19180	Danville, IL	0.9267
	Vermilion County, IL.	
19260	Danville, VA	0.8451
	Pittsylvania County, VA.	
	Danville City, VA.	
19340	Davenport-Moline-Rock Island, IA-IL	0.8847
	Henry County, IL.	
	Mercer County, IL.	
	Rock Island County, IL.	
	Scott County, IA.	
19380	Dayton, OH	0.9037
	Greene County, OH.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Miami County, OH.	
	Montgomery County, OH.	
	Preble County, OH.	
19460	Decatur, AL	0.8160
	Lawrence County, AL.	
	Morgan County, AL.	
19500	Decatur, IL	0.8173
	Macon County, IL.	
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.9264
	Volusia County, FL.	
19740	Denver-Aurora, CO	1.0931
	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.	
19780	Des Moines, IA	0.9214
	Dallas County, IA.	
	Guthrie County, IA.	
	Madison County, IA.	
	Polk County, IA.	
	Warren County, IA.	
19804	Detroit-Livonia-Dearborn, MI	1.0282
	Wayne County, MI.	
20020	Dothan, AL	0.7381
	Geneva County, AL.	
	Henry County, AL.	
	Houston County, AL.	
20100	Dover, DE	0.9848
	Kent County, DE.	
20220	Dubuque, IA	0.9134
	Dubuque County, IA.	
20260	Duluth, MN-WI	1.0042
	Carlton County, MN.	
	St. Louis County, MN.	
	Douglas County, WI.	
20500	Durham, NC	0.9826
	Chatham County, NC.	
	Durham County, NC.	
	Orange County, NC.	
	Person County, NC.	
20740	Eau Claire, WI	0.9630
	Chippewa County, WI.	
	Eau Claire County, WI.	
20764	Edison, NJ	1.1190
	Middlesex County, NJ.	
	Monmouth County, NJ.	
	Ocean County, NJ.	
	Somerset County, NJ.	
20940	El Centro, CA	0.9076
	Imperial County, CA.	
21060	Elizabethtown, KY	0.8698
	Hardin County, KY.	
	Larue County, KY.	
21140	Elkhart-Goshen, IN	0.9426
	Elkhart County, IN.	
21300	Elmira, NY	0.8240
	Chemung County, NY.	
21340	El Paso, TX	0.9053
	El Paso County, TX.	
21500	Erie, PA	0.8828
	Erie County, PA.	
21604	Essex County, MA	1.0419
	Essex County, MA.	
21660	Eugene-Springfield, OR	1.0877

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Lane County, OR.	
21780	Evansville, IN-KY	0.9071
	Gibson County, IN.	
	Posey County, IN.	
	Vanderburgh County, IN.	
	Warrick County, IN.	
	Henderson County, KY.	
	Webster County, KY.	
21820	Fairbanks, AK	1.1060
	Fairbanks North Star Borough, AK.	
21940	Fajardo, PR	0.4037
	Ceiba Municipio, PR.	
	Fajardo Municipio, PR.	
	Luquillo Municipio, PR.	
22020	Fargo, ND-MN	0.8251
	Cass County, ND.	
	Clay County, MN.	
22140	Farmington, NM	0.8589
	San Juan County, NM.	
22180	Fayetteville, NC	0.8946
	Cumberland County, NC.	
	Hoke County, NC.	
22220	Fayetteville-Springdale-Rogers, AR-MO	0.8865
	Benton County, AR.	
	Madison County, AR.	
	Washington County, AR.	
	McDonald County, MO.	
22380	Flagstaff, AZ	1.1601
	Coconino County, AZ.	
22420	Flint, MI	1.0969
	Genesee County, MI.	
22500	Florence, SC	0.8388
	Darlington County, SC.	
	Florence County, SC.	
22520	Florence-Muscle Shoals, AL	0.7844
	Colbert County, AL.	
	Lauderdale County, AL.	
22540	Fond du Lac, WI	1.0064
	Fond du Lac County, WI.	
22660	Fort Collins-Loveland, CO	0.9545
	Larimer County, CO.	
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	1.0134
	Broward County, FL.	
22900	Fort Smith, AR-OK	0.7732
	Crawford County, AR.	
	Franklin County, AR.	
	Sebastian County, AR.	
	Le Flore County, OK.	
	Sequoyah County, OK.	
23020	Fort Walton Beach-Crestview-Destin, FL	0.8643
	Okaloosa County, FL.	
23060	Fort Wayne, IN	0.9517
	Allen County, IN.	
	Wells County, IN.	
	Whitley County, IN.	
23104	Fort Worth-Arlington, TX	0.9570
	Johnson County, TX.	
	Parker County, TX.	
	Tarrant County, TX.	
	Wise County, TX.	
23420	Fresno, CA	1.0943
	Fresno County, CA.	
23460	Gadsden, AL	0.8066
	Etowah County, AL.	
23540	Gainesville, FL	0.9277
	Alachua County, FL.	
	Gilchrist County, FL.	
23580	Gainesville, GA	0.8959
	Hall County, GA.	
23844	Gary, IN	0.9334

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Jasper County, IN.	
	Lake County, IN.	
	Newton County, IN.	
	Porter County, IN.	
24020	Glens Falls, NY	0.8325
	Warren County, NY.	
	Washington County, NY.	
24140	Goldsboro, NC	0.9171
	Wayne County, NC.	
24220	Grand Forks, ND-MN	0.7949
	Polk County, MN.	
	Grand Forks County, ND.	
24300	Grand Junction, CO	0.9669
	Mesa County, CO.	
24340	Grand Rapids-Wyoming, MI	0.9455
	Barry County, MI.	
	Ionia County, MI.	
	Kent County, MI.	
	Newaygo County, MI.	
24500	Great Falls, MT	0.8598
	Cascade County, MT.	
24540	Greeley, CO	0.9602
	Weld County, CO.	
24580	Green Bay, WI	0.9787
	Brown County, WI.	
	Kewaunee County, WI.	
	Oconto County, WI.	
24660	Greensboro-High Point, NC	0.8866
	Guilford County, NC.	
	Randolph County, NC.	
	Rockingham County, NC.	
24780	Greenville, NC	0.9432
	Greene County, NC.	
	Pitt County, NC.	
24860	Greenville, SC	0.9804
	Greenville County, SC.	
	Laurens County, SC.	
	Pickens County, SC.	
25020	Guayama, PR	0.3235
	Arroyo Municipio, PR.	
	Guayama Municipio, PR.	
	Patillas Municipio, PR.	
25060	Gulfport-Biloxi, MS	0.8915
	Hancock County, MS.	
	Harrison County, MS.	
	Stone County, MS.	
25180	Hagerstown-Martinsburg, MD-WV	0.9039
	Washington County, MD.	
	Berkeley County, WV.	
	Morgan County, WV.	
25260	Hanford-Corcoran, CA	1.0282
	Kings County, CA.	
25420	Harrisburg-Carlisle, PA	0.9402
	Cumberland County, PA.	
	Dauphin County, PA.	
	Perry County, PA.	
25500	Harrisonburg, VA	0.9074
	Rockingham County, VA.	
	Harrisonburg City, VA.	
25540	Hartford-West Hartford-East Hartford, CT	1.0894
	Hartford County, CT.	
	Litchfield County, CT.	
	Middlesex County, CT.	
	Tolland County, CT.	
25620	Hattiesburg, MS	0.7430
	Forrest County, MS.	
	Lamar County, MS.	
	Perry County, MS.	
25860	Hickory-Lenoir-Morganton, NC	0.9010
	Alexander County, NC.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Burke County, NC.	
	Caldwell County, NC.	
	Catawba County, NC.	
259801	Hinesville-Fort Stewart, GA	0.9178
	Liberty County, GA.	
	Long County, GA.	
26100	Holland-Grand Haven, MI	0.9163
	Ottawa County, MI.	
26180	Honolulu, HI	1.1096
	Honolulu County, HI.	
26300	Hot Springs, AR	0.8782
	Garland County, AR.	
26380	Houma-Bayou Cane-Thibodaux, LA	0.8082
	Lafourche Parish, LA.	
	Terrebonne Parish, LA.	
26420	Houston-Baytown-Sugar Land, TX	1.0009
	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.	
26580	Huntington-Ashland, WV-KY-OH	0.8998
	Boyd County, KY.	
	Greenup County, KY.	
	Lawrence County, OH.	
	Cabell County, WV.	
	Wayne County, WV.	
26620	Huntsville, AL	0.9007
	Limestone County, AL.	
	Madison County, AL.	
26820	Idaho Falls, ID	0.9088
	Bonneville County, ID.	
	Jefferson County, ID.	
26900	Indianapolis, IN	0.9896
	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.	
26980	Iowa City, IA	0.9714
	Johnson County, IA.	
	Washington County, IA.	
27060	Ithaca, NY	0.9928
	Tompkins County, NY.	
27100	Jackson, MI	0.9560
	Jackson County, MI.	
27140	Jackson, MS	0.8271
	Copiah County, MS.	
	Hinds County, MS.	
	Madison County, MS.	
	Rankin County, MS.	
	Simpson County, MS.	
27180	Jackson, TN	0.8853
	Chester County, TN.	
	Madison County, TN.	
27260	Jacksonville, FL	0.9166
	Baker County, FL.	
	Clay County, FL.	
	Duval County, FL.	
	Nassau County, FL.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	St. Johns County, FL.	
27340	Jacksonville, NC	0.8231
	Onslow County, NC.	
27500	Janesville, WI	0.9655
	Rock County, WI.	
27620	Jefferson City, MO	0.8333
	Callaway County, MO.	
	Cole County, MO.	
	Moniteau County, MO.	
	Osage County, MO.	
27740	Johnson City, TN	0.8043
	Carter County, TN.	
	Unicoi County, TN.	
	Washington County, TN.	
27780	Johnstown, PA	0.8620
	Cambria County, PA.	
27860	Jonesboro, AR	0.7662
	Craighead County, AR.	
	Poinsett County, AR.	
27900	Joplin, MO	0.8606
	Jasper County, MO.	
	Newton County, MO.	
28020	Kalamazoo-Portage, MI	1.0705
	Kalamazoo County, MI.	
	Van Buren County, MI.	
28100	Kankakee-Bradley, IL	1.0083
	Kankakee County, IL.	
28140	Kansas City, MO-KS	0.9495
	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.	
28420	Kennewick-Richland-Pasco, WA	1.0343
	Benton County, WA.	
	Franklin County, WA.	
28660	Killeen-Temple-Fort Hood, TX	0.8902
	Bell County, TX.	
	Coryell County, TX.	
	Lampasas County, TX.	
28700	Kingsport-Bristol-Bristol, TN-VA	0.7985
	Hawkins County, TN.	
	Sullivan County, TN.	
	Bristol City, VA.	
	Scott County, VA.	
	Washington County, VA.	
28740	Kingston, NY	0.9367
	Ulster County, NY.	
28940	Knoxville, TN	0.8249
	Anderson County, TN.	
	Blount County, TN.	
	Knox County, TN.	
	Loudon County, TN.	
	Union County, TN.	
29020	Kokomo, IN	0.9669
	Howard County, IN.	
	Tipton County, IN.	
29100	La Crosse, WI-MN	0.9426
	Houston County, MN.	
	La Crosse County, WI.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
29140	Lafayette, IN	0.8932
	Benton County, IN.	
	Carroll County, IN.	
	Tippecanoe County, IN.	
29180	Lafayette, LA	0.8289
	Lafayette Parish, LA.	
	St. Martin Parish, LA.	
29340	Lake Charles, LA	0.7914
	Calcasieu Parish, LA.	
	Cameron Parish, LA.	
29404	Lake County-Kenosha County, IL-WI	1.0571
	Lake County, IL.	
	Kenosha County, WI.	
29460	Lakeland, FL	0.8879
	Polk County, FL.	
29540	Lancaster, PA	0.9589
	Lancaster County, PA.	
29620	Lansing-East Lansing, MI	1.0088
	Clinton County, MI.	
	Eaton County, MI.	
	Ingham County, MI.	
29700	Laredo, TX	0.7812
	Webb County, TX.	
29740	Las Cruces, NM	0.9273
	Dona Ana County, NM.	
29820	Las Vegas-Paradise, NV	1.1430
	Clark County, NV.	
29940	Lawrence, KS	0.8366
	Douglas County, KS.	
30020	Lawton, OK	0.8066
	Comanche County, OK.	
30140	Lebanon, PA	0.8680
	Lebanon County, PA.	
30300	Lewiston, ID-WA	0.9854
	Nez Perce County, ID.	
	Asotin County, WA.	
30340	Lewiston-Auburn, ME	0.9126
	Androscoggin County, ME.	
30460	Lexington-Fayette, KY	0.9181
	Bourbon County, KY.	
	Clark County, KY.	
	Fayette County, KY.	
	Jessamine County, KY.	
	Scott County, KY.	
	Woodford County, KY.	
30620	Lima, OH	0.9042
	Allen County, OH.	
30700	Lincoln, NE	1.0092
	Lancaster County, NE.	
	Seward County, NE.	
30780	Little Rock-North Little Rock, AR	0.8890
	Faulkner County, AR.	
	Grant County, AR.	
	Lonoke County, AR.	
	Perry County, AR.	
	Pulaski County, AR.	
	Saline County, AR.	
30860	Logan, UT-ID	0.9022
	Franklin County, ID.	
	Cache County, UT.	
30980	Longview, TX	0.8788
	Gregg County, TX.	
	Rusk County, TX.	
	Upshur County, TX.	
31020	Longview, WA	1.0011
	Cowlitz County, WA.	
31084	Los Angeles-Long Beach-Glendale, CA	1.1760
	Los Angeles County, CA.	
31140	Louisville, KY-IN	0.9119
	Clark County, IN.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	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.	
31180	Lubbock, TX	0.8613
	Crosby County, TX.	
	Lubbock County, TX.	
31340	Lynchburg, VA	0.8694
	Amherst County, VA.	
	Appomattox County, VA.	
	Bedford County, VA.	
	Campbell County, VA.	
	Bedford City, VA.	
	Lynchburg City, VA.	
31420	Macon, GA	0.9520
	Bibb County, GA.	
	Crawford County, GA.	
	Jones County, GA.	
	Monroe County, GA.	
	Twiggs County, GA.	
31460	Madera, CA	0.8155
	Madera County, CA.	
31540	Madison, WI	1.0840
	Columbia County, WI.	
	Dane County, WI.	
	Iowa County, WI.	
31700	Manchester-Nashua, NH	1.0243
	Hillsborough County, NH.	
	Merrimack County, NH.	
31900	Mansfield, OH	0.9271
	Richland County, OH.	
32420	Mayagüez, PR	0.3848
	Hormigueros Municipio, PR.	
	Mayagüez Municipio, PR.	
32580	McAllen-Edinburg-Pharr, TX	0.8773
	Hidalgo County, TX.	
32780	Medford, OR	1.0818
	Jackson County, OR.	
32820	Memphis, TN-MS-AR	0.9373
	Crittenden County, AR.	
	DeSoto County, MS.	
	Marshall County, MS.	
	Tate County, MS.	
	Tunica County, MS.	
	Fayette County, TN.	
	Shelby County, TN.	
	Tipton County, TN.	
32900	Merced, CA	1.1471
	Merced County, CA.	
33124	Miami-Miami Beach-Kendall, FL	0.9813
	Miami-Dade County, FL.	
33140	Michigan City-La Porte, IN	0.9118
	LaPorte County, IN.	
33260	Midland, TX	0.9786
	Midland County, TX.	
33340	Milwaukee-Waukesha-West Allis, WI	1.0218
	Milwaukee County, WI.	
	Ozaukee County, WI.	
	Washington County, WI.	
	Waukesha County, WI.	
33460	Minneapolis-St. Paul-Bloomington, MN-WI	1.0946
	Anoka County, MN.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	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.	
33540	Missoula, MT Missoula County, MT.	0.8929
33660	Mobile, AL Mobile County, AL.	0.7914
33700	Modesto, CA Stanislaus County, CA.	1.1730
33740	Monroe, LA Ouachita Parish, LA. Union Parish, LA.	0.7997
33780	Monroe, MI Monroe County, MI.	0.9708
33860	Montgomery, AL Autauga County, AL. Elmore County, AL. Lowndes County, AL. Montgomery County, AL.	0.8009
34060	Morgantown, WV Monongalia County, WV. Preston County, WV.	0.8423
34100	Morristown, TN Grainger County, TN. Hamblen County, TN. Jefferson County, TN.	0.7933
34580	Mount Vernon-Anacortes, WA Skagit County, WA.	1.0518
34620	Muncie, IN Delaware County, IN.	0.8562
34740	Muskegon-Norton Shores, MI Muskegon County, MI.	0.9941
34820	Myrtle Beach-Conway-North Myrtle Beach, SC Horry County, SC.	0.8811
34900	Napa, CA Napa County, CA.	1.3375
34940	Naples-Marco Island, FL Collier County, FL.	0.9941
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.	0.9847
35004	Nassau-Suffolk, NY Nassau County, NY. Suffolk County, NY.	1.2663
35084	Newark-Union, NJ-PA Essex County, NJ. Hunterdon County, NJ. Morris County, NJ. Sussex County, NJ. Union County, NJ.	1.1892

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Pike County, PA.	
35300	New Haven-Milford, CT	1.1953
	New Haven County, CT.	
35380	New Orleans-Metairie-Kenner, LA	0.8832
	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.	
35644	New York-Wayne-White Plains, NY-NJ	1.3177
	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.	
35660	Niles-Benton Harbor, MI	0.8915
	Berrien County, MI.	
35980	Norwich-New London, CT	1.1932
	New London County, CT.	
36084	Oakland-Fremont-Hayward, CA	1.5819
	Alameda County, CA.	
	Contra Costa County, CA.	
36100	Ocala, FL	0.8867
	Marion County, FL.	
36140	Ocean City, NJ	1.0472
	Cape May County, NJ.	
36220	Odessa, TX	1.0102
	Ector County, TX.	
36260	Ogden-Clearfield, UT	0.8995
	Davis County, UT.	
	Morgan County, UT.	
	Weber County, UT.	
36420	Oklahoma City, OK	0.8843
	Canadian County, OK.	
	Cleveland County, OK.	
	Grady County, OK.	
	Lincoln County, OK.	
	Logan County, OK.	
	McClain County, OK.	
	Oklahoma County, OK.	
36500	Olympia, WA	1.1081
	Thurston County, WA.	
36540	Omaha-Council Bluffs, NE-IA	0.9450
	Harrison County, IA.	
	Mills County, IA.	
	Pottawattamie County, IA.	
	Cass County, NE.	
	Douglas County, NE.	
	Sarpy County, NE.	
	Saunders County, NE.	
	Washington County, NE.	
36740	Orlando, FL	0.9452
	Lake County, FL.	
	Orange County, FL.	
	Osceola County, FL.	
	Seminole County, FL.	
36780	Oshkosh-Neenah, WI	0.9315
	Winnebago County, WI.	
36980	Owensboro, KY	0.8748
	Daviess County, KY.	
	Hancock County, KY.	
	McLean County, KY.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
37100	Oxnard-Thousand Oaks-Ventura, CA	1.1546
	Ventura County, CA.	
37340	Palm Bay-Melbourne-Titusville, FL	0.9443
	Brevard County, FL.	
37460	Panama City-Lynn Haven, FL	0.8027
	Bay County, FL.	
37620	Parkersburg-Marietta, WV-OH	0.7978
	Washington County, OH.	
	Pleasants County, WV.	
	Wirt County, WV.	
	Wood County, WV.	
37700	Pascagoula, MS	0.8215
	George County, MS.	
	Jackson County, MS.	
37860	Pensacola-Ferry Pass-Brent, FL	0.8000
	Escambia County, FL.	
	Santa Rosa County, FL.	
37900	Peoria, IL	0.8982
	Marshall County, IL.	
	Peoria County, IL.	
	Stark County, IL.	
	Tazewell County, IL.	
	Woodford County, IL.	
37964	Philadelphia, PA	1.0997
	Bucks County, PA.	
	Chester County, PA.	
	Delaware County, PA.	
	Montgomery County, PA.	
	Philadelphia County, PA.	
38060	Phoenix-Mesa-Scottsdale, AZ	1.0288
	Maricopa County, AZ.	
	Pinal County, AZ.	
38220	Pine Bluff, AR	0.8383
	Cleveland County, AR.	
	Jefferson County, AR.	
	Lincoln County, AR.	
38300	Pittsburgh, PA	0.8674
	Allegheny County, PA.	
	Armstrong County, PA.	
	Beaver County, PA.	
	Butler County, PA.	
	Fayette County, PA.	
	Washington County, PA.	
	Westmoreland County, PA.	
38340	Pittsfield, MA	1.0266
	Berkshire County, MA.	
38540	Pocatello, ID	0.9401
	Bannock County, ID.	
	Power County, ID.	
38660	Ponce, PR	0.4843
	Juana Díaz Municipio, PR.	
	Ponce Municipio, PR.	
	Villalba Municipio, PR.	
38860	Portland-South Portland-Biddeford, ME	0.9909
	Cumberland County, ME.	
	Sagadahoc County, ME.	
	York County, ME.	
38900	Portland-Vancouver-Beaverton, OR-WA	1.1416
	Clackamas County, OR.	
	Columbia County, OR.	
	Multnomah County, OR.	
	Washington County, OR.	
	Yamhill County, OR.	
	Clark County, WA.	
	Skamania County, WA.	
38940	Port St. Lucie-Fort Pierce, FL	0.9834
	Martin County, FL.	
	St. Lucie County, FL.	
39100	Poughkeepsie-Newburgh-Middletown, NY	1.0911
	Dutchess County, NY.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Orange County, NY.	
39140	Prescott, AZ	0.9836
	Yavapai County, AZ.	
39300	Providence-New Bedford-Fall River, RI-MA	1.0783
	Bristol County, MA.	
	Bristol County, RI.	
	Kent County, RI.	
	Newport County, RI.	
	Providence County, RI.	
	Washington County, RI.	
39340	Provo-Orem, UT	0.9538
	Juab County, UT.	
	Utah County, UT.	
39380	Pueblo, CO	0.8754
	Pueblo County, CO.	
39460	Punta Gorda, FL	0.9405
	Charlotte County, FL.	
39540	Racine, WI	0.9356
	Racine County, WI.	
39580	Raleigh-Cary, NC	0.9864
	Franklin County, NC.	
	Johnston County, NC.	
	Wake County, NC.	
39660	Rapid City, SD	0.8833
	Meade County, SD.	
	Pennington County, SD.	
39740	Reading, PA	0.9623
	Berks County, PA.	
39820	Redding, CA	1.3198
	Shasta County, CA.	
39900	Reno-Sparks, NV	1.1964
	Storey County, NV.	
	Washoe County, NV.	
40060	Richmond, VA	0.9177
	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.	
40140	Riverside-San Bernardino-Ontario, CA	1.0904
	Riverside County, CA.	
	San Bernardino County, CA.	
40220	Roanoke, VA	0.8647
	Botetourt County, VA.	
	Craig County, VA.	
	Franklin County, VA.	
	Roanoke County, VA.	
	Roanoke City, VA.	
	Salem City, VA.	
40340	Rochester, MN	1.1408
	Dodge County, MN.	
	Olmsted County, MN.	
	Wabasha County, MN.	
40380	Rochester, NY	0.8994
	Livingston County, NY.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Monroe County, NY.	
	Ontario County, NY.	
	Orleans County, NY.	
	Wayne County, NY.	
40420	Rockford, IL	0.9990
	Boone County, IL.	
	Winnebago County, IL.	
40484	Rockingham County-Strafford County, NH	1.0159
	Rockingham County, NH.	
	Strafford County, NH.	
40580	Rocky Mount, NC	0.8854
	Edgecombe County, NC.	
	Nash County, NC.	
40660	Rome, GA	0.9194
	Floyd County, GA.	
40900	SacramentoArden-ArcadeRoseville, CA	1.3373
	El Dorado County, CA.	
	Placer County, CA.	
	Sacramento County, CA.	
	Yolo County, CA.	
40980	Saginaw-Saginaw Township North, MI	0.8874
	Saginaw County, MI.	
41060	St. Cloud, MN	1.0362
	Benton County, MN.	
	Stearns County, MN.	
41100	St. George, UT	0.9265
	Washington County, UT.	
41140	St. Joseph, MO-KS	1.0118
	Doniphan County, KS.	
	Andrew County, MO.	
	Buchanan County, MO.	
	DeKalb County, MO.	
41180	St. Louis, MO-IL	0.9006
	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.	
41420	Salem, OR	1.0439
	Marion County, OR.	
	Polk County, OR.	
41500	Salinas, CA	1.4338
	Monterey County, CA.	
41540	Salisbury, MD	0.8953
	Somerset County, MD.	
	Wicomico County, MD.	
41620	Salt Lake City, UT	0.9402
	Salt Lake County, UT.	
	Summit County, UT.	
	Tooele County, UT.	
41660	San Angelo, TX	0.8362
	Irion County, TX.	
	Tom Green County, TX.	
41700	San Antonio, TX	0.8845
	Atascosa County, TX.	
	Bandera County, TX.	
	Bexar County, TX.	
	Comal County, TX.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Guadalupe County, TX.	
	Kendall County, TX.	
	Medina County, TX.	
	Wilson County, TX.	
41740	San Diego-Carlsbad-San Marcos, CA	1.1354
	San Diego County, CA.	
41780	Sandusky, OH	0.9302
	Erie County, OH.	
41884	San Francisco-San Mateo-Redwood City, CA	1.5166
	Marin County, CA.	
	San Francisco County, CA.	
	San Mateo County, CA.	
41900	San Germán-Cabo Rojo, PR	0.4885
	Cabo Rojo Municipio, PR.	
	Lajas Municipio, PR.	
	Sabana Grande Municipio, PR.	
	San Germán Municipio, PR.	
41940	San Jose-Sunnyvale-Santa Clara, CA	1.5543
	San Benito County, CA.	
	Santa Clara County, CA.	
41980	San Juan-Caguas-Guaynabo, PR	0.4452
	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.	
	.	
42020	San Luis Obispo-Paso Robles, CA	1.1599
	San Luis Obispo County, CA.	
42044	Santa Ana-Anaheim-Irvine, CA	1.1473
	Orange County, CA.	
42060	Santa Barbara-Santa Maria-Goleta, CA	1.1092
	Santa Barbara County, CA.	
42100	Santa Cruz-Watsonville, CA	1.5458

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Santa Cruz County, CA.	
42140	Santa Fe, NM	1.0825
	Santa Fe County, NM.	
42220	Santa Rosa-Petaluma, CA	1.4464
	Sonoma County, CA.	
42260	Sarasota-Bradenton-Venice, FL	0.9868
	Manatee County, FL.	
	Sarasota County, FL.	
42340	Savannah, GA	0.9351
	Bryan County, GA.	
	Chatham County, GA.	
	Effingham County, GA.	
42540	ScrantonWilkes-Barre, PA	0.8348
	Lackawanna County, PA.	
	Luzerne County, PA.	
	Wyoming County, PA.	
42644	Seattle-Bellevue-Everett, WA	1.1434
	King County, WA.	
	Snohomish County, WA.	
42680	Sebastian-Vero Beach, FL	0.9573
43100	Sheboygan, WI	0.9027
	Sheboygan County, WI.	
43300	Sherman-Denison, TX	0.8503
	Grayson County, TX.	
43340	Shreveport-Bossier City, LA	0.8865
	Bossier Parish, LA.	
	Caddo Parish, LA.	
	De Soto Parish, LA.	
43580	Sioux City, IA-NE-SD	0.9201
	Woodbury County, IA.	
	Dakota County, NE.	
	Dixon County, NE.	
	Union County, SD.	
43620	Sioux Falls, SD	0.9559
	Lincoln County, SD.	
	McCook County, SD.	
	Minnehaha County, SD.	
	Turner County, SD.	
43780	South Bend-Mishawaka, IN-MI	0.9842
	St. Joseph County, IN.	
	Cass County, MI.	
43900	Spartanburg, SC	0.9174
	Spartanburg County, SC.	
44060	Spokane, WA	1.0447
	Spokane County, WA.	
44100	Springfield, IL	0.8890
	Menard County, IL.	
	Sangamon County, IL.	
44140	Springfield, MA	1.0079
	Franklin County, MA.	
	Hampden County, MA.	
	Hampshire County, MA.	
44180	Springfield, MO	0.8469
	Christian County, MO.	
	Dallas County, MO.	
	Greene County, MO.	
	Polk County, MO.	
	Webster County, MO.	
44220	Springfield, OH	0.8593
	Clark County, OH.	
44300	State College, PA	0.8784
	Centre County, PA.	
44700	Stockton, CA	1.1443
	San Joaquin County, CA.	
44940	Sumter, SC	0.8084
	Sumter County, SC.	
45060	Syracuse, NY	0.9692
	Madison County, NY.	
	Onondaga County, NY.	
	Oswego County, NY.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
45104	Tacoma, WA	1.0789
	Pierce County, WA.	
45220	Tallahassee, FL	0.8942
	Gadsden County, FL.	
	Jefferson County, FL.	
	Leon County, FL.	
	Wakulla County, FL.	
45300	Tampa-St. Petersburg-Clearwater, FL	0.9144
	Hernando County, FL.	
	Hillsborough County, FL.	
	Pasco County, FL.	
	Pinellas County, FL.	
45460	Terre Haute, IN	0.8765
	Clay County, IN.	
	Sullivan County, IN.	
	Vermillion County, IN.	
	Vigo County, IN.	
45500	Texarkana, TX-Texarkana, AR	0.8104
	Miller County, AR.	
	Bowie County, TX.	
45780	Toledo, OH	0.9586
	Fulton County, OH.	
	Lucas County, OH.	
	Ottawa County, OH.	
	Wood County, OH.	
45820	Topeka, KS	0.8730
	Jackson County, KS.	
	Jefferson County, KS.	
	Osage County, KS.	
	Shawnee County, KS.	
	Wabaunsee County, KS.	
45940	Trenton-Ewing, NJ	1.0836
	Mercer County, NJ.	
46060	Tucson, AZ	0.9203
	Pima County, AZ.	
46140	Tulsa, OK	0.8103
	Creek County, OK.	
	Okmulgee County, OK.	
	Osage County, OK.	
	Pawnee County, OK.	
	Rogers County, OK.	
	Tulsa County, OK.	
	Wagoner County, OK.	
46220	Tuscaloosa, AL	0.8542
	Greene County, AL.	
	Hale County, AL.	
	Tuscaloosa County, AL.	
46340	Tyler, TX	0.8812
	Smith County, TX.	
46540	Utica-Rome, NY	0.8397
	Herkimer County, NY.	
	Oneida County, NY.	
46660	Valdosta, GA	0.8369
	Brooks County, GA.	
	Echols County, GA.	
	Lanier County, GA.	
	Lowndes County, GA.	
46700	Vallejo-Fairfield, CA	1.5138
	Solano County, CA.	
47020	Victoria, TX	0.8560
	Calhoun County, TX.	
	Goliad County, TX.	
	Victoria County, TX.	
47220	Vineland-Millville-Bridgeton, NJ	0.9832
	Cumberland County, NJ.	
47260	Virginia Beach-Norfolk-Newport News, VA-NC	0.8790
	Currituck County, NC.	
	Gloucester County, VA.	
	Isle of Wight County, VA.	
	James City County, VA.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	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.	
47300	Visalia-Porterville, CA	0.9968
	Tulare County, CA.	
47380	Waco, TX	0.8633
	McLennan County, TX.	
47580	Warner Robins, GA	0.8380
	Houston County, GA.	
47644	Warren-Farmington Hills-Troy, MI	1.0054
	Lapeer County, MI.	
	Livingston County, MI.	
	Macomb County, MI.	
	Oakland County, MI.	
	St. Clair County, MI.	
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	1.1054
	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.	
	.	
47940	Waterloo-Cedar Falls, IA	0.8408
	Black Hawk County, IA.	
	Bremer County, IA.	
	Grundy County, IA.	
48140	Wausau, WI	0.9723
	Marathon County, WI.	
48260	Weirton-Steubenville, WV-OH	0.8064
	Jefferson County, OH.	
	Brooke County, WV.	
	Hancock County, WV.	
48300	Wenatchee, WA	1.0347
	Chelan County, WA.	
	Douglas County, WA.	
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	0.9649
	Palm Beach County, FL.	
48540	Wheeling, WV-OH	0.7010
	Belmont County, OH.	
	Marshall County, WV.	
	Ohio County, WV.	
48620	Wichita, KS	0.9063
	Butler County, KS.	
	Harvey County, KS.	
	Sedgwick County, KS.	
	Sumner County, KS.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
48660	Wichita Falls, TX	0.8311
	Archer County, TX.	
	Clay County, TX.	
	Wichita County, TX.	
48700	Williamsport, PA	0.8139
	Lycoming County, PA.	
48864	Wilmington, DE-MD-NJ	1.0684
	New Castle County, DE.	
	Cecil County, MD.	
	Salem County, NJ.	
48900	Wilmington, NC	0.9836
	Brunswick County, NC.	
	New Hanover County, NC.	
	Pender County, NC.	
49020	Winchester, VA-WV	1.0091
	Frederick County, VA.	
	Winchester City, VA.	
	Hampshire County, WV.	
49180	Winston-Salem, NC	0.9276
	Davie County, NC.	
	Forsyth County, NC.	
	Stokes County, NC.	
	Yadkin County, NC.	
49340	Worcester, MA	1.0690
	Worcester County, MA.	
49420	Yakima, WA	0.9848
	Yakima County, WA.	
49500	Yauco, PR	0.3854
	Guánica Municipio, PR.	
	Guayanilla Municipio, PR.	
	Peñuelas Municipio, PR.	
	Yauco Municipio, PR.	
49620	York-Hanover, PA	0.9398
	York County, PA.	
49660	Youngstown-Warren-Boardman, OH-PA	0.8802
	Mahoning County, OH.	
	Trumbull County, OH.	
	Mercer County, PA.	
49700	Yuba City, CA	1.0731
	Sutter County, CA.	
	Yuba County, CA.	
49740	Yuma, AZ	0.9109
	Yuma County, AZ.	

[1] At this time, there are no hospitals in these urban areas on which to base a wage index. Therefore, the urban wage index value is based on the average wage index of all urban areas within the State.

[FR Doc. 07–2167 Filed 4–27–07; 4:45 am]

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Federal Register

Friday,

May 4, 2007

Part III

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

Federal Motor Vehicle Safety Standards; Head Restraints; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. NHTSA–2007–27986]

RIN 2127–AJ96

Federal Motor Vehicle Safety Standards; Head Restraints

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document completes the agency's response to petitions for reconsideration of the December 2004 final rule upgrading our head restraints standard. We are partially granting and partially denying the petitions.

We are making two changes related to the backset requirement. First, to address concerns about variability in measurements, we are specifying that backset is determined by taking the arithmetic average of three measurements, rather than using a single measurement. Second, we are slightly relaxing the backset requirement by specifying that the 55 mm backset limit applies with the seat back at the vehicle manufacturer's specified design angle rather than at 25 degrees. This decision reflects consideration of interrelated issues and data concerning the 55 mm backset limit, consumer comfort, and seat back angle.

In addition, we are making a number of other amendments. We are making changes related to non-use positions of rear seat head restraints, requirements for gaps between the head restraint and seat back, and the backset and height retention (lock) tests, as well as a number of changes in other areas. For the front seat requirements, we are providing one additional year of leadtime and also establishing a one-year phase-in with an 80 percent requirement. The agency previously delayed the compliance date for voluntarily installed rear outboard head restraints by two years. In this document, we are also establishing a one-year 80 percent phase-in for those requirements. Finally, we respond to a petition for rulemaking concerning requirements included in the upgraded head restraints rule.

Today's amendments will not affect the costs of the December 2004 final rule. However, the agency estimates that the change in seat back angle to provide greater flexibility with respect to backset will result in a 20 percent reduction in the number of whiplash injuries prevented by upgraded front seat head restraints, compared to the benefits estimated in the December 2004 final rule. Whiplash injuries are Abbreviated Injury Scale (AIS) 1 injuries.

The agency has separately been leading efforts to develop a Global Technical Regulation (GTR) on head restraints, under the United Nations Economic Commission for Europe 1998 Global Agreement. Some issues raised by petitioners for reconsideration, including ones related to backset and testing of dynamic systems, are also being discussed in the context of the GTR. While it is necessary for us to issue today's decision in order to respond to the outstanding petitions for reconsideration, we note that if agreement is achieved on the GTR, we will consider making changes in these and other areas.

DATES: *Effective Date:* This rule is effective July 3, 2007.

Petitions: Petitions for reconsideration must be received by June 18, 2007.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Please see the Privacy Act heading under Regulatory Notices.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Louis Molino of the Office of Rulemaking, Office of Crashworthiness Standards, Light Duty Vehicle Division, NVS–112, (Phone: 202–366–2264; Fax: 202–366–4329; E-mail: *Louis.Molino@dot.gov*).

For legal issues, you may contact Edward Glancy of the Office of Chief Counsel, NCC–112, (Phone: 202–366–2992; Fax 202–366–3820).

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

On December 14, 2004, NHTSA published in the **Federal Register** (69 FR 74848) a final rule [1] upgrading NHTSA's head restraint standard in order to reduce whiplash injuries in rear collisions. For front seat head restraints, the final rule provided that the upgraded standard becomes mandatory for all vehicles manufactured on or after September 1, 2008. For head restraints voluntarily installed in rear outboard designated seating positions, the requirements become mandatory on September 1, 2010.[2] In this section, we discuss the highlights of the December 2004 rule, and the safety concerns and other considerations that led the agency to adopt it.

A. Current Head Restraints

Vehicle manufacturers currently use three types of head restraints to meet the requirements of FMVSS No. 202. The first type is the "integral head restraint," which is non-adjustable and is built into the seat. It typically consists of a seat back that extends high enough to meet the height requirement of the standard. The second type is the "adjustable" head restraint, which consists of a separate cushion that is attached to the seat back, typically by two sliding metal shafts. Adjustable head restraints

[1] Docket No. NHTSA–2004–19807.

[2] The September 1, 2010 date was established in a final rule; partial response to petitions for reconsideration published in the **Federal Register** (46 FR 12145) on March 9, 2006.

typically adjust vertically to accommodate different occupant seating heights. Some also provide adjustments to allow the head restraint to be moved closer to the occupant's head. The third type is the active head restraint system, which deploys in the event of a collision to minimize the potential for whiplash. During the normal vehicle operation, the active head restraint system is retracted.

B. The Safety Concern—Whiplash Injuries

Whiplash injuries are a set of common symptoms that occur in motor vehicle crashes and involve the soft tissues of the head, neck and spine. Symptoms of pain in the head, neck, shoulders, and arms may be present along with damage to muscles, ligaments and vertebrae, but in many cases lesions are not evident. The onset of symptoms may be delayed and may only last a few hours; however, in some cases, effects of the injury may last for years or even be permanent. The relatively short-term symptoms are associated with muscle and ligament trauma, while the long-term ones are associated with nerve damage.

Based on National Automotive Sampling System (NASS) data, we estimate that between 1988 and 1996, 805,581 whiplash injuries [3] occurred annually in crashes involving passenger cars and LTVs (light trucks, multipurpose passenger vehicles, and vans). Of these whiplash injuries, 272,464 occurred as a result of rear impacts. For rear impact crashes, the average cost of whiplash injuries in 2002 dollars is $9,994 (which includes $6,843 in economic costs and $3,151 in quality of life impacts, but not property damage), resulting in a total annual cost of approximately $2.7 billion.

C. Understanding Whiplash

Although whiplash injuries can occur in any kind of crash, an occupant's chances of sustaining this type of injury are greatest in rear-end collisions. When a vehicle is struck from behind, typically several things occur in quick succession to an occupant of that vehicle. First, from the occupant's frame of reference, the back of the seat moves forward into his or her torso, straightening the spine and forcing the head to rise vertically. Second, as the seat pushes the occupant's body forward, the unrestrained head tends to lag behind. This causes the neck to change shape, first taking on an S-shape and then bending backward. Third, the forces on the neck accelerate the head, which catches up with—and, depending on the seat back stiffness and if the occupant is using a shoulder belt, passes—the restrained torso. This motion of the head and neck, which is like the lash of a whip, gives the resulting neck injuries their popular name.

D. Previous Regulatory Approach

As discussed in the NPRM preceding the December 2004 final rule, a historical examination of head restraint standards in this country indicates that the focus has been the prevention of neck hyperextension (the rearward movement of the head and neck over a large range of motion relative to the torso), as opposed to controlling lesser amounts of head and neck movement in a crash.

The predecessor to FMVSS No. 202 was General Services Administration (GSA) Standard 515/22, which applied to vehicles purchased by the U.S. Government and went into effect on October 1, 1967. GSA 515/22 required that the top of the head restraint achieve a height 700 mm (27.5 inches (in)) above the H-point.[4] Also in 1967, research using staged 48 kilometer per hour (kph) (30 mile per hour, mph) crashes concluded that a head restraint 711 mm (28 in) above the H-point was adequate to prevent neck hyperextension of a 95th percentile male. FVMSS No. 202, which became effective on January 1, 1969, required that head restraints be at least 700 mm (27.5 in) above the seating reference point or limit the relative angle between the head and the torso to 45 degrees or less during a dynamic test.

E. Current Knowledge

There are many hypotheses as to the mechanisms of whiplash injuries. Despite a lack of consensus with respect to whiplash injury biomechanics, there is research indicating that reduced backset, i.e., the horizontal distance between the rear of the occupant's head and the head restraint, will result in reduced risk of whiplash injury. For example, one study of Volvo vehicles reported that, when vehicle occupants involved in rear crashes had their heads against the head restraint (an equivalent to 0 mm backset) during impact, no whiplash injury occurred.[5] By contrast, another study showed significant increase in injury and duration of symptoms when an occupant's head was more than 100 mm away from the head restraint at the time of the rear impact.[6]

In addition, the persistence of whiplash injuries in the current fleet of vehicles indicates that the existing height requirement is not sufficient to prevent excessive movement of the head and neck relative to the torso for some people. Specifically, the head restraints do not effectively limit rearward movement of the head of a person at least as tall as the average occupant. Research indicates that taller head restraints would better prevent whiplash injuries because at heights of 750 to 800 mm, the head restraint can more effectively limit the movement of the head and neck.

In a recent report from the Insurance Institute for Highway Safety (IIHS), Farmer, Wells, and Lund examined automobile insurance claims to determine the rates of neck injuries in rear end crashes for vehicles with the improved geometric fit of head restraints (reduced backset and increased head restraint height).[7] Their data indicate that these improved head restraints are reducing the risk of whiplash injury. Specifically, there was an 18 percent reduction in injury claims. Similarly, NHTSA computer generated models have shown that the reduction of the backset and an increase in the height of the head restraint reduces the level of neck loading and relative head-to-torso motion that may be related to the incidence of whiplash injuries.[8]

With respect to impact speeds, research and injury rate data indicate that whiplash may occur as a result of head and neck movements insufficient to cause hyperextension. Staged low speed impacts indicate that mild whiplash symptoms can occur without a person's head exceeding the normal range of motion. This means that our previous focus on preventing neck hyperextension is insufficient to adequately protect all rear impact victims from risks of whiplash injuries. Instead, to effectively prevent whiplash, the head restraint must control smaller

[3] Non-contact Abbreviated Injury Scale (AIS) 1 neck.

[4] The H-point is defined by a test machine placed in the vehicle seat (Society of Automotive Engineers (SAE) J826, July 1995). From the side, the H-point represents the pivot point between the torso and upper leg portions of the test machine. It can be thought of, roughly, as the hip joint of a 50th percentile male occupant viewed laterally.

[5] Jakobsson et al., *Analysis of Head and Neck Responses in Rear End Impacts—A New Human-Like Model.* Volvo Car Corporation Safety Report (1994).

[6] Olsson et al., *An In-depth Study of Neck Injuries in Rear-end Collisions.* International IRCOBI Conference, pp 269–280 (1990).

[7] Farmer, Charles, Wells, JoAnn, Lund, Adrian, "Effects of Head Restraint and Seat Redesign on Neck Injury Risk in Rear-End Crashes," Insurance Institute For Highway Safety, October 2002.

[8] "*Effect of Head Restraint Position on Neck Injury in Rear Impact,*" World Congress of Whiplash-Associated Disorders (1999), Vancouver, British Columbia.

amounts of rapid head and neck movement relative to the torso.

In sum, in light of recent evidence that whiplash may be caused by smaller amounts of head and neck movements relative to the torso, and that reduced backset and increased height of head restraints help to better control these head and neck movements, we concluded that head restraints should be higher and positioned closer to the occupant's head in order to be more effective in preventing whiplash.

Further, information about consumer practices regarding the positioning of adjustable head restraints indicates that there is a need to improve consumer awareness and knowledge of the importance of properly adjusted head restraints. Specifically, in 1995, NHTSA surveyed 282 vehicles to examine how well head restraints were adjusted and if the restraints should have been adjusted higher. Approximately 50 percent of adjustable head restraints were left in the lowest adjustable position. Three quarters of these could have been raised to decrease whiplash potential by bringing the head restraint higher in relation to the center of gravity of the occupant's head. The information was included in a report [9] for which the agency requested public comment. 61 FR 66992; December 19, 1996.

F. January 2001 Notice of Proposed Rulemaking

Using the new information gained about the effectiveness of head restraints, on January 4, 2001, NHTSA published in the **Federal Register** (66 FR 968) a notice of proposed rulemaking (NPRM) to improve the effectiveness of head restraints. The agency proposed new height and backset requirements, and other requirements, described below. NHTSA also proposed that head restraints be required in the rear outboard seating positions.

In the proposed FMVSS No. 202a, manufacturers were given the option of meeting either of two sets of requirements. The first set was a comprehensive group of dimension and strength requirements, compliance with which is measured statically. The second set was made of requirements that would have to be met in a dynamic test.[10]

1. Proposed Requirements for Head Restraints Tested Statically

To ensure that head restraints would be properly used in a position high enough to limit hyperextension, the NPRM proposed the following height requirements. The top of the front integral head restraint would have to reach the height of at least 800 mm above the H-point. The top of the front adjustable head restraint would have to reach the height of at least 800 mm above the H-point, and could not be adjusted below 750 mm. The top of the rear mandatory head restraint could be adjusted below 750 mm above the H-point. The NPRM also proposed that adjustable head restraints must lock in their adjustment positions. NHTSA proposed to retain existing requirements for head restraint width.[11] To control even smaller amounts of rapid head and neck movement relative to the torso than the amount of relative motion resulting in neck hyperextension, the NPRM proposed also to limit the amount of backset to 50 mm (2 in) for both front and rear outboard head restraints. In addition, the NPRM also proposed maximum gap requirements for head restraint openings within the perimeter of the restraint, and for height adjustable head restraints, between the seat and head restraint.

The agency also proposed to prohibit head restraints in the front seats from being removable solely by hand, i.e., without use of tools. Comments were requested on applying such a requirement to rear seat head restraints. Rear seat head restraints could be folded or retracted to "non-use" positions if they give the occupant an "unambiguous physical cue" that the restraint is not properly positioned by altering the normal torso angle of the seat occupant or automatically returning to a "use" position when the seat is occupied.

In addition, the NPRM proposed that these statically-tested head restraints would have to meet a new energy absorption requirement, compliance with which would be measured using a free-motion impactor. Additionally, the agency proposed placing a minimum on the radius of curvature for the front surface of the vehicle seat and head restraint. The NPRM proposed modifications to the existing strength versus displacement test procedure to require simultaneous loading of the back pan [12] and the head restraint, and to remove the allowance for seat back failure.

2. Proposed Requirements for Head Restraints Tested Dynamically

The NPRM proposed a dynamic test alternative and said that the purpose was to ensure that the final rule does not discourage or preclude continuing development and implementation of active head restraints and other advanced seat back/head restraint systems designed to minimize rear impact injuries. Specifically, the NPRM proposed that head restraints tested dynamically would have to meet a Head Injury Criterion (HIC) limit of 150 with a 15 millisecond (ms) window. In addition, NHTSA proposed a head-to-torso rotation limit of 20 degrees when testing with a 95th percentile male dummy in front outboard seats, and of 12 degrees when testing with a 50th percentile male dummy in all outboard seats.[13] Further, the NPRM proposed that the head restraints must have the same lateral width specified for statically tested restraints.

G. December 2004 Final Rule

On December 14, 2004, after considering the public comments and other available information, NHTSA published in the **Federal Register** (69 FR 74848) a final rule upgrading Federal Motor Vehicle Safety Standard No. 202, *Head Restraints* (FMVSS No. 202). The new upgraded version of the standard was designated as FMVSS No. 202a.

1. In General

To provide better whiplash protection for a wider range of occupants, the rule required that front outboard head restraints meet more stringent height requirements. Fixed front head restraints must be not less than 800 mm. In their lowest adjustment position, adjustable head restraints must not be lower than 750 mm, and in their highest position, they must be at least 800 mm. To reduce the distance that a vehicle occupant's head can be whipped backward in a rear end crash, this rule established new requirements limiting backset in front seats and limiting the size of gaps and openings in the restraints. The rule also established new strength and position retention requirements. Finally, it significantly amended the dynamic compliance test option currently in the standard to

[9] The report was included in Docket No. 96–22, Notice 1. It is noted that this NHTSA docket predates the DOT DMS system.

[10] The previous version of FMVSS No. 202 also features two sets of requirements; one applies to statically tested head restraints and the other to dynamically tested head restraints.

[11] 254 mm (10 in) for restraints on bench-type seats, and 171 mm (6.75 in) for restraints on individual seats.

[12] The back pan is the portion of the SAE J826 manikin (July 1995) that comes in contact with the seat back. Its shape is intended to simulate the shape of an occupant's back and thus allow for a realistic load distribution.

[13] Changes to the dynamic test procedures were also proposed, including a new sled pulse corridor. Also, the entire vehicle would be mounted on the test sled, not merely the seat.

encourage continued development and use of "active" head restraint systems because the test is designed to allow a manufacturer the flexibility necessary to offer innovative active head restraint designs while still ensuring a minimal level of head restraint performance.

In developing the final rule, the agency decided not to require head restraints for rear seating positions. However, in order to ensure that head restraints voluntarily installed in rear outboard seating positions do not pose a risk of exacerbating whiplash injuries, the final rule required that, if provided, those head restraints meet certain height, strength, position retention, and energy absorption requirements, but no backset limit. The head restraint regulation of the United Nations/Economic Commission for Europe (UN/ECE) also does not mandate rear seat head restraints, but manufacturers can voluntarily choose to have rear head restraints type approved per the regulation.

The agency explained that in the future stages of its efforts to improve occupant protection in rear impacts, it intends to evaluate the performance of head restraints and seat backs as a single system to protect occupants, just as they work in the real world, instead of evaluating their performance separately as individual components. Accordingly, in making our decisions about the upgraded requirements for head restraints, we sought, e.g., through upgrading our dynamic test procedure option, to make those requirements consistent with the ultimate goal of adopting a method of comprehensively evaluating the seating system.

NHTSA also sought to harmonize the FMVSS requirements for head restraints with the head restraint regulation of the UN/ECE, except to the extent needed to provide increased safety for vehicle occupants or to facilitate enforcement.[14] In some instances, a desire to achieve increased safety in a cost effective manner made it necessary for us to go beyond or take an approach different from that in the ECE regulation.

The agency estimated that approximately 272,464 whiplash injuries occur annually, and that the final rule would result in approximately 16,831 fewer whiplash injuries, 15,272 involving front seat occupants and 1,559 involving rear seat occupants. The estimated average cost in 2002 dollars, per vehicle, of meeting the rule was estimated to be $4.51 for front seats, and $1.13 for rear seats currently equipped with head restraints, for a combined cost of $5.42. The cost per year was estimated to be $70.1 million for front head restraints and $14.1 million for optional rear head restraints, for a combined annual cost of $84.2 million. The final rule was considered to be economically significant because the agency estimated that it would result in economic benefits in excess of $100 million.

2. Details of the December 2004 Final Rule

Under the final rule, the top of the front outboard integral head restraint must reach the height of at least 800 mm above the H-point, instead of the 700 mm above the seating reference point (SgRP) [15] previously required. The top of the front outboard adjustable head restraint must be adjustable to at least 800 mm above the H-point, and cannot be adjusted below 750 mm.

If a manufacturer chooses to install head restraints in rear outboard seating positions, these head restraints must meet certain height, strength, position retention, and energy absorption requirements. The rear outboard head restraint is defined as a rear seat back, or any independently adjustable seat component attached to or adjacent to the rear seat back, that has a height equal to or greater than 700 mm, in any position of backset and height adjustment, as measured with the J826 manikin. Accordingly, any rear outboard seat back or any independently adjustable component attached or adjacent to that seat back that exceeds 700 mm above the H-point, must meet the above requirements.

In recognition of the manufacturing and measurement variability concerns highlighted by the industry commenters, the agency increased the maximum allowable backset for front head restraints from the proposed 50 mm to 55 mm. Backset adjustment to less than 55 mm was permitted. However, the backset may not be adjustable to greater than 55 mm when the top of the front head restraint is positioned between 750 and 800 mm, inclusive, above the H-point. There is no backset limit for optional rear head restraints. The agency specified use of a Head Restraint Measurement Device (HRMD), consisting of a head form developed by the Insurance Corporation of British Columbia (ICBC) attached to the Society of Automotive Engineers (SAE) J826 manikin (rev. Jul 95), for measuring backset compliance.

The minimum width requirement for front outboard head restraints in vehicles without a front center seating position, and for optional rear head restraints is 170 mm. The minimum width requirement for front outboard head restraints in vehicles with a center seating position between the outboard positions is 254 mm. For integral head restraints, there is a limit of 60 mm on the maximum gap between the head restraint and the top of the seat. The gap limit for adjustable head restraints in their lowest position of adjustment and any position of backset adjustment is similarly 60 mm. For all head restraints, gaps within the restraint are also limited to not more than 60 mm.

Under the final rule, an adjustment retention mechanism that locks into place is mandatory for all adjustable head restraints. Retention of the head restraint in its vertical position is tested using a loading cylinder measuring 165 mm in diameter and 152 mm in length. The rearward (with respect to the seat direction) position retention testing is conducted using a loading sphere, with the seat back braced. Under both tests, the head restraint must return to within 13 mm of the initial reference point, an increase from the proposed 10 mm return requirement.

The energy absorption test procedure is conducted using a linear impactor, rather than the proposed free-motion impactor or the pendulum impactor used in ECE 17.

The dynamic compliance option utilizes a Hybrid III 50th percentile adult male test dummy only, as the 95th percentile Hybrid III dummy is not yet available for compliance purposes. The head-to-torso rotation is limited to 12 degrees, and the maximum HIC_{15} was limited to 500 instead of 150 in the NPRM. These performance limits must be met with the head restraint midway between the lowest and the highest position of adjustment rather than at the lowest position as proposed.

Between the effective date of the final rule and September 1, 2008, manufacturers were permitted to comply with FMVSS No. 202 by meeting: (1) All the requirements of the current FMVSS No. 202, (2) the specified requirements of ECE 17, or (3) all the requirements of FMVSS No. 202a. NHTSA has found that ECE 17 is functionally equivalent to the existing FMVSS No. 202, so it permitted

[14] The regulation, adopted by the UN/ECE's Working Party 29, World Forum for Harmonization of Vehicle Regulations, is ECE 17, Uniform Provisions concerning the Approval of Vehicles with regard to the Seats, their Anchorages, and any Head Restraints (*http://www.unece.org/trans/main/wp29/wp29regs/r017r4e.pdf*).

[15] The term "seating reference point" is fully defined in 49 CFR 571.3. It represents a unique design H-point. The H-point is the mechanically hinged hip point of an SAE J826 (July 1995) three-dimensional manikin (SAE J826 manikin), which simulates the actual pivot center of the human torso and thigh.

compliance with ECE 17 during the interim.

II. Petitions for Reconsideration

We received seven petitions for reconsideration. Four were from auto manufacturers or an auto manufacturer trade association: the Alliance of Automobile Manufacturers (Alliance), Ford, DaimlerChrysler, and BMW. Two were from seat manufacturers: Johnson Controls and Keiper. The seventh petition was submitted by Syson-Hill and Associates, an engineering services firm. We note that we also received a petition from Kongsberg Automotive. However, since this was not submitted within the required timeframe for petitions for reconsideration, our regulations provide that it is treated as a petition submitted under 49 CFR part 552, rather than a petition for reconsideration. We address this petition for rulemaking in a separate section at the end of this notice.

In this section, we provide a brief summary of the issues raised by the petitions. The summary is representative and does not necessarily identify each petitioner which raised a particular issue.

A. Backset Requirement

Several petitioners asked the agency to reconsider the 55 mm backset requirement. The Alliance stated that it believes there are potential safety disbenefits from the requirement. It argued that the 55 mm backset requirement measured at 25 degree torso angle is too aggressive and will create significant dissatisfaction. The Alliance stated that while it agrees less backset is better, a better balance between customer comfort and safety benefits must be achieved. It requested a maximum 70 mm requirement with "a 10 mm audit allowance to 80 mm."

DaimlerChrysler stated that it firmly believes that the backset requirement for front seats is overly restrictive and should be relaxed. That company stated that its experience suggests that designs meeting this requirement will encounter very strong consumer resistance. DaimlerChrysler stated that it designed the head restraints for a new vehicle to meet the backset requirements included in the NPRM, i.e., 50 mm at a torso angle of 25 degrees. It stated that consumer reaction from some customers, especially short-statured drivers, was very negative, and that some have removed or reversed the head restraint.

Daimler Chrysler asked the agency to reconsider the 25 degree torso angle as well as the 55 mm limit. That company stated that there are several vehicle concepts, including light trucks, in which an angle of 25 degrees is much greater than the design and not realistic, thus leading to a much larger backset measured in the specified procedure as compared to a real world situation. DaimlerChrysler recommended that the agency specify the "design torso angle" rather than 25 degrees.

Johnson Controls stated that it believes a 90 mm backset requirement would best accomplish the goals of safety and passenger comfort while recognizing the practical effects of design and measurement variation inherent in the backset measurement technology.

B. Backset Measurement Method

Ford argued that the backset measurement method and device specified in the final rule have not been sufficiently evaluated to adequately account for total process variability. It stated that test data analysis shows that the actual variability far exceeds the amount specified in the final rule, and that the rule is therefore not reasonable or practicable.

C. Dynamic Option

The Alliance stated that it believes the dynamic test alternative included in the final rule is premature and not adequately supported and developed for use at this time. It requested that the agency investigate other alternatives and, in the meantime, retain the existing dynamic test in FMVSS No. 202.

D. Rear Seat Non-Use Positions

Petitioners for reconsideration asked the agency to make several changes in the requirements for rear seat non-use positions. The Alliance and Ford petitioned the agency to allow head restraint designs that manually retract (without having to rotate) to non-use positions and that must be manually repositioned to in-use positions. The Alliance, BMW and DaimlerChrysler requested that the manually stowed non-use position compliance option originally in the NPRM be reinstated except that the required torso angle change should be no more than 5 degrees. GM recommended several options for visual cues to indicate that a rear seat head restraint is in a non-use position.

E. Effective Date

The Alliance stated that while the date set forth in the final rule appears to provide more than three years leadtime, it was concerned that that leadtime will be subsumed during the period petitions for reconsideration are before the agency. It argued that additional leadtime could be needed depending on when the agency resolved issues raised in the petitions. The Alliance also requested that in order to permit manufacturers to implement the required changes with the start of a new model cycle rather than at the end of the current model design, NHTSA should modify the compliance date to require 80 percent compliance with FMVSS No. 202a for the first year and 100 percent beginning the second year, with carry-forward credits.

F. Other Issues

The petitioners for reconsideration raised a number of other issues, including ones related to the height requirement, gaps between the head restraint and the seat back, the backset and height retention (lock) tests, the energy absorption test and seat back bracing, head restraint clearance, the width of head restraints for certain seats, the option to comply with ECE 17, temperature and humidty, and owner's manual requirements.

III. Development of Global Technical Regulation on Head Restraints

For the past couple years, NHTSA has been leading efforts to develop a Global Technical Regulation (GTR) on head restraints. During the November 2004 meeting of WP.29 and the Executive Committee of the 1998 Global Agreement, NHTSA formalized its sponsorship of the regulation on Head Restraints as identified in the Program of Work of the 1998 Global Agreement. In a notice published in the **Federal Register** (69 FR 60460) on October 8, 2004, NHTSA sought comments on a proposal that formalizes the U.S. sponsorship of a GTR on head restraints. The agency did not receive any comments.

The proposal was formally presented by the U.S. and adopted by the Executive Committee and referred to the Working Party of Experts (GRSP) at the March 2005 Session of WP.29. In February 2005, the GRSP formed an informal working group, chaired by the US, to develop a GTR. The working group has met eight times with the following contracting parties and representatives participating: Netherlands, France, Canada, Japan, Germany, Spain, Korea, the UK, USA, the EC, the European Association of Automotive Suppliers (CLEPA) and the International Organization of Motor Vehicle Manufacturers (OICA).

In developing and drafting the new GTR, the working group is combining elements from UNECE Regulations Nos. 17, 25, and newly upgraded FMVSS No. 202, as well as considering proposals for

requirements not contained in the previously mentioned regulations. The working group is exchanging data and has started drafting the regulatory text.

The major outstanding issues are:

• *Applicability:* Applying the GTR to vehicles up to 4,500 kg or limiting it to 3,500 kg.

• *Backset:* There is general consensus that it should be regulated, but the maximum backset limit is still being discussed.

• *Measuring procedures for height and backset:* There is continued discussion on using the H-point or R point as the point of reference.

• *Dynamic Test:* The issue of how to evaluate dynamic systems continues to be under discussion.

The working group has submitted four Progress Reports on the status of this GTR. They can be found in Docket No. NHTSA–2004–14395.

We note that the work on the GTR has been proceeding at the same time that NHTSA has been evaluating the petitions for reconsideration. Some of the issues that are the subject of the petitions for reconsideration have also been raised in the context of the GTR. In this document, we are addressing those issues in the context of the petitions for reconsideration of the recently upgraded FMVSS No. 202. If the development of the GTR continues to proceed successfully and it is ultimately adopted, and if the U.S. has voted for its adoption, NHTSA would issue an NPRM based on the GTR for a new FMVSS.

IV. March 2006 Partial Response to Petitions

On March 9, 2006, NHTSA published in the **Federal Register** (71 FR 12145) a final rule; partial response to the petitions for reconsideration.[16] In that document, the agency delayed the date on which manufacturers must comply with the requirements applicable to head restraints voluntarily installed in rear outboard designated seating positions from September 1, 2008 until September 1, 2010. The agency stated that the remaining issues raised by petitioners for reconsideration would be addressed in a separate document.

V. Overview of Decision

This document addresses the remaining issues raised by petitioners for reconsideration of the December 2004 final rule upgrading the agency's head restraint standard. We are partially granting and partially denying the petitions. The more significant changes that we are making in response to the petitions include:

• *Leadtime:* For the front seat requirements, we have decided to provide one additional year of leadtime and also establish a one-year phase-in with an 80 percent requirement. The agency previously extended the compliance date for the rear seat requirements by two years. We are also establishing a one-year phase-in with an 80 percent requirement for the rear seat requirements.

• *Backset:* We are making two changes related to the backset requirement. First, we are specifying in FMVSS No. 202a that backset is determined by taking the arithmetic average of three measurements, rather than using a single measurement. Two studies, one by NHTSA and one by Transport Canada, have indicated that taking an average of several measurements reduces variability. Second, we are slightly relaxing the backset requirement by specifying that the 55 mm backset limit applies with the seat back at the vehicle manufacturer's specified design angle rather than at 25 degrees. This decision reflects consideration of interrelated issues and data concerning the 55 mm backset limit, comfort, and seat back angle.

• *Rear Seat Non-Use Positions:* To provide greater flexibility in this area, we are adding (as included in the NPRM) an option for a 10-degree change in the torso reference angle criteria.

• *Gaps Between Head Restraint and Seat Back:* We are adding a manufacturer option under which the gap requirement may be met by either the existing FMVSS No. 202a procedure using a sphere or one based on the ECE 17 measurement methodology.

• *Backset and Height Retention (Lock) Tests:* We are specifying that instead of returning to the reference loads of 37 Nm and 50 N after application of the peak load during these tests, that the load be reduce to zero and then increased to the reference loads.

As discussed in the sections which follow, we are making a number of other changes as well.

Finally, as indicated above, the agency has separately been leading efforts to develop a GTR on head restraints. Some issues raised by petitioners for reconsideration, including ones related to backset and the dynamic test, are also being discussed in the context of the GTR. While it is necessary for us to issue today's decision in order to respond to the outstanding petitions for reconsideration, we note that if agreement is achieved on the GTR, we will consider making changes in these and other areas.

VI. Response to Petitions

A. Backset Requirement

1. Petitions

Several petitioners, including automobile manufacturers and seat manufacturers, requested reconsideration of the 55 mm backset requirement.

Under the final rule, backset is measured using an HRMD consisting of a head form developed by ICBC attached to the SAE J826 manikin (rev. Jul 95). The head form includes a probe that slides rearward until contact is made with the head restraint. The resulting measurement reflects the horizontal distance between the back of the head of a seated 50th percentile adult male occupant and the front of the head restraint.

Under the final rule, backset must not exceed 55 mm for front seats, with the seat back positioned at an angle that gives the J826 manikin a torso reference line angle of 25 degrees. We will refer to the torso reference line angle and seat back angle interchangeably.

In addressing the petitioners' requests concerning the backset requirement, we will consider together issues related to the 55 mm value, test procedure variability, specification of the HRMD, and seat back angle, as they are closely interrelated.

The Alliance stated that it believes that the 55 mm backset requirement measured at 25 degree torso angle is too aggressive and will create significant customer dissatisfaction. It stated that while it agrees that reducing backset is desirable, a better balance between customer comfort and safety benefits should be achieved. That organization stated that 5th percentile female stature occupants do not sit at 25 degree torso angles, but prefer about 18 degrees and some as little as 14 to improve their ability to see the road ahead.

The Alliance stated that this is corroborated by the 2001 UMTRI response to the NPRM, which indicates a mean seat back (torso angle) of 22 degrees with a 3.2 degree standard deviation. The petitioner argued that this more upright back angle greatly reduces the backset to the point it interferes with the head of some of these occupants, if not just their hair.

(NHTSA notes that backset is reduced with more upright seat back angles because the angle of an occupant's head relative to the occupant's torso changes as the occupant's seat back angle is changed. As an occupant's seat back

[16] Docket No. NHTSA–2006–23848.

angle is reduced, making the seat back more vertical, the occupant's head is tilted increasingly further back with respect to their torso. Conversely, as the back angle is increased, the occupant's head is tilted further forward.)

The Alliance stated that negative consumer reactions to a recent new vehicle introduction with a 50 mm backset head restraint at 25 degree torso angle included removal and reversal of the head restraint. That organization indicated that increasing the torso angle a couple degrees did not satisfy customers. The Alliance also stated that drivers' increasing the seat back angle to relieve the close proximity of the head restraint to their heads may result in positioning the seat back at an angle greater than the one that provides optimal vision of the vehicle controls and displays, headroom, and lumbar comfort.

The Alliance stated that while the 50 mm backset requirement was relaxed to 55 mm in the final rule by NHTSA to account for a 5 mm measurement variability range of the HRMD, it does not account for a 2 degree design tolerance for seat back torso angle or an H-point tolerance of 12 mm. The Alliance stated that it believes a maximum of 70 mm should be adopted with a 10 mm audit allowance, making the limit effectively 80 mm. According to the Alliance, this would still make it necessary for manufacturers to design front head restraints within the IIHS Acceptable or Good rating for geometry.

DaimlerChrysler stated that it firmly believes the backset requirement for front seats is overly restrictive and should be relaxed. That company stated that its experience suggests that designs meeting this requirement will encounter very strong consumer resistance. It made a number of the same arguments as the Alliance, in some cases in more detail.

DaimlerChrysler indicated that it recently introduced a new vehicle in the U.S. market that was designed just after the issuance of the NPRM for the head restraint rule. That company stated that it ambitiously designed the head restraints for this new vehicle to meet the backset requirements of the NPRM, i.e., 50 mm at a torso angle of 25 degrees. DaimlerChrysler stated that the reaction from some customers has been very negative, with more than two percent of customers rating them unacceptable in a recent survey of owners. That company stated that given this response, it embarked on a high priority redesign effort to change the backset to 65 mm at a 25 degree torso angle.

According to DaimlerChrysler, it appears that a high percentage of 5th percentile female drivers object to the head restraints. It stated that some of these drivers are removing the head restraint and others are reversing the head restraint. DaimlerChrysler also stated that merely reclining the seat further has not been an acceptable solution for some drivers (especially those of short stature), and could also degrade visibility of controls, displays and rearward visibility.

DaimlerChrysler also stated that studies by the IIHS conclude that women are at greater risk of neck injury than men. That company argued that a new head restraint standard should protect those at the greatest risk, where the benefits are greatest, and where discomfort issues have the greatest consequences. DaimlerChrysler argued that referencing the backset requirement from a 25 degree torso angle, an angle more consistent with the angles typically used by larger stature (i.e., taller) occupants than those used by smaller stature occupants biases the requirement in favor of the larger stature occupants at the expense or discomfort of smaller stature occupants.

DaimlerChrysler stated that the UMTRI submission in response to the NPRM showed mean seat back angles to be 22.5 degrees with a standard deviation of 3.5 degrees. According to DaimlerChrysler, the mean angle minus 2 standard deviations approximates the 5% female occupant and the mean angle plus 2 standard deviations approximates the 95% male occupant. It stated that this shows, on average, a 14 degree range in seat back angle between these upper and lower size occupants for automotive design. DaimlerChrysler stated that with NHTSA's assumed 3 mm change in backset per degree change in seat back angle, most of the 55 mm backset is lost for the 5% female without any accommodation for hair clearance. DaimlerChrysler suggested that the regulation specify the backset at the seat back design angle.

DaimlerChrysler provided other arguments in support of specifying backset at the seat back design angle. It argued that there are several vehicle concepts (e.g., light trucks, minivans, SUV's and full size vans) in which an angle of 25 degrees is not realistic, thus leading to a much larger backset in NHTSA's procedure as compared to the real world situation. That company stated that SAE J–1100 July 2002 recommends a 22 degree nominal torso design angle. It urged the agency to use the "design torso angle."

In a later submission, DaimlerChrysler indicated that nominal seat back angles for high vehicles, e.g., light trucks, are approximately 20 degrees, whereas for other vehicles, e.g., sedans they are approximately 23 to 25 degrees. It indicated that a 1 degree increase of seat back angle yields 3 to 4 mm increase of backset.

On the issue of the 55 mm backset limit and variability, DaimlerChrysler stated that while the final rule made some accommodation for measurement variance for the HRMD, the net effect of the 55 mm backset limit is less than a 50 mm backset design. It argued that the 5 mm increase that NHTSA included in the final rule does not account for seat back (torso angle) tolerances that are ±2 degrees, and H-point tolerances of ±12 mm. In a later submission, DaimlerChrysler argued that a "worst case" sum of backset tolerances is 29 mm. This includes 5 mm for seat upholstery, 10 mm for torso angle of the manikin, 10 mm for head rest rod to seat back angle, and 4 mm for seat reference point. DaimlerChrysler indicated that it would be necessary to design to a 26 mm backset limit to allow for these worst case tolerances.

DaimlerChrysler stated that all of its arguments point to the need for greater backset, and an audit allowance of at least a 10 mm beyond the intended nominal requirement. It requested a nominal backset requirement of 70 mm, with an additional 10 mm allowance for compliance.

DaimlerChrysler characterized NHTSA's philosophy in the head restraint rulemaking as being "if a little backset is good, less is better," and argued such an approach cannot be justified below 70 mm of backset. That company stated that it agreed that, all things being equal, "the less the backset, the better," but a balance between "customer acceptance" and "a better theoretical design" should be achieved. DaimlerChrysler argued that until the mechanism and threshold for whiplash is completely understood, overly ambitious targets should be avoided until they can be backed by better fundamental knowledge of the causation and prevention of rear impact induced neck injuries and customer acceptance.

Ford stated that it believes the backset measurement method and device have not been sufficiently evaluated to account adequately for total process variability. It stated that its test data analysis found significantly greater operator/gauge variability than that suggested by the agency in its rule.

Ford argued that the capability of the HRMD and related measurement process has not been sufficiently established. That company stated that the final rule preamble stated that

"maximum allowable backset requirement is based on the ±5 mm tolerance of the measuring device" and that the tolerance "represents the variability associated with measuring backset with the ICBC measuring device." Ford argued that this statement does not define in acceptable statistical terms the accuracy of the measuring device and that sufficient data are not provided to permit an assessment of the accuracy of the measuring device.

Ford argued that, as a threshold matter, the accuracy of the measuring device must be determined. It asserted that accuracy characterizes the level of deviation of the measurement device output from known "accurate" values, and that accuracy evaluation is performed utilizing calibration procedures using established certified specimens that are traceable to nationally recognized standards typically maintained by the National Institute of Standards & Technology. Ford claimed that without such traceability it is impossible to evaluate ICBC's claim that "that the HRMD yields a level of accuracy of ±5 mm when used by competent, well-trained operators."

Ford stated that RONA Kinetics, the developer and manufacturer of the HRMD,[17] calibrates all new HRMDs, but there are no studies to indicate how well that calibration is maintained over time in various test labs. According to Ford, there is no calibration procedure that test labs can use to check calibration retention. It argued that because the true accuracy of HRMDs is not known, seat manufacturers and agency contractors cannot reliably verify compliance with the backset requirement of 55 mm. Ford argued that the agency should develop the accuracy requirements for the HRMD, verify that the proposed HRMDs satisfy these minimum requirements, and develop calibration standards and the necessary equipment to permit periodic calibration of the test device at the point of use.

Ford stated that once accuracy and calibration are established, repeatability and reproducibility as well as other major variability factors should be assessed with a study. According to that company, a comprehensive study should be conducted to assess the statistical distribution of the backset measurement on a sufficient sample of seat designs representative of the United States light vehicle fleet and these measurements should be compared to the actual backset. Ford stated that these variables include, but are not limited to, different HRMD machines, different J826 manikins, different operators, different laboratories, differing temperatures and humidity, as well as the variability of the parameters set forth in the agency's compliance test procedure.

Ford stated that in the absence of these data, it undertook a preliminary study to assess the accuracy of the HRMD. According to Ford, this study did not attempt to evaluate all major sources of potential variability. The preliminary study evaluated three different seats designed to meet the IIHS good rating, and used three trained operators using their own HRMD and associated J826 manikins.

Ford stated that of five combinations it evaluated, only one combination across three paired operators/gauges had a range of 10mm. The remaining combination ranges were between 19 mm and 21 mm. Ford stated that if it assumed that the ±5 mm "tolerance" represents a range of 10 mm, these results double what the agency stated manufacturers should expect when measurements are taken by trained HRMD operators.

Ford also stated that this study excluded certain significant potential variables, including the impact of various laboratories, temperature and humidity variances, and manufacturing variability. Ford argued that its study identifies the need for the agency to perform the necessary work to determine the actual capability of the HRMD, and that the agency needs to consider and address other potential sources of variability and develop a reasonable and practicable backset requirement.

Ford also submitted data which it argued indicated that multiple variabilities mean that head restraint designs must use a backset less than 30 mm to assure statistical significance.

Ford later submitted the results of two studies addressing comfort and backset. That company stated that the studies show that it is not possible to design a seat that is both statistically compliant with the 55 mm requirement and comfortable for a vast majority of drivers. That company argued that the data show that the design target must be less than 19 mm to be compliant statistically with the 55 mm requirement. It also stated that the minimum backset required to satisfy 85 percent of drivers is 69 to 87 mm, depending on the vehicle model. Ford argued that for head restraints that do not adjust in the fore/aft direction, the FMVSS 202a backset requirement would have to be at least 98 mm in order to satisfy about 85 percent of drivers. Ford stated that fore/aft adjustable head restraints could be a solution to the comfort problem if FMVSS 202a permitted the 55 mm backset requirement at the most forward position of the head restraint.

Johnson Controls stated that it believes a 90 mm backset requirement would best accomplish the goals of safety and passenger comfort while recognizing the practical effects of design and measurement variation inherent in the backset measurement methodology. It stated that an UMTRI study concluded that backset below 70 mm would not accommodate a substantial number of occupants. Johnson Controls also argued that the potential for variation in measurement technique and the variation inherent in the design tolerances associated with the determination of backset require a substantially lower nominal backset than the 55 mm limit in the standard. That petitioner noted that the agency added 5 mm in light of variability associated with the measuring device, but argued that while this is one facet of variation, sources of variation include repeatability, reproducibility, trim, foam and structure tolerances that are inherent in the designs used.

2. Agency Response

In responding to the petitions concerning the backset requirement, we begin by noting that the agency addressed issues related to backset at considerable length in the final rule preamble. As discussed in that document, in selecting the 55 mm limit, we attempted to balance comfort, safety and measurement variability concerns.

While all of these concerns are important, we note that in order to address the problem of whiplash, it is necessary to reduce the backset of many current head restraints. As discussed in the final rule, the available scientific data show that whiplash may be caused by relatively small amounts of head and neck movements relative to the torso.

Based on the available scientific data, NHTSA estimated that the final rule, once fully implemented, would prevent 15,272 front seat whiplash injuries annually. By contrast, we estimate that if the 55 mm backset limit were relaxed to 70 mm, the number of prevented injuries would be reduced by almost half, to 7,743. In the final rule preamble, we noted that no commenter disputed scientific data indicating that the closer the head restraint is to the occupant's head at the time of impact, the better the protection the head restraint offers.

[17] We note that some commenters refer to the ICBC device as HRMD, whereas the agency refers to the combined ICBC device and J826 manikin as the HRMD.

On reconsideration, for reasons discussed below, we have decided to make two changes related to the backset requirement. First, we are specifying in FMVSS No. 202a that backset is determined by taking the arithmetic average of three measurements, rather than using a single measurement. Two studies, one by NHTSA and one by Transport Canada, have indicated that taking an average of several measurements reduces variability. Second, we are slightly relaxing the backset requirement by specifying that the 55 mm backset limit applies with the seat back at the vehicle manufacturer's specified design angle rather than at 25 degrees. This decision reflects consideration of interrelated issues and data concerning the 55 mm backset limit, comfort, and seat back angle.

In explaining our decision in this area, we will begin with a discussion of issues related to suitability of the HRMD. We will then address issues related to comfort, seat back angle, and the 55 mm backset limit.

a. Suitability of the HRMD and Measurement Variability

In the final rule preamble, we addressed issues related to specifying use of the HRMD for measuring backset and test variability. As discussed earlier, the agency relaxed the backset requirement from the proposed 50 mm by 5 mm, to 55 mm, to account for the variability associated with measuring backset with the HRMD.

The HRMD consists of a SAE J826 three-dimensional manikin with a head form designed by ICBC attached. The SAE J826 manikin is sometimes referred to as an "OSCAR" device. The ICBC head form includes a probe that slides rearward until contact is made with the head restraint, thereby measuring backset.

In commenting on the NPRM, most vehicle manufacturers and seat suppliers had opposed the use of the HRMD. Generally, they questioned the accuracy and repeatability of head restraint geometry measurements made using that device. Further, the HRMD was deemed too sensitive to foam, trim, actual H-point, temperature, and humidity variations. Several commenters argued that the HRMD was not appropriate for compliance testing because repeated testing on the same seat assembly yielded different results. For example, Ford noted that the 2000 Ford Taurus and 2000 Mercury Sable received different ratings despite the fact that they are manufactured on the same platform and have identical front seats.

On the other hand, Transport Canada had reported that a study commissioned by several Canadian insurance companies, conducted by RONA Kinetics and Associates, Ltd., entitled "Head Restraint Field Study," concluded that the HRMD is repeatable and an effective predictor of head restraint position. Transport Canada has used the HRMD for years and finds it to be a convenient and accurate tool.

In addressing accuracy concerns, ICBC said that the HRMD yields a level of accuracy of ±5 mm when used by competent, well-trained operators. ICBC stated further that manufacturers have historically had to accommodate similar tolerance levels with other compliance testing based on the H-point machine.

In addressing Ford's comments on different measurement results for virtually identical vehicles, ICBC stated that the two seats, while identical in theory, had different upholstery materials (leather and cloth) and also had different stitching patterns. As a result, the deviation between two seat measurements was 5 mm, which ICBC noted was enough to warrant awarding two different vehicle head restraint ratings.

ICBC commented that it developed the HRMD because there were no similar tools available to produce accurate and repeatable measurements. It claimed the HRMD is more biofidelic than other similar or proposed devices, because it has an articulating neck joint that approximates the C7–T1 joint (i.e., the location on the spine between the most inferior cervical vertebra and the most superior thoracic vertebra). This allows the operator to approximate human posture at any seat back angle. The ICBC noted that there are 35 HRMD devices now in use, arguing this makes it a well-accepted compliance tool, and that the device is readily available from ICBC. Further, the HRMD represents a small cost for demonstrating compliance.

In adopting the HRMD for the final rule, the agency stated ICBC claimed the device has an accuracy of ±5 mm. The agency stated that because ICBC has a significant amount of experience in using the HRMD, its assertion that the overall level of repeatability of its device is within a ±5 mm, when used correctly, was persuasive.

The agency also concluded that ICBC adequately explained the discrepancy between the measurement results for Ford Taurus and Mercury Sable. Different upholstery and stitching patterns can result in different measurements. If these differences are significant, the difference in both height and backset may be significant.

We also stated we had found that while measuring head restraint geometries with the HRMD for use in a cost study, the backset measurements varied by a total of 10 mm when NHTSA's Vehicle Research and Test Center (VRTC) repeated the measurement of a single vehicle seat three times. This was consistent with the ICBC statements showing ±5 mm accuracy.

In petitioning for reconsideration, petitioners raised many of the same issues concerning the HRMD and variability as had been raised in the comments. However, additional data was submitted, including the results of the preliminary study conducted by Ford. In addition, many of these same issues have been raised in the context of the negotiations for a GTR, and new data have been presented in that context. While this document considers the issues for purposes of the FMVSS No. 202 final rule, we have taken into account the GTR data since it is available relevant information.

After carefully considering the petitions and other available information, we continue to believe that the HRMD is a suitable test device.

First, in response to Ford's argument that the HRMD has not been shown to be an "accurate" measuring device, we disagree. As indicated earlier, the HRMD consists of an SAE J826 manikin with a head form designed by ICBC attached.

The SAE J826 manikin has long been incorporated in NHTSA's safety standards for purposes of determining H-point location. See S10.4.2.1 and S10.4.2.2 of FMVSS No. 208 and S7.2.1 of FMVSS No. 214. Moreover, the definitions section of 49 CFR Part 571 defines H-point by referencing SAE J826.

As to the head form designed by ICBC, we note that, in conjunction with the ongoing development of a head restraint GTR, Transport Canada recently conducted a study [18] to verify whether the HRMD is an adequate tool to measure backset. Among other things, the study sought to verify specifications and dimensional tolerances of the HRMD headform and measuring probes.

Transport Canada reported that the head form is manufactured to have a mass of 3150 ± 50 grams, and all linear dimensions of the head form are within ±0.25 mm of the drawing specifications for the head form size "J" provided in ISO DIS 6220—Headforms for use in the testing of protective helmets. It also reported that both height and backset

[18] GTR HR–7–5 (*http://www.unece.org/trans/main/wp29/wp29wgs/wp29grsp/head07.html).*

probes are within ±2 mm of the RONA Kinetics drawing specifications, and that conformity with the drawing specifications is accomplished with a specially designed jig.

Transport Canada noted that the ICBC HRMD is not patented and imitations exist. It indicated, however, that the ICBC HRMD bears the ICBC/RONA Kinetics nameplate guaranteeing its authenticity and construction accuracy. FMVSS 202a specifies use of the ICBC head form.

The HRMD is a purely mechanical device. Also, unlike a crash test dummy, it is not subjected to crash test forces. Given these considerations, we believe that calibration should rarely be needed. We note, however, that the International Insurance Whiplash Prevention Group (IIWPG), of which ICBC is a member, has identified that variability between OSCAR units can be an issue when using the ICBC HRMD. To address this issue, IIWPG has developed a "Gloria jig" to calibrate the combination together as one single unit. We note that proper use of test equipment is an issue that NHTSA considers in all of its compliance testing. We believe that the issue of calibration of HRMD's is an issue for the agency to consider in the context of possible inclusion in the Laboratory Test Procedures or Compliance Test Procedure (CTP) for FMVSS No. 202a.

As to specifications for temperature and humidity, we do not believe these factors would have any significant effect on the HRMD since it is purely mechanical measuring tool. The issue of temperature and humidity related to seats is addressed later in this document.

As part of evaluating the petitions for reconsideration, NHTSA conducted an additional study of height and backset measurement variability. Transport Canada has also conducted such a study, a portion of which was discussed earlier. Studies have also been conducted by Ford, the European Automobile Manufacturers Association, and Japan.

To accompany this response to petitions, NHTSA has prepared a Technical Analysis Relevant to Petitions for Reconsideration of FMVSS 202a which, among other things, presents the results of the NHTSA study, and also provides analysis of the other studies.[19] A copy of this Technical Analysis will be placed in the docket.

The goal of the NHTSA study was to understand the expected variation in backset measurement when using multiple laboratories. The NHTSA study concluded, among other things, that taking the average of three backset measurements at each of three labs reduced the average measurement range between labs by about half (from 8.5 mm to 4.5 mm). The backset measurement variability across labs fit between the estimates made from the Japanese and Ford data. Using an average of three measurements in each backset position of adjustment, at a 2 standard deviation (s.d.) (97.7 percent) level of certainty, the expected variability was 5.64 mm; at a 3 s.d. (99.9 percent) level of certainty, the expected variability was 8.47 mm.

The Transport Canada study, which used eight vehicles, sought to verify whether the ICBC HRMD is an adequate tool to measure backset. It concluded that the HRMD provides repeatable and reproducible results. It also found that increasing the number of measurements always reduced the backset measurement variability. Using an average of three measurements in each backset position of adjustment, at a 2 s.d. (97.7 percent) level of certainty, the expected variability was 2.6 mm; at a 3 s.d. (99.9 percent) level of certainty, the expected variability was 3.9 mm. We reassessed the Canadian data using the same statistical techniques used in our own study and found the 2 s.d. and 3 s.d. values to be 2.84 mm and 4.26 mm, respectively.[20] This was slightly higher than Transport Canada reported, but still about half the variability the agency study found.

Given that both the NHTSA and Transport Canada studies indicated that increasing the number of measurements reduce backset measurement variability, we have decided to specify in FMVSS No. 202a that backset is determined by taking the arithmetic average of three measurements, rather than using a single measurement. This will help address some of the concerns about variability cited by petitioners. We also believe that these studies, as well as the information discussed in the final rule preamble, confirm that the HRMD is an adequate and appropriate tool to measure backset, providing repeatable and reproducible results.

b. Comfort, the 55 mm Backset Limit, and Seat Back Angle

As indicated above, petitioners for reconsideration argued that the 55 mm backset requirement measured at 25 degree torso angle is too aggressive and will create significant customer dissatisfaction. We will address together issues related to the 55 mm limit and the 25 degree torso angle given the interrelationship between them, e.g., reducing the torso degree at which backset is measured by one degree, from 25 degrees to 24 degrees, while maintaining the same backset limit, would result in head restraint designs with approximately 3 to 4 mm of additional backset.

Numerous commenters on the NPRM stated that occupants may be intolerant of head restraints very close to the back of their head. Further, because of differences in the occupant size, posture and seat angle preference, the same head restraint can yield different amounts of backset clearance and thus comfort for different individuals.

In addressing the comments in the final rule preamble, we stated that since ICBC reported that 49 of 164 vehicles from model year 2001 met the proposed 50 mm backset limit, it appears that occupant discomfort in front seats is not an insurmountable obstacle. We concluded that the available information does not substantiate the industry concerns associated with discomfort from front seat back adjustment to a more upright position.

UMTRI had commented that a 50 mm backset causes interference with the "preferred" head position of 13 percent of drivers. Generally, these tend to be smaller occupants, who prefer a more upright seat back angle. We stated that the "preferred" backset position, as articulated by UMTRI, may merely refer to a position that the drivers are most accustomed to. We noted that the term does not necessarily mean that the position is the only acceptable one or even the safest one for a given occupant. We also noted that the driving population as a whole is accustomed to a backset position that is, while comfortable, not optimal to prevent whiplash injuries.

We stated that we believed that no significant deviation from the proposed backset limit of 50 mm was necessary to provide an overwhelming majority of front seat occupants with an acceptable backset position. We also stated that any potential discomfort can be reduced by a slight increase in seat back angle. We stated that we believe that most front seat occupants can increase the seat back angle slightly without compromising their ability to reach the steering wheel comfortably or see the road ahead. We stated that for every additional degree of inclination,

[19] "Technical Analysis Relevant to Petitions for Reconsideration to the December 14, 2004 FMVSS 202a—Head Restraints Final Rule."

[20] The difference between the Transport Canada analysis and the NHTSA analysis is that Transport Canada reported the average of the s.d. of operator measurements from the 8 seats measured, while NHTSA reported the square root of the pooled variance of operator measurements from the 8 seats.

approximately 3 mm of additional backset clearance would be obtained.

We also noted that our own measurements of 14 vehicles showed that the front seat head restraints in the MY 1999 Toyota Camry, Chevy C1500, Chevy S10, Saab 9–5, and Chevy Malibu had backsets within 50 mm. This supported comments by ICBC and IIHS that many vehicles already have a 50 mm backset. We also stated that we believe the seat manufacturers can provide a front seating system design, such as a different head restraint shape, that would allow for better comfort.

As to seat back angle, NHTSA explained in the final rule preamble that the seat back angle of 25 degrees was chosen because it is on the edge of the range of normally selected seat back angles and would most likely be selected by larger occupants. ICBC, which developed the HRMD, designed it to be used at 25 degrees. The 25-degree angle is also consistent with the methods used by IIHS and the Research Council for Automobile Repairs (RCAR) for measurement of height and backset.

We noted that the 25-degree seat back angle in comparison to steeper angles represents a more stringent requirement for backset measurements because it maximizes the distance between the head and head restraint. However, a 25-degree angle is less stringent for measuring head restraint height. We stated that if we decided to adopt the manufacturer's design seat back angle, typically around 23 degrees,[21] we would be requiring taller head restraints. We also stated that we were adopting a single measurement angle for both height and backset in order to reduce unnecessary complexity in measurements and increase accuracy of testing results. Finally, we noted that using the same angle for the measurement of backset and height for every seat, rather than the manufacturer's design seat back angle, will allow comparison of height and backset measurement from seat to seat.

As indicated above, in petitioning for reconsideration, DaimlerChrysler argued that there are several vehicle concepts (e.g., light trucks, minivans, SUV's and full size vans) in which a seat back angle of 25 degrees is not realistic, thus leading to a much larger backset using NHTSA's procedure as compared to the real world situation. That company stated that SAE J–1100 July 2002 recommends a 22 degree nominal torso design angle. It urged the agency to use the "design torso angle."

Also, the Alliance stated that 5th percentile female stature occupants do not sit at 25 degree torso angles, but prefer about 18 degrees and some as little as 14. It argued that this more upright back angle greatly reduces the backset to the point it interferes with the head of some of these occupants, not just the hair.

i. *Seat Back Angle.* After considering the petitions for reconsideration, we believe a small amount of additional flexibility is appropriate. While we believe the available information shows that no major change is needed, we are persuaded that additional flexibility is needed to account for vehicles with very upright design angles. As indicated above, in petitioning for reconsideration, DaimlerChrysler argued that there are several vehicle concepts (e.g., light trucks, minivans, SUV's and full size vans) in which a seat back angle of 25 degrees is not realistic.

Additional flexibility in this area could be provided either by adjusting the backset limit or the specified seat back angle. This is because the angle at which the seat back is set for backset measurement affects the amount of measured backset.

To the extent the agency reduces the seat back angle that is used for backset measurement, the backset limit is easier to meet. In the preamble to the final rule, we assumed a 3 mm reduction per degree of backset. Based on subsequent information provided by Ford and DaimlerChrysler, we believe a range of 3 mm to 4 mm may be more accurate. However, the exact value is vehicle-specific and influenced by such factors as the shape of the head restraint.

While we considered either adjusting the backset limit or the specified seat back angle, or a combination of the two approaches, we decided that the best way to provide appropriate additional flexibility is to specify design seat back angle instead of the 25 degree angle. This approach maximizes flexibility for vehicles with very upright design angles while minimizing the potential lost benefits.

As discussed in Supplement to the Final Regulatory Impact Analysis, the impact on benefits of changing the backset limit to 60 mm or changing seat back angle to design angle is similar (about a 20 percent loss in benefits). However, for vehicles with seat back angles significantly steeper than 25 degrees, e.g., 20 degrees, specifying seat back angle provides significantly greater flexibility.

As a practical matter, this approach provides some additional backset flexibility for most seats, since NHTSA estimates that the sales weighted average front seat design seat back angle is 23.5 degrees.[22] Specifying that such a seat be tested at the design seat back angle instead of 25 degrees is roughly equivalent to increasing the backset limit by 4.5 to 6 mm. Therefore, this will also help address possible concerns related to comfort.

We note, in considering specifying design angle instead of 25 degrees, that our analysis of UMTRI data does not show a good correlation between design seat back angle and selected angle. However, the UMTRI data was limited to 17 vehicles with design angles ranging from 22 to 26 degrees, with a majority of vehicles having design angles of 24 and 25 degrees. Because the data represent such a limited number of different design angles, it has limited value in assessing the correlation between average selected seat back angle and design angle for a spectrum of design angles. We have not seen data to contradict our belief that a reasonable way of identifying the seats that are most likely to be used at very steep angles is to rely on the manufacturer design seat back angle.

We also note that while the HRMD was designed to be used at 25 degrees, the device has an articulation to allow for adjustment of the head for varying torso angles. The device can therefore be used at different seat back angles. It is relatively rare that a seat can be adjusted to have a seat back angle of exactly 25 degrees. Thus, even prior to the change to specify seat back angle, the standard specified testing in the adjustment position closest to 25 degrees. For these reasons, we believe there is no problem in testing vehicles at the design seat back angle. We also note that specifying testing at design seat back angle will slightly affect the height requirement.

ii. *55 mm Backset Limit and Comfort.* As we respond to issues concerning the backset limit and comfort, we will take account of the additional flexibility provided by specifying design seat back angle. As indicated above, the sales weighted average design seat back angle is 23.5 degrees. Specifying that such a seat be tested at the design seat back angle instead of 25 degrees is approximately equivalent to increasing the backset limit by 6 mm.

In petitioning for reconsideration, DaimlerChrysler cited consumer complaints about the head restraints of a vehicle it said were designed to meet the 50 mm backset requirement proposed in the NPRM. The petition submitted by the Alliance also cited this

[21] SAE J1100—Motor Vehicle Dimensions. All 1999–2000 make and model data submitted to NHTSA. The data ranged from 18 to 28 degrees.

[22] "Technical Analysis Relevant to Petitions for Reconsideration to the December 14, 2004 FMVSS 202a—Head Restraints Final Rule."

experience. We note that DaimlerChrysler had also cited this experience in commenting on the NPRM, but provided additional information in the context of its petition for reconsideration. We also note that some of the information submitted by DaimlerChrysler about this issue is subject to a claim of confidentiality.

In discussions with DaimlerChrysler, we were advised that the design backset target for the vehicle in question was 47 mm. This was intended to provide a margin of compliance, although not one sufficient for purposes of certification. In light of DaimlerChrysler's petition, NHTSA measured the backset on two versions of this vehicle. Since the measurements on one of these vehicles was made with the seat backs a few degrees steeper than the 25 degrees specified in the standard, the measurements were normalized by adding 4 mm [23] to the backset for each degree less than 25 degrees. The average backset was 28 mm in the lowest position of adjustment and 18 mm in the highest position of adjustment.

We subsequently learned from DaimlerChrysler that the 47 mm target was based on SgRP instead of H-point. However, under the final rule, backset measurement is based on H-point. This change is significant. As discussed in the final rule preamble, the SgRP is a theoretical design point in the vehicle, usually representing the most rearward normal riding or driving H-point. It does not necessarily represent the actual vehicle build, e.g., it may be 15 or 20 mm forward, rearward, above or below the actual vehicle H-point. The HRMD defines the H-point of the specific seat being measured and thus is representative of the actual backset experienced by an occupant of that seat. Since DaimlerChrysler's 47 mm target was based on SgRP instead of H-point, it is not surprising that the backset measured according to the final rule is very different.

Given that the as-built backset, measured using the HRMD in accordance with the final rule, is on the order of half of the value cited in the petition, we believe the complaints about this vehicle are not germane to the 55 mm requirement included in the final rule.

As part of evaluating the petitions for reconsideration concerning the backset, we looked at more recent data from IIHS concerning the backset of model year 2004 vehicles. That organization measured the backset of vehicles representing approximately 100 make/models, or about half of the vehicle fleet, using the same procedure as that of the final rule. Some make/models were measured multiple times using different available seat trim levels. Nearly half of the vehicles (47.1 percent) had a backset of 55 mm or less. Moreover, more than 30 percent had a backset of 45 mm or less, and 25 percent had a backset of 40 mm or less.

We also reviewed our Office of Defect Investigation database for consumer complaints about head restraints. The search was restricted to 2000 and later model year vehicles. Two hundred and five complaints were found. These were categorized as various types of complaints. The vast majority of the complaints (59%) pertained to the lack of head restraint in the rear seating positions of vehicles. Most of these were for pickups with two seat rows. Only two complaints (1%) specifically mention a lack of sufficient backset. The vehicles with these complaints were a 2003 Toyota Camry and a 2004 Honda Pilot.

Extrapolating the IIHS data to the entire vehicle fleet, we find that nearly half of current head restraints have a backset of 55 mm or less (tested at a seat back angle of 25 degrees). Yet there is an absence of any significant number of consumer complaints. Therefore, we do not accept Ford's study claiming that the minimum backset required to satisfy 85 percent of drivers is 69 to 89 mm (with an even higher value needed for a regulatory requirement due to issues related to variability). Ford did not submit many details of how its comfort study was performed. However, it is evident that the study was not a blind study in that the participants were aware of what was being evaluated. This could have had a strong influence on the results as well as the wording of the questions asked of each participant. In any event, no evidence has been presented that a substantial number of drivers are dissatisfied with the backset of the head restraints in half of all vehicles.

We have also considered petitioners' arguments related to the "design target" needed to ensure compliance with a 55 mm backset limit. We recognize that manufacturers routinely design their vehicles with a compliance margin to meet regulatory requirements. Such margins are intended to address both measurement variability (the factor which led NHTSA to increase the backset limit by 5 mm in the final rule as compared to the NPRM) and build variability. However, we do not accept DaimlerChrysler's claim that companies must design to 26 mm in order to ensure compliance with a 55 mm limit, or Ford's claims that companies must design to 19 mm.

DaimlerChrysler estimated the design tolerance by providing theoretical ranges for various aspects of the seat design and estimating their effect on overall backset. These estimates were then summed to provide an overall estimate. One problem with this estimate is that it is based on theoretical design tolerances as opposed to measurements of actual seats. Thus, there is no way to know what confidence level of variance they represent.

Another problem with this estimate is the adding or stacking of these tolerances. Stacking of tolerances tends to provide an overestimate of the overall tolerance rather than a statistically valid estimate. A more appropriate technique would be to use a pooled variance technique such as the agency used in its estimates of backset measurement variability.[24] Finally, DaimlerChrysler provided no information or arguments about the extent to which it is possible for manufacturers to improve these tolerances.[25]

We also believe there are several problems with Ford's estimate of a target backset value. Ford estimated the mean shift to be in the range of -3.2 mm to -27.9 mm and from these estimates stated that with additional process controls a shift of ± 15 mm was possible. However, the mean shift estimates how close the as-built seat is to design. It is not an estimate of random build variance.

We believe that one of the causes for this difference is the reliance of designing seats around the theoretical SgRP, which can deviate substantially from the actual H-point. We saw this in the results of the backset measured for the DaimlerChrysler vehicle which had a design backset of 47 mm based on the SgRP location, but when measured as built had a backset of about half of that value. However, manufacturers can deal with this issue by designing their vehicles and seats in light of the actual H-point for purposes of FMVSS No. 202a. Thus, we do not accept a mean shift estimate of ±15 mm as being necessary for purposes of meeting the backset requirement. Supporting this conclusion is data submitted by Ford

[23] For every degree the seat back was more upright than 25 degrees, the measured backset was increased by 4 mm to approximate the backset measurement with the seat back set to 25 degrees.

[24] "Technical Analysis Relevant to Petitions for Reconsideration to the December 14, 2004 FMVSS 202a—Head Restraints Final Rule."

[25] DaimlerChrysler did submit confidential information to indicate the cost associated with reducing the seat design tolerance. However, there was insufficient information provided to evaluate the cost estimates.

reporting capability of achieving a shift of as little as 3.2 mm.

In addition to the estimate of mean shift in backset, Ford provided estimates of variability around the mean for three vehicles. It also submitted data it described as seat-to-seat variability for a Lincoln Town Car.

The s.d. for build variability ranged from 5.4 mm to 7.2 mm. Using a pooled variance method, the Ford data gives an s.d. of 6.6 mm. However, the Ford data also included measurement variability.

Using data submitted by Japan, NHTSA has made an estimate of seat build variability separate from measurement variability. (This analysis is included in the Technical Analysis [26] noted earlier.) The technique used in the agency's analysis separates the effects of the variability associated with the technician, technician repeated measures, the seat build, and any interaction between these covariates. The s.d. for build variability of the three seats ranged from 2.7 mm to 7.3 mm, with a combined s.d. of 3.75 mm.

The s.d. of lab-to-lab measurement variability in NHTSA's study was estimated to be 2.82 mm. Transport Canada's study and NHTSA's analysis of data submitted by Japan show much smaller measurement variability.

We can estimate the combined build and measurement variability by summing the squares of the s.d. values and taking the square root. Thus, the combined s.d. is about 4.7 mm = $[(2.82)^2 + (3.75)^2]^{0.5}$. The 2 s.d. estimate of the combined measurement and build variability is 9.4 mm. Subtracting this value from the 55 mm backset limit, we arrive at a value of 45.6 mm. This is far larger than the estimates of 26 mm and 19 mm suggested by DaimlerChrysler and Ford as "design targets."

We note that NHTSA does not make estimates of the "design targets" that manufacturers may need to adopt in order to ensure that all of their vehicles comply with a particular requirement. It is up to each manufacturer to determine what is necessary to certify using due care that each of its vehicles comply with all applicable safety standards.

The above analysis is provided to help show why we do not believe the estimates provided by DaimlerChrysler and Ford are necessarily representative of what is achievable. Apart from accounting for measurement variability, the design target a manufacturer may need to adopt in order to ensure that all of its vehicles will comply with a particular requirement is primarily dependent on the manufacturer's choices concerning design and manufacturing tolerances, and its quality control measures.

We also note, in the context of addressing variability, that some manufacturers have argued that the agency should adjust the backset limit in light of an additional type of variability, that is associated with using the same seat structure for multiple designs related to options or trim levels. An example of this is the differences in measured backset for the 2000 Ford Taurus and 2000 Mercury Sable, noted earlier. We believe this is an issue that manufacturers can address in the design process of each seating option or trim level, i.e., ensuring that each such design will enable the vehicle to meet the backset limit.

As indicated above, the agency stated in the preamble to the final rule that one method a driver could use to achieve additional head restraint clearance would be to increase seat back angle slightly. Although DaimlerChrysler and the Alliance stated in their petitions that this solution had been unacceptable for some, no supporting information was provided. Moreover, as indicated above, that experience was in the context of a seat with a backset far under the specified amount of the final rule. Based on seat geometry, movement of a seat back one recliner click would have a minimal effect on the vertical eye location of a driver, and a particularly small effect for a seat in a more upright position.

On the issue of whether the backset limit should be increased because women are at greater risk of neck injury than men, we note that the data indicate that reduced backset reduces the risk of neck injury. This suggests that reduced backset is even more important for women than men.

We recognize the importance of acceptable comfort for all occupants, including those of short stature. However, we believe that the available data do not support the view that the 55 mm requirement will create any significant problems for a well designed and well built seat. As indicated above, nearly half of the current vehicles measured by IIHS had a backset of 55 mm or less, more than 30 percent had a backset of 45 mm or less, and 25 percent had a backset of 40 mm or less. Moreover, these calculations were made using a seat back angle of 25 degrees, and the change to design seat back angle will provide additional flexibility to typical vehicles. Thus, a large number of vehicles in the current fleet show that the new requirement can be met without causing significant comfort issues. Finally, as discussed further in the Supplemental Final Regulatory Evaluation (SFRE), increasing the backset limit along the lines suggested by the petitioners would substantially reduce the benefits of the final rule.

For these reasons, as well as the ones discussed in the final rule preamble, we decline to increase the 55 mm backset limit.

iii. *55 mm Backset Limit, H point and SgRP.* In December 2006, the Alliance recommended for FMVSS No. 202a [27] that the backset limit be kept "at no less than 55 mm at the design torso angle using a measurement procedure about the "R" point (SgRP) derived from ECE R17 in place of a backset requirement of 80 mm at the design torso angle using the "H" point (HRMD) measurement method." This recommended alternative would thus replace the one it presented in its petition for reconsideration. The Alliance stated that this would preserve the benefits the agency estimated in the FRIA.

We note that while the Alliance's recommendation is an alternative method of addressing concerns it raised in its petition for reconsideration about the backset limit, it represents a very different approach. In order to ensure that the agency can fully consider particular requests, petitioners for reconsideration should be specific in their petition about the relief they desire. We also note that while petitioners for reconsideration did not request that the agency use SgRP for measuring backset, the issue was raised in connection with measuring head restraint height.

As to the issue of using H-point or SgRP, the agency addressed this subject in the preambles to the NPRM and final rule. Use of H-point measures the actual vehicle as manufactured and hence the actual protection provided to vehicle occupants. By contrast, the SgRP is a theoretical design point in the vehicle and does not necessarily represent the actual vehicle build. Therefore, we continue to believe that use of H-point is a better approach and decline to change to SgRP.

B. Rear Seat Non-Use Positions

1. Petitions

In the head restraint final rule, NHTSA permitted rear head restraints to have non-use positions in limited circumstances. The agency decided to permit such positions to address concerns about rear visibility. However, the agency also wanted to reduce the

[26] "Technical Analysis Relevant to Petitions for Reconsideration to the December 14, 2004 FMVSS 202a—Head Restraints Final Rule."

[27] The Alliance also made this recommendation for the GTR that is under development.

risk of injuries stemming from misused head restraints.

In light of these considerations, the agency adopted the following requirement: (1) A head restraint in a non-use position must automatically return to a normal "use position" when the seat is occupied by a 5th percentile female dummy whose midsagittal plane is aligned within 15 mm of the head restraint centerline; *or* (2) the head restraint must be capable of manually rotating at least 60 degrees forward or rearward in a vehicle vertical longitudinal plane between the "use position" and the non-use position. In explaining its decision to allow the latter of these two options, the agency stated that if the head restraint is capable of rotating forward or rearward by at least 60 degrees to achieve a non-use position, it would clearly be in a non-use position, thereby informing the occupant that the head restraint is available, but out of place.

The agency did not adopt a proposed provision that would have required that the non-use positions cause a 10-degree change of the torso angle of the J826 manikin. This proposed requirement was based on the premise that the non-use position should give the occupant an obvious physical cue when the head restraint is not properly positioned. Given its decisions not to mandate rear head restraints and to allow head restraints to be removable without the use of tools, the agency concluded that it would be incongruous to mandate a possibly complex seat mechanism to ensure that non-use positions provide a physical cue to the occupant in the form of a 10-degree change to the torso reference angle.

Petitioners for reconsideration asked the agency to make several changes in the requirements for rear seat non-use positions. The Alliance and Ford petitioned the agency to allow head restraint designs that manually retract (without having to rotate) to non-use positions and that must be manually repositioned to in-use positions.

The Alliance stated that since publication of the NPRM, many new vehicles have been designed such that the rear seats retract into the floor. The head restraints on these seats can be lowered to a position nearly flush with the top of the seat back, allowing the seat to be stowed without head restraint removal. It argued that the folding head restraints permitted by the final rule would take up too much space below the floor. It also argued that removable head restraints allowed by the final rule are not preferred by customers and are less likely to be available when needed. Ford stated that strong customer demand for vehicle functionality requires rear seats with folding or otherwise stowable seats.

The Alliance argued that disallowing retractable head restraints may overly restrict otherwise acceptable head restraints and is contrary to the interests of occupant safety. Ford stated that the restriction is not reasonable, necessary or practicable. The Alliance requested that the agency allow non-use positions of less than 700 mm, and in-use adjustment positions between 700 mm and 750 mm.

GM recommended several options for visual cues to indicate that a rear seat head restraint is in a non-use position. These included a permanent label similar to that already present in some Volvo models, and indicators that deploy only when the head restraint is in the lowest position.

The Alliance, BMW and DaimlerChrysler requested that the manually stowed non-use position compliance option originally in the NPRM be reinstated except that the required torso angle change should be no more than 5 degrees. DaimlerChrysler stated that the agency's efforts to minimize adjustability misuse may have the unintended consequence of threatening the very installation of rear seat head restraints. It argued that a 5 degree torso angle change would be clearly uncomfortable for an adult and would satisfy the agency's concern about misuse.

BMW stated that it believed that NHTSA did not intend to inadvertently prohibit designs that meet the agency's proposed 10-degree change in the torso reference angle criteria, and it believes this added option can provide occupants with an obvious physical cue that the head restraint is not properly positioned. That company stated that, based on the NPRM, it had designed seats to meet the 10-degree change in torso reference angle option. However, BMW recommended that the agency adopt a 5-degree change in torso reference angle option.

2. Agency Response

After considering the petitions, we have decided to add an option for a 10-degree change in the torso reference angle criteria. Head restraints that meet this option will give the occupant an obvious physical cue when the head restraint is not properly positioned. We are not adopting a 5-degree change in the torso reference angle criteria since, for reasons discussed below, we believe this option would not provide an obvious physical cue. We are also not adopting the other changes requested by petitioners for reasons discussed below.

In the December 2004 final rule, the agency did not adopt the proposed 10-degree torso angle change option for rear seat non-use positions in light of concerns raised by commenters that it was overly burdensome. We adopted instead the option for head restraints that fold forward or rearward by 60 degrees. We concluded that although such designs would not necessarily provide a physical cue, they would provide a clear visual cue that the head restraint is not in a proper use position.

However, based on our review of the petitions for reconsideration, we believe that it would be useful to include the 10-degree torso angle change option as well. As indicated above, BMW stated that it has designed head restraints to meet this option.

Given the requests of petitioners, we carefully considered whether a 5-degree torso angle change option would provide an appropriate physical cue. To explore this question, the agency developed a human factors study to determine if an occupant would be likely to reposition their head restraint as a function of the torso angle change the head restraint produced in the non-use position.[28]

The baseline seat for this study was the second row captain's chair of a 2005 MY Dodge Grand Caravan. In its OEM configuration, the seat created a nominal 5 degree torso angle change between its non-use and in-use positions. The head restraint was then modified by introducing two forward offsets that generated either a 10 or 15 degree torso angle change. One other condition that was used was a label attached to the head restraint in the 5-degree condition. The label was modified from a label used by Volvo.

Of the participants who adjusted the head restraint, 88% adjusted it immediately after sitting down. The 5-degree condition and label condition were unsuccessful in motivating participants to adjust the head restraint. For the 5-degree condition, only 3 out of 20 participants (15 percent) adjusted the head restraint. None of the participants (0 out of 20) adjusted the head restraint as a result of the label. The 10-degree condition had a nearly 80% success rate, 19 out of 24. Only four participants were run in the 15-degree condition since the percentage of participants who adjusted the head restraint in the 10-degree condition was high. The 15-degree condition had a 100% rate of adjustment.

[28] DOT HS 809 957, "Rear Seat Stowable Head Restraint Non-Use Position Torso Angle Study," November 2005.

In light of the results of this human factors study, which demonstrated the effectiveness of a 10 degree torso angle change and the ineffectiveness of a 5 degree torso angle change, we decline to adopt petitioners' request for a 5-degree torso angle change option.

We also decline to adopt the other changes recommended in this area by petitioners. As to the issue of permitting manually retractable head restraints, we continue to believe that head restraints should not have non-use positions unless either there is an automatic return to a normal use position feature or there is a clear physical or visual signal to occupants that the head restraint is not in a position intended for use. This is necessary to help prevent unintentional misuse. A head restraint that simply retracts to a lower position intended to be a non-use position looks the same to an occupant as a head restraint that has a position of adjustment below the required 750 mm height. There would be no physical or visual cue leading the user to adjust the head restraint to the in use position.

While we appreciate concerns that current designs for rear seats that retract into the floor may not come within one of the available options, petitioners have not shown that these options could not be met by other designs, including ones with more novel packaging. We note that the agency extended the compliance date for the rear seat requirements to September 1, 2010. This provides additional leadtime for design changes. As discussed elsewhere in this document, we are also providing a one-year 80 percent phase-in for the rear seat requirements.

As to the Alliance's request that the agency allow in-use adjustment positions between 700 mm and 750 mm, we note that the final rule specified that the lowest in-use position must be at least 750 mm. The rationale for this minimum height requirement was provided in the NPRM and final rule. Of particular note, the 750 mm requirement ensures that the head restraint will provide benefits to a higher percentage of rear seat occupants.

No new information was provided to support a change in this requirement. Issues related to visibility and folding seat storage are addressed by allowing for removal and non-use positions. The gap requirements assure that short-statured occupants will have head restraint protection even when the head restraint is at the 750 mm position. We therefore decline to make this requested change.

As to the request for other options for visual cues to indicate that a rear seat head restraint is in a non-use position, including labels, no information has been provided to show that such cues would be effective. As noted above, in our human factors study, none of the participants (0 out of 20) adjusted their head restraints as a result of a label. Accordingly, we are not adopting such additional options.

Finally, we note that in December 2006, the Alliance asked the agency to include all of the non-use alternatives within the current GTR draft text, including a 450 mm $\times$ 55 mm $H_{LE} \times S$ "Discomfort metric." The request concerning "discomfort metric" was not included in the Alliance's petition. It is, however, relevant to the concerns the Alliance raised about rear non-use positions and has similarities to the change in torso reference angle approach. The specific values for the "discomfort metric" are still under discussion in the context of developing the draft GTR. Before adopting such an approach, we would want to more carefully analyze it. Accordingly, we are not adopting a "discomfort metric" at this time.

C. Dynamic Option

The agency included an upgraded optional dynamic test requirement in the head restraint final rule which, if chosen, allows a manufacturer to forgo certification to the majority of static test requirements (S4.3 and S5.3). While the dynamic option is intended to facilitate the continued development and use of "active" head restraint systems, it is available for any head restraint system.

Under the dynamic option, the entire vehicle is exposed to a half-sine deceleration pulse with a target of 8.8 g peak and 88 ms duration. The 50th percentile male Hybrid III dummy in each seat must have a maximum head-to-torso rotation of less than 12 degrees and a HIC15 of less than 500.

While the head restraint standard previously included an optional dynamic test alternative, the agency adopted the upgraded alternative for several reasons. First, the agency wanted the dynamic test alternative to be consistent with the standard's upgraded static test requirements, including the height requirement. The existing performance limit (45 degree head rotation) was such that very short head restraints could comply with the regulation.

Also, the previous dynamic alternative specified use of a 95th percentile adult male dummy. However, the agency had not adopted a specific 95th percentile adult male dummy for regulatory purposes. The agency specified use of the 50th percentile adult Hybrid III dummy to improve objectivity and enforceability.

1. Basic Test Requirement

In petitioning for reconsideration, the Alliance and DaimlerChrysler argued that the test was premature and not adequately supported. They stated that the 12 degree rotation limit has no biomechanical derivation. They questioned the basis for the injury risk curve provided in the preamble of the final rule, which shows whiplash risk associated with head translation rather than rotation. The Alliance and DaimlerChrysler asked the agency to retain the previous dynamic option that specifies a 95th percentile test dummy and a 45 degree head-to-torso rotation.

DaimlerChrysler argued that the agency had not provided any biomechanical data correlating risk of neck injury with head rotation. It claimed that head rotation has been found to be not a good estimator for neck injury. It also argued that the agency did not present a cost-benefit analysis to relate the benefit of reducing head rotation to 12 degrees. That company argued that there has been no quantifiable justification for changing the existing dynamic alternative.

DaimlerChrysler also stated that studies conducted by IIHS for its dynamic head restraint test has eliminated head rotation from consideration as an assessment parameter for whiplash injury. It stated that IIHS has elected to instead use neck tension and neck shear.

Ford argued that the head-to-torso rotation may not be functionally equivalent to the static requirements, and may be design/technology restrictive. It argued that the Volvo WHIPS seat has good field performance yet does not pass the 12 degree requirement. That company asked that the head-to-torso rotation limit be increased to 20 degrees. It argued that this would represent a 10 percent risk of whiplash injury. As an alternative, Ford suggested that the agency use neck moment as the injury criterion.

After considering the petitions for reconsideration, NHTSA has decided to retain the basic dynamic test alternative included in the final rule. We note that the agency previously addressed the general criticisms of this option in both the NPRM and final rule preambles. In the preamble of the December 14, 2004 final rule and in an associated technical report,[29] the agency showed the

[29] Docket No. 2004–19807–05, NHTSA Technical Report, "Injury Criteria and Anthropomorphic Test Devices for Whiplash Injury Assessment. NHTSA has also published this study in the 2005 ESV

biomechanical basis for the development of the head-to-torso rotation limit.

Unfortunately, the agency incorrectly presented in the final rule preamble a graph of head displacement rather than head rotation (69 FR at 74874). The graph should have been the following:

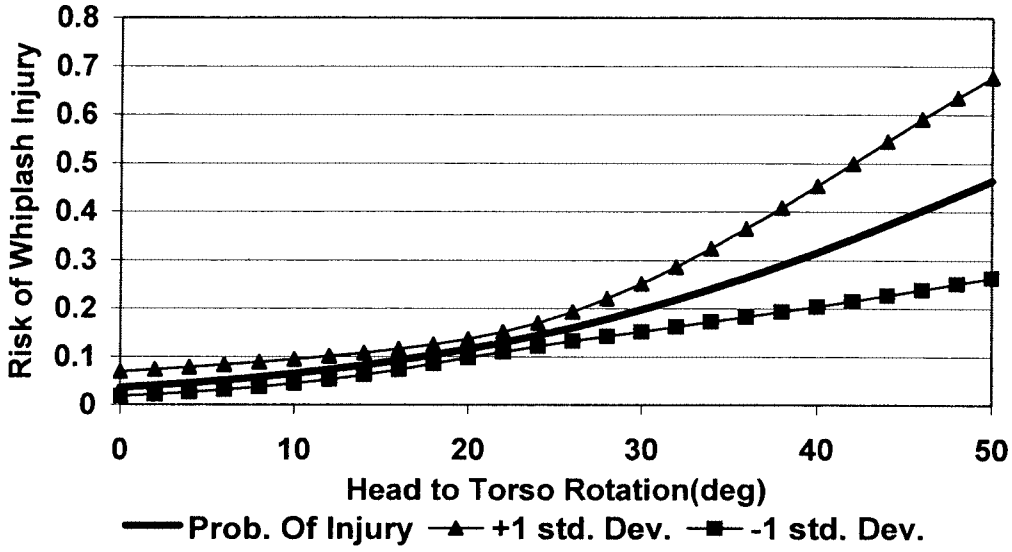

Figure 1. Risk of Whiplash Injury versus Head to Torso Rotation on the Hybrid III 50th percentile male dummy

This correct graph addresses some of the questions raised by the petitioners.

DaimlerChrysler cited a technical paper [30] for its claim that head rotation has been found to be not a good estimator for neck injury. Using statistical and optimization techniques on published biomechanical data, the authors of the paper concluded that neck tensile force alone was the best predictor of AIS 3+ neck injury. All the biomechanical data used for analysis were those where the subject was either uninjured (AIS=0) or the subject sustained AIS 3+ neck injuries. Thus, the resulting injury criterion, neck tension or Nij, are meant for developing AIS 3+ neck injury criterion. There is no way of assessing the risk of AIS=1 neck injuries with these data, which is the AIS level for whiplash injuries. Therefore, we do not accept that company's argument concerning this paper.

As to Ford's request concerning neck moment, we note that lower neck moment was one of the criteria considered by the agency when developing the dynamic option proposal. However, we decided in favor of head-to-torso rotation for the following reasons.

We have decided in favor of head-to-torso rotation because, in the absence of generally accepted injury criteria specifically applicable to whiplash injuries, we believe that a head restraint's ability to prevent whiplash is primarily due to its ability to prevent the rearward translation and rotation of the occupant's head with respect to the torso. The sled tests showed that rearward head rotation seemed to correlate with head restraint position. Other biomechanics researchers have found a similar correlation and used head-to-torso rotations for the evaluation of whiplash injury. The agency is willing to reconsider the dynamic performance criteria if and when more advanced whiplash injury criteria become available. 69 FR 74875 (footnote omitted).

In adopting the upgraded dynamic test, it was our goal to provide a level of safety similar to that of the static requirements. However, given the differences in the basic nature of the test requirements, we do not believe it is possible to provide one-to-one correspondence between the two sets of tests. Thus, a particular vehicle may be able to pass one test but not the other.

For reasons discussed above and in the NPRM and final rule preambles, we do not believe it would be appropriate to simply retain the existing dynamic alternative test requirement. Among other things, that requirement is not consistent with the upgraded static test requirements with respect to the need for higher and closer head restraints. Also, we believe there was a need to specify a specific test dummy to improve objectivity and enforceability.

As to DaimlerChrysler's argument that the agency has not presented cost-benefit analysis related to reducing head rotation to 12 degrees, the agency addressed, in connection with the December 2004 final rule, the costs and benefits of upgraded head restraints. This analysis was presented in the context of head restraints designed to meet the static requirements, the option which is relevant to nearly all current head restraints.

The dynamic alternative simply provides a means to facilitate the development and use of active head restraints, while ensuring the same level of protection as ones meeting the static requirements. For reasons discussed above, it was necessary to reduce the head rotation limit in order to accomplish this, and there were a variety of other reasons why it was necessary to upgrade the dynamic alternative. The agency is not requiring active head restraints, and we do not

conference. Kuppa, S., Saunders, J., Stammen, J., Mallory, A., "Kinematically Based Whiplash Injury Criterion," 19th ESV Conference, Paper No. 0211, 2005. (*http://www-nrd.nhtsa.dot.gov/pdf/nrd-01/esv/esv19/05–0211–O.pdf.*)

[30] DaimlerChrysler cited: Nusholtz, G.S., Di Domenico, L., Shi, Y., Eagle, P., "Studies of Neck Injury Criteria Based on Existing Biomechanical Test Data," Accident Analysis and Prevention, May 2002. We note that the correct citation for this paper is to Accident Analysis and Prevention, Vol. 35, pp. 777–786, 2003.

believe additional analysis concerning costs and benefits of the dynamic alternative is necessary.

As indicated in the discussion in the final rule preamble, data indicate that active head restraints can be designed to comply with the 12 degree head-to-torso rotation limit. Since the publication of the final rule, we have conducted dynamic tests using four different manufacturers' active head restraints. The results are shown in Table I. Three of the four seats had head-to-torso rotations of less than 7.7 degrees.[31] One seat exceeded the 12 degree limit (17.9 degrees). This data shows that, in general, active head restraints can perform very well in the dynamic option. However, this is a seating systems test that assesses the performance of multiple seat characteristics such as the seat back compliance and seat back recliner mechanism, in addition to the head restraint. So the mere presence of an active head restraint does not assure compliance. Also after publication of the final rule, it has been reported to the agency that a production Toyota Whiplash Injury Lessening (WIL) seat, optimized for rear impacts, but not an active head restraint, achieved a head-to-torso rotation of 6 degrees when tested to the dynamic compliance option.[32] The Toyota WIL seat shows non-active systems can be designed to pass the test.

TABLE I.—NHTSA TESTING OF MY2006 ACTIVE HEAD RESTRAINTS

Vehicle	Head-to-torso rotation (deg.)
Honda Civic	7.7
Nissan Altima	17.9
Saab 9–3	4.1
Subaru Outback	4.1

We note that the Alliance requested that if the agency does not otherwise change the 12 degree limit, a 10 percent tolerance should be added for purposes of compliance.[33] This would, in effect, change the limit to 13.2 degrees. However, the Alliance did not present evidence that the 12 degree limit cannot be met by vehicles with active restraints. We therefore decline to make this change.

We do not believe that the fact that the Volvo WHIPS seat does not pass the 12 degree limit is a reason to change the requirement. The primary reason for including the dynamic test option is to facilitate use of active restraint systems that require a certain range of motion to work effectively and which, when undeployed, might not meet the static test requirements.

The Volvo WHIPS seat does not present this type of active system. It incorporates features in the seat recliner mechanism to help optimize rear impact protection, but it does not "deploy" as such. We have been advised that the Volvo WHIPS seat meets the static test requirements.[34] Therefore, the dynamic test option is not needed to permit this type of system.

We also observe that Ford indicated that IIHS rated all of the 2005 Volvo models using the WHIPS seat as "Good." However, IIHS published a study in April of 2005, through the Highway Loss Data Institute (HLDI), which examined the rate of personal injury protection (PIP) claims in passenger cars struck in the rear for different vehicle classes (by vehicle weight), different types of head restraints (active, non-active), and different types of seats (WHIPS, and no WHIPS).[35] The results of the study indicate that for each vehicle class, active head restraints outperform non-active head restraints. In addition, within each vehicle class, the PIP rates of seats with active head restraints rated as "marginal" or "poor" by IIHS was lower than the PIP rates of seats without active head restraints rated as "good" by IIHS. The study indicated that Volvos equipped with WHIPS seats did not reduce relative PIP rates when compared to vehicles with similar size and weight.

2. Trigger Point

The Alliance stated in its petition that there is no provision in the dynamic option for a trigger point for a sensor driven deployable head restraint and that such a provision should be included. It stated that such a specification would be similar to one included in FMVSS No. 208 for the sled test option, and argued that such a provision should be included in the head restraint standard to ensure objective testing.

In a meeting with NHTSA, BMW argued that for its dynamic head restraint design to be adequately tested, a trigger or deployment time needs to be part of the test procedure.[36] The BMW active head restraint uses a pyrotechnic design. Once the threshold acceleration is sensed, the pyrotechnic element fires and the head restraint moves about 40 mm to 60 mm forward, depending on the height adjustment, and rotates 9 degrees towards the occupants head.

BMW argued that the half-sine deceleration pulse is not representative of the pulse that its vehicle would sense in a rear impact. However, it believes the total ΔV is acceptable. BMW provided a data plot of a rigid barrier striking one of its vehicles at 35 km/h in comparison to a sled pulse within the FMVSS 202a corridor. The slope of the acceleration was much higher for the barrier impact, although at approximately 80 ms they both have a 17 km/h ΔV. BMW stated that its system would deploy in the rigid barrier impact, but might not in the sled test. It stated that if it were to adjust its algorithm to deploy in the test, it could get deployments in the field when it is unnecessary to protect the occupant.

After considering these requests, we decline to make the requested change. As discussed below, we believe that the specified sled pulse is representative of one experienced in a crash when the head restraint is needed to provide protection. Therefore, we believe the sensors should be designed to activate the head restraint in such a situation. We are concerned that if the agency specified a trigger point, i.e., specified that the head restraint be activated at a specific point in time as part of the test procedure, there would be no test of the sensors and no assurance that the head restraint would activate during the type of crash simulated by the sled pulse.

We do not consider the provisions of FMVSS No. 208 with respect to its sled test as indicative that a trigger point is needed for the head restraint sled test. The FMVSS No. 208 sled test was adopted as a special measure to help address the problem of aggressive air bags. The sled test was adopted to enable vehicle manufacturers to quickly depower all of their air bags.

There are no similar time issues related to active head restraints, and manufacturers have time to develop algorithms to ensure that such head restraints activate in a timely manner during the sled test, without activating

[31] Copies of the test reports will be placed in the docket.

[32] See the docket for this document.

[33] We note that when NHTSA includes tolerances in the safety standards, vehicles or equipment must meet the specified requirements at all points within the specified tolerances. Thus, tolerances within the safety standards do not provide compliance margins.

[34] In supplemental information submitted to the agency, Ford reported a 13 mm backset for the Volvo S80 (Docket No. NHTSA–2004–19807–25). This is consistent with agency backset measurements of the S40, which were well below the backset limit.

[35] Insurance Special Report —Head Restraints and Personal Injury Protection Losses, (2005). Highway Loss Data Institute (HLDI).

[36] Docket No. NHTSA–2004–19807–21.

in situations where deployment is unnecessary. We note that BMW has not presented evidence to the agency that this cannot be done with its system.

As to the issue of the representativeness of the crash pulse, we believe that the appropriateness of the ΔV and average acceleration of the FMVSS No. 202a pulse is supported by a 2002 Swedish study by Krafft and others. This study examined rear impact crashes with crash recorders where crash pulse was a known (66 such crashes).[37] It examined the relationship between whiplash injury risk and parameters such as ΔV, peak acceleration, average acceleration, and average windowed acceleration for 18 ms, 36 ms, and 80 ms. It found that average acceleration best correlated with whiplash injury risk.

For most occupants who had whiplash symptoms for longer than a month, the mean acceleration of the crash pulse was greater than 4.5g and above a ΔV of 15 km/h. For this group, the average mean acceleration was 5.3 g and the average ΔV was 20 km/h. The FMVSS No. 202a crash pulse has a 5.6 g average acceleration and 17.3 km/h ΔV.

We are including in the Technical Analysis [38] noted earlier additional analysis concerning why we believe that the sled test pulse is appropriate.

3. Dynamic Angular Measurement

The Alliance, in reference to the procedure specified in S5.3.9 for calculating angular displacement, stated that Part 572 does not specify instrumentation for determining the angular position of either the head or the torso of the Subpart E dummy. It stated its understanding that agency tests have used magnetohydrodynamic (MHD) angular rate sensors mounted in the head and torso. The Alliance stated that if the agency plans to use these sensors for the FMVSS No. 202a dynamic tests, this instrumentation and its mounting (and any related changes to the dummy to offset the added mass of the MHD sensors) should be specified in Part 572 or in the FMVSS 202a test procedure, along with any algorithms that will be used to process the data.

We note that S5.3.9 does not specify specific instrumentation, but does specify that the instrumentation and algorithm to be used is capable of determining the relative angular displacement to within one degree. While we have considered the Alliance's request, we have decided not to specify the specific instrumentation. A variety of types of instrumentation can be used to make the specified measurements, and we believe that there is no reason to be more specific.

We have made clarifying changes in the regulatory text to make it clear that the Hybrid III dummy is fitted with sensors to measure rotation between the head and torso, and that the dummy with the sensors is to still meet the specifications in 49 CFR Part 572 Subpart E.

4. Seat Back Angle

We note that the agency was not asked to change the 25 degree seat back angle specified for the dynamic test alternative, and are not making such a change. Concerns related to the static backset limit and comfort are not relevant to the dynamic test. Absent this consideration, we believe it is preferable to test seats in a consistent way with respect to seat back angle.

5. Technical Amendments

The Alliance pointed out an incorrect reference in S5.3.7.4. We are correcting that reference, from S5.3.7.4 to S5.3.7.5.

We note that maintaining the 25 degree seat back angle for the dynamic test and specifying design seat back angle for all other testing requires rearranging the regulatory text. S5.1 previously specified the seat back angle for all tests was 25 degrees. We have moved this specification to S5.3.4, which deals with the test setup for the dynamic test. S5.1 contains a specification that all tests, except the dynamic test (S5.3) and the backset for a specific type of head restraint not attached to the seat (S5.2.3), be performed at design position.

We are also making two technical clarifications related to seat setup. S5.3.4 previously contained specification for the seat cushion adjustment for the dynamic test. This has been brought forward to S5 because it is relevant to the static testing as well. Finally, S5.3.4 specified that seat cushion and seat back adjustment be made "without using any controls that move the entire seat." This prohibition is unnecessary and inconsistent with S5, which does not make this limitation.

D. Clarification of Removability Requirement

The final rule provided that head restraints "must not be removable without a deliberate action distinct from any act necessary for adjustment" (S4.5). Several petitioners requested clarification of this provision.

The Alliance stated that the rule is ambiguous for two adjustment/removal control scenarios. First, it stated that it believes that a button that would be pushed to an initial adjustment position to adjust head restraint height and which then must be pushed further to a more depressed position to permit removal of the head restraint would comply with the requirement of providing a "deliberate action distinct from any act necessary for adjustment." The Alliance requested confirmation that a single actuating device for adjustment and also for head restraint removal would comply with the standard when there are two distinctive positions for setting of the actuating device to perform the different operations of head restraint adjustment and head restraint removal.

Second, the Alliance stated that, in addition, its members are unsure whether the new limits on actions to remove head restraints would apply to current head restraints that have a control button that must be pushed to lower the head restraint, but not to raise it to a higher adjusted position. It stated that to adjust the head restraint higher, the head restraint is simply pulled upward. The Alliance stated that it believes that the combined action of pushing the same button used to adjust the head restraint down while pulling the head restraint up would constitute a "deliberate" action distinct from any act necessary for adjustment. It noted that the agency's CTP includes a statement that pushing the same button to adjust height and to remove the restraint is not permitted. The Alliance stated that it disagrees with this interpretation and stated that it is not consistent with ECE 17.

DaimlerChrysler and Johnson Controls also raised the same concern as the latter one made by the Alliance. DaimlerChrysler suggested that the language be reformulated to read: "The head restraint must not be removable without a deliberate action distinct from any act necessary for upward adjustment."

After considering the petitions for reconsideration, we have decided to adopt the language suggested by DaimlerChrylsler. The purpose of this provision was to prevent head restraints from accidental removal when being adjusted. This is a potential problem when the head restraint is being adjusted in an upward direction but not a downward direction.

As to the Alliance's question concerning whether a head restraint

[37] Krafft, M., Kullgren, A., Ydenius, A., and Tingvall, C. (2002) Influence of Crash Pulse Characteristics on Whiplash Associated Disorders in Rear Impacts—Crash Recording in Real-Life Impacts, Traffic Injury Prevention, Vol. 3 (2), pp 141–149.

[38] "Technical Analysis Relevant to Petitions for Reconsideration to the December 14, 2004 FMVSS 202a—Head Restraints Final Rule."

design with a push button that would be pushed to an initial adjustment position to adjust head restraint height and which would be pushed further to a more depressed position to permit removal of the head restraint would comply with the requirement regarding providing a deliberate action distinct from any act necessary for adjustment, the answer is no. This assumes, consistent with the language we are adopting that was suggested by DaimlerChrysler, that the button would permit adjustment in the upward position.

As we understand the design at issue, the action required for adjustment and the action required for removal would be pushing the same button. The fact that the button would need to be pushed further for one scenario than the other would not be sufficient to make it a distinct deliberate action. However, pulling or twisting that same button would constitute a distinct action.

Further, we are aware of designs where the head restraint locks for both upward and downward movement and a single button is used to release the head restraint for adjustment in either direction. Under the new language that same button, activated in the same way, could not be used to release the head restraint for complete removal.

E. Height Requirement

Under the final rule, front seat head restraints must be able to achieve a height of at least 800 mm, and front seat and optionally provided rear seat head restraints must not be adjustable to positions lower than 750 mm. Height is defined as the distance from the H-point measured parallel to the torso reference line defined by the SAE J826 manikin.

As discussed earlier, the agency's decision to change seat back angle from 25 degrees to manufacturer design angle, as part of its response to petitions concerning the backset requirement, has a small impact on the height requirement. Under the final rule, the same specified seat back angle is used for measuring backset and height. In order to maintain this, we are specifying manufacturer design angle instead of 25 degrees for both requirements. This enables both measurements to be taken from the same manikin installation. In addition, we are not aware of any reason why different seat back angles would be used for the two requirements.

In the final rule preamble, we stated that there is a decrease in measured height of 2 to 3 mm for each degree the seat back is more upright. Because the fleet-weighted front seat seat back design angle is 23.5 degrees, the decrease in measured height will typically be about 3 to 4.5 mm. This means that, on average, head restraints will need to be 3 to 4.5 mm taller for front seats as a result of this change. Most rear seat backs are not adjustable, so there is effectively no change in the averaged required height.

DaimlerChrysler petitioned the agency to add what it referred to as a "13 mm acceptance tolerance for audit purposes" to the height limit. This would mean reducing the height limit for front seat head restraints to 787 mm and rear seat head restraint to 737 mm.[39] That company indicated that such a provision would make the FMVSS No. 202a requirement more similar to ECE 17.

Johnson Controls requested that the current procedure for measurement of head restraint height, using SgRP, be retained. It stated that it believes it is inappropriate to utilize an H-point reference, which introduces more variation into the determination of head restraint height than exists today using SgRP.

Johnson Controls also addressed the issue of seat cushion adjustment. That petitioner stated that there is no reference in the final rule for seat cushion adjustment, but that this is covered in the CTP, i.e., highest adjustment position of the seat cushion. Johnson Controls stated that using the highest position of the cushion to determine compliance with head restraint height requirements utilizes a position occupied by smaller occupants to establish conformance with a height requirement intended to address larger occupants.

In a July 20, 2005, meeting with NHTSA, Ford requested that the agency use SgRP instead of H-point in measuring height.[40] The previous version of FMVSS No. 202 used SgRP, as does ECE 17.

The Alliance noted that the regulatory text in S5.2.1 states that the height should be measured using the scale incorporated in the SAE J826 manikin. It stated its belief that the agency's intent was to specify the headroom probe.

The Alliance also stated that it believes there is inconsistency between the seat back positions specified in S5.1 and those indicated in S5.2.1 and S5.2.3. S5.1 refers to an exception to the seat back angle specification that is then specified in S5.2.3.9 (backset measurement). However, S5.2.1 (height measurement) also has an exception to the seat back angle.

As to the issue of measuring height from H-point or SgRP, the agency addressed this subject in the preambles to the NPRM and final rule. Use of H-point measures the actual vehicle as manufactured and hence the actual protection provided to vehicle occupants. By contrast, the SgRP is a theoretical design point in the vehicle and does not necessarily represent the actual vehicle build. Therefore, we continue to believe that use of H-point is a better approach and decline to change to SgRP.

As to seat cushion adjustment, it is the agency's goal to ensure that the specified height requirement is met with the cushion in the worst case position, i.e., regardless of how the cushion is adjusted, the height limit must be met. As to Johnson Controls' argument that this results in a requirement that utilizes a position occupied by smaller occupants to establish conformance with a height requirement intended to address larger occupants, we agree that it is not unreasonable to think that shorter occupants might be biased toward adjusting the entire seat with respect to the vehicle interior. However, we do not have any data showing that different size occupants routinely adjust seat cushion orientation in light of their own height or to believe that only small statured occupants would ride with seat cushions adjusted to yield a higher height with respect to the seat back.

We note that when the agency performed its study of backset measurement variability, discussed earlier, we also assessed height measurement variability. In general, the height variability is similar to that of backset, but we do not see a reduction in variance by taking the average of three measurements. We are including the results of that study in the Technical Analysis[41] discussed earlier.

While we have considered DaimlerChrysler's request that we reduce the specified height requirements by 13 mm, we decline to make that change. That company did not submit data demonstrating difficulties in the meeting the 800 mm height requirement for front seats or the 750 mm requirement for rear seats. As discussed earlier, manufacturers routinely design their vehicles with a compliance margin to meet regulatory requirements. Such margins are intended to address both measurement

[39] We note that when NHTSA includes tolerances in the safety standards, vehicles or equipment must meet the specified requirements at all points within the specified tolerances. Thus, tolerances within the safety standards are not "acceptance tolerances for audit purposes."

[40] Docket No. NHTSA–2004–19807–20.

[41] "Technical Analysis Relevant to Petitions for Reconsideration to the December 14, 2004 FMVSS 202a—Head Restraints Final Rule."

variability and build variability. We are not aware of any issues concerning undue measurement variability with respect to the height requirement. We also note that, unlike the backset limit, small differences in height do not raise comfort issues. We therefore decline to change the requirement.

The Alliance is correct that the scale referred to in S5.2.1 is more specifically the headroom probe. This is a more appropriate designation, and we are revising the language accordingly. We also note that the probe by itself cannot be used to directly measure height, but must be used in conjunction with, for example, a carpenter's square.

We also agree with the Alliance that there is inconsistency in S5.1, since it refers to an exception to the seat back angle used for measurement in S5.2.3 but not the exception stated in S5.2.1. We are therefore adding to S5.1 a reference to S5.2.1 indicating that this section also has an exception to the general seat back angle provision.

F. Gaps Between Head Restraint and Seat Back

DaimlerChrysler stated that it is concerned that the test method specified for the gap requirement could disallow the "shingled" or "saddle" design for head restraints. That company stated that it knows of no way to meet the 60 mm gap requirement in S4.2.4 for shingled or saddle type retractable head restraints, when using the spherical gap measurement procedure in S5.2.4 for gaps between the head restraint and seat. DaimlerChrysler stated that these designs currently are approved to ECE R17 where a linear gap measurement procedure is used. It petitioned that FMVSS No. 202a be harmonized with the ECE R17 procedure for this specific issue. The Alliance stated that further clarification is necessary for the gap measurement.

After considering the DaimlerChrysler and Alliance petitions, we have decided to specify that the gap requirement must be met when the gap is measured either by the existing current FMVSS No. 202a procedure using a sphere or one based on the ECE 17 measurement methodology. We are not aware of any data showing benefits to one methodology over the other.

Also, we are adding a new Figure 4 that we believe will help clarify the requirement when using the sphere.

G. Backset and Height Retention (Lock) Tests

FMVSS No. 202a includes test requirements to help ensure that a head restraint that locks in position will maintain this position when loaded downward (S4.2.6 and S5.2.6) and rearward (S4.2.7 and S5.2.7).

For the height retention test, the seat back is initially braced to prevent it from moving. A 50 N downward force is applied with the round surface of a 165 mm diameter cylinder to establish an initial reference position. During the application of this load, the head restraint is required to not move more than 25 mm. This is necessary to prevent head restraints with very weak locks from displacing to their down position and passing the remainder of the test. The downward load is then increased to 500 N and is held for 5 seconds. The load is then reduced back to 50 N, and the position of the head form is checked to assure that it did not have a change from its reference position of more than 13 mm.

The backset retention test is somewhat more complicated than the height retention test because it is performed in the midst of the displacement test. First, the displaced torso reference angle is achieved by a 373 Nm moment applied through the back pan. This establishes the displaced torso reference line used to test for head restraint displacement beyond 102 mm. Then a 37 Nm moment is applied with the 165 mm spherical head form to establish an initial reference position for the locking test. During the establishment of this initial reference position the loading device is not permitted to move more than 25 mm. This is necessary to prevent head restraints with very weak locks from displacing to a physical stop and passing the remainder of the test in that position.

The moment is then increased to 373 Nm and maintained at that level for 5 seconds. It is during the application of this 373 Nm moment that the head form must not displace more than 102 mm beyond the displaced torso reference line. The moment is then reduced to the 37 Nm reference. The head form must return to within 13 mm of the initial reference position to verify that the locking mechanism is meeting the performance requirement.

We note that in the test procedure outlined above, the bracing of the seat back was introduced in the December 2004 final rule. We stated in the final rule preamble that if seat characteristics were not accounted for by bracing the seat "the horizontal displacement may be larger because of those characteristics." 69 FR at 74867. The return to position limit was also increased, relative to the NPRM, from 10 mm to 13 mm for the same reason.

Petitioners raised several issues concerning the backset and height retention tests. In the sections which follow, we will address each issue and provide our response.

1. Zero-Out Load

Several petitioners, including the Alliance, DaimlerChrysler, Keiper, and Johnson Controls, asked that the agency make a slight modification to the test procedures described above. The modification involves the loading sequence. They recommended that instead of returning to the reference loads of 50 N or 37 Nm after application of the peak load, that the load be reduce to zero and then increased to the reference loads. They believe this will alleviate much of the permanent set associated with upholstery and foam in the head restraint that is not a true measure of structural displacement.

Keiper submitted test data from testing of a Mercedes Benz C-Class seat. Under the current procedure the backset retention displacement range was 15 to 18 mm, which is outside the 13 mm limit. However, after unloading the head restraint and reloading to the reference load, the displacement was 2 to 4 mm. Keiper did not indicate whether the seat back was braced. DaimlerChrysler submitted data that is subject to a claim of confidentiality.

In order to evaluate this issue, the agency conducted a series of tests on eight different make/models of vehicles. The agency performed height retention and backset retention tests according to the modified procedure suggested by the petitioners. In addition, as part of evaluating the appropriate procedure for these tests, the study included tests with the seat back braced and not braced. The details of the testing are included the Technical Analysis [42] noted earlier.

After considering the arguments and data submitted by manufacturers and the results of our testing, we have decided to grant the petitioners' requests in this area. Based on the testing performed to the modified test procedure, we conclude that completely removing the load on the head restraint before returning to the reference load improves the test results in a statistically significant way.

2. Five Second Hold Time

The Alliance petitioned the agency to specify a peak load hold time of 5 to 6 seconds and have the measurement taken during the hold period. The regulation currently states the hold time will be at least 5 seconds. The Alliance argued that the hold times for this and

[42] Technical Analysis Relevant to Petitions for Reconsideration to the December 14, 2004 FMVSS 202a—Head Restraints Final Rule."

other aspects of the loading procedure may affect the results.

After considering this issue, we believe that the request to modify the hold time for the maximum load values (S5.2.6(c), S5.2.7(a)(6) and S5.2.7(b)) from a minimum of 5 seconds to 5.5 ± 0.5 seconds has merit. We also believe that there should be a tolerance on the hold times for the initial application of the reference loads (S5.2.6.(b)(2) and S5.2.7(a)(5)) and on the times after which the displacement measurement should be made (S5.2.6(e) and S5.2.7(a)(8)). We are therefore making changes in the regulatory text to reflect these decisions.

3. Request for Elimination of Vertical Height Retention Test

Johnson Controls argued that the vertical height retention test is not justified and should be eliminated. It believes that the agency's justification for the 500 N load was derived from the force component of lateral (rearward) displacement. Johnson Controls stated that although its customers prescribe loads that a head restraint must resist vertically, these are to account for the loading a person might put on the head restraint as they enter or exit the vehicle and these loads are much less than 500 N.

In explaining the height retention force of 500 N in the preambles to the NPRM and final rule, we stated that it is representative of the peak loads likely to be encountered in moderate to severe rear impacts. We noted that the average upper neck shear forces in a Hybrid III 50th percentile male dummy in FMVSS No. 301 rear impacts was about 350 N. We surmised that this shear load was representative of the loading on the head restraint although we did not do an analysis to determine the direction of the loading.

Since the final rule was published, we have made a more thorough examination of head restraint loading based on the dummy neck loads measured in rear impact crash and sled tests. We have presented this analysis in a technical report.[43] The test type and dummy size that we have the most data for is the 50th percentile male dummy in a FMVSS No. 301 impact. For 23 cases, the average downward force was 539 N. We believe these and the other data presented in the technical report show the need for and appropriateness of the 500 N vertical load. We therefore decline to adopt the request of Johnson Controls.

4. Pre-Load Displacement Limit

The Alliance stated there are some mechanical active head restraint designs that cannot meet the 25 mm pre-load displacement limit during the backset retention test (S4.2.7 and S5.2.7). It petitioned the agency to increase this limit to 35 mm or remove it completely. It argued that this requirement places a limitation on manufacturers' ability to provide active head restraints.

DaimlerChrysler stated that it has a rear seat head restraint design that rotates without locking, for occupant comfort. It called these "inclinable designs" and said that they displace during the preload and cannot meet the 25 mm limit on displacement during the preload of the height retention test (S4.2.6 and S5.2.6). It petitioned the agency to increase the preload limit for these types of head restraints to 50 mm.

As discussed below, we have decided to deny the requests of both petitioners. However, to help accommodate active head restraint systems, we are making a change in the test procedure to permit active systems to be fixed in their undeployed position during the position retention testing.

The Alliance stated that there are advanced active head restraints that, due to their mechanical nature, displace more than 25 mm during the preload of the backset retention test. Therefore, it requested a 35 mm limit.

We note that the agency anticipated that there may be advanced designs which, by their active nature, are unable to pass the static test requirements in their undeployed positions. This is why the dynamic compliance option was provided.

However, while the dynamic compliance option is specifically in place for active systems, it has never been our intention to exclude active systems from certifying through the static option. However, the agency has emphasized that such static compliance must be in the undeployed condition. See 69 FR 74854.

Based on our desire to not exclude the possibility of active systems being certified to the static option, we have decided to permit active systems to be fixed in their undeployed position during the retention tests. We are including a specific manufacturer option to this effect in FMVSS No. 202a.

We believe that the concern raised by the Alliance is brought about by the way active systems function and that the option to fix them in their undeployed position during the retention tests will resolve that concern. Therefore, we are not changing the 25 mm limit to 35 mm as requested by that petitioner.

DaimlerChrysler requested an increase of the preload displacement limit in the height retention test from 25 mm to 50 mm because of a design that rotates for comfort. However, head restraint users will not know whether adjustment positions are for comfort or for improved whiplash protection. Moreover, regardless of whether a manufacturer intends a head restraint position to be for comfort or to provide improved whiplash protection, there are safety benefits for having the adjustment position selected by the user lock in place. The head restraint design, as described, appears to have non-locking positions. The agency included the preload displacement limit to address such systems. We are therefore not adopting the change recommended by DaimlerChrysler.

5. Seat Back Bracing

As discussed above, as part of the agency's additional testing and evaluation concerning the appropriate procedure for the height retention and backset retention tests, it included tests with the seat back braced and not braced.

The agency indicated in the preamble to the final rule that it intended to alter the position retention tests to allow the seat back frame to be braced. 69 FR at 74867. However, a provision to this effect was not included in the regulatory text.

We note that some concerns were expressed in the context of the development of a GTR that bracing the seat back during these tests does not provide a load path that would be seen in real world use.

As part of our additional testing, we studied the bracing of the seat back. The discussion below refers to testing that incorporates a zero load in the loading sequence. The testing showed that although there was a small reduction in the average displacement value for the braced condition when the loading was returned to the reference value, this difference was not statistically significant. However, we did find that bracing the seat back reduced the peak displacement by an average of about 18.5 mm and that this was significant at a 90% level of confidence. It was not our intention to reduce the stringency of this requirement by bracing the seat back.

As part of reevaluating the test procedure for these tests in response to petitions for reconsideration, we have decided that the seat backs should not be braced for these tests. We are also making this change as part of

[43] This analysis has been presented to the Informal Working Group on Head Restraints in connection with the ongoing development of a GTR and can be found at *http://www.unece.org/trans/doc/2005/wp29grsp/HR–02–08e.pdf*.

maintaining consistency with changes we are making in the test procedure for the energy absorption test, which are discussed below. There is no need to change the regulatory text, given that the agency omitted adding a specification for bracing in the final rule.

H. Energy Absorption Test and Seat Back Bracing

Under the energy absorption test requirement (S4.2.5 and S5.2.5), a 6.8 kg mass strikes the head restraint at 24.1 km/h, and the deceleration of the impactor must not be more than 80g.

The Alliance stated that it was concerned that S5.2.5 of the regulatory text specifies that this test is to be performed with the seat back "rigidly fixed" without any further clarification of how it is fixed. It stated that the methodology as to how the seat back is fixed may affect the test results. It requested there be no seat back bracing.

The Alliance also stated that S4.2.5 and S5.2.5 do not specify a seat back angle for the test. It stated that it believes that it is the agency's intent to perform the tests consistent with ECE 17, i.e., with the seat back at design position. It requested that this be explicitly stated in the regulation.

The agency has performed an evaluation of various energy absorption test methods. This evaluation is included in the Technical Analysis previously cited.[44]

In testing performed by the agency using a linear impactor, bracing the seat back resulted in a slightly more severe (about 10%) outcome. However, this difference was not statistically significant. Also, removal of the seat back bracing will simplify the test procedure. We have therefore decided to make the change requested by the Alliance.

We do not agree with the Alliance that FMVSS No. 202a was unclear about the seat back angle to be used in this test. Under the final rule, S5.1 stated that, except in S5.2.3, the seat back angle must be the position closest to 25 degrees.

However, given that we are changing from 25 degree seat back angle to design seat back angle for the backset and height requirements, we believe it is appropriate for purposes of consistency to also use design seat back angle for this test. Accordingly, we are granting the Alliance's request to that effect.

[44] "*Technical Analysis Relevant to Petitions for Reconsideration to the December 14, 2004 FMVSS 202a—Head Restraints Final Rule.*"

I. Head Restraint Clearance

In order to accommodate vehicles with low rooflines, FMVSS No. 202a permits a lower minimum height for head restraints for front outboard-designated seating positions to allow a maximum of 25 mm of vertical clear space between the top of the front head restraint and the roofline. It similarly permits a lower minimum height for rear outboard seating positions equipped with optional head restraints to allow a maximum of 25 mm of vertical clear space between the top of the rear head restraint and the roofline or the backlight.

In petitioning for reconsideration, the Alliance expressed concern that the agency had not defined the term "roofline." It stated its belief that the agency intended to measure clearance to the inside of the headliner, consistent with ECE 17 practice. The Alliance argued that without clearance to the inside of the headliner, the head restraints would damage the energy absorbing capability of the headliner. The Alliance requested that the agency replace the term "roofline" with "interior surface of the roof" to clarify that the intent is the same as ECE 17, or to define the term "roofline" as the interior surface of the roof of the vehicle.

The Alliance argued that for convertibles, the clearance to rear seat head restraint clearance needs to be 50 mm to allow for articulation of the folding top mechanism.

DaimlerChrysler made similar requests in its petition for reconsideration. However, in a June 8, 2005 with NHTSA, DaimlerChrysler requested that the rear seat clearance for convertibles be 10 mm during the folding phase of a convertible roof motion.[45] It showed a diagram of a vehicle design that had a 13 mm clearance during folding of the roof. This same design had 80 mm of clearance when the roof was in place.

After considering the petitions for reconsideration, we have decided to adopt changes along the lines suggested by the Alliance. As to the definition of roofline, it was always the agency's intention to measure the roofline/backlight clearance from the interior surface of the vehicle rather than from the exterior surface. The latter would be unnecessarily complex and have no relevance to the head restraint dimensions. Accordingly, in the relevant portions of regulatory text we are replacing the term "roofline" with "interior surface of the vehicle at the roofline," and "backlight" with "interior surface of the backlight."

On the issue of clearance for convertibles, we note that there are differences in the relief requested by the Alliance and the relief requested by DaimlerChrysler in its later request. The Alliance requested the agency to increase the allowed gap with the roof in place from 25 to 50 mm, and DaimlerChrysler requested that the agency provide 10 mm of clearance as the roof folds.

DaimlerChrysler presented a design with about 10 mm clearance when folding and 80 mm when in place. One might then conclude that, at a minimum, if the head restraint had essentially no clearance when the roof was folding, the in-place clearance would need to be 70 mm for this design.

The agency does not have independent data on convertible geometry. However, we believe that the argument that relief is needed appears reasonable. We have decided to grant the relief requested by the Alliance. We are not granting the later request made by DaimlerChrysler. That request would result in a greater reduction in stringency. We do not believe that a single design is sufficient to demonstrate a need for greater relief.

J. Width of Head Restraints for Certain Seats

Johnson Controls petitioned for reconsideration of the retention (from the earlier version of FMVSS No. 202) of the 254 mm width requirement for outboard designated seating positions for front rows with three designated seating positions. That company stated that it believes that the head restraint width requirement for these designated seating positions should be 170 mm, the same width as required by ECE 17 standard.

Johnson Controls argued that the distinction between bench and bucket seats that drove the difference in width requirements no longer exists. It also stated that the added width is not subject to any performance requirements.

The petitioner stated that, in support of retaining the requirement, the agency said that front outboard non-bench seats have a defined contour that better prescribe occupant seating position relative to the head restraint than bench seats, occupants seated on bench seats are freer than occupants of single seats to position themselves so that they are not directly in front of head restraint, and a bench head restraint needs to be wider to assure that the head restraint will be behind the occupant in event of a crash.

[45] Docket No. NHTSA–2004–19807–13

Johnson Controls argued that, based on a survey it conducted, less than 1.4 percent of front seats offered on the market today are bench seats where front outboard seating positions have no contour. It also argued that extra width is typically trim and foam which has no demonstrated ability to achieve goals of prevent neck hyperextension as well as smaller rotations of the neck.

After considering the request of Johnson Controls, we have decided to not make the change requested. We note that the agency addressed this issue in both the NPRM and final rule preambles.

As we discussed in the final rule preamble, the 254 mm width requirement at issue has been effect since January 1, 1969. We stated that we were not aware of any evidence showing that the present level of protection should be reduced. We stated that we decided to maintain wider head restraints for front bench-type seats because wider head restraints tend to better reduce relative head-to-torso motion in off-axis impacts.

After considering Johnson Controls' petition, our view remains the same. Johnson Controls did not provide evidence that wider head restraints do not provide benefits or that they do not better reduce relative head-to-torso motion in off-axis impacts.

DaimlerChrysler requested clarification concerning how this requirement applies to a three-passenger first row option with a walkway between the driver and the two-passenger seat to the driver's side. That company stated that it interprets the two-passenger seat to have two outboard seating positions by definition so that the width requirements for the head restraints is 170 mm and not the 254 mm requirement.

DaimlerChrysler's suggested interpretation is incorrect. S4.2.2 specifies that the lateral width of the head restraint for front outboard designated seating positions in a vehicle with a front center designated seating position must be not less than 254 mm. The term "outboard designated seating position" is defined at 49 CFR Part 571, and the inboard seating position on the two-passenger seat is not within that definition. Since the vehicle has a front center designated seating position, the two front outboard designated seating positions must have a width of not less than 254 mm.

K. Option To Comply With ECE 17

The Alliance stated that it appreciates the option in FMVSS No. 202 that permits compliance with ECE R17 until September 1, 2008 as an option. The Alliance stated, however, that the agency has "no test procedures for its contractors to use in auditing compliance to an ECE regulation."

The Alliance recommended that NHTSA publish a policy statement that, for purposes of this option, the Technical Service organization type approval granted for the applicable system to the vehicle manufacturer who selects this option can be used for demonstrating compliance to FMVSS 202. It stated that, as an alternative, the agency would have to develop and publish an official and detailed Test Procedure for the ECE R17 requirements itemized in FMVSS No. 202.

We note that, given the relatively short duration of this option, NHTSA does not plan to develop a Laboratory Test Procedure for this option. We also decline to adopt the policy statement suggested by the Alliance.

Under the Safety Act, vehicle manufacturers are required to certify that their vehicles comply with all applicable Federal motor vehicle safety standards. They do not certify compliance with Laboratory Test Procedures.

NHTSA's Office of Vehicle Safety Compliance provides a CTP for the use of its contractor laboratories. The agency includes the following note at the beginning of these procedures:

> The OVSC Test Procedures are prepared for the limited purpose of use by independent laboratories under contract to conduct compliance tests for the OVSC. The TPs are not rules, regulations or NHTSA interpretations regarding the FMVSS. The TPs are not intended to limit the requirements of the applicable FMVSS(s). In addition the TPs may be modified by the OVSC at any time without notice, and the COTR may direct or authorize contractors to deviate from these procedures, as long as the tests are performed in a manner consistent with the FMVSS itself and within the scope of the contract. TPs may not be relied upon to create any right or benefit in any person. Therefore, compliance of a vehicle or item of motor vehicle equipment is not guaranteed if the manufacturer limits its certification tests to those described in the TP.

A CTP does not need to be in place in order for a manufacturer to certify compliance with a particular standard or option within a standard. Also, a CTP does not need to be in place in order for the agency to enforce a particular standard or selected option within a standard. It is therefore unnecessary for the agency to adopt either of the alternatives suggested by the Alliance.

L. Temperature and Humidity Specifications

The Alliance stated that FMVSS No. 202a should have temperature and humidity specifications in order to provide an objective test procedure. That organization stated that it could not find any humidity specifications, even though these environmental limits are included in most FMVSS test procedures.

The Alliance stated that the OVSC Laboratory Test Procedure specifies a temperature range of 19 to 26 degrees C, which the Alliance said is a much broader range than vehicle and seat manufacturer's test facilities experience. The Alliance stated that because the flexibility of seating foam and trim varies with temperature, it recommends adopting the same limits that have been used for many years for FMVSS No. 208 tests using the Hybrid III dummy. It argued that these temperature and humidity limits should be applied to dynamic tests, quasi-static force tests, and static measurements. The Alliance did not provide data concerning the extent to which seating foam may vary temperature or humidity.

In responding to the Alliance's request, we note that we do not believe that the quasi-static force tests and static measurements included in FMVSS No. 202a are comparable to the FMVSS No. 208 tests using the Hybrid III dummy. The agency includes certain environmental limits in FMVSS No. 208 related to the Hybrid III dummy because the test dummy itself is sensitive to environmental conditions. However, there is no reason to believe that the HRMD is sensitive to environmental conditions because it is a purely mechanical measuring tool. Moreover, we believe that head restraints should provide protection in the wide range of conditions experienced in the real world.

At the same time, we recognize that the inclusion of a temperature range improves the objectivity of the standard, particularly given the Alliance's argument that the flexibility of seating foam may vary with temperature. Without a specification, for example, it is not clear whether the agency might conduct tests at very low winter temperatures or very hot summer temperatures.

After considering this issue, we have decided to specify a temperature range of 18 to 28 degrees C (64.4 to 82.4 degrees F). This is representative of the interior temperatures at which vehicles are routinely operated. We note that the range is slightly wider than that included in the current version of the Laboratory Test Procedure. The Laboratory Test Procedure is not the same as the standard, and it is not uncommon for the agency to include narrower conditions in the Laboratory

Test Procedure than those specified in the standard.

We are not specifying conditions related to humidity. No information has been provided showing a need for such specifications, and vehicles are routinely operated at wide ranges of humidity.

Finally we are adding a test condition to the dynamic test which provides that the stability test temperature of the test dummy is at any temperature level between 69 degrees F and 72 degrees F, inclusive. This is the same condition as specified for FMVSS No. 208.

M. Owner's Manual Requirements

The Alliance petitioned the agency to modify requirements for the owner's manual. First, that organization raised concerns about a requirement in S4.7.1 that the owner's manual for each vehicle must emphasize that all occupants, including the driver, should not operate a vehicle or sit in a vehicle's seat until the head restraints are placed in their proper positions in order to minimize the risk of severe injury in the event of a crash. The Alliance argued that this requirement overstates the importance of head restraint adjustment.

The Alliance stated that while proper adjustment of head restraints is desirable to improve their effectiveness in reducing whiplash injuries—Abbreviate Injury Scale (AIS) 1 injuries—the agency has not presented data indicating that proper positioning minimizes the risk of severe injuries. That organization stated that severe injuries are generally considered to be injuries of AIS 3 or greater. It requested that the agency revise S4.7.1 to state that the owner's manual for each vehicle must emphasize the importance of properly adjusting head restraints to reduce the risk of injury.

In considering the Alliance's request in this area, we note that while the agency's benefits analysis only accounts for whiplash (AIS 1 neck) injury, we believe that there is a protective effect against high-order neck injuries in higher speed rear impacts. However, we agree that based on the frequency of injury the primary benefits of proper positioning head restraints are in AIS 1 injuries. We also believe that most consumers are not aware of the differences between different levels of AIS injuries or the terminology used to describe such injuries.

In light of the most frequent injuries addressed by proper positioning of head restraints—AIS 1 injuries—and the terminology ordinarily used to describe such injuries, we are removing the term "severe" from S4.7.1 and replacing it with the word "neck." We believe that the addition of the word "neck" will help draw occupants' attention to the importance of proper adjustment of head restraints in much the same way as the word "severe," while avoiding inconsistent use of a term. We are not otherwise shortening the language, since we believe that it is important for all occupants, including the driver, to not operate a vehicle or sit in a vehicle's seat until the head restraints are placed in their proper positions in order to minimize the risk of neck injury.

The Alliance also expressed concerns about requirements related to instructions for head restraint adjustment. S4.7.2(d) requires each owner's manual to describe in an easily understandable format the adjustment of the head restraints and/or seat back to achieve appropriate head restraint position relative to the occupant's head. This discussion must include, at a minimum, accurate information on the following topics:

(1) A presentation and explanation of the main components of the vehicle's head restraints.

(2) The basic requirements for proper head restraint operation, including an explanation of the actions that may affect the proper functioning of the head restraints.

(3) The basic requirements for proper positioning of a head restraint in relation to an occupant's head position, including information regarding the proper positioning of the center of gravity of an occupant's head in relation to the head restraint.

The Alliance argued that the intent of item (2) is unclear. It stated that except for adjustment, and possibly removal and reinstallation, customers do not expect any "basic requirements" to "operate" head restraints. That organization also stated that adjustment, removal and reinstallation are covered elsewhere. The Alliance asked whether this provision is intended to address head restraints that fold or retract either automatically or manually.

In response, we note that although the issues of adjustment, removal and reinstallation are covered by other provisions, a head restraint may have other modes of operation. Folding and retracting are examples of these modes. This provision is intended to ensure that users have clear information on all the necessary requirements for proper operation.

The Alliance also argued that item (3) appears to be inconsistent with S4.7.2(d) because most customers do not understand the center of gravity of an occupant's head. That organization stated that it is not practicable to describe in an easily understandable format the adjustment of the head restraint in relation to the center of gravity of the occupant's head. It suggested that (3) simply state the basic requirements for proper positioning of a head restraint.

We disagree with the Alliance that reference to the head restraint adjustment with respect to the head CG is inconsistent with easily understandably instructions. However, we believe it is appropriate to permit manufacturers the flexibility to provide instructions which reference other anatomical landmarks such as the tops of the ears, eyebrow, etc. We are therefore revising this provision to that effect.

N. Nature of Standard

Syson-Hille stated that while it seems reasonable to upgrade FMVSS 202, it believes that the agency is failing to appropriately address the whiplash issue. It argued that as long as seats continue to collapse in rear impacts, head restraints will continue to be ineffective. Syson-Hille stated that until the seat "systems" problem is addressed, neither the whiplash problem, nor the failure of seats to appropriately manage rear collision energy will be resolved. It stated that NHTSA should combine FMVSS No. 202 and No. 207 to form a seat "systems" test.

In response to this request, we note that we stated the following in the final rule preamble:

> In the future stages of our efforts to improve occupant protection in rear impacts,[46] NHTSA intends to evaluate the performance of head restraints and seat backs as a single system to protect occupants, just as they work in the real world, instead of evaluating their performance separately as individual components. Accordingly, in making our decisions about the upgraded requirements for head restraints in this final rule, we sought, e.g., through upgrading our dynamic test procedure option, to make those requirements consistent with the ultimate goal of adopting a method of comprehensively evaluating the seating system.

Syson-Hille's request that we develop a seat systems test that considers the spectrum of rear impact severity is not within the scope of this rulemaking. We therefore decline to adopt its request. We note that the dynamic compliance option does provide a system test at an impact speed where whiplash injury is likely. In addition, as indicated in the paragraph from the final rule preamble cited above, the agency plans to

[46] As part of this effort, NHTSA issued a final rule upgrading the performance of vehicle fuel systems in rear impacts. (68 FR 67068, December 1, 2003).

continue its efforts to improve occupant protection in rear impacts, including considering methods of comprehensively evaluating the seating system. For now, for reasons discussed in this document, the NPRM and final rule preambles, and the agency's regulatory impact analyses, we believe the upgraded head restraint standard will make a significant contribution toward reducing whiplash injuries.

O. Leadtime

Under the final rule, the upgraded standard becomes mandatory for all vehicles manufactured on or after September 1, 2008. However, as indicated above, the agency previously extended the compliance date for the rear seat requirements to September 1, 2010.

The petitioners' request for additional leadtime was not limited to the rear seat. The Alliance stated that while the date set forth in the final rule appears to provide more than three years leadtime, it is concerned that that leadtime will be subsumed during the period petitions for reconsideration are before the agency.

The Alliance also stated that while it considered the final rule and potential issues for reconsideration, the agency published a test procedure previously unavailable. (This was apparently referring to the OVSC Laboratory Test Procedure or CTP.) The Alliance also claimed that other test procedures necessary to complete the final rule have not been made public, significantly limiting manufacturers' ability to assess the final rule and its impact on their respective vehicle fleets. The Alliance argued that test procedures are an integral part of the rulemaking process and must be available to the public during the entire rulemaking process beginning with the NPRM.

The Alliance stated that if the issues resolved in its petition were not resolved by September 2005, its members would no longer have adequate leadtime for some required changes. It stated that minor adjustments to backset can be made relatively quickly, but other changes are much more time-consuming. We note that one item the Alliance cited, development of mechanisms that allow conversion of passenger compartments to cargo areas, relates to rear seats. The Alliance also stated that developing and incorporating new active head restraint mechanisms requires a long leadtime.

The Alliance also stated that certain vehicle models that are past final design release will continue in production beyond September 1, 2008, but would require extensive changes to comply with FMVSS No. 202a. It requested that in order to permit manufacturers to implement the required changes with the start of a new model cycle rather than at the end of the current model design, NHTSA should modify the compliance date to require 80 percent compliance with FMVSS No. 202a for the first year and 100 percent beginning the second year, with carry-forward credits.

Ford also expressed concern about the amount of time that it anticipated would be taken to address issues raised in the petitions for reconsideration. It stated that it cannot begin to make vehicle design changes necessary to comply with the rule, especially those involving retractable head restraints that raise significant safety issues, until these issues have all been resolved. Ford stated that it believes that the three year leadtime should not begin to run until all petitions have been resolved and all test requirements have been finalized. Like the Alliance, DaimlerChrysler requested an 80 percent/100 percent phase-in, with carry-forward credits.

In responding to the petitions for reconsideration concerning leadtime, we begin by noting two things. First, under 49 CFR 553.35, the filing of a petition for reconsideration does not stay the effectiveness of the rule unless the Administrator so provides. Accordingly, once a final rule is published in the **Federal Register**, manufacturers have the responsibility to take steps to comply with that rule as it is issued, including its compliance date, unless and until the agency changes the rule. The agency will not change the compliance date of a rule to account for situations where a manufacturer either simply assumes that its petition for reconsideration will be granted or decides not to take actions to comply with a standard until such time as the agency responds to its petition.

Second, we disagree with the Alliance's apparent argument that CTPs are an integral part of the rulemaking process. They are not. As discussed earlier, vehicle manufacturers are required to certify that their vehicles comply with all applicable Federal motor vehicle safety standards. All necessary test procedures for certification are included in the standards themselves (sometimes by incorporation by reference or citation to other portions of the CFR).

In considering the petitioners' requests for additional leadtime, we note that the agency provided about three and one-half years leadtime in the final rule. Moreover, as a result of our earlier partial response to the petitions, we provided five and one-half years leadtime for the rear seat requirements. We believe that these requirements, particularly the ones related to non-use positions, represent the most difficult technical challenges.

After considering the petitions, we have decided to provide some additional leadtime for the front seat requirements, primarily in light of the changes made in this final rule. The change in seat back angle, while generally providing greater flexibility with respect to the backset limit, has an impact on the height requirement. This could, in some cases, necessitate design changes. Also, while the various changes made in this document are relatively minor, manufacturers may need to re-test seats in order to ensure that their vehicles comply with the standards.

For the front seat requirements, we have decided to provide one additional year of leadtime and also establish a one-year phase-in with an 80 percent requirement. We are not providing for carry-forward credits. In addition to providing flexibility with respect to any minor design changes that may be needed as a result of the changes made by this final rule, the additional leadtime we are providing also accommodates the concerns identified by manufacturers concerning implementing changes with the start of a new model cycle rather than at the end of the current model design.

As indicated earlier, we previously delayed the compliance date for head restraints voluntarily installed in rear outboard designated seating positions from September 1, 2008 until September 1, 2010. As part of completing our response to the petitions, we have decided to also establish a one-year phase-in with an 80 percent requirement for these vehicles.

As indicated above, we believe that the rear seat requirements, particularly the ones related to non-use positions, represent the most difficult technical challenges. The one-year phase-in will provide additional flexibility in meeting these challenges. This 80 percent requirement applies to the production year beginning on September 1, 2010 and ending August 31, 2011. We note that since the rear seat requirements apply only to vehicles with voluntarily installed rear head restraints, the 80 percent figure is calculated solely with regard to vehicles with rear head restraints.

As with other phase-ins, we are establishing the usual reporting requirements.

P. Technical Amendments and Typographical Corrections

In the section above on the dynamic optional test, specific technical amendments were described. We are also making several technical amendments as a result of our own review of the entire regulatory text. In Part 571.202 we are making the following revisions. We are adding the term GVWR to S2 and S4.1. In S4.1 we are changing the reference to S4.3 and S4.4 to S4.4 and S4.5. For Part 571.202a, in S5.2.7(a)(5) we are changing the reference to S5.2.7(4) to S5.2.7(a)(4).

Also, in a submission dated February 1, 2007, the Alliance requested a technical correction related to the agency's March 2006 rule delaying the date on which manufacturers must comply with the requirements applicable to head restraints voluntarily installed in rear outboard designated seating positions. While the Alliance believed the preamble was clear as to the agency's intent, it expressed concern that the changes made in the regulatory had the effect of delaying some but not all of the requirements for rear head restraints. To ensure clarity, we are making technical amendments to S2.1 and S4.1 to eliminate any doubt that all of the requirements for rear head restraints are delayed.

In addition, typographical errors have been corrected in Part 571.202a. These include elimination of extra spaces, adding an underline and punctuation correction. The following sections are affected: S2.2(a), S2.2(b), S4, S4.2.1(a)(2), S4.3.1, S5.2.5(a), S5.3.5, S5.3.7.1, S5.3.7.2, S5.3.7.3, S5.3.7.5, S5.4(a)(1), S5.4(a)(4).

VII. Kongsberg Petition for Rulemaking

A. Summary of Petition

On November 10, 2005, Kongsberg Automotive submitted a document to NHTSA that it characterized as a petition for reconsideration of the head restraint final rule. However, since this was not submitted within the required timeframe for petitions for reconsideration, our regulations provide that it is treated as a petition submitted under 49 CFR Part 552, rather than a petition for reconsideration.

The majority of arguments from Kongsberg concerning the final rule pertain to issues discussed extensively in our response to the timely petitions for reconsideration. However, in some cases, the relief sought is unique and not requested by others in petitions for reconsideration. After considering these requests carefully, the agency has decided to deny the Kongsberg rulemaking petition. Below we discuss each of the issues raised by Kongsberg and the agency response.

B. Effective Backset

1. Petition

The petitioner described the term "effective backset" as the combination of the backset measurement made in FMVSS No. 202a and the head restraint displacement measured during application of the initial reference moment on the head restraint during the backset retention test. The final rule limits on these two requirements are 55 mm for backset and 25 mm for the reference moment displacement. The petitioner requested that the agency replace the backset criterion of 55 mm with an "effective backset" limit of 80 mm. It stated that having separate requirements for backset and initial displacement in the retention test does not drive design changes towards optimization.

2. Agency Response

The agency has discussed in detail in this document and in the NPRM and final rule preambles and accompanying agency analyses the scientific basis for the backset limit and the expected benefits. We have also discussed the rationale for the backset retention test. Specifically, we have explained that the limit on displacement during the initial application of the reference moment of 37 Nm is necessary to prevent head restraints with very weak locks from displacing to a physical stop and passing the remainder of the test in that position.

In its request concerning an "effective backset" requirement, the petitioner recommends adding 25 mm to the backset value to account for this initial displacement under the reference load. Thus, depending on the initial displacement value, a head restraint could have a range of acceptable backset values between 55 mm (if the displacement was 25 mm) and 80 mm (if the displacement was 0 mm). The petitioner did not provide any data as to the expected benefits that might accrue from a change to an "effective backset" requirement or any alternative methodology for estimating these benefits. The petitioner implies this change would result in optimized designs, but does not support this contention.

In testing of seven different vehicle model seats to the backset retention test, the agency found the average initial displacement was approximately 15 mm when a head restraint was exposed to the 37 Nm reference moment.[47] Assuming an average displacement of 15 mm for the entire vehicle fleet, the requested effective backset approach would result in a 10 mm increase in backset limit or an equivalent backset of 65 mm. The agency's methodology for calculating benefits related to improved backset does not consider the initial displacement of the head restraint. Using the agency's methodology for estimating benefits, the recommended "effective backset" approach would result in a 36 percent loss of expected benefits estimated in the 2004 final rule. Moreover, it is possible that manufacturers might redesign head restraints to reduce the initial displacement in order to achieve more leeway for backset. This would reduce benefits even more.

Given the potential loss in benefits, the agency denies this request.

C. Backset Retention and Displacement

1. Petition

Kongsberg expressed its agreement with the petitions for reconsideration that recommended that the moment be returned to zero before reapplication of the reference load in the backset retention test. However, it questioned the correlation between the 102 mm limit on displacement of the head restraint beyond the displaced torso reference line during application of the 373 Nm moment. It petitioned the agency to set a lower value for displacement that would "be correlated with a safety benefit." In addition, it disagreed with the 13 mm displacement allowance after the moment returns to the reference load. It referred to this displacement as the "permanent deformation" of the head restraint. It recommended that the "permanent deformation" be measured from the initial position of the head restraint rather than the position achieved at the reference load. It referred to this measurement as "effective backset retention" and recommended a limit of 25 mm.

2. Agency Response

We will begin by addressing the request to zero-out the applied moment during the testing. As discussed earlier in this document, the agency has agreed to make this change in response to petitions for reconsideration. Thus, the Kongsberg petition is moot on this point.

In reference to the Kongsberg request to set a lesser value for the current 102

[47] "Technical Analysis Relevant to Petitions for Reconsideration to the December 14, 2004 FMVSS 202a—Head Restraints Final Rule."

mm displacement limit beyond the displaced torso reference line, we make the following observations. This requirement was part of the standard when it originated in the late 1960s. In recent head restraint testing, even when the seat back was not braced, the average head restraint displacement was well below the required limit or close to actually being a negative displacement when using the displaced torso reference line as the zero displacement point.[48] Thus, we acknowledge that, in this relatively small sample, the 102 mm limit is not driving head restraint design. However, the agency has no research to indicate how reducing the limit would affect head restraint performance. Nor has the petitioner suggested a value that would "be correlated with a safety benefit."

Finally, regarding the petitioner's disagreement with the 13 mm allowance in the backset retention test as well as its recommendation that the "permanent deformation" be measured from the unloaded head restraint position and that the limit be 25 mm, the petitioner appears to place great emphasis on the compliance of the head restraint, i.e., how flexible it is under initial load, in addition to how well it maintains its position after the load is removed. The focus of the backset retention test in the final rule is restricted to an assessment of the head restraint ability to remained locked in its position of adjustment. This is addressed with the 13 mm limit on the change in reference positions. This was not intended as a restriction on "permanent deformation." In addition, we did not intend to regulate the initial flexibility of the head restraint beyond the establishment of a 25 mm limit to assure there is no loophole for particularly weak locks.

Based on agency testing, we believe that a head restraint whose lock maintains its integrity will pass the 25 mm initial reference load displacement and 13 mm reference position change limits separately.[49] These same test data indicate that the average and standard deviation for backset retention displacement under the methodology recommended by Kongsberg is 26.1 mm ±8.3 mm, when the seat back is not braced and the applied load is returned to zero. Thus, the average value is over the 25 mm limit recommended by the petitioner, and many head restraints would need to be redesigned if the recommendation was adopted.

Kongsberg has not provided any data as to the expected benefits that would accrue by measuring the backset retention from the initial head restraint position rather than from the reference load position. Absent this analysis, the agency denies this part of the petition.

D. Height Retention

1. Petition

Kongsberg recommended that the agency adopt several changes to the height retention requirement. It expressed its agreement with petitions for reconsideration that recommended that the moment be returned to zero before reapplication of the reference load in the backset retention test. The height retention test is very similar to the backset retention test except that there is no limit on the head restraint displacement at peak load. The petitioner requested that the agency reevaluate the lack of a peak load limit and set a limit that provides safety benefit to taller occupants. The petitioner contends that the height retention requirement is not applied to non-adjustable head restraints and requested that it be expanded to all head restraints. Finally, it requested that the height retention limit be measured from the initial position rather than the reference position and that the limit be 25 mm instead of 13 mm. It called this an "effective height retention" limit.

2. Agency Response

First we will address the request to zero-out the applied moment during the testing. As discussed earlier in this document, the agency has agreed to make this change in response to petitions for reconsideration. Thus, the Kongsberg petition is moot on this issue.

In reference to the Kongsberg request for setting a peak load displacement limit, we make the following observations. The agency has no research data nor are we aware of any data that would enable us to determine if a limit on head restraint displacement under the peak downward load of 500 N is appropriate or what the limit should be. In the absence of such data being provided by the petitioner, we decline to act in this area.

In reference to the petitioner's recommendation concerning application of the height retention test to all head restraints, we wish to clarify that the current regulatory text does not exclude any head restraint design from the provisions of the height retention test.

Finally, we address the request for an "effective height retention" limit. Based on agency testing, we believe that a head restraint whose lock maintains its integrity will pass the 25 mm initial reference load displacement and 13 mm reference position change limits separately.[50] These same test data indicate that the average and standard deviation for height retention displacement under the methodology recommended by Kongsberg is 14.0 mm ±3.2 mm, when the seat back is not braced and the applied load is returned to zero. Thus, we would expect most head restraints to meet the 25 mm limit recommended by the petitioner. Given these results, it is unclear what advantage would be achieved by changing the current requirement. Therefore the agency denies this part of the petition.

E. Non-Use Position

1. Petition

Kongsberg asked if the agency accepts the petitions for reconsideration of a 5 degree torso angle change option for non-use positions, that a warning label be required on the head restraint identifying the potential for neck injury and the need for a detailed explanation of the hazard in the owner's manual.

2. Agency Response

As discussed earlier in this document, in response to petitions for reconsideration, the agency has reinstated (from the NPRM) a 10 degree torso angle change option for non-use positions. Our human factors study supported the need for the 10 degree torso angle change as opposed to the 5 degree change. In addition, the agency studied the effectiveness of warning labels on occupant behavior when paired with a 5 degree torso angle change. The results showed that the label was highly ineffective. Thus, we rejected the idea of adding a label as part of the non-use position requirement. Therefore we are denying the Kongsberg rulemaking petition asking for a label on the head restraint in addition to a torso change requirement. For these reasons, we are denying the portion of the Kongsberg rulemaking petition asking for a label on the head restraint in addition to a torso change requirement.

With respect to providing detailed explanations of neck injury hazards in the owner's manual; Kongsberg has not suggested what might be added to the December 2004 final rule requirements. We believe the current requirement is sufficient and have made minor changes

[48] "Technical Analysis Relevant to Petitions for Reconsideration to the December 14, 2004 FMVSS 202a—Head Restraints Final Rule."

[49] "Technical Analysis Relevant to Petitions for Reconsideration to the December 14, 2004 FMVSS 202a—Head Restraints Final Rule."

[50] "Technical Analysis Relevant to Petitions for Reconsideration to the December 14, 2004 FMVSS 202a—Head Restraints Final Rule."

in response to petitions for reconsideration, explained in this document.

F. Definition of Rear Head Restraint

1. Petition

FMVSS No. 202a defines a rear seat head restraint in the following way:

"[A]t any rear outboard designated seating position, a rear seat back, or any independently adjustable seat component attached to or adjacent to a seat back, that has a height equal to or greater than 700 mm, in any position of backset and height adjustment, as measured in accordance with S5.1.1."

Kongsberg recommended that the agency modify the definition of a rear seat head restraint from one using a 700 mm height threshold to any head restraint that is an "independently adjustable seat component." Kongsberg stated that ECE requires a minimum height of 750 mm for any head restraint that is an "independently adjustable seat component." It argued that the FMVSS No. 202a requirement should match that of the ECE since it has not seen any justification for why the public expectation in Europe should differ from that in North America.

2. Agency Response

First, we will address Kongsberg's claim that the ECE requires a minimum height for an "independently adjustable seat component." We are not aware of such a provision in ECE 17 relative to optionally provided rear seat head restraints.

Second, the agency provided an extensive justification for our definition for rear seat head restraints in the preamble of the 2004 final rule. Part of that justification was that the definition includes seats with cushion components on the top of the seat back, i.e., what the general public would consider a seat back. We also stated our belief that the definition had the required objectivity for an FMVSS.

The petitioner has not provided any new information that would persuade the agency to change its position on this issue. Therefore, this part of the petition for rulemaking is denied.

G. Gaps

1. Petition

Kongsberg requested that the agency modify the requirement for a maximum 60 mm gap between the fully down head restraint and seat back measured with a 165 mm sphere pressed against the seat back to a 25 mm gap measured by a 25 mm diameter sphere passed through the space between the seat back and head restraint. In addition, it requested that the agency limit the gap between the head restraint and seat back with the head restraint in the full up position.

2. Agency Response

The agency received petitions for reconsideration on the issue of the maximum gap between the seat back and the fully down head restraint. Petitioners for reconsideration requested that this requirement be harmonized with the 25 mm gap in ECE 17. The petitioners indicated that the gap is to be measured perpendicular to the seat back angle. Our response to this petition for reconsideration is relevant here. Specifically, we modified the final rule to allow the use of either a 165 mm sphere pressed against the seat back with a 60 mm limit between the points of contact or a 25 mm diameter cylinder with its long axis perpendicular to the seat back angle and pushed into the gap between the head restraint and seat back.

Kongsberg has requested the use of a 25 mm sphere rather than a 25 mm cylinder. The agency has specified that a cylinder be used to be consistent with measuring the gap perpendicular to the seat back angle. Use of a sphere would be a less rigorous requirement since the gap could be oriented in any direction. Therefore, we are denying the rulemaking petition to use a 25 mm sphere to measure the gap.

On the issue of restricting the gap between the head restraint in the fully up position and the seat back, the agency addressed this issue in the 2004 final rule preamble. The agency concluded at that time that such a requirement was unnecessary because most misadjusted head restraints are adjusted too low and that such a restriction might limit the maximum height of head restraints above the 800 mm requirement and reduce protection for taller occupants. The petitioner has not provided any new information that would persuade the agency to change its position on this issue. Therefore, this part of the petition for rulemaking is denied.

H. Removability of Head Restraints

1. Petition

Kongsberg recommended that if the agency allowed a single input to adjust and remove the head restraint, the input effort must be mutually exclusive. For example, if a button is pressed to adjust down, that button must be pulled to remove the head restraint. Thus, Kongsberg would define "distinct" as "mutually exclusive" and under no circumstances could the same push-button be used for adjustment and removal. Referring to a petition for reconsideration the agency received on use of a single mechanism for downward adjustment and removal, Kongsberg stated that it does not believe the act to be distinct. It further stated that the agency must give consideration to the risk of injury when a head restraint is adjusted even slightly above the highest locking position.

2. Agency Response

The agency received petitions for reconsideration on this issue. Our response to those petitions is relevant to Kongsberg petition for rulemaking. In response to petitions for reconsideration we decided to add the word "upward" to the restriction on removability such that it now states:

"The head restraint must not be removable without a deliberate action distinct from any act necessary for upward adjustment."

As discussed in this document, the revised requirement allows a push-button to release a head restraint for both downward adjustment and removal. This is a common design in many vehicles today. Although the push button action is the same for downward adjustment and removal, the actions are distinct because the head restraint is pushed down in one instance and pulled up in another. As indicated earlier in this document, the purpose of this provision is to prevent accidental removal of head restraints when being adjusted. This is a potential problem when the head restraint is being adjusted in an upward direction but not a downward direction.

The petitioner's recommendation for the removability requirement would be more restrictive than the revised regulatory text. It would justify this more stringent requirement based on concerns about misadjustment above the highest locking position and potential resulting injuries. However, it is not clear to the agency how much more likely this type of misadjustment is under the Kongsberg's recommendation as opposed to the current definition. Absent any further information documenting the relative risks of the two approaches, the agency has decided to deny this part of the petition for rulemaking.

VIII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and

procedures. This rulemaking document was not reviewed under E.O. 12866.

This rule amends the agency's December 2004 final rule upgrading the agency's head restraint standard, which was considered significant because of public interest and economically significant because the agency estimated yearly economic cost savings of approximately $127 million. However, as explained below, today's amendments are not significant.

NHTSA is placing in the public docket a Supplemental Final Regulatory Evaluation describing the costs and benefits of this rulemaking action. Today's amendments will not affect the costs of the December 2004 final rule. However, as discussed in the SFRE and for the reasons discussed earlier in this document, the agency estimates that the change in seat back angle to provide greater flexibility with respect to backset will reduce front seat benefits by about 20 percent. We note that our estimate for rear seat benefits remains the same. This is because backset is not regulated for rear seat head restraints. In addition, our estimate of rear seat benefits is based on head restraint height. Although head restraint height is affected by seat back angle, since a large portion of rear seats are fixed or not adjustable, we are estimating no change in rear seat benefits.

Table II shows the SFRE benefits estimates with respect to the benefits of the December 2004 final rule and how those benefits are changed by today's rule:

TABLE II.—BENEFITS COMPARISON BETWEEN THE FINAL REGULATORY IMPACT ANALYSIS AND SUPPLEMENTAL FINAL REGULATORY EVALUATION

Whiplash injuries reduced	FRIA	SFRE
Front Seat	15,272	12,231
Rear Seat	1,559	1,559
Total	16,831	13,790

B. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The final rule will affect motor vehicle manufacturers, alterers, and seating manufacturers. NHTSA has determined that this action will not have a significant economic impact on a substantial number of small entities.

In the preamble to the December 2004 final rule upgrading the head restraint standard, NHTSA made a determination that that rule will not have a significant economic impact on a substantial number of small entities. Today's amendments make relatively minor changes in that rule, generally for the purpose of providing greater flexibility. Since none of the amendments being made to the December 2004 final rule will significantly affect small entities, this rule will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

NHTSA has analyzed the final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have federalism implications because the rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Further, no consultation is needed to discuss the preemptive effect of today's rule. NHTSA rules can have preemptive effect in at least two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemptive provision: "When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter." 49 U.S.C. 30103(b)(1). It is this statutory command that preempts State law, not today's rulemaking, so consultation would be inappropriate.

In addition to the express preemption noted above, the Supreme Court has also recognized that State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes there State requirements unenforceable. *See Geier* v. *American Honda Motor Co.*, 529 U.S. 861 (2000). NHTSA has not outlined such potential State requirements in today's rulemaking, however, in part because such conflicts can arise in varied contexts, but it is conceivable that such a conflict may become clear through subsequent experience with today's standard and test regime. NHTSA may opine on such conflicts in the future, if warranted. *See id.* at 883–86.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year ($120,700,000 as adjusted for inflation with base year of 1995).

Because this final rule will not have a $100 million effect, no Unfunded Mandates assessment has been prepared. A full assessment of the rule's costs and benefits is provided in the SFRE.

F. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

G. Paperwork Reduction Act

The December 2004 final rule included the following "collections of information," as that term is defined in 5 CFR Part 1320 *Controlling Paperwork*

Burdens on the Public: the final rule required that vehicle manufacturers include in owners' manuals information about appropriate head restraint adjustment. Today's rule makes minor revisions to the owner's manual requirements. The revisions do not affect the nature of the information that must be provided or affect the burden hours. OMB has approved NHTSA's collection of owner's manual requirements under OMB clearance No. 2127–0541 *Consolidated Justification of Owner's Manual Requirements for Motor Vehicles and Motor Vehicle Equipment*. This clearance will expire on February 28, 2009. Given that the revisions will not affect the nature of the information that must be provided or the burden hours, the collection of information comes within that clearance.

Two Years of Phase-in Reporting Requirements Beginning in 2010—This final rule includes a phase-in period and reporting requirements for manufacturers of passenger cars, multipurpose passenger vehicles, trucks and buses with a GVWR of 4,536 kg or less, concerning the number of vehicles that meet requirements of Standard No. 202a. Two reports, one report for each of two consecutive years, will be required from each affected manufacturer. The reports will be due within 60 days after the end of the production year ending August 31, 2010, and within 60 days after the end of the production year ending August 31, 2011. Although OMB approval for these collections of information will not be sought until late 2008 (as part of the request for renewal of OMB clearance No. 2127–0541), NHTSA describes the anticipated collection of information as follows:

Type of Request—Revision of a Currently Approved Collection of Information.

OMB Clearance No.—2127–0541.

Form Number—This collection of information will not use any standard forms.

Requested Expiration Date of Clearance—At present, Clearance No. 2127–0541 is scheduled to expire on February 28, 2009. As a result of this final rule, NHTSA anticipates asking for another extension of this collection, though February 28, 2012.

Summary of the Collection of Information—NHTSA will ask for an extension of approval to collect the information already approved under OMB Clearance No. 2127–0541. In addition, NHTSA will ask for approval to adopt phase-in reporting requirements similar to those used in other phase-ins. For each year of the phase-in period, manufacturers are required to provide to NHTSA, within 60 days after the August 31 end date of each "production year," information identifying the vehicles (by make, model, and vehicle identification number (VIN)) that have been certified as complying with certain head restraint requirements.

As discussed earlier, the implementation schedule for the new requirements is as follows:

—for the front seat requirements, 80 percent of each manufacturer's vehicles with a GVWR of 4,536 kg or less manufactured during the production year ending on August 31, 2010 (with the phase-in report due to NHTSA on October 31, 2010); and

—for the requirements for voluntarily installed rear head restraints, 80 percent of each manufacturer's vehicles with rear head restraints, manufactured during the production year ending on August 31, 2011 (with the phase-in report due to NHTSA on October 31, 2011).

Description of the Need for the Information

NHTSA needs this information to ensure that vehicle manufacturers are complying with the upgraded head restraint standard. NHTSA will use this information to determine whether a manufacturer has complied with the amended requirements of FMVSS No. 202a during the phase-in period.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

NHTSA estimates that 26 vehicle manufacturers will submit the required information.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From this Collection of Information

Anticipated Request for Clearance for February 28, 2009 through February 28, 2012—For each of 2010 and 2011, NHTSA anticipates requesting approval to collect an additional 26 hours per year to cover the phase-in reports from each of 26 manufacturers. Because NHTSA anticipates that the information will be collected and reported 100 percent through electronic means, it does not anticipate each manufacturer taking more than an hour to compile the information.

There would be 0 hours of recordkeeping burdens resulting from the collection of information.

NHTSA estimates that there are no additional cost burdens resulting from this additional collection of information. There are no capital or start-up costs as a result of this collection.

H. Executive Order 13045

Executive Order 13045 [51] applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us. This rule is not economically significant, and it will not have a disproportionate effect on children.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [52] in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

The agency is not aware of any new voluntary consensus standards addressing the changes made to the December 2004 final rule as a result of this final rule.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the

[51] 62 FR 19885, April 23, 1997.

[52] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NHTSA as "a performance-based or design specific technical specifications and related management systems practices. They pertain to products and processes, such as size, strength, or technical performance of a product, process or material."

name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477 at 19478).

List of Subjects in 49 CFR Parts 571 and 585

Imports, Incorporation by Reference, Motor Vehicle Safety, Motor Vehicles, Reporting and recordkeeping requirements, and Tires.

■ In consideration of the foregoing, 49 CFR parts 571 and 585 are amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.202 is amended by revising the section heading, S2, S4, and S4.1 to read as follows:

571.202 Standard No. 202; Head restraints; Applicable at the manufacturers option until September 1, 2009.

* * * * *

S2. *Application.* This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses with a GVWR of 4,536 kg or less, manufactured before September 1, 2009. Until September 1, 2009, manufacturers may comply with the standard in this § 571.202, with the European regulations referenced in S4.3 of this § 571.202, or with the standard in § 571.202a. For vehicles manufactured on or after September 1, 2009 and before September 1, 2010, manufacturers may comply with the standard in this § 571.202 or with the European regulations referenced in S4.3 of this § 571.202, instead of the standard in § 571.202a, only to the extent consistent with phase-in specified in § 571.202a.

* * * * *

S4. *Requirements.*

S4.1 Each passenger car, and multipurpose passenger vehicle, truck and bus with a GVWR of 4,536 kg or less, must comply with, at the manufacturer's option, S4.2, S4.4 or S4.5 of this section.

* * * * *

■ 3. Section 571.202a is revised to read as follows:

§ 571.202a Standard No. 202a; Head restraints; Mandatory applicability begins on September 1, 2009.

S1. *Purpose and scope.* This standard specifies requirements for head restraints to reduce the frequency and severity of neck injury in rear-end and other collisions.

S2. *Application & incorporation by reference.*

S2.1 *Application.* This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses with a GVWR of 4,536 kg or less, manufactured on or after September 1, 2009. However, the standard's requirements for rear head restraints do not apply to vehicles manufactured before September 1, 2010, and, for vehicles manufactured between September 1, 2010 and August 31, 2011, the requirements for rear head restraints apply only to the extent provided in S7. Until September 1, 2009, manufacturers may comply with the standard in this § 571.202a, with the standard in § 571.202, or with the European regulations referenced in S4.3(a) of § 571.202. For vehicles manufactured on or after September 1, 2009 and before September 1, 2010, manufacturers may comply with the standard in § 571.202 or with the European regulations referenced in S4.3(a) of § 571.202, instead of the standard in this § 571.202a, only to the extent consistent with the phase-in specified in this § 571.202a.

S2.2 *Incorporation by reference.*

(a) Society of Automotive Engineers (SAE) Recommended Practice J211/1 rev. Mar 95, "Instrumentation for Impact Test—Part 1—Electronic Instrumentation," SAE J211/1 (rev. Mar 95) is incorporated by reference in S5.2.5(b), S5.3.8, S5.3.9, and 5.3.10 of this section. The Director of the Federal Register has approved the incorporation by reference of this material in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of SAE J211/1 (rev. Mar 95) may be obtained from SAE at the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. A copy of SAE J211/1 (rev. Mar 95) may be inspected at NHTSA's Technical Information Services, 400 Seventh Street, SW., Plaza Level, Room 403, Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) Society of Automotive Engineers (SAE) Standard J826 "Devices for Use in Defining and Measuring Vehicle Seating Accommodation," SAE J826 (rev. Jul 95) is incorporated by reference in S3, S5, S5.1, S5.1.1, S5.2, S5.2.1, S5.2.2, and S5.2.7 of this section. The Director of the Federal Register has approved the incorporation by reference of this material in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. A copy of SAE J826 (rev. Jul 95) may be obtained from SAE at the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. A copy of SAE J826 (rev. Jul 95) may be inspected at NHTSA's Technical Information Services, 400 Seventh Street, SW., Plaza Level, Room 403, Washington, DC or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

S3. Definitions.

Backset means the minimum horizontal distance between the rear of a representation of the head of a seated 50th percentile male occupant and the head restraint, as measured by the head restraint measurement device.

Head restraint means a device that limits rearward displacement of a seated occupant's head relative to the occupant's torso.

Head restraint measurement device (HRMD) means the Society of Automotive Engineers (SAE) (July 1995) J826 three-dimensional manikin with a head form attached, representing the head position of a seated 50th percentile male, with sliding scale at the back of the head for the purpose of measuring backset. The head form is designed by and available from the ICBC, 151 West Esplanade, North Vancouver, BC V7M 3H9, Canada (*www.icbc.com*).

Height means, when used in reference to a head restraint, the distance from the H-point, measured parallel to the torso reference line defined by the three dimensional SAE J826 (July 1995) manikin, to a plane normal to the torso reference line.

Intended for occupant use means, when used in reference to the adjustment of a seat, positions other than that intended solely for the purpose of allowing ease of ingress and egress of occupants and access to cargo storage areas of a vehicle.

Rear head restraint means, at any rear outboard designated seating position, a rear seat back, or any independently adjustable seat component attached to or adjacent to a seat back, that has a height equal to or greater than 700 mm, in any position of backset and height

adjustment, as measured in accordance with S5.1.1.

Top of the head restraint means the point on the head restraint with the greatest height.

S4. *Requirements.* Except as provided in S4.4, S4.2.1(a)(2) and S4.2.1(b)(2) of this section, each vehicle must comply with S4.1 of this section with the seat adjusted as intended for occupant use. Whenever a range of measurements is specified, the head restraint must meet the requirement at any position of adjustment within the specified range.

S4.1 *Performance levels.* In each vehicle other than a school bus, a head restraint that conforms to either S4.2 or S4.3 of this section must be provided at each front outboard designated seating position. In each equipped with rear outboard head restraints, the rear head restraint must conform to either S4.2 or S4.3 of this section. In each school bus, a head restraint that conforms to either S4.2 or S4.3 of this section must be provided for the driver's seating position. At each designated seating position incapable of seating a 50th percentile male Hybrid III test dummy specified in 49 CFR Part 572, Subpart E, the applicable head restraint must conform to S4.2 of this section.

S4.2 *Dimensional and static performance.* Each head restraint located in the front outboard designated seating position and each head restraint located in the rear outboard designated seating position must conform to paragraphs S4.2.1 through S4.2.7 of this section. Compliance is determined for the height requirements of S4.2.1 and the backset requirements of S4.2.3 of this section by taking the arithmetic average of three measurements.

S4.2.1 *Minimum height.*

(a) *Front outboard designated seating positions.* (1) Except as provided in S4.2.1(a)(2) of this section, when measured in accordance with S5.2.1(a)(1) of this section, the top of a head restraint located in a front outboard designated seating position must have a height not less than 800 mm in at least one position of adjustment.

(2) Exception. The requirements of S4.2.1(a)(1) do not apply if the interior surface of the vehicle at the roofline physically prevents a head restraint, located in the front outboard designated seating position, from attaining the required height. In those instances in which this head restraint cannot attain the required height, when measured in accordance with S5.2.1(a)(2), the maximum vertical distance between the top of the head restraint and the interior surface of the vehicle at the roofline must not exceed 50 mm for convertibles and 25 mm for all other vehicles. Notwithstanding this exception, when measured in accordance with S5.2.1(a)(2), the top of a head restraint located in a front outboard designated seating position must have a height not less than 700 mm in the lowest position of adjustment.

(b) *All outboard designated seating positions equipped with head restraints.*

(1) Except as provided in S4.2.1(b)(2) of this section, when measured in accordance with S5.2.1(b)(1) of this section, the top of a head restraint located in an outboard designated seating position must have a height not less than 750 mm in any position of adjustment.

(2) Exception. The requirements of S4.2.1(b)(1) do not apply if the interior surface of the vehicle at the roofline or the interior surface of the backlight physically prevent a head restraint, located in the rear outboard designated seating position, from attaining the required height. In those instances in which this head restraint cannot attain the required height, when measured in accordance with S5.2.1(b)(2), the maximum vertical distance between the top of the head restraint and the interior surface of the vehicle at the roofline or the interior surface of the backlight must not exceed 50 mm for convertibles and 25 mm for all other vehicles.

S4.2.2 *Width.* When measured in accordance with S5.2.2 of this section, 65 ± 3 mm below the top of the head restraint, the lateral width of a head restraint must be not less than 170 mm, except the lateral width of the head restraint for front outboard designated seating positions in a vehicle with a front center designated seating position, must be not less than 254 mm.

S4.2.3 *Front Outboard Designated Seating Position Backset.* When measured in accordance with S5.2.3 of this section, the backset must not be more than 55 mm, when the seat is adjusted in accordance with S5.1. For adjustable restraints, the requirements of this section must be met with the top of the head restraint in any height position of adjustment between 750 mm and 800 mm, inclusive. If the top of the head restraint, in its lowest position of adjustment, is above 800 mm, the requirements of this section must be met at that position. If the head restraint position is independent of the seat back inclination position, the head restraint must not be adjusted such that backset is more than 55 mm when the seat back inclination is positioned closer to vertical than the position specified in S5.1.

S4.2.4 *Gaps.*

All head restraints must meet limits for gaps in the head restraint specified in S4.2.4.1. For gaps between the seat and head restraint, adjustable head restraints must meet either the limits specified in S4.2.4.1 or S4.2.4.2.

S4.2.4.1 *Gaps within the head restraint and between the head restraint and seat using a 165 mm sphere.* When measured in accordance with S5.2.4.1 of this section using the head form specified in that paragraph, there must not be any gap greater than 60 mm within or between the anterior surface of the head restraint and anterior surface of the seat, with the head restraint adjusted to its lowest height position and any backset position, except as allowed by S4.4.

S4.2.4.2 *Gaps between the adjustable head restraint and seat using a 25 mm cylinder.* When measured in accordance with S5.2.4.2 of this section using the 25 mm cylinder specified in that paragraph, there must not be any gap greater than 25 mm between the anterior surface of the head restraint and anterior surface of the seat, with the head restraint adjusted to its lowest height position and any backset position, except as allowed by S4.4.

S4.2.5 *Energy absorption.* When the anterior surface of the head restraint is impacted in accordance with S5.2.5 of this section by the head form specified in that paragraph at any velocity up to and including 24.1 km/h, the deceleration of the head form must not exceed 785 m/s^2 (80 g) continuously for more than 3 milliseconds.

S4.2.6 *Height retention.* When tested in accordance with S5.2.6 of this section, the cylindrical test device specified in S5.2.6(b) must return to within 13 mm of its initial reference position after application of at least a 500 N load and subsequent reduction of the load to 50 N ± 1 N. During application of the initial 50 N reference load, as specified in S5.2.6(b)(2) of this section, the cylindrical test device must not move downward more than 25 mm.

S4.2.7 *Backset retention, displacement, and strength.*

(a) *Backset retention and displacement.* When tested in accordance with S5.2.7 of this section, the described head form must:

(1) Not be displaced more than 25 mm during the application of the initial reference moment of 37 ± 0.7 Nm;

(2) Not be displaced more than 102 mm perpendicularly and posterior of the displaced extended torso reference line during the application of a 373 ± 7.5 Nm moment about the H-point; and

(3) Return to within 13 mm of its initial reference position after the application of a 373 ± 7.5 Nm moment

about the H-point and reduction of the moment to 37 ± 0.7 Nm.

(b) *Strength.* When the head restraint is tested in accordance with S5.2.7(b) of this section with the test device specified in that paragraph, the load applied to the head restraint must reach 890 N and remain at 890 N for a period of 5 seconds.

S4.3 *Dynamic performance and width.* At each forward-facing outboard designated seating position equipped with a head restraint, the head restraint adjusted midway between the lowest and the highest position of adjustment must conform to the following:

S4.3.1 *Injury criteria.* When tested in accordance with S5.3 of this section, during a forward acceleration of the dynamic test platform described in S5.3.1, the head restraint must:

(a) *Angular rotation.* Limit posterior angular rotation between the head and torso of the 50th percentile male Hybrid III test dummy specified in 49 CFR part 572, subpart E, fitted with sensors to measure rotation between the head and torso, to 12 degrees for the dummy in all outboard designated seating positions;

(b) *Head injury criteria.* Limit the maximum HIC_{15} value to 500. HIC_{15} is calculated as follows—

For any two points in time, t_1 and t_2, during the event which are separated by not more than a 15 millisecond time interval and where t_1 is less than t_2, the head injury criterion (HIC_{15}) is determined using the resultant head acceleration at the center of gravity of the dummy head, a_r, expressed as a multiple of g (the acceleration of gravity) and is calculated using the expression:

$$HIC = \left[\frac{1}{(t_2 - t_1)} \int_{t_1}^{t_2} a_r dt \right]^{2.5} (t_2 - t_1)$$

4.3.2 *Width.* The head restraint must have the lateral width specified in S4.2.2 of this section.

S4.4 *Folding or retracting rear head restraints non-use positions.* A rear head restraint may be adjusted to a position at which its height does not comply with the requirements of S4.2.1 of this section. However, in any such position, the head restraint must meet either S4.4(a), (b) or (c) of this section.

(a) The head restraint must automatically return to a position in which its minimum height is not less than that specified in S4.2.1(b) of this section when a test dummy representing a 5th percentile female Hybrid III test dummy specified in 49 CFR part 572, subpart O is positioned according to S5.4(a); or

(b) The head restraint must, when tested in accordance with S5.4(b) of this section, be capable of manually rotating forward or rearward by not less than 60 degrees from any position of adjustment in which its minimum height is not less than that specified in S4.2.1(b) of this section.

(c) The head restraint must, when tested in accordance with S5.4(b) of this section, cause the torso reference line angle to be at least 10 degrees closer to vertical than when the head restraint is in any position of adjustment in which its height is not less than that specified in S4.2.1(b)(1) of this section.

S4.5 *Removability of head restraints.* The head restraint must not be removable without a deliberate action distinct from any act necessary for upward adjustment.

S4.6 *Compliance option selection.* Where manufacturer options are specified in this section, the manufacturer must select an option by the time it certifies the vehicle and may not thereafter select a different option for that vehicle. The manufacturer may select different compliance options for different designated seating positions to which the requirements of this section are applicable. Each manufacturer must, upon request from the National Highway Traffic Safety Administration, provide information regarding which of the compliance options it has selected for a particular vehicle or make/model.

S4.7 Information in owner's manual.

S4.7.1 The owner's manual for each vehicle must emphasize that all occupants, including the driver, should not operate a vehicle or sit in a vehicle's seat until the head restraints are placed in their proper positions in order to minimize the risk of neck injury in the event of a crash.

S4.7.2 The owner's manual for each vehicle must—

(a) Include an accurate description of the vehicle's head restraint system in an easily understandable format. The owner's manual must clearly identify which seats are equipped with head restraints;

(b) If the head restraints are removable, the owner's manual must provide instructions on how to remove the head restraint by a deliberate action distinct from any act necessary for upward adjustment, and how to reinstall head restraints;

(c) Warn that all head restraints must be reinstalled to properly protect vehicle occupants.

(d) Describe in an easily understandable format the adjustment of the head restraints and/or seat back to achieve appropriate head restraint position relative to the occupant's head. This discussion must include, at a minimum, accurate information on the following topics:

(1) A presentation and explanation of the main components of the vehicle's head restraints.

(2) The basic requirements for proper head restraint operation, including an explanation of the actions that may affect the proper functioning of the head restraints.

(3) The basic requirements for proper positioning of a head restraint in relation to an occupant's head position, including information regarding the proper positioning of the center of gravity of an occupant's head or some other anatomical landmark in relation to the head restraint.

S5. *Procedures.* Demonstrate compliance with S4.2 through S4.4 of this section with any adjustable lumbar support adjusted to its most posterior nominal design position. If the seat cushion adjusts independently of the seat back, position the seat cushion such that the highest H-point position is achieved with respect to the seat back, as measured by SAE J826 (July 1995) manikin, with leg length specified in S10.4.2.1 of § 571.208 of this Part. If the specified position of the H-point can be achieved with a range of seat cushion inclination angles, adjust the seat inclination such that the most forward part of the seat cushion is at its lowest position with respect to the most rearward part. All tests specified by this standard are conducted with the ambient temperature between 18 degrees C. and 28 degrees C.

S5.1 Except as specified in S5.2.3 and S5.3 of this section, if the seat back is adjustable, it is set at an initial inclination position closest to the manufacturer's design seat back angle, as measured by SAE J826 manikin. If there is more than one inclination position closest to the design angle, set the seat back inclination to the position closest to and rearward of the design angle.

S5.1.1 *Procedure for determining presence of head restraints in rear outboard seats.* Measure the height of the top of a rear seat back or the top of any independently adjustable seat component attached to or adjacent to the rear seat back in its highest position of adjustment using the scale incorporated into the SAE J826 (July 1995) manikin or an equivalent scale, which is positioned laterally within 15 mm of the centerline of the rear seat back or any independently adjustable seat component attached to or adjacent to the rear seat back.

S5.2 *Dimensional and static performance procedures.* Demonstrate

compliance with S4.2 of this section in accordance with S5.2.1 through S5.2.7 of this section. Position the SAE J826 (July 1995) manikin according to the seating procedure found in SAE J826 (July 1995).

S5.2.1 *Procedure for height measurement.* Demonstrate compliance with S4.2.1 of this section in accordance with S5.2.1 (a) and (b) of this section, using the headroom probe scale incorporated into the SAE J826 (July 1995) manikin with the appropriate offset for the H-point position or an equivalent scale, which is positioned laterally within 15 mm of the head restraint centerline. If the head restraint position is independent of the seat back inclination position, compliance is determined at a seat back inclination position closest to the design seat back angle, and each seat back inclination position less than the design seat back angle.

(a)(1) For head restraints in front outboard designated seating positions, adjust the top of the head restraint to the highest position and measure the height.

(2) For head restraints located in the front outboard designated seating positions that are prevented by the interior surface of the vehicle at the roofline from meeting the required height as specified in S4.2.1(a)(1), measure the clearance between the top of the head restraint and the interior surface of the vehicle at the roofline, with the seat adjusted to its lowest vertical position intended for occupant use, by attempting to pass a 25 mm sphere between them. Adjust the top of the head restraint to the lowest position and measure the height.

(b)(1) For head restraints in all outboard designated seating positions equipped with head restraints, adjust the top of the head restraint to the lowest position other than allowed by S4.4 and measure the height.

(2) For head restraints located in rear outboard designated seating positions that are prevented by the interior surface of the vehicle at the roofline or the interior surface of the rear backlight from meeting the required height as specified in S4.2.1(b)(1), measure the clearance between the top of the head restraint or the seat back and the interior surface of the vehicle at the roofline or the interior surface of the rear backlight, with the seat adjusted to its lowest vertical position intended for occupant use, by attempting to pass a 25 mm sphere between them.

S5.2.2 *Procedure for width measurement.* Demonstrate compliance with S4.2.2 of this section using calipers to measure the maximum dimension perpendicular to the vehicle vertical longitudinal plane of the intersection of the head restraint with a plane that is normal to the torso reference line of SAE J826 (July 1995) manikin and 65 ± 3 mm below the top of the head restraint.

S5.2.3 *Procedure for backset measurement.* Demonstrate compliance with S4.2.3 of this section using the HRMD positioned laterally within 15 mm of the head restraint centerline. Adjust the front head restraint so that its top is at any height between and inclusive of 750 mm and 800 mm and its backset is in the maximum position other than allowed by S4.4. If the lowest position of adjustment is above 800 mm, adjust the head restraint to that position. If the head restraint position is independent of the seat back inclination position, compliance is determined at each seat back inclination position closest to and less than the design seat back angle.

S5.2.4 *Procedures for gap measurement.*

S5.2.4.1 Procedure using a 165 mm sphere.

Demonstrate compliance with S4.2.4.1 of this section in accordance with the procedures of S5.2.4.1 (a) through (c) of this section, with the head restraint adjusted to its lowest height position and any backset position, except as allowed by S4.4.

(a) The area of measurement is anywhere on the anterior surface of the head restraint or seat with a height greater than 540 mm and within the following distances from the centerline of the seat—

(1) 127 mm for seats required to have 254 mm minimum head restraint width; and

(2) 85 mm for seats required to have a 170 mm head restraint width.

(b) Applying a load of no more than 5 N against the area of measurement specified in subparagraph (a), place a 165 ± 2 mm diameter spherical head form against any gap such that at least two points of contact are made within the area. The surface roughness of the head form is less than 1.6 μm, root mean square.

(c) Determine the gap dimension by measuring the vertical straight line distance between the inner edges of the two furthest contact points, as shown in Figures 2, 3 and 4.

S5.2.4.2 Procedure using a 25 mm cylinder.

Demonstrate compliance with S4.2.4.2 of this section in accordance with the procedures of S5.2.4.2 (a) through (c) of this section, with the head restraint adjusted to its lowest height position and any backset position, except as allowed by S4.4.

(a) The area of measurement is between the anterior surface of the head restraint and seat with a height greater than 540 mm and within the following distances from the centerline of the seat—

(1) 127 mm for seats required to have 254 mm minimum head restraint width; and

(2) 85 mm for seats required to have a 170 mm head restraint width.

(b) Orient a 25 ± 1 mm diameter cylinder such that its long axis is perpendicular to the seat back angle and in a vertical longitudinal vehicle plane. Applying a load of no more than 5 N along the axis of the cylinder, place the cylinder against any gap within the area of measurement specified in subparagraph (a). The surface roughness of the cylinder is less than 1.6 μm, root mean square.

(c) Determine if at least 125 mm of the cylinder can completely pass through the gap.

S5.2.5 *Procedures for energy absorption.* Demonstrate compliance with S4.2.5 of this section in accordance with S5.2.5 (a) through (e) of this section, with adjustable head restraints in any height and backset position of adjustment.

(a) Use an impactor with a semispherical head form with a 165 ± 2 mm diameter and a surface roughness of less than 1.6 μm, root mean square. The head form and associated base have a combined mass of 6.8 ± 0.05 kg.

(b) Instrument the impactor with an acceleration sensing device whose output is recorded in a data channel that conforms to the requirements for a 600 Hz channel class as specified in SAE Recommended Practice J211/1 (March 1995). The axis of the acceleration-sensing device coincides with the geometric center of the head form and the direction of impact.

(c) Propel the impactor toward the head restraint. At the time of launch, the longitudinal axis of the impactor is within 2 degrees of being horizontal and parallel to the vehicle longitudinal axis. The direction of travel is posteriorly.

(d) Constrain the movement of the head form so that it travels linearly along the path described in S5.2.5(c) of this section for not less than 25 mm before making contact with the head restraint.

(e) Impact the anterior surface of the seat or head restraint at any point with a height greater than 635 mm and within a distance of the head restraint vertical centerline of 70 mm.

S5.2.6 *Procedures for height retention.* Demonstrate compliance with S4.2.6 of this section in accordance with S5.2.6(a) through (e) of this section. For

head restraints that move with respect to the seat when occupant loading is applied to the seat back, S5.2.6(a) through (e) may be performed with the head restraint fixed in a position corresponding to the position when the seat is unoccupied.

(a) Adjust the adjustable head restraint so that its top is at any of the following height positions at any backset position—

(1) For front outboard designated seating positions—

(i) The highest position; and

(ii) Not less than, but closest to 800 mm; and

(2) For rear outboard designated seating positions equipped with head restraints—

(i) The highest position; and

(ii) Not less than, but closest to 750 mm.

(b)(1) Orient a cylindrical test device having a 165 ± 2 mm diameter in plan view (perpendicular to the axis of revolution), and a 152 mm length in profile (through the axis of revolution) with a surface roughness of less than 1.6 μm, root mean square, such that the axis of the revolution is horizontal and in the longitudinal vertical plane through the longitudinal centerline of the head restraint. Position the midpoint of the bottom surface of the cylinder in contact with the head restraint.

(2) Establish initial reference position by applying a vertical downward load of 50 ± 1 N at the rate of 250 ± 50 N/minute. Determine the reference position after 5.5 ± 0.5 seconds at this load.

(c) Increase the load at the rate of 250 ± 50 N/minute to at least 500 N and maintain this load for 5.5 ± 0.5 seconds.

(d) Reduce the load at the rate of 250 ± 50 N/minute until the load is completely removed. Maintain this condition for not more than two minutes.

(e) Increase the load at the rate of 250 ± 50 N/minute to 50 ± 1 N and, after 5.5 ± 0.5 seconds at this load, determine the position of the cylindrical device with respect to its initial reference position.

S5.2.7 *Procedures for backset retention, displacement, and strength.* Demonstrate compliance with S4.2.7 of this section in accordance with S5.2.7(a) and (b) of this section. The load vectors that generate moment on the head restraint are initially contained in a vertical plane parallel to the vehicle longitudinal centerline.

(a) *Backset retention and displacement.* For head restraints that move with respect to the seat when occupant loading is applied to the seat back, S5.2.7(a)(1) through (8) may be performed with the head restraint fixed in a position corresponding to the position when the seat is unoccupied.

(1) Adjust the head restraint so that its top is at a height closest to and not less than:

(i) 800 mm for front outboard designated seating positions (or the highest position of adjustment for head restraints subject to S4.2.1(a)(2)); and

(ii) 750 mm for rear outboard designated seating positions equipped with head restraints (or the highest position of adjustment for rear head restraints subject to S4.2.1(b)(2)).

(2) Adjust the head restraint to any backset position.

(3) In the seat, place a test device having the back pan dimensions and torso reference line (vertical center line), when viewed laterally, with the head room probe in the full back position, of the three dimensional SAE J826 (July 1995) manikin;

(4) Establish the displaced torso reference line by creating a posterior moment of 373 ± 7.5 Nm about the H-point by applying a force to the seat back through the back pan at the rate of 187 ± 37 Nm/minute. The initial location on the back pan of the moment generating force vector has a height of 290 mm ± 13 mm. Apply the force vector normal to the torso reference line and maintain it within 2 degrees of a vertical plane parallel to the vehicle longitudinal centerline. Constrain the back pan to rotate about the H-point. Rotate the force vector direction with the back pan.

(5) Maintain the position of the back pan as established in S5.2.7(a)(4) of this section. Using a 165 ± 2 mm diameter spherical head form with a surface roughness of less than 1.6 μm, root mean square, establish the head form initial reference position by applying, perpendicular to the displaced torso reference line, a posterior initial load at the seat centerline at a height 65 ± 3 mm below the top of the head restraint that will produce a 37 ± 0.7 Nm moment about the H-point. After maintaining this moment for 5.5 ± 0.5 seconds, measure the posterior displacement of the head form during the application of the load.

(6) Increase the initial load at the rate of 187 ± 37 Nm/minute until a 373 ± 7.5 Nm moment about the H-point is produced. Maintain the load level producing that moment for 5.5 ± 0.5 seconds and then measure the posterior displacement of the head form relative to the displaced torso reference line.

(7) Reduce the load at the rate of 187 ± 37 Nm/minute until it is completely removed. Maintain this condition for not more than two minutes.

(8) Increase the load at the rate of 187 ± 37 Nm/minute until a 37 ± 0.7 Nm moment about the H-point is produced. After maintaining the load level producing that moment for 5.5 ± 0.5 seconds, measure the posterior displacement of the head form position with respect to its initial reference position; and

(b) *Strength.* Increase the load specified in S5.2.7(a)(7) of this section at the rate of 250 ± 50 N/minute to at least 890 N and maintain this load level for 5.5 ± 0.5 seconds.

S5.3 *Procedures for dynamic performance.* Demonstrate compliance with S4.3 of this section in accordance with S5.3.1 though S5.3.9 of this section with a 50th percentile male Hybrid III test dummy specified in 49 CFR Part 572 Subpart E, fitted with sensors to measure head to torso rotation. The dummy with all sensors is to continue to meet all specifications in 49 CFR Part 572 Subpart E. The restraint is positioned midway between the lowest and the highest position of adjustment.

S5.3.1 Mount the vehicle on a dynamic test platform at the vehicle altitude set forth in S13.3 of § 571.208 of this part, so that the longitudinal centerline of the vehicle is parallel to the direction of the test platform travel and so that movement between the base of the vehicle and the test platform is prevented. Instrument the platform with an accelerometer and data processing system. Position the accelerometer sensitive axis parallel to the direction of test platform travel.

S5.3.2 Remove the tires, wheels, fluids, and all unsecured components. Remove or rigidly secure the engine, transmission, axles, exhaust, vehicle frame and any other vehicle component necessary to assure that all points on the acceleration vs. time plot measured by an accelerometer on the dynamic test platform fall within the corridor described in Figure 1 and Table 1.

S5.3.3 Place any moveable windows in the fully open position.

S5.3.4 *Seat Adjustment.* At each outboard designated seating position, if the seat back is adjustable, it is set at an initial inclination position closest to 25 degrees from the vertical, as measured by SAE J826 (July 1995) manikin. If there is more than one inclination position closest to 25 degrees from the vertical, set the seat back inclination to the position closest to and rearward of 25 degrees. Using any control that primarily moves the entire seat vertically, place the seat in the lowest position. Using any control that primarily moves the entire seat in the fore and aft directions, place the seat midway between the forwardmost and

rearmost position. If an adjustment position does not exist midway between the forwardmost and rearmost positions, the closest adjustment position to the rear of the midpoint is used. Adjust the seat cushion and seat back as required by S5 and S5.1 of this section. If the head restraint is adjustable, adjust the top of the head restraint to a position midway between the lowest position of adjustment and the highest position of adjustment. If an adjustment position midway between the lowest and the highest position does not exist, adjust the head restraint to a position below and nearest to midway between the lowest position of adjustment and the highest position of adjustment.

S5.3.5 *Seat Belt Adjustment*. Prior to placing the Type 2 seat belt around the test dummy, fully extend the webbing from the seat belt retractor(s) and release it three times to remove slack. If an adjustable seat belt D-ring anchorage exists, place it in the adjustment position closest to the mid-position. If an adjustment position does not exist midway between the highest and lowest position, the closest adjustment position above the midpoint is used.

S5.3.6 Dress and adjust each test dummy as specified in S8.1.8.2 through S8.1.8.3 of § 571.208 of this Part. The stabilized test temperature of the test dummy is at any temperature level between 69 degrees F and 72 degrees F, inclusive.

S5.3.7 *Test dummy positioning procedure*. Place a test dummy at each outboard designated seating position equipped with a head restraint.

S5.3.7.1 *Head*. The transverse instrumentation platform of the head is level within ½ degree. To level the head of the test dummy, the following sequence is followed. First, adjust the position of the H-point within the limits set forth in S10.4.2.1 of § 571.208 to level the transverse instrumentation platform of the head of the test dummy. If the transverse instrumentation platform of the head is still not level, then adjust the pelvic angle of the test dummy. If the transverse instrumentation platform of the head is still not level, then adjust the neck bracket of the dummy the minimum amount necessary from the non-adjusted "0" setting to ensure that the transverse instrumentation platform of the head is horizontal within ½ degree. The test dummy remains within the limits specified in S10.4.2.1 of § 571.208 after any adjustment of the neck bracket.

S5.3.7.2 *Upper arms and hands*. Position each test dummy as specified in S10.2 and S10.3 of § 571.208 of this Part.

S5.3.7.3 *Torso*. Position each test dummy as specified in S10.4.1.1, S10.4.1.2, and S10.4.2.1 of § 571.208 of this Part, except that the midsagittal plane of the dummy is aligned within 15 mm of the head restraint centerline. If the midsagittal plane of the dummy cannot be aligned within 15 mm of the head restraint centerline then align the midsagittal plane of the dummy as close as possible to the head restraint centerline.

S5.3.7.4 *Legs*. Position each test dummy as specified in S10.5 of § 571.208 of this Part, except that final adjustment to accommodate placement of the feet in accordance with S5.3.7.5 of this section is permitted.

S5.3.7.5 *Feet*. Position each test dummy as specified in S10.6 of § 571.208 of this Part, except that for rear outboard designated seating positions the feet of the test dummy are placed flat on the floorpan and beneath the front seat as far forward as possible without front seat interference. For rear outboard designated seating positions, if necessary, the distance between the knees can be changed in order to place the feet beneath the seat.

S5.3.8 Accelerate the dynamic test platform to 17.3 ± 0.6 km/h. All of the points on the acceleration vs. time curve fall within the corridor described in Figure 1 and Table 1 when filtered to channel class 60, as specified in the SAE Recommended Practice J211/1 (March 1995). Measure the maximum posterior angular displacement.

S5.3.9 Calculate the angular displacement from the output of instrumentation placed in the torso and head of the test dummy and an algorithm capable of determining the relative angular displacement to within one degree and conforming to the requirements of a 600 Hz channel class, as specified in SAE Recommended Practice J211/1, March 1995. No data generated after 200 ms from the beginning of the forward acceleration are used in determining angular displacement of the head with respect to the torso.

S5.3.10 Calculate the HIC_{15} from the output of instrumentation placed in the head of the test dummy, using the equation in S4.3.1(b) of this section and conforming to the requirements for a 1000 Hz channel class as specified in SAE Recommended Practice J211/1 (March 1995). No data generated after 200 ms from the beginning of the forward acceleration are used in determining HIC.

S5.4 Procedures for folding or retracting head restraints for unoccupied rear outboard designated seating positions.

(a) Demonstrate compliance with S4.4 (a) of this section, using a 5th percentile female Hybrid III test dummy specified in 49 CFR Part 572, Subpart O, in accordance with the following procedure—

(1) Position the test dummy in the seat such that the dummy's midsaggital plane is aligned within the 15 mm of the head restraint centerline and is parallel to a vertical plane parallel to the vehicle longitudinal centerline.

(2) Hold the dummy's thighs down and push rearward on the upper torso to maximize the dummy's pelvic angle.

(3) Place the legs as close as possible to 90 degrees to the thighs. Push rearward on the dummy's knees to force the pelvis into the seat so there is no gap between the pelvis and the seat back or until contact occurs between the back of the dummy's calves and the front of the seat cushion such that the angle between the dummy's thighs and legs begins to change.

(4) Note the position of the head restraint. Remove the dummy from the seat. If the head restraint returns to a retracted position upon removal of the dummy, manually place it in the noted position. Determine compliance with the height requirements of S4.2.1 of this section by using the test procedures of S5.2.1 of this section.

(b) Demonstrate compliance with S4.4 (b) of this section in accordance with the following procedure:

(1) Place the rear head restraint in any position meeting the requirements of S4.2 of this section;

(2) Strike a line on the head restraint. Measure the angle or range of angles of the head restraint reference line as projected onto a vertical longitudinal vehicle plane. Alternatively, measure the torso reference line angle with the SAE J826 (July 1995) manikin;

(3) Fold or retract the head restraint to a position in which its minimum height is less than that specified in S4.2.1 (b) of this section;

(4) Determine the minimum change in the head restraint reference line angle as projected onto a vertical longitudinal vehicle plane from the angle or range of angles measured in 5.4(b)(2). Alternatively, determine the change in the torso reference line angle with the SAE J826 (July 1995) manikin.

S6 *Vehicles manufactured on or after September 1, 2009, and before September 1, 2010 (Phase-in of § 571.202a)*.

(a) For vehicles manufactured for sale in the United States on or after September 1, 2009, and before September 1, 2010, a percentage of the manufacturer's production, as specified in S6.1, shall meet the requirements

specified in this § 571.202a without regard to any option to comply with the standard in § 571.202 or with the European regulations referenced in S4.3(a) of § 571.202. So long as this percentage requirement is met, a vehicle may comply with the standard in this § 571.202a, with the standard in § 571.202, or with the European regulations referenced in S4.3(a) of § 571.202.

(b) Notwithstanding S6(a), vehicles that are manufactured in two or more stages or that are altered (within the meaning of 49 CFR 567.7) after having previously been certified in accordance with Part 567 of this chapter may comply with the standard in this § 571.202a, with the standard in § 571.202, or with the European regulations referenced in S4.3(a) of § 571.202.

S6.1 *Phase-in percentage.* For vehicles manufactured by a manufacturer on or after September 1, 2009, and before September 1, 2010, the amount of vehicles complying with S6(a) shall be not less than 80 percent of:

(a) If the manufacturer has manufactured vehicles for sale in the United States during both of the two production years prior to September 1, 2009, the manufacturer's average annual production of vehicles manufactured on or after September 1, 2007, and before September 1, 2010, or

(b) The manufacturer's production on or after September 1, 2009, and before September 1, 2010.

S6.2 *Vehicles produced by more than one manufacturer.*

S6.2.1 For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S6.1, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S6.2.2.

(a) A vehicle that is imported shall be attributed to the importer.

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S6.2.2 A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR Part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S6.2.1.

S7. *Vehicles manufactured on or after September 1, 2010, and before September 1, 2011 (Phase-in of rear seat requirements of § 571.202a).*

(a) For vehicles manufactured for sale in the United States on or after September 1, 2010, and before September 1, 2011 a percentage of the manufacturer's production of vehicles equipped with rear outboard head restraints, as specified in S7.1, shall meet the requirements specified in this § 571.202a for rear head restraints.

(b) Vehicles that are manufactured in two or more stages or that are altered (within the meaning of 49 CFR 567.7) after having previously been certified in accordance with Part 567 of this chapter are not subject to the requirement specified in S7(a).

S7.1 *Phase-in percentage.* For vehicles manufactured by a manufacturer on or after September 1, 2010, and before September 1, 2011, the amount of vehicles equipped with rear outboard head restraints complying with S7(a) shall be not less than 80 percent of:

(a) If the manufacturer has manufactured vehicles for sale in the United States during both of the two production years prior to September 1, 2010, the manufacturer's average annual production of vehicles equipped with rear outboard head restraints manufactured on or after September 1, 2008, and before September 1, 2011, or

(b) The manufacturer's production of vehicles equipped with rear outboard head restraints on or after September 1, 2010, and before September 1, 2011.

S7.2 *Vehicles produced by more than one manufacturer.*

S7.2.1 For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S6.1, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S7.2.2.

(a) A vehicle that is imported shall be attributed to the importer.

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S7.2.2 A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR Part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S7.2.1.

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Table 1 of 571.202a – Sled pulse corridor reference point locations.

Reference Point	Time (ms)	Acceleration (m/s^2)
A	0	10
B	28	94
C	60	94
D	92	0
E	4	0
F	38.5	80
G	49.5	80
H	84	0

Figure 1 of §571.202a - Sled pulse acceleration corridor. The target acceleration with time expressed in milliseconds is a = 86 Sin(πt/88) m/s^2, for V = 17.3 ± 0.6 km/h. The time zero for the test is defined by the point when the sled acceleration achieves 2.5 m/s^2 (0.25 G's).

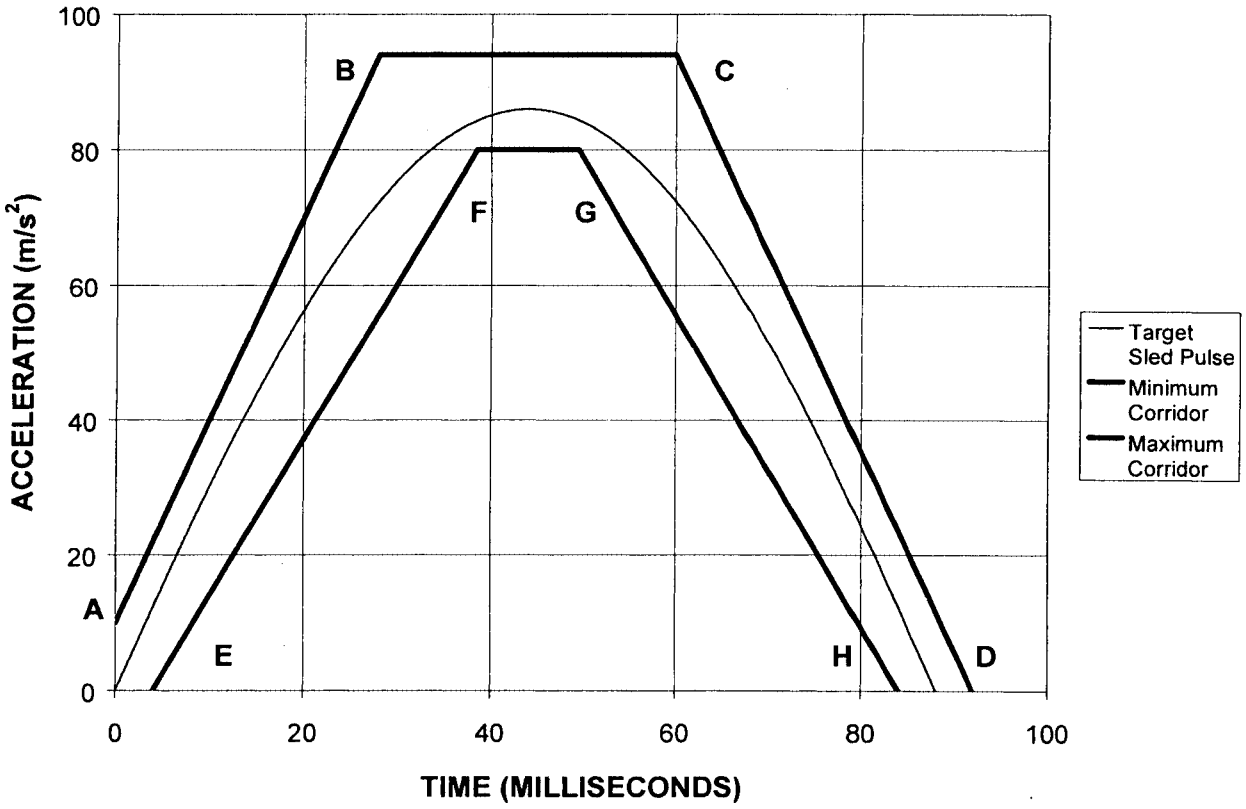


Figure 2 of §571.202a - Measurement of a vertical gap "a".

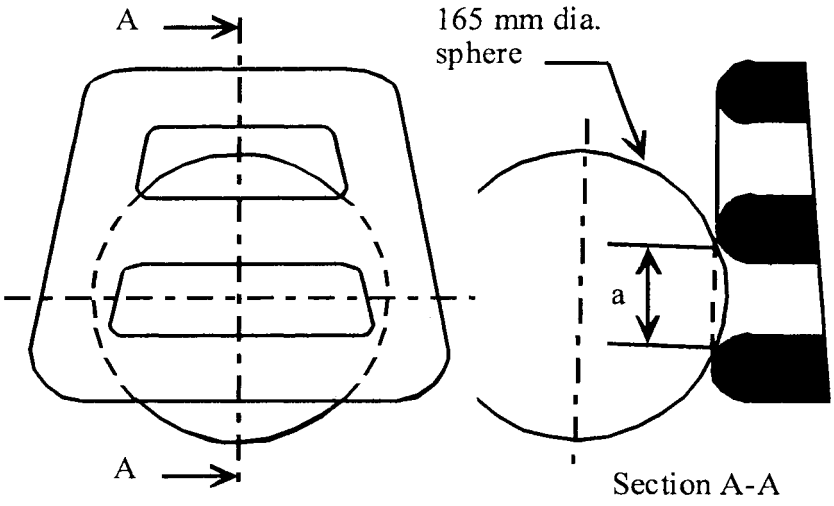


Figure 3 of §571.202a - Measurement of a horizontal gap "a".

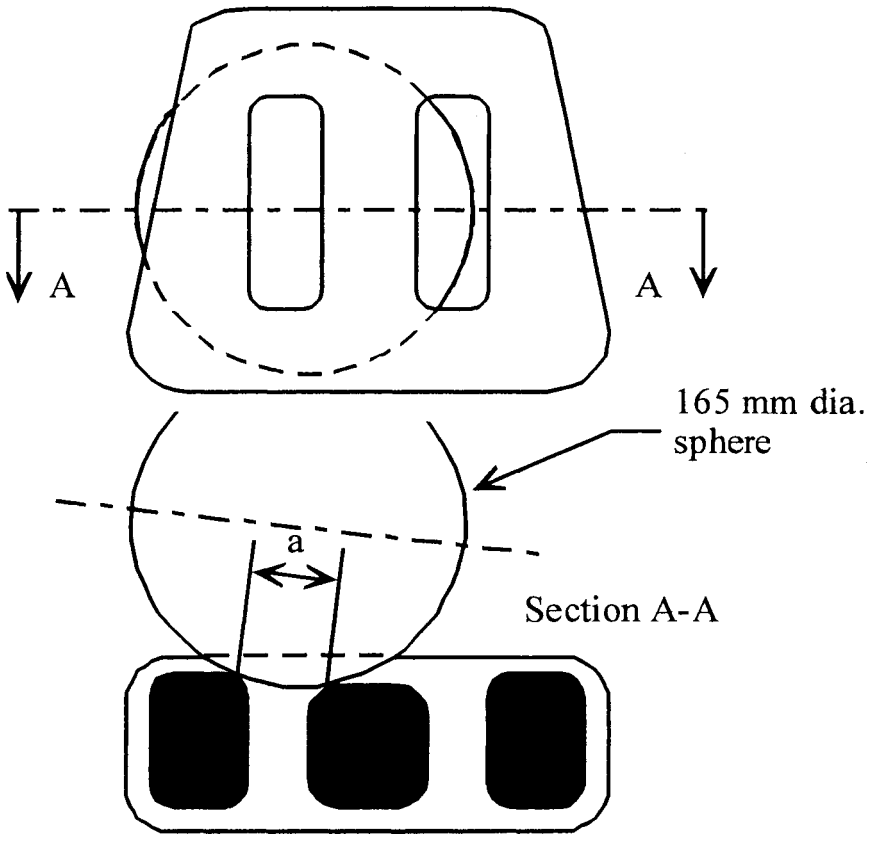
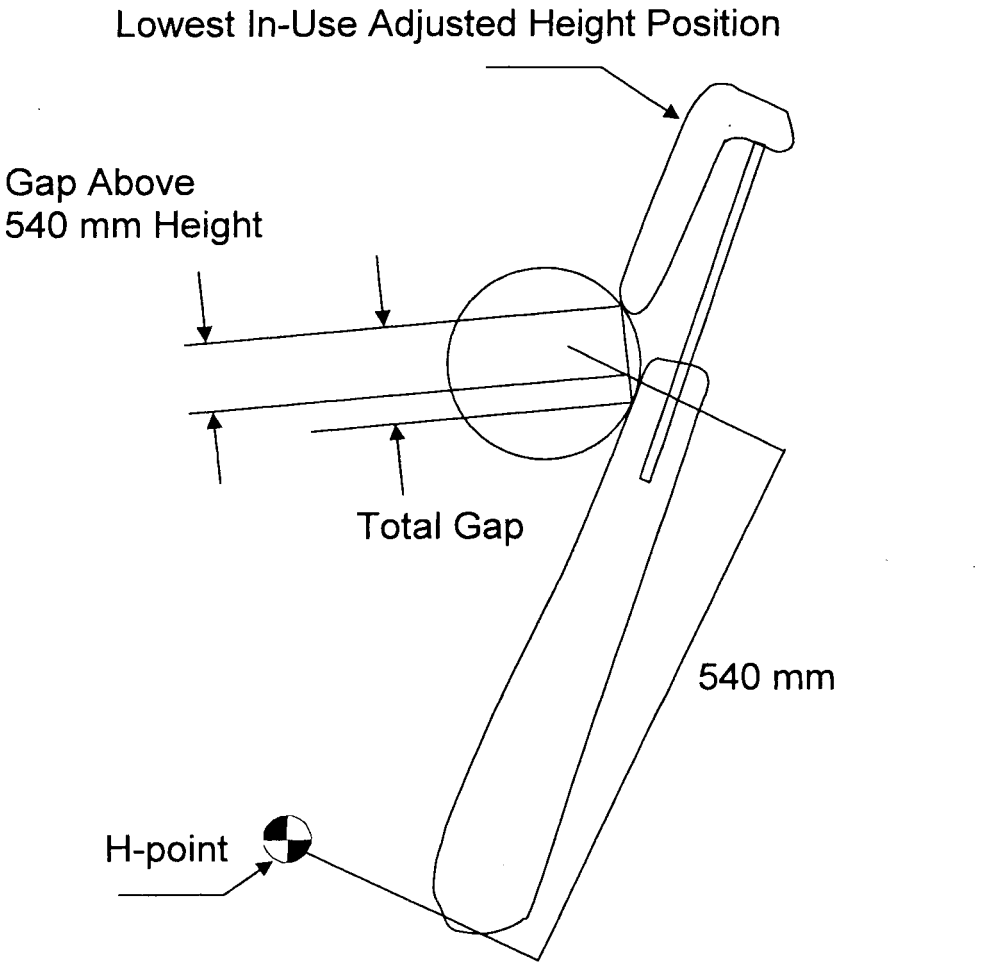


Figure 4 of §571.202a – Portion of gap above 540 mm height.



BILLING CODE 4910–59–C

PART 585—PHASE-IN REPORTING REQUIREMENTS

■ 4. The authority citation for Part 585 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 5. Amend Part 585 by adding Subpart J to read as follows:

Subpart J—Head Restraints Phase-in Reporting Requirements

Sec.

Subpart J—Head Restraints Phase-in Reporting Requirements

§ 585.91 Scope.

This subpart establishes requirements for manufacturers of passenger cars, multipurpose passenger vehicles, trucks and buses with a GVWR of 4,536 kg or less to submit a report, and maintain records related to the report, concerning the number of vehicles that meet the requirements of Standard No. 202a.

§ 585.92 Purpose.

The purpose of these reporting requirements is to assist the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with Standard No. 202a.

§ 585.93 Applicability.

This subpart applies to manufacturers of passenger cars, multipurpose passenger vehicles, trucks and buses with a GVWR of 4,536 kg or less. However, it does not apply to manufacturers whose production consists exclusively of vehicles that are manufactured in two or more stages or that are altered (within the meaning of 49 CFR 567.7) after having previously been certified in accordance with Part 567 of this chapter.

§ 585.94 Definitions.

Production year means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

§ 585.95 Response to inquiries.

(a) *Production year ending August 31, 2010.* At any time during the production year, each manufacturer must, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification

number) that have been certified as complying with § 571.202a without regard to any option to comply with the standard in § 571.202 or with the European regulations referenced in S4.3(a) of § 571.202.

(b) *Production year ending August 31, 2011.* At any time during the production year, each manufacturer must, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been certified as complying with the requirements specified in § 571.202a for rear head restraints.

§ 585.96 Reporting Requirements.

(a) *Production year ending August 31, 2010.*

(1) *General reporting requirements.* Within 60 days after the end of the production year ending August 31, 2010, each manufacturer must submit a report to the National Highway Traffic Safety Administration concerning its compliance with the head restraint requirements specified in § 571.202a, without regard to any option to comply with the standard in § 571.202 or with the European regulations referenced in S4.3(a) of § 571.202, for its passenger cars, trucks, buses and multipurpose passenger vehicles produced in that year. The report must provide the information specified in paragraph (2) of this section and in § 585.2 of this part.

(2) *Report content.*

(i) *Basis for phase-in production goals.* Each manufacturer must provide the number of passenger cars and multipurpose passenger vehicles, trucks and buses with a GVWR of 4,536 kg or less manufactured for sale in the United States. The number must be either the manufacturer's average annual production of vehicles manufactured on or after September 1, 2007 and before September 1, 2010, or, at the manufacturer's option, the manufacturer's production on or after September 1, 2009 and before September 1, 2010. A new manufacturer that has not previously manufactured these vehicles for sale in the United States must report the number of such vehicles manufactured during the production period beginning on or after September 1, 2009 and before September 1, 2010.

(ii) *Production.* Each manufacturer must report for the production year ending August 31, 2010: The total number of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kg or less that meet § 571.202a, without regard to any option to comply with the standard in § 571.202 or with the European regulations referenced in S4.3(a) of § 571.202.

(b) *Production year ending August 31, 2011.*

(1) *General reporting requirements.* Within 60 days after the end of the production year ending August 31, 2011, each manufacturer must submit a report to the National Highway Traffic Safety Administration concerning its compliance with the rear head restraint requirements specified in § 571.202a. The report must provide the information specified in paragraph (2) of this section and in § 585.2 of this part.

(2) *Report content.*

(i) *Basis for phase-in production goals.* Each manufacturer must provide the number of passenger cars and multipurpose passenger vehicles, trucks and buses with a GVWR of 4,536 kg or less manufactured for sale in the United States with rear head restraints. The number must be either the manufacturer's average annual production of vehicles with rear head restraints manufactured on or after September 1, 2008 and before September 1, 2011, or, at the manufacturer's option, the manufacturer's production on or after September 1, 2010 and before September 1, 2011. A new manufacturer that has not previously manufactured these vehicles for sale in the United States must report the number of such vehicles manufactured during the production period on or after September 1, 2010 and before September 1, 2011.

(ii) *Production.* Each manufacturer must report for the production year ending August 31, 2011: The total number of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kg or less that meet the rear head restraint requirements of § 571.202a.

§ 585.97 Records.

Each manufacturer must maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 585.96 until December 31, 2007.

Issued on: April 16, 2007.

Nicole R. Nason,

Administrator.

[FR Doc. 07–2011 Filed 5–3–07; 8:45 am]

BILLING CODE 4910–59–P

Federal Register

Friday,

May 4, 2007

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 413

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2008; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

[CMS–1545–P]

RIN 0938–AO64

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2008

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year (FY) 2008. In addition, this proposed rule would revise and rebase the SNF market basket, and would modify the threshold for the adjustment to account for market basket forecast error.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 29, 2007.

ADDRESSES: In commenting, please refer to file code CMS–1545–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking.* Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1545–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1545–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ellen Berry, (410) 786–4528 (for information related to the case-mix classification methodology). Mollie Knight, (410) 786–7948 (for information related to the SNF market basket and labor-related share). Jeanette Kranacs, (410) 786–9385 (for information related to the development of the payment rates). Bill Ullman, (410) 786–5667 (for information related to level of care determinations, consolidated billing, and general information).

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–1545–P and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.cms.hhs.gov/eRulemaking.* Click on the link "Electronic Comments on CMS Regulations" on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

Table of Contents

Abbreviations

In addition, because of the many terms to which we refer by abbreviation in this proposed rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ADL Activity of Daily Living
AIDS Acquired Immune Deficiency Syndrome
ARD Assessment Reference Date
BBA Balanced Budget Act of 1997, Pub. L. 105–33
BBRA Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999, Pub. L. 106–113
BIPA Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Pub. L. 106–554
BLS Bureau of Labor Statistics
CAH Critical Access Hospital
CBSA Core-Based Statistical Area
CFR Code of Federal Regulations
CMS Centers for Medicare & Medicaid Services
CPT (Physicians') Current Procedural Terminology
DRA Deficit Reduction Act of 2005, Pub. L. 109–171
DRG Diagnosis Related Group
ECI Employment Cost Index
FI Fiscal Intermediary
FQHC Federally Qualified Health Center
FR Federal Register
FY Fiscal Year
GAO Government Accountability Office
HCPCS Healthcare Common Procedure Coding System
HIT Health Information Technology
ICD–9–CM International Classification of Diseases, Ninth Edition, Clinical Modification
IFC Interim Final Rule with Comment Period
MDS Minimum Data Set
MEDPAC Medicare Payment Advisory Commission
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
NAICS North American Industrial Classification System
OIG Office of the Inspector General
OMB Office of Management and Budget
OMRA Other Medicare Required Assessment
PPI Producer Price Index
PPS Prospective Payment System
RAI Resident Assessment Instrument
RAP Resident Assessment Protocol
RAVEN Resident Assessment Validation Entry
RFA Regulatory Flexibility Act, Pub. L. 96–354
RHC Rural Health Clinic
RIA Regulatory Impact Analysis
RUG–III Resource Utilization Groups, Version III
RUG–53 Refined 53-Group RUG–III Case-Mix Classification System
SCHIP State Children's Health Insurance Program
SIC Standard Industrial Classification System
SNF Skilled Nursing Facility
STM Staff Time Measurement
UMRA Unfunded Mandates Reform Act, Public Law 104–4

I. Background

[If you choose to comment on issues in this section, please include the caption "BACKGROUND" at the beginning of your comments.]

Annual updates to the prospective payment system (PPS) rates for skilled nursing facilities (SNFs) are required by section 1888(e) of the Social Security Act (the Act), as added by section 4432 of the Balanced Budget Act of 1997 (BBA), and amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) relating to Medicare payments and consolidated billing for SNFs. Our most recent annual update occurred in an update notice (71 FR 43158, July 31, 2006) that set forth updates to the SNF PPS payment rates for fiscal year (FY) 2007. We subsequently published a correction notice (71 FR 57519, September 29, 2006) with respect to those payment rate updates.

A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

Section 4432 of the Balanced Budget Act of 1997 (BBA) amended section 1888 of the Act to provide for the implementation of a per diem PPS for SNFs, covering all costs (routine, ancillary, and capital-related) of covered SNF services furnished to beneficiaries under Part A of the Medicare program, effective for cost reporting periods beginning on or after July 1, 1998. In this proposed rule, we propose to update the per diem payment rates for SNFs for FY 2008. Major elements of the SNF PPS include:

• *Rates.* As discussed in section I.F.1 of this proposed rule, we established per diem Federal rates for urban and rural areas using allowable costs from FY 1995 cost reports. These rates also included an estimate of the cost of services that, before July 1, 1998, had been paid under Part B but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. We adjust the rates annually using a SNF market basket index, and we adjust them by the hospital inpatient wage index to account for geographic variation in wages. We also apply a case-mix adjustment to account for the relative resource utilization of different patient types. This adjustment utilizes a refined, 53-group version of the Resource Utilization Groups, version III (RUG–III) case-mix classification system, based on information obtained from the required resident assessments using the Minimum Data Set (MDS) 2.0. Additionally, as noted in the August 4, 2005 final rule (70 FR 45028), the payment rates at various times have also reflected specific legislative provisions, including section 101 of the BBRA, sections 311, 312, and 314 of the BIPA, and section 511 of the MMA.

• *Transition.* Under sections 1888(e)(1)(A) and (e)(11) of the Act, the SNF PPS included an initial, three-phase transition that blended a facility-specific rate (reflecting the individual facility's historical cost experience) with the Federal case-mix adjusted rate. The transition extended through the facility's first three cost reporting periods under the PPS, up to and including the one that began in FY 2001. Thus, the SNF PPS is no longer operating under the transition, as all facilities have been paid at the full Federal rate effective with cost reporting periods beginning in FY 2002. As we now base payments entirely on the adjusted Federal per diem rates, we no longer include adjustment factors

related to facility-specific rates for the coming fiscal year.

• *Coverage.* The establishment of the SNF PPS did not change Medicare's fundamental requirements for SNF coverage. However, because the RUG–III classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted, where possible, to coordinate claims review procedures with the output of beneficiary assessment and RUG–III classifying activities. This approach includes an administrative presumption that utilizes a beneficiary's initial classification in one of the upper 35 RUGs of the refined 53-group system to assist in making certain SNF level of care determinations, as discussed in greater detail in section II.E. of this proposed rule.

• *Consolidated Billing.* The SNF PPS includes a consolidated billing provision that requires a SNF to submit consolidated Medicare bills to its fiscal intermediary for almost all of the services that its residents receive during the course of a covered Part A stay. While section 313 of the BIPA repealed the Part B aspect of the consolidated billing requirement, SNFs maintain responsibility for submitting consolidated Medicare bills to the fiscal intermediary for physical, occupational, and speech-language therapy that residents receive during a noncovered stay. The statute excludes a small list of services from the consolidated billing provision (primarily those of physicians and certain other types of practitioners), which remain separately billable under Part B when furnished to a SNF's Part A resident. A more detailed discussion of this provision appears in section V. of this proposed rule.

• *Application of the SNF PPS to SNF services furnished by swing-bed hospitals.* Section 1883 of the Act permits certain small, rural hospitals to enter into a Medicare swing-bed agreement, under which the hospital can use its beds to provide either acute or SNF care, as needed. For critical access hospitals (CAHs), Part A pays on a reasonable cost basis for SNF services furnished under a swing-bed agreement. However, in accordance with section 1888(e)(7) of the Act, these services furnished by non-CAH rural hospitals are paid under the SNF PPS, effective with cost reporting periods beginning on or after July 1, 2002. A more detailed discussion of this provision appears in section VI. of this proposed rule.

B. Requirements of the Balanced Budget Act of 1997 (BBA) for Updating the Prospective Payment System for Skilled Nursing Facilities

Section 1888(e)(4)(H) of the Act requires that we publish annually in the **Federal Register:**

1. The unadjusted Federal per diem rates to be applied to days of covered SNF services furnished during the FY.

2. The case-mix classification system to be applied with respect to these services during the FY.

3. The factors to be applied in making the area wage adjustment with respect to these services.

In the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to modifications in the RUG–III classification structure (see section II.E of this proposed rule for a discussion of the relationship between the case-mix classification system and SNF level of care determinations).

Along with a number of other revisions proposed later in this preamble, this proposed rule provides the annual updates to the Federal rates as mandated by the Act.

C. The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA)

There were several provisions in the BBRA that resulted in adjustments to the SNF PPS. We described these provisions in detail in the final rule that we published in the **Federal Register** on July 31, 2000 (65 FR 46770). In particular, section 101(a) of the BBRA provided for a temporary 20 percent increase in the per diem adjusted payment rates for 15 specified RUG–III groups. In accordance with section 101(c)(2) of the BBRA, this temporary payment adjustment expired on January 1, 2006, upon the implementation of case-mix refinements (see section I.F.1. of this proposed rule). We included further information on BBRA provisions that affected the SNF PPS in Program Memorandums A–99–53 and A–99–61 (December 1999).

Also, section 103 of the BBRA designated certain additional services for exclusion from the consolidated billing requirement, as discussed in section IV of this proposed rule. Further, for swing-bed hospitals with more than 49 (but less than 100) beds, section 408 of the BBRA provided for the repeal of certain statutory restrictions on length of stay and aggregate payment for patient days, effective with the end of the SNF PPS transition period described in section 1888(e)(2)(E) of the Act. In the July 31, 2001 final rule (66 FR 39562), we made conforming changes to the regulations at § 413.114(d), effective for services furnished in cost reporting periods beginning on or after July 1, 2002, to reflect section 408 of the BBRA.

D. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA)

The BIPA also included several provisions that resulted in adjustments to the SNF PPS. We described these provisions in detail in the final rule that we published in the **Federal Register** on July 31, 2001 (66 FR 39562). In particular:

• Section 203 of the BIPA exempted CAH swing-beds from the SNF PPS. We included further information on this provision in Program Memorandum A–01–09 (Change Request #1509), issued January 16, 2001, which is available online at *www.cms.hhs.gov/transmittals/downloads/a0109.pdf.*

• Section 311 of the BIPA revised the statutory update formula for the SNF market basket, and also directed us to conduct a study of alternative case-mix classification systems for the SNF PPS. In 2006, we submitted a report to the Congress on this study, which is available online at *www.cms.hhs.gov/SNFPPS/Downloads/RC_2006_PC–PPSSNF.pdf.*

• Section 312 of the BIPA provided for a temporary increase of 16.66 percent in the nursing component of the case-mix adjusted Federal rate for services furnished on or after April 1, 2001, and before October 1, 2002. The add-on is no longer in effect. This section also directed the General Accounting Office (GAO) to conduct an audit of SNF nursing staff ratios and submit a report to the Congress on whether the temporary increase in the nursing component should be continued. The report (GAO–03–176), which GAO issued in November 2002, is available online at *www.gao.gov/new.items/d03176.pdf.*

• Section 313 of the BIPA repealed the consolidated billing requirement for services (other than physical, occupational, and speech-language therapy) furnished to SNF residents during noncovered stays, effective January 1, 2001. (A more detailed discussion of this provision appears in section V. of this proposed rule.)

• Section 314 of the BIPA corrected an anomaly involving three of the RUGs that the BBRA had designated to receive the temporary payment adjustment discussed above in section I.C. of this proposed rule. (As noted previously, in accordance with section 101(c)(2) of the

BBRA, this temporary payment adjustment expired upon the implementation of case-mix refinements on January 1, 2006.)

• Section 315 of the BIPA authorized us to establish a geographic reclassification procedure that is specific to SNFs, but only after collecting the data necessary to establish a SNF wage index that is based on wage data from nursing homes. At this time, this has proven to be infeasible due to the volatility of existing SNF wage data and the significant amount of resources that would be required to improve the quality of that data.

We included further information on several of the BIPA provisions in Program Memorandum A–01–08 (Change Request #1510), issued January 16, 2001, which is available online at *www.cms.hhs.gov/transmittals/downloads/a0108.pdf.*

E. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA)

The MMA included a provision that results in a further adjustment to the SNF PPS. Specifically, section 511 of the MMA amended section 1888(e)(12) of the Act to provide for a temporary increase of 128 percent in the PPS per diem payment for any SNF resident with Acquired Immune Deficiency Syndrome (AIDS), effective with services furnished on or after October 1, 2004. This special AIDS add-on was to remain in effect until "* * * such date as the Secretary certifies that there is an appropriate adjustment in the case mix * * *." The AIDS add-on is also discussed in Program Transmittal #160 (Change Request #3291), issued on April 30, 2004, which is available online at *www.cms.hhs.gov/transmittals/downloads/r160cp.pdf.* As discussed in the SNF PPS final rule for FY 2006 (70 FR 45028, August 4, 2005), we did not address the certification of the AIDs add-on with the implementation of the case-mix refinements, thus allowing the temporary add-on payment created by section 511 of the MMA to continue in effect.

For the limited number of SNF residents that qualify for the AIDS add-on, implementation of this provision results in a significant increase in payment. For example, using 2005 data, we identified 1276 SNF residents with a principal diagnosis code of 042 ("Human Immunodeficiency Virus (HIV) Infection"). For FY 2008, an urban facility with a resident with AIDS in RUG group "SSA" would have a case-mix adjusted payment of almost $250.91 (see Table 4) before the application of the MMA adjustment. After an increase of 128 percent, this urban facility would receive a case-mix adjusted payment of approximately $572.07.

In addition, section 410 of the MMA contained a provision that excluded from consolidated billing certain practitioner and other services furnished to SNF residents by rural health clinics (RHCs) and Federally Qualified Health Centers (FQHCs). (A more detailed discussion of this provision appears in section V. of this proposed rule.)

F. Skilled Nursing Facility Prospective Payment System—General Overview

We implemented the Medicare SNF PPS effective with cost reporting periods beginning on or after July 1, 1998. This PPS pays SNFs through prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services. These payment rates cover all costs of furnishing covered skilled nursing services (routine, ancillary, and capital-related costs) other than costs associated with approved educational activities. Covered SNF services include post-hospital services for which benefits are provided under Part A and all items and services that, before July 1, 1998, had been paid under Part B (other than physician and certain other services specifically excluded under the BBA) but were furnished to Medicare beneficiaries in a SNF during a covered Part A stay. A complete discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252).

1. Payment Provisions—Federal Rate

The PPS uses per diem Federal payment rates based on mean SNF costs in a base year updated for inflation to the first effective period of the PPS. We developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the Federal rates also incorporated an estimate of the amounts that would be payable under Part B for covered SNF services furnished to individuals during the course of a covered Part A stay in a SNF.

In developing the rates for the initial period, we updated costs to the first effective year of the PPS (the 15-month period beginning July 1, 1998) using a SNF market basket index, and then standardized for the costs of facility differences in case-mix and for geographic variations in wages. In compiling the database used to compute the Federal payment rates, we excluded those providers that received new provider exemptions from the routine cost limits, as well as costs related to payments for exceptions to the routine cost limits. Using the formula that the BBA prescribed, we set the Federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We computed and applied separately the payment rates for facilities located in urban and rural areas. In addition, we adjusted the portion of the Federal rate attributable to wage-related costs by a wage index.

The Federal rate also incorporates adjustments to account for facility case-mix, using a classification system that accounts for the relative resource utilization of different patient types. The RUG–III classification system uses beneficiary assessment data from the Minimum Data Set (MDS) completed by SNFs to assign beneficiaries to one of 53 RUG–III groups. The original RUG–III case-mix classification system included 44 groups. However, under refinements that became effective on January 1, 2006, we added nine new groups—comprising a new Rehabilitation plus Extensive Services category—at the top of the RUG hierarchy. The May 12, 1998 interim final rule (63 FR 26252) included a complete and detailed description of the original 44-group RUG–III case-mix classification system. A comprehensive description of the refined 53-group RUG–III case-mix classification system (RUG–53) appeared in the proposed and final rules for FY 2006 (70 FR 29070, May 19, 2005, and 70 FR 45026, August 4, 2005).

Further, in accordance with section 1888(e)(4)(E)(ii)(IV) of the Act, the Federal rates in this proposed rule reflect an update to the rates that we published in the July 31, 2006 final rule for FY 2007 (71 FR 43158) and the associated correction notice (71 FR 57519, September 29, 2006), equal to the full change in the SNF market basket index. A more detailed discussion of the SNF market basket index and related issues appears in sections I.F.2. and III. of this proposed rule.

2. Rate Updates Using the Skilled Nursing Facility Market Basket Index

Section 1888(e)(5) of the Act requires us to establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered SNF services. We use the SNF market basket index to update the Federal rates on an annual basis. For FY 2008, we propose to revise and rebase the market basket to reflect 2004 total cost data as detailed in section III.A. The proposed

FY 2008 market basket increase is 3.3 percent. (However, we note that both the President's budget and the recommendations of the Medicare Payment Advisory Commission (MedPAC) include a proposal for a zero percent update in the SNF market basket for FY 2008, and that the provisions outlined in this proposed rule would need to reflect any legislation that the Congress enacts to adopt this proposal.)

As explained in the final rule for FY 2004 (66 FR 46058, August 4, 2003), the annual update of the payment rates includes, as appropriate, an adjustment to account for market basket forecast error. When we initially proposed the forecast error adjustment (68 FR 34768, June 10, 2003), we noted that significant previous forecast errors had resulted from wages and benefits for SNF workers increasing more rapidly than expected. In the SNF PPS final rule for FY 2004, we then proceeded to correct for those forecast errors with a one-time, cumulative adjustment relating to the FYs 2000 through 2002 updates, resulting in a 3.26 percentage point addition to the market basket update. We also provided for subsequent adjustments in succeeding fiscal years whenever the difference between the forecasted and actual market basket increases exceeds a specified threshold, which we indicated at the time would likely be 0.25 percentage point.

However, we believe that it is now appropriate to draw a distinction between the kind of exceptional, unanticipated major increases in wages and benefits that initially gave rise to this policy and the much smaller variances between forecasted and actual change that more typically occur from year to year, in recognition that a certain level of imprecision is inherently associated with measuring statistics. In general, the SNF market basket is expected to reasonably project inflationary price pressures. Further, according to MedPAC analysis, we note that freestanding SNFs (which represent more than 80 percent of all SNFs) have received Medicare payments that exceeded costs by 10.8 percent or more since 2001, and Medicare margins are projected to be 11 percent in 2007. Moreover, following the initial, cumulative 3.26 percent forecast error adjustment relating to FYs 2000 through 2002 updates, the differences between the forecasted and actual increases in the market basket for each of the subsequent fiscal years have been far smaller in magnitude (0.3 percentage point or less) than the ones that originally had prompted the adoption of this policy.

Accordingly, we believe it would be appropriate at this point to recalibrate the specified threshold for triggering a forecast error adjustment, in a manner that distinguishes between the major forecast errors that gave rise to this policy initially and the far more typical minor variances that have consistently occurred in each of the succeeding years. As indicated in our original proposal for a forecast error adjustment, we believe that establishing a minimum threshold for making such adjustments reflects the concept that there is generally a minimal amount of imprecision that is inherently associated with measuring statistics, and that any such threshold should be sufficiently high to screen out small variations that may arise from this imprecision. At this point, however, we are concerned that the existing 0.25 percentage point threshold may not be high enough to accomplish this and to focus instead on the more significant variations—those of a magnitude that would indicate a failure to reflect accurately the actual historical price changes faced by SNFs—which the forecast error adjustment was originally created to address.

We believe that a threshold of 0.5 percentage point represents an amount that is sufficiently high to screen out the expected minor variances in a projected statistical methodology, while at the same time appropriately serving to trigger an adjustment in those instances where it is clear that the historical price changes are not being adequately reflected. Therefore, this proposed rule would raise the threshold for triggering a forecast error adjustment under the SNF PPS from the current 0.25 percentage point to 0.5 percentage point, effective with FY 2008.

We are also considering a higher threshold for the forecast error adjustment, up to 1.0 percentage point. This would be consistent with the relative magnitude of forecast error that is addressed by the inpatient hospital capital PPS forecast error adjustment. Both the SNF and inpatient hospital capital PPS forecast error adjustments currently utilize a 0.25 percent threshold. However, the inpatient hospital capital PPS's average annual forecasted market basket update from FY 1996 through FY 2006 (the period of historical data used for forecast error adjustments to date) was approximately 0.9 percent. In contrast, the SNF PPS's average annual forecasted market basket update from FY 2000 through FY 2006 (the period of historical data used for forecast error adjustments to date) was approximately 3.1 percent. Thus, the 0.25 percentage point threshold addressed forecast errors equaling 28 percent or more of the average annual forecasted market basket update under the inpatient hospital capital PPS, compared with 8 percent of the average annual forecasted market basket update under the SNF PPS. Utilizing a 1 percentage point forecast error adjustment threshold under the SNF PPS would address forecast errors equaling 32 percent or more of the average annual forecasted market basket update, which is more consistent with the relative magnitude of forecast error for which adjustment is made under the inpatient hospital capital PPS.

While this rule proposes applying the new threshold in FY 2008, we are also considering delaying implementation of this change to FY 2009. We specifically invite comments on increasing the forecast error adjustment threshold and making the proposal effective in FY 2009.

As the difference between the estimated and actual amount of change falls below the proposed 0.5 percentage point threshold, no forecast error adjustment is appropriate in FY 2008. For FY 2006 (the most recently available fiscal year for which there is final data), the estimated increase in the market basket index was 3.1 percentage points, while the actual increase was 3.4 percentage points, resulting in a 0.3 percentage point difference. Table 1 below shows the forecasted and actual market basket amount for FY 2006.

TABLE 1.—DIFFERENCE BETWEEN THE FORECASTED AND ACTUAL MARKET BASKET INCREASES FOR FY 2006

Index	Forecasted Actual FY 2006 increase*	Actual FY 2006 increase**	FY 2006 difference
SNF	3.1	3.4	0.3

*Published in FEDERAL REGISTER; based on second quarter 2005 Global Insight Inc. forecast (97 index).
**Based on the first quarter 2007 Global Insight forecast (97 index).

II. Annual Update of Payment Rates Under the Prospective Payment System for Skilled Nursing Facilities

[If you choose to comment on issues in this section, please include the caption "Annual Update" at the beginning of your comments.]

A. Federal Prospective Payment System

This proposed rule sets forth a schedule of Federal prospective payment rates applicable to Medicare Part A SNF services beginning October 1, 2007. The schedule incorporates per diem Federal rates that provide Part A payment for all costs of services furnished to a beneficiary in a SNF during a Medicare-covered stay.

1. Costs and Services Covered by the Federal Rates

The Federal rates apply to all costs (routine, ancillary, and capital-related) of covered SNF services other than costs associated with approved educational activities as defined in § 413.85. Under section 1888(e)(2) of the Act, covered SNF services include post-hospital SNF services for which benefits are provided under Part A (the hospital insurance program), as well as all items and services (other than those services excluded by statute) that, before July 1, 1998, were paid under Part B (the supplementary medical insurance program) but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. (These excluded service categories are discussed in greater detail in section V.B.2. of the May 12, 1998 interim final rule (63 FR 26295–97)).

2. Methodology Used for the Calculation of the Federal Rates

The proposed FY 2008 rates would reflect an update using the full amount of the latest market basket index. The FY 2008 market basket increase factor is 3.3 percent. A complete description of the multi-step process initially appeared in the May 12, 1998 interim final rule (63 FR 26252), as further revised in subsequent rules. We note that in accordance with section 101(c)(2) of the BBRA, the previous, temporary increases in the per diem adjusted payment rates for certain designated RUGs, as specified in section 101(a) of the BBRA and section 314 of the BIPA, are no longer in effect due to the implementation of case-mix refinements as of January 1, 2006. However, the temporary increase of 128 percent in the per diem adjusted payment rates for SNF residents with AIDS, enacted by section 511 of the MMA, remains in effect.

We used the SNF market basket to adjust each per diem component of the Federal rates forward to reflect cost increases occurring between the midpoint of the Federal fiscal year beginning October 1, 2006, and ending September 30, 2007, and the midpoint of the Federal fiscal year beginning October 1, 2007, and ending September 30, 2008, to which the payment rates apply. In accordance with section 1888(e)(4)(E)(ii)(IV) of the Act, we update the payment rates for FY 2008 by a factor equal to the full market basket index percentage increase. We further adjust the rates by a wage index budget neutrality factor, described later in this section. Tables 2 and 3 reflect the updated components of the unadjusted Federal rates for FY 2008.

TABLE 2.—FY 2008 UNADJUSTED FEDERAL RATE PER DIEM URBAN

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per Diem Amount	$146.77	$110.55	$14.56	$74.90

TABLE 3.—FY 2008 UNADJUSTED FEDERAL RATE PER DIEM RURAL

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per Diem Amount	$140.22	$127.48	$15.55	$76.29

B. Case-Mix Refinements

Under the BBA, each update of the SNF PPS payment rates must include the case-mix classification methodology applicable for the coming Federal fiscal year. As indicated in section I.F.1. of this proposed rule, the payment rates set forth herein reflect the use of the refined RUG–53 that we discussed in detail in the proposed and final rules for FY 2006 (70 FR 29070, May 19, 2005, and 70 FR 45026, August 4, 2005). As noted in the FY 2006 final rule, we deferred RUG–53 implementation from the beginning of FY 2006 (October 1, 2005) until January 1, 2006, in order to allow sufficient time to prepare for and ease the transition to the refinements (70 FR 45034).

We list the case-mix adjusted payment rates separately for urban and rural SNFs in Tables 4 and 5, with the corresponding case-mix values. These tables do not reflect the AIDS add-on enacted by section 511 of the MMA, which we apply only after making all other adjustments (wage and case-mix).

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Table 4.
RUG-53
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES
URBAN

RUG-III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Non-case Mix Therapy Comp	Non-case Mix Component	Total Rate
RUX	1.90	2.25	278.86	248.74		74.90	602.50
RUL	1.40	2.25	205.48	248.74		74.90	529.12
RVX	1.54	1.41	226.03	155.88		74.90	456.81
RVL	1.33	1.41	195.20	155.88		74.90	425.98
RHX	1.42	0.94	208.41	103.92		74.90	387.23
RHL	1.37	0.94	201.07	103.92		74.90	379.89
RMX	1.93	0.77	283.27	85.12		74.90	443.29
RML	1.68	0.77	246.57	85.12		74.90	406.59
RLX	1.31	0.43	192.27	47.54		74.90	314.71
RUC	1.28	2.25	187.87	248.74		74.90	511.51
RUB	0.99	2.25	145.30	248.74		74.90	468.94
RUA	0.84	2.25	123.29	248.74		74.90	446.93
RVC	1.23	1.41	180.53	155.88		74.90	411.31
RVB	1.09	1.41	159.98	155.88		74.90	390.76
RVA	0.82	1.41	120.35	155.88		74.90	351.13
RHC	1.22	0.94	179.06	103.92		74.90	357.88
RHB	1.11	0.94	162.91	103.92		74.90	341.73
RHA	0.94	0.94	137.96	103.92		74.90	316.78
RMC	1.15	0.77	168.79	85.12		74.90	328.81
RMB	1.09	0.77	159.98	85.12		74.90	320.00
RMA	1.04	0.77	152.64	85.12		74.90	312.66
RLB	1.14	0.43	167.32	47.54		74.90	289.76

RLA	0.85	0.43	124.75	47.54		74.90	247.19
SE3	1.86		272.99		14.56	74.90	362.45
SE2	1.49		218.69		14.56	74.90	308.15
SE1	1.26		184.93		14.56	74.90	274.39
SSC	1.23		180.53		14.56	74.90	269.99
SSB	1.13		165.85		14.56	74.90	255.31
SSA	1.10		161.45		14.56	74.90	250.91
CC2	1.22		179.06		14.56	74.90	268.52
CC1	1.06		155.58		14.56	74.90	245.04
CB2	0.98		143.83		14.56	74.90	233.29
CB1	0.91		133.56		14.56	74.90	223.02
CA2	0.90		132.09		14.56	74.90	221.55
CA1	0.80		117.42		14.56	74.90	206.88
IB2	0.74		108.61		14.56	74.90	198.07
IB1	0.72		105.67		14.56	74.90	195.13
IA2	0.61		89.53		14.56	74.90	178.99
IA1	0.56		82.19		14.56	74.90	171.65
BB2	0.73		107.14		14.56	74.90	196.60
BB1	0.69		101.27		14.56	74.90	190.73
BA2	0.60		88.06		14.56	74.90	177.52
BA1	0.52		76.32		14.56	74.90	165.78
PE2	0.85		124.75		14.56	74.90	214.21
PE1	0.82		120.35		14.56	74.90	209.81
PD2	0.78		114.48		14.56	74.90	203.94
PD1	0.76		111.55		14.56	74.90	201.01
PC2	0.71		104.21		14.56	74.90	193.67
PC1	0.69		101.27		14.56	74.90	190.73
PB2	0.55		80.72		14.56	74.90	170.18
PB1	0.54		79.26		14.56	74.90	168.72
PA2	0.53		77.79		14.56	74.90	167.25
PA1	0.50		73.39		14.56	74.90	162.85

Table 5.
RUG-53
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES
RURAL

RUG-III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Non-case Mix Therapy Comp	Non-case Mix Component	Total Rate
RUX	1.9	2.25	266.42	286.83		76.29	629.54
RUL	1.4	2.25	196.31	286.83		76.29	559.43
RVX	1.54	1.41	215.94	179.75		76.29	471.98
RVL	1.33	1.41	186.49	179.75		76.29	442.53
RHX	1.42	0.94	199.11	119.83		76.29	395.23

RHL	1.37	0.94	192.10	119.83		76.29	388.22
RMX	1.93	0.77	270.62	98.16		76.29	445.07
RML	1.68	0.77	235.57	98.16		76.29	410.02
RLX	1.31	0.43	183.69	54.82		76.29	314.80
RUC	1.28	2.25	179.48	286.83		76.29	542.60
RUB	0.99	2.25	138.82	286.83		76.29	501.94
RUA	0.84	2.25	117.78	286.83		76.29	480.90
RVC	1.23	1.41	172.47	179.75		76.29	428.51
RVB	1.09	1.41	152.84	179.75		76.29	408.88
RVA	0.82	1.41	114.98	179.75		76.29	371.02
RHC	1.22	0.94	171.07	119.83		76.29	367.19
RHB	1.11	0.94	155.64	119.83		76.29	351.76
RHA	0.94	0.94	131.81	119.83		76.29	327.93
RMC	1.15	0.77	161.25	98.16		76.29	335.70
RMB	1.09	0.77	152.84	98.16		76.29	327.29
RMA	1.04	0.77	145.83	98.16		76.29	320.28
RLB	1.14	0.43	159.85	54.82		76.29	290.96
RLA	0.85	0.43	119.19	54.82		76.29	250.30
SE3	1.86		260.81		15.55	76.29	352.65
SE2	1.49		208.93		15.55	76.29	300.77
SE1	1.26		176.68		15.55	76.29	268.52
SSC	1.23		172.47		15.55	76.29	264.31
SSB	1.13		158.45		15.55	76.29	250.29
SSA	1.10		154.24		15.55	76.29	246.08
CC2	1.22		171.07		15.55	76.29	262.91
CC1	1.06		148.63		15.55	76.29	240.47
CB2	0.98		137.42		15.55	76.29	229.26
CB1	0.91		127.60		15.55	76.29	219.44
CA2	0.90		126.20		15.55	76.29	218.04
CA1	0.80		112.18		15.55	76.29	204.02
IB2	0.74		103.76		15.55	76.29	195.60
IB1	0.72		100.96		15.55	76.29	192.80
IA2	0.61		85.53		15.55	76.29	177.37
IA1	0.56		78.52		15.55	76.29	170.36
BB2	0.73		102.36		15.55	76.29	194.20
BB1	0.69		96.75		15.55	76.29	188.59
BA2	0.60		84.13		15.55	76.29	175.97
BA1	0.52		72.91		15.55	76.29	164.75
PE2	0.85		119.19		15.55	76.29	211.03
PE1	0.82		114.98		15.55	76.29	206.82
PD2	0.78		109.37		15.55	76.29	201.21
PD1	0.76		106.57		15.55	76.29	198.41
PC2	0.71		99.56		15.55	76.29	191.40
PC1	0.69		96.75		15.55	76.29	188.59
PB2	0.55		77.12		15.55	76.29	168.96
PB1	0.54		75.72		15.55	76.29	167.56
PA2	0.53		74.32		15.55	76.29	166.16
PA1	0.50		70.11		15.55	76.29	161.95

C. Wage Index Adjustment to Federal Rates

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the Federal rates to account for differences in area wage levels, using a wage index that we find appropriate. Since the inception of a PPS for SNFs, we have used hospital wage data in developing a wage index to be applied to SNFs. We propose to continue that practice for FY 2008, as we continue to believe that in the absence of SNF-specific wage data, using the hospital inpatient wage data is appropriate and reasonable for the SNF PPS. As explained in the update notice for FY 2005 (69 FR 45786, July 30, 2004), the SNF PPS does not use the hospital area wage index's occupational mix adjustment, as this adjustment serves specifically to define the occupational categories more clearly in a hospital setting; moreover, the collection of the occupational wage data also excludes any wage data related to SNFs. Therefore, we believe that using the updated wage data exclusive of the occupational mix adjustment continues to be appropriate for SNF payments.

We would apply the wage index adjustment to the labor-related portion of the Federal rate, which is 73.757 percent of the total rate. This percentage reflects the labor-related relative importance for FY 2008, using the proposed revised and rebased FY 2004-based market basket. The labor-related relative importance for FY 2007 was 75.839, using the FY 1997-based market basket, as shown in Table 11. We calculate the labor-related relative importance from the SNF market basket, and it approximates the labor-related portion of the total costs after taking into account historical and projected price changes between the base year and FY 2008. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2008 than the base year weights from the SNF market basket.

We calculate the labor-related relative importance for FY 2008 in four steps. First, we compute the FY 2008 price index level for the total market basket and each cost category of the market basket. Second, we calculate a ratio for each cost category by dividing the FY 2008 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2008 relative importance for each cost category by multiplying this ratio by the base year (FY 1997) weight. Finally, we add the FY 2008 relative importance for each of the labor-related cost categories (wages and salaries, employee benefits, nonmedical professional fees, labor-intensive services, and a portion of capital-related expenses) to produce the FY 2008 labor-related relative importance. Tables 6 and 7 below show the Federal rates by labor-related and non-labor-related components.

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Table 6.
RUG-53
Case-Mix Adjusted Federal Rates for Urban SNFs
By Labor and Non-Labor Component

RUG-III Category	Total Rate	Labor Portion	Non-Labor Portion
RUX	602.50	444.39	158.11
RUL	529.12	390.26	138.86
RVX	456.81	336.93	119.88
RVL	425.98	314.19	111.79
RHX	387.23	285.61	101.62
RHL	379.89	280.20	99.69
RMX	443.29	326.96	116.33
RML	406.59	299.89	106.70
RLX	314.71	232.12	82.59
RUC	511.51	377.27	134.24
RUB	468.94	345.88	123.06
RUA	446.93	329.64	117.29
RVC	411.31	303.37	107.94
RVB	390.76	288.21	102.55
RVA	351.13	258.98	92.15
RHC	357.88	263.96	93.92
RHB	341.73	252.05	89.68
RHA	316.78	233.65	83.13
RMC	328.81	242.52	86.29
RMB	320.00	236.02	83.98
RMA	312.66	230.61	82.05
RLB	289.76	213.72	76.04
RLA	247.19	182.32	64.87
SE3	362.45	267.33	95.12
SE2	308.15	227.28	80.87
SE1	274.39	202.38	72.01
SSC	269.99	199.14	70.85
SSB	255.31	188.31	67.00
SSA	250.91	185.06	65.85
CC2	268.52	198.05	70.47
CC1	245.04	180.73	64.31
CB2	233.29	172.07	61.22
CB1	223.02	164.49	58.53
CA2	221.55	163.41	58.14

CA1	206.88	152.59	54.29
IB2	198.07	146.09	51.98
IB1	195.13	143.92	51.21
IA2	178.99	132.02	46.97
IA1	171.65	126.60	45.05
BB2	196.60	145.01	51.59
BB1	190.73	140.68	50.05
BA2	177.52	130.93	46.59
BA1	165.78	122.27	43.51
PE2	214.21	157.99	56.22
PE1	209.81	154.75	55.06
PD2	203.94	150.42	53.52
PD1	201.01	148.26	52.75
PC2	193.67	142.85	50.82
PC1	190.73	140.68	50.05
PB2	170.18	125.52	44.66
PB1	168.72	124.44	44.28
PA2	167.25	123.36	43.89
PA1	162.85	120.11	42.74

Table 7.
RUG-53
Case-Mix Adjusted Federal Rates for Rural SNFs by Labor and Non-Labor Component

RUG-III Category	Total Rate	Labor Portion	Non-Labor Portion
RUX	629.54	464.33	165.21
RUL	559.43	412.62	146.81
RVX	471.98	348.12	123.86
RVL	442.53	326.40	116.13
RHX	395.23	291.51	103.72
RHL	388.22	286.34	101.88
RMX	445.07	328.27	116.80
RML	410.02	302.42	107.60
RLX	314.80	232.19	82.61
RUC	542.60	400.21	142.39
RUB	501.94	370.22	131.72
RUA	480.90	354.70	126.20
RVC	428.51	316.06	112.45
RVB	408.88	301.58	107.30
RVA	371.02	273.65	97.37
RHC	367.19	270.83	96.36
RHB	351.76	259.45	92.31

RHA	327.93	241.87	86.06
RMC	335.70	247.60	88.10
RMB	327.29	241.40	85.89
RMA	320.28	236.23	84.05
RLB	290.96	214.60	76.36
RLA	250.30	184.61	65.69
SE3	352.65	260.10	92.55
SE2	300.77	221.84	78.93
SE1	268.52	198.05	70.47
SSC	264.31	194.95	69.36
SSB	250.29	184.61	65.68
SSA	246.08	181.50	64.58
CC2	262.91	193.91	69.00
CC1	240.47	177.36	63.11
CB2	229.26	169.10	60.16
CB1	219.44	161.85	57.59
CA2	218.04	160.82	57.22
CA1	204.02	150.48	53.54
IB2	195.60	144.27	51.33
IB1	192.80	142.20	50.60
IA2	177.37	130.82	46.55
IA1	170.36	125.65	44.71
BB2	194.20	143.24	50.96
BB1	188.59	139.10	49.49
BA2	175.97	129.79	46.18
BA1	164.75	121.51	43.24
PE2	211.03	155.65	55.38
PE1	206.82	152.54	54.28
PD2	201.21	148.41	52.80
PD1	198.41	146.34	52.07
PC2	191.40	141.17	50.23
PC1	188.59	139.10	49.49
PB2	168.96	124.62	44.34
PB1	167.56	123.59	43.97
PA2	166.16	122.55	43.61
PA1	161.95	119.45	42.50

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Section 1888(e)(4)(G)(ii) of the Act also requires that we apply this wage index in a manner that does not result in aggregate payments that are greater or less than would otherwise be made in the absence of the wage adjustment. For FY 2008 (Federal rates effective October 1, 2007), we would apply the most recent wage index using the hospital inpatient wage data, and would also apply an adjustment to fulfill the budget neutrality requirement. We would meet this requirement by multiplying each of the components of the unadjusted Federal rates by a factor equal to the ratio of the volume weighted mean wage adjustment factor (using the wage index from the previous year) to the volume weighted mean wage adjustment factor, using the wage index for the FY beginning October 1, 2006. We use the same volume weights in both the numerator and denominator, and derive them from the 1997 Medicare Provider Analysis and Review File (MEDPAR) data. We define the wage adjustment factor used in this calculation as the labor share of the rate component multiplied by the wage index plus the non-labor share. The proposed budget neutrality factor for this year is 1.0003. The wage index applicable to FY 2008 appears in Tables 8 and 9 of this proposed rule.

In the SNF PPS final rule for FY 2006 (70 FR 45026, August 4, 2005), we adopted the changes discussed in the Office of Management and Budget (OMB) Bulletin No. 03–04 (June 6, 2003), available online at *www.whitehouse.gov/omb/bulletins/b03–04.html,* which announced revised definitions for Metropolitan Statistical Areas (MSAs), and the creation of Micropolitan Statistical Areas and Combined Statistical Areas. In addition, OMB published subsequent bulletins regarding CBSA changes, including changes in CBSA numbers and titles. We wish to clarify that this and all subsequent SNF PPS rules and notices are considered to incorporate the CBSA

changes published in the most recent OMB bulletin that applies to the hospital wage data used to determine the current SNF PPS wage index. The OMB bulletins may be accessed online at *http://www.whitehouse.gov/omb/bulletins/index.html*.

In adopting the OMB Core-Based Statistical Area (CBSA) geographic designations, we provided for a 1-year transition with a blended wage index for all providers. For FY 2006, the wage index for each provider consisted of a blend of 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index (both using FY 2002 hospital data). We referred to the blended wage index as the FY 2006 SNF PPS transition wage index. As discussed in the SNF PPS final rule for FY 2006 (70 FR 45041), subsequent to the expiration of this 1-year transition on September 30, 2006, we used the full CBSA-based wage index values, as now presented in Tables 8 and 9 of this proposed rule.

When adopting OMB's new labor market 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 SNF PPS wage index (70 FR 29095, May 19, 2005). As in the SNF PPS final rule for FY 2006 (70 FR 45041) and in the SNF PPS update notice for FY 2007 (71 FR 43170, July 31, 2006), we now address two situations concerning the wage index.

The first situation involves rural locations in Massachusetts and Puerto Rico. Under the CBSA labor market areas, there are no rural hospitals in those locations. Because there was no rural proxy for more recent rural data within those areas, we used the FY 2005 wage index value in both FY 2006 and FY 2007 for rural Massachusetts and rural Puerto Rico.

Because we have used the same wage index value (from FY 2005) for these areas for the previous two fiscal years, we believe it is appropriate at this point to consider alternatives in our methodology to update the wage index for rural areas without hospital wage index data. We believe that the best imputed proxy would (1) use pre-floor, pre-reclassified hospital data, (2) use the most local data available, (3) be easy to evaluate, and (4) be easily updateable from year-to-year. Although our current methodology uses local, rural pre-floor, pre-reclassified hospital wage data, this method is not updateable from year-to-year.

Therefore, in cases where there is a rural area without hospital wage data, we propose using the average wage index from all contiguous CBSAs to represent a reasonable proxy for the rural area. This approach uses pre-floor, pre-reclassified hospital wage data, is easy to evaluate, is updateable from year-to-year, and uses the most local data available.

In determining an imputed rural wage index, we interpret the term "contiguous" to mean sharing a border. For example, in the case of Massachusetts, the entire rural area consists of Dukes and Nantucket counties. We have determined that the borders of Dukes and Nantucket counties are "contiguous" with Barnstable and Bristol counties. Under the proposed methodology, the wage indexes for the counties of Barnstable (CBSA 12700, Barnstable Town, MA-(1.2539)) and Bristol (CBSA 39300, Providence-New Bedford-Fall River, RI-MA-(1.0783)) are averaged, resulting in an imputed rural wage index of 1.1665 for rural Massachusetts for FY 2008. While we believe that this policy could be readily applied to other rural areas that lack hospital wage data (possibly due to hospitals converting to a different provider type, such as a CAH, that does not submit the appropriate wage data), should a similar situation arise in the future, we may re-examine this policy. However, we do not believe that this policy is appropriate for Puerto Rico. There are sufficient economic differences between hospitals in the United States and those in Puerto Rico (including the payment of hospitals in Puerto Rico using blended Federal/Commonwealth-specific rates) to warrant establishing a separate and distinct policy specifically for Puerto Rico. Consequently, any alternative methodology for imputing a wage index for rural Puerto Rico would need to take into account those differences. Our policy of imputing a rural wage index based on the wage index(es) of CBSAs contiguous to the rural area in question does not recognize the unique circumstances of Puerto Rico. While we have not yet identified an alternative methodology for imputing a wage index for rural Puerto Rico, we will continue to evaluate the feasibility of using existing hospital wage data and, possibly, wage data from other sources. Accordingly, we propose to continue using the most recent wage index previously available for rural Puerto Rico; that is, a wage index of 0.4047.

The second situation involved the urban CBSA (25980) Hinesville-Fort Stewart, GA. Again, under CBSA designations there are no urban hospitals within that CBSA. For FY 2006 and FY 2007, we used all of the urban areas within the State to serve as a reasonable proxy for the urban area without specific hospital wage index data in determining the SNF PPS wage index.

We propose to continue this approach for urban areas without specific hospital wage index data. Therefore, the wage index for urban CBSA (25980) Hinesville-Fort Stewart, GA is calculated as the average wage index of all urban areas in Georgia.

We solicit comments on these approaches to calculating the wage index values for areas without hospitals for FY 2008 and subsequent years.

D. Updates to the Federal Rates

In accordance with section 1888(e)(4)(E) of the Act as amended by section 311 of the BIPA, the proposed payment rates in this proposed rule reflect an update equal to the full SNF market basket, estimated at 3.3 percentage points. We will continue to disseminate the rates, wage index, and case-mix classification methodology through the **Federal Register** before the August 1 that precedes the start of each succeeding fiscal year.

E. Relationship of RUG–III Classification System to Existing Skilled Nursing Facility Level-of-Care Criteria

As discussed in § 413.345, we include in each update of the Federal payment rates in the **Federal Register** the designation of those specific RUGs under the classification system that represent the required SNF level of care, as provided in § 409.30. This designation reflects an administrative presumption under the refined RUG–53 that beneficiaries who are correctly assigned to one of the upper 35 of the RUG–53 groups on the initial 5-day, Medicare-required assessment are automatically classified as meeting the SNF level of care definition up to and including the assessment reference date on the 5-day Medicare required assessment.

A beneficiary assigned to any of the lower 18 groups is not automatically classified as either meeting or not meeting the definition, but instead receives an individual level of care determination using the existing administrative criteria. This presumption recognizes the strong likelihood that beneficiaries assigned to one of the upper 35 groups during the immediate post-hospital period require a covered level of care, which would be significantly less likely for those beneficiaries assigned to one of the lower 18 groups.

In this proposed rule, we are continuing the designation of the upper 35 groups for purposes of this administrative presumption, consisting

of the following RUG–53 classifications: All groups within the Rehabilitation plus Extensive Services category; all groups within the Ultra High Rehabilitation category; all groups within the Very High Rehabilitation category; all groups within the High Rehabilitation category; all groups within the Medium Rehabilitation category; all groups within the Low Rehabilitation category; all groups within the Extensive Services category; all groups within the Special Care category; and, all groups within the Clinically Complex category.

F. Example of Computation of Adjusted PPS Rates and SNF Payment

Using the SNF XYZ described in Table 10 below, the following shows the adjustments made to the Federal per diem rate to compute the provider's actual per diem PPS payment. SNF XYZ's total PPS payment would equal $29,656. The Labor and Non-labor columns are derived from Table 6 of this proposed rule.

TABLE 10.—RUG–53 SNF XYZ: LOCATED IN CEDAR RAPIDS, IA (URBAN CBSA 16300) WAGE INDEX: 0.8853

RUG group	Labor	Wage index	Adj. labor	Non-labor	Adj. rate	Percent adj	Medicare days	Payment
RVX	$336.93	0.8853	$298.28	$119.88	$418.16	$418.16	14	$5,854.00
RLX	232.12	0.8853	205.50	82.59	288.09	288.09	30	8,643.00
RHA	233.65	0.8853	206.85	83.13	289.98	289.98	16	4,640.00
CC2	198.05	0.8853	175.33	70.47	245.80	*560.43	10	5,604.00
IA2	132.02	0.8853	116.88	46.97	163.85	163.85	30	4,915.00
							100	29,656.00

*Reflects a 128 percent adjustment from section 511 of the MMA.

III. The Skilled Nursing Facility Market Basket Index

[If you choose to comment on issues in this section, please include the caption "Market Basket Index" at the beginning of your comments.]

Section 1888(e)(5)(A) of the Act requires us to establish a SNF market basket index (input price index) that reflects changes over time in the prices of an appropriate mix of goods and services included in the SNF PPS. This proposed rule incorporates the latest available projections of the SNF market basket index. We will incorporate into the SNF final rule updated projections based on the latest available projections at that time. Accordingly, we have developed a SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. A discussion of our proposal to revise and rebase the SNF market basket appears in section IV. of this proposed rule.

Each year, we calculate a revised labor-related share based on the relative importance of labor-related cost categories in the input price index. Table 11 below summarizes the proposed updated labor-related share for FY 2008, which is based on the proposed rebased and revised SNF market basket.

TABLE 11.—LABOR-RELATED RELATIVE IMPORTANCE, FY 2007 AND FY 2008

	Relative importance, labor-related, FY 2007 (1997-based index) 0:2 forecast	Relative importance, labor-related, FY 2008 (2004-based index) 07:41 forecast
Wages and salaries	54.231	53.628
Employee benefits	11.903	12.299
Nonmedical professional fees	2.721	1.442
Labor-intensive services	4.035	3.746
Capital-related (.391)	2.949	2.642
Total	75.839	73.757

Source: Global Insight, Inc., formerly DRI–WEFA.

A. Use of the Skilled Nursing Facility Market Basket Percentage

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index, as described in the previous section, from the average of the prior fiscal year to the average of the current fiscal year. For the Federal rates established in this proposed rule, we use the percentage increase in the SNF market basket index to compute the update factor for FY 2008. We use the Global Insight, Inc. (formerly DRI–WEFA), 1st quarter 2007 forecasted percentage increase in the FY 2004-based SNF market basket index for routine, ancillary, and capital-related expenses, described in the previous section, to compute the update factor in this proposed rule. Finally, as discussed in section I.A. of this proposed rule, we no longer compute update factors to adjust a facility-specific portion of the SNF PPS rates, because the initial three-phase transition period from facility-specific to full Federal rates that started with cost reporting periods beginning in July 1998 has expired.

B. Market Basket Forecast Error Adjustment

As discussed in the June 10, 2003, supplemental proposed rule (68 FR 34768) and finalized in the August 4, 2003, final rule (68 FR 46067), the regulations at 42 CFR 413.337(d)(2) currently provide for an adjustment to account for market basket forecast error.

The initial adjustment applied to the update of the FY 2003 rate for FY 2004, and took into account the cumulative forecast error for the period from FY 2000 through FY 2002. Subsequent adjustments in succeeding FYs take into account the forecast error from the most recently available fiscal year for which there is final data, and apply whenever the difference between the forecasted and actual change in the market basket exceeds a 0.25 percentage point threshold. As also discussed previously in section I.F.2. of this proposed rule, we are proposing to raise the 0.25 percentage point threshold for forecast error adjustments under the SNF PPS to 0.5 percentage point effective with FY 2008, and we invite comments on increasing the forecast error adjustment threshold and its effective date, as well as other aspects of this proposed rule. As also discussed in that section, the payment rates for FY 2008 do not include a forecast error adjustment, as the difference between the estimated and actual amounts of increase in the market basket index for FY 2006 (the most recently available fiscal year for which there is final data) does not exceed the proposed 0.5 percentage point threshold.

C. Federal Rate Update Factor

Section 1888(e)(4)(E)(ii)(IV) of the Act requires that the update factor used to establish the FY 2008 Federal rates be at a level equal to the full market basket percentage change. Accordingly, to establish the update factor, we determined the total growth from the average market basket level for the period of October 1, 2006 through September 30, 2007 to the average market basket level for the period of October 1, 2007 through September 30, 2008. Using this process, the proposed market basket update factor for FY 2008 SNF Federal rates is 3.3 percent. We used this revised proposed update factor to compute the Federal portion of the SNF PPS rate shown in Tables 2 and 3.

IV. Revising and Rebasing the Skilled Nursing Facility Market Basket Index

[If you choose to comment on issues in this section, please include the caption "Revising and Rebasing" at the beginning of your comments.]

A. Background

Section 1888(e)(5)(A) of the Social Security Act requires the Secretary to establish a market basket index that reflects the changes over time in the prices of an appropriate mix of goods and services included in the SNF PPS. Effective for cost reporting periods beginning on or after July 1, 1998, we revised and rebased our 1977 routine costs input price index and adopted a total expenses SNF input price index using FY 1992 as the base year. In 2001 we rebased and revised the market basket to a base year of FY 1997. This year, in 2007, we propose to revise and rebase the SNF market basket to a base year of FY 2004.

The term "market basket" technically describes the mix of goods and services needed to produce SNF care, and is also commonly used to denote the input price index that includes both weights (mix of goods and services) and price factors. The term "market basket" used in this proposed rule refers to the SNF input price index.

The proposed FY 2004-based SNF market basket represents routine costs, costs of ancillary services, and capital-related costs. The percentage change in the market basket reflects the average change in the price of a fixed set of goods and services purchased by SNFs in order to furnish all services. For further background information, see the May 12, 1998 interim final rule (63 FR 26289) and the July 31, 2001 final rule (66 FR 39582).

For purposes of the SNF PPS, the SNF market basket is a fixed-weight (Laspeyres-type) price index. A Laspeyres-type index compares the cost of purchasing a specified mix of goods and services in a selected base period to the cost of purchasing that same group of goods and services at current prices.

We construct the market basket in three steps. The first step is to select a base period and estimate total base period expenditure shares for mutually exclusive and exhaustive spending categories. We use total costs for routine services, ancillary services, and capital. These shares are called "cost" or "expenditure" weights. The second step is to match each expenditure category to a price/wage variable, called a price proxy. We draw these price proxy variables from publicly available statistical series published on a consistent schedule, preferably at least quarterly. The final step involves multiplying the price level for each spending category by the cost weight for that category. The sum of these products (that is, weights multiplied by proxy index levels) for all cost categories yields the composite index level of the market basket for a given quarter or year. Repeating the third step for other quarters and years produces a time series of market basket index levels, from which we can calculate rates of growth.

The market basket represents a fixed-weight index because it answers the question of how much more or less it would cost, at a later time, to purchase the same mix of goods and services that was purchased in the base period. The effects on total expenditures resulting from changes in the quantity or mix of goods and services purchased subsequent or prior to the base period are, by design, not considered.

As discussed in the May 12, 1998 interim final rule (63 FR 26252) and in the July 31, 2001 final rule (66 FR 39582), to implement section 1888(e)(5)(A) of the Act we propose to revise and rebase the market basket so the cost weights and price proxies reflect the mix of goods and services that SNFs purchased for all costs (routine, ancillary, and capital-related) included in the SNF PPS for FY 2004.

B. Rebasing and Revising the Skilled Nursing Facility Market Basket

The terms "rebasing" and "revising", while often used interchangeably, actually denote different activities. Rebasing means shifting the base year for the structure of costs of the input price index (for example, for this proposed rule, we propose to shift the base year cost structure from fiscal year 1997 to fiscal year 2004). Revising means changing data sources, cost categories, price proxies, and/or methodology used in developing the input price index.

We are proposing both to rebase and revise the SNF market basket to reflect 2004 Medicare allowable total cost data (routine, ancillary, and capital-related). Medicare allowable costs are costs that could be reimbursed under the SNF PPS. For example, the SNF market basket excludes home health aide costs as these costs would be reimbursed under the HHA PPS and, therefore, these costs are not SNF Medicare allowable costs.

The 1997-based SNF market basket is based on total facility costs, which includes costs not reimbursed under the SNF PPS (such as nursing facility, long-term care, HHA, and intermediate care facility costs). Due to insufficient data, we were unable to separate Medicare allowable costs from total facility costs during the 1997-based SNF market basket rebasing and other previous rebasings. For this current rebasing analysis, we compared a 2004-based SNF market basket based on Medicare allowable costs to one based on total facility cost methodologies and found the cost weights to be similar. We believe that using only Medicare allowable costs better reflects the cost structure of SNFs serving Medicare beneficiaries, and permits us to apply the same methodology used to calculate the Inpatient Prospective Payment

System (IPPS), Rehabilitation, Psychiatric, and Long-term Care (RPL), and Home Health Agency (HHA) market baskets.

We selected FY 2004 as the new base year because 2004 is the most recent year for which relatively complete Medicare cost report data are available. In developing the proposed market basket, we reviewed SNF expenditure data from Medicare cost reports for FY 2004 for each freestanding SNF that reported Medicare expenses and payments. The FY 2004 cost reports are those with cost reporting periods beginning after September 30, 2003 and before October 1, 2004. We maintained our policy of using data from freestanding SNFs because freestanding SNF data reflect the actual cost structure faced by the SNF itself. In contrast, expense data for a hospital-based SNF reflect the allocation of overhead over the entire institution. Due to this method of allocation, total expenses will be correct, but the individual components' expenses may be skewed. If data from hospital-based SNFs were included, the resultant cost structure might be unrepresentative of the costs that a typical SNF experiences. We show in table 16 a comparison of the proposed 2004-based Medicare allowable and total facility SNF market baskets.

We developed cost category weights for the proposed 2004-based market basket in two stages. First, we derived base weights for seven major categories (wages and salaries, employee benefits, contract labor, pharmaceuticals, professional liability insurance, capital-related, and a residual "all other") using edited SNF Medicare cost reports. We edited the Medicare costs reports to remove reports where the data were deemed unreliable (for example, when total costs were not greater than zero). We divided the residual "all other" cost category into subcategories, using U.S. Department of Commerce Bureau of Economic Analysis' 1997 Benchmark Input-Output (I–O) tables for the nursing home industry aged forward using price changes. (The methodology we used to age the data involves applying the annual changes from the price proxies to the appropriate cost categories. We repeat this practice for each year.) The 1997-based SNF market basket used the U.S. Department of Commerce Bureau of Economic Analysis' 1997 Annual Input-Output tables and the 1997 Business Expenditures Survey. The 1997 Annual I–O is an update of the 1992 Benchmark I–O data, while the 1997 Benchmark I–O is based on a completely new set of data and, thus, is a more comprehensive and up-to-date data source for nursing home expenditure data.

The capital-related portion of the proposed rebased and revised SNF PPS market basket employs the same overall methodology used to develop the capital-related portion of the 1992-based SNF market basket, described in the May 12, 1998 interim final rule (63 FR 26289) and the 1997-based SNF market basket, described in the July 31, 2001 final rule (66 FR 39582). It is also the same methodology used for the inpatient hospital capital input price index described in the May 31, 1996 proposed rule (61 FR 27466), the August 30, 1996 final rule (61 FR 46196), and the August 12, 2005 final rule (70 FR 47407). The strength of this methodology is that it reflects the vintage nature of capital, which represents the acquisition and use of capital over time. We explain this methodology in more detail below.

Our proposed rebasing and revising of the market basket index resulted in 23 cost weights, a change from the current market basket. We are adding cost categories for postage and professional liability insurance (PLI), and have changed price proxies in several of the categories. We describe below the sources of the main category weights and their subcategories in the proposed 2004-based SNF market basket. The proposed market basket contains 23 detailed cost weights, two more cost weights than the 1997-based index.

Wages and Salaries: We derived the wages and salaries cost category using the 2004 SNF Medicare Cost Reports. We determined the share using Medicare allowable wages and salaries from Worksheet S–3, part II and total expenses from Worksheet B, part I. Medicare allowable wages and salaries are equal to total wages and salaries minus excluded salaries from Worksheet S–3, part II, as well as nursing facility and non-reimbursable salaries from Worksheet A, lines 18, 34 through 36, and 58 through 63. Medicare allowable total expenses are equal to total expenses from Worksheet B, lines 16, 21 through 30, 32, 33, 48, and 52 through 54. This share represents the wage and salary share of costs for employees for the SNF, and does not include the wages and salaries from contract labor, which are allocated to wages and salaries in a later step.

Employee Benefits: We determined the weight for employee benefits using 2004 SNF Medicare Cost Reports. We derived the share using Medicare allowable wage-related costs from Worksheet S–3, part II and total expenses from Worksheet B. Medicare allowable benefits are equal to total benefits from Worksheet S–3, part II, minus excluded (non-Medicare allowable) benefits. Non-Medicare allowable benefits are equal to the non-Medicare allowable salaries times the ratio of total benefit costs for the SNF to the total wage costs for the SNF.

Contract Labor: We determined the weight for contract labor using 2004 SNF Medicare Cost Reports. We derived the share using Medicare allowable wage-related costs from Worksheet S–3, part II line 17 minus Nursing Facility (NF) contract labor costs and Medicare allowable total costs from Worksheet B, part I. (Worksheet S–3, part II line 17 only includes direct patient care contract labor attributable to SNF and NF services.) NF contract labor costs (which are not reimbursable under Medicare) are equal to total contract labor costs multiplied by the ratio of NF wages and salaries to the sum of NF and SNF wages and salaries.

We then distributed contract labor costs between the wages and salaries and employee benefits cost categories, under the assumption that contract costs should move at the same rate as direct labor costs even though unit labor cost levels may be different.

Pharmaceuticals: We derived the cost weight for pharmaceuticals from the 2004 SNF Medicare Cost Reports. We calculated this share using non-salary costs from the Pharmacy cost center and the Drugs Charged to Patients' cost center, both found on Worksheet B. Since these drug costs were attributable to the entire SNF and not limited to Medicare allowable services, we adjusted the drug costs by the ratio of Medicare allowable pharmacy total costs to total pharmacy costs from Worksheet B, part I, column 11. Worksheet B, part I allocates the general service cost centers, which are often referred to as "overhead costs" (in which pharmacy costs are included), to the Medicare allowable and non-Medicare allowable cost centers. This resulted in a drug cost weight (3.2 percent) that was slightly higher than the drug cost weight would have been (2.7 percent) if no adjustment for Medicare allowable services had been made. We are proposing to use this methodology to derive the pharmaceutical cost weight.

In addition to the Medicare allowable methodology, we also explored alternative methods for calculating the SNF market basket drug cost weight. Specifically, we researched the viability of calculating a Medicare-specific drug cost weight based on Medicare drug costs as a percent of Medicare total costs. Because these expenses are not reported directly, we were required to

estimate them using cost-to-charge ratios. Medicare drug costs can be calculated as the product of non-salary, non-overhead costs from the Drugs Charged to Patients cost center (including allocated costs from the Pharmacy cost center) from Worksheet B, part I and the cost-to-charge ratio from Worksheet D, part 1. We excluded salary and facility overhead costs from this weight, as these costs would be included in the other cost weights. Medicare total costs can be calculated as the sum of Medicare inpatient costs and Medicare ancillary costs, including Medicare drug costs.

This methodology produced a cost weight that was nearly three times higher than the Medicare allowable drug cost weight. This considerably higher drug cost weight is primarily driven by the cost-to-charge ratio for the Drugs Charged to Patients cost center, which is 0.8 on average based on the 2004 SNF Medicare cost reports. This ratio has been relatively consistent over the last five years. The Drugs Charged to Patient cost center is one of the ancillary cost centers on the Medicare cost report. The average cost-to-charge ratio for all ancillary cost centers is 0.65.

Furthermore, the Medicare Drugs Charged to Patients cost-to-charge ratios for freestanding SNFs differ greatly from those of hospital-based SNFs. Hospital-based SNFs report an average cost-to-charge ratio for the Drugs Charged to Patients cost center of 0.22. For sensitivity analysis we used the hospital-based ratio of 0.22 to estimate a freestanding SNF Medicare drug cost weight. The resulting weight was 3.3 percent, which is close to the 3.2 percent weight that was determined using the Medicare allowable methodology. Contrary to freestanding SNFs, the cost-to-charge ratio for the Drugs Charged to Patients cost center for hospital-based SNFs is below the average cost-to-charge ratio for all ancillary cost centers, which is 0.29.

The large inconsistencies between freestanding and hospital-based SNFs, including the substantial difference in the drug cost-to-charge ratios, as well as the dissimilarity in the relationships of those ratios to the cost-to-charge ratios from all ancillary cost centers by SNF type, led us to believe this methodology was inappropriate to use in developing the proposed drug cost weight in the proposed 2004-based SNF market basket. In addition, as part of our sensitivity analysis, we estimated the impact that this alternative methodology would have on our proposed FY 2008 update, and found that it was minimal. However, we are soliciting comments on this methodology. We also welcome any input, data, or documentation from the public that would help to clarify the discrepancies between freestanding and hospital-based facilities' Medicare drug cost weights. Based on further internal analyses and any external data or documentation that we receive from the industry, we may still consider adoption of this Medicare drug cost weight methodology to derive the SNF market basket drug cost weight.

Table 12 below shows the similarity between the SNF market basket percent changes using the drug cost weight calculated with the Medicare allowable methodology for drugs and the market basket percent changes using the alternative drug methodology described above.

Table 12
SNF Market Basket Percent Changes using Medicare Allowable Methodology to Determine Pharmaceuticals Cost Weight, FY 2002-FY 2010

Fiscal Year (FY)	Medicare Allowable Methodology	Alternative Drug Methodology
Historical data:		
FY 2002	3.7	3.8
FY 2003	3.4	3.6
FY 2004	3.3	3.5
FY 2005	3.3	3.4
FY 2006	3.6	3.8
Average FY 2002-2006	3.5	3.6
Forecast:		
FY 2007	3.3	3.4
FY 2008	3.3	3.4
FY 2009	3.1	3.2
FY 2010	2.9	3.0
Average FY 2007-2010	3.2	3.3

Source: Global Insight, Inc. 1st Qtr 2007, @USMACRO/CNTL0307@CISSIM/TL0207.SIM

Malpractice: Unlike the 1997-based SNF market basket, the proposed 2004-based SNF market basket includes a separate cost category for professional liability insurance (PLI). The 2004 SNF Medicare cost reports include PLI as an entry, while in 1997 very few SNFs reported data for malpractice premiums, paid losses, or self-insurance on Worksheet S–2. In addition, the 1997 Benchmark Input-Output table indicated that the general category for insurance carriers (which includes PLI as a subset) was a very small share of total SNF costs in 1997. In the past, it

has been our policy not to provide detailed breakouts of cost categories unless they represent a significant portion of providers' costs. Recent indications are that PLI costs for SNFs are rising.

We calculated the share using malpractice costs from Worksheet S–2 of the Medicare Cost reports to develop a SNF total facility cost weight. Since these malpractice costs are attributable to the entire SNF and not just Medicare allowable services, we adjusted the malpractice costs by the ratio of Medicare allowable beds to total facility beds. We believe this is an appropriate adjustment as malpractice costs are often based on the number of facility beds. The proposed malpractice cost weight is slightly higher than the 2004-based SNF total facility market basket malpractice cost weight.

In addition to the proposed adjustment, we also considered adjusting the total facility malpractice costs by the ratio of SNF inpatient days to total facility days and by the ratio of Medicare allowable costs to total facility costs. We note that these latter adjustment methodologies produced malpractice cost weights that were less than one-tenth of a percentage point different than the Medicare allowable cost weight determined using our proposed adjustment of Medicare allowable beds to total beds. Again, we believe using Medicare allowable beds to total beds is an appropriate adjustment to total facility malpractice costs as malpractice costs are often based on the number of facility beds. Due to a lack of data, the malpractice cost weight was not broken out separately in the 1997-based SNF market basket.

Capital-Related: We derived the weight for overall capital-related expenses using the 2004 SNF Medicare cost reports. We calculated the Medicare allowable capital-related cost weight from Worksheet B, part II. In determining the subcategory weights for capital, we used information from the 2004 SNF Medicare Cost Reports and the 2002 Bureau of Census' Business Expenditure Survey (BES). We calculated the depreciation cost weight using depreciation costs from Worksheet S–2. Unlike the cost weights described above, we did not calculate the depreciation cost weight using Medicare allowable total costs. Rather, we used total facility costs under the assumption that the depreciation of an asset is not dependent upon whether the asset was used for Medicare or non-Medicare patients.

We determined the distribution between building and fixed equipment and movable equipment from the 2004 SNF Medicare Cost Reports. From these calculations, we estimated the depreciation expenses (that is, depreciation expenses excluding leasing costs) to be 32 percent of total capital-related expenditures in 2004.

We also derived the interest expense share of capital-related expenses from Worksheet A for the same edited 2004 SNF Medicare cost reports. Similar to the depreciation cost weight, we calculated the interest cost weight using total facility costs. For the current market basket, we determined the split of interest expense between for-profit and not-for-profit facilities based on the distribution of long-term debt outstanding by type of SNF (for-profit or not-for-profit) from the 2004 SNF Medicare cost reports. We estimated the interest expense (that is, interest expenses excluding leasing costs) to be 34 percent of total capital-related expenditures in 2004.

Because the data were not available in the Medicare cost reports, we used the most recent 2002 BES data to derive the capital-related expenses attributable to leasing and other capital-related expenses. We determined the leasing costs to be 21 percent of capital-related expenses in 2002, while we determined the other capital-related costs (insurance, taxes, licenses, other) to be 13 percent of capital-related expenses.

Lease expenses are not broken out as a separate cost category, 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. As was done in previous rebasings, we assumed 10 percent of lease expenses are overhead and assigned them to the other capital expenses cost category as overhead. We distributed the remaining lease expenses to the three cost categories based on the proportion of depreciation, interest, and other capital expenses to total capital costs, excluding lease expenses.

Table 13 shows the capital-related expense distribution (including expenses from leases) in the proposed 2004-based SNF market basket and the 1997-based SNF market basket.

TABLE 13.—COMPARISON OF THE CAPITAL-RELATED EXPENSE DISTRIBUTION OF THE 2004-BASED SNF MARKET BASKET AND THE 1997-BASED SNF MARKET BASKET

Cost category	Proposed 2004-based SNF market basket	1997-based SNF market basket
Capital-related Expenses	7.518	8.602
Total Depreciation	2.981	5.266
Total Interest	3.168	3.852
Other Capital-related Expenses	1.369	0.760

Our methodology for determining the price change of capital-related expenses accounts for the vintage nature of capital, which is the acquisition and use of capital over time. In order to capture this vintage nature, the price proxies must be vintage-weighted. The determination of these vintage weights occurs in two steps. First, we must determine the expected useful life of capital and debt instruments in SNFs. Second, we must identify the proportion of expenditures within a cost category that is attributable to each individual year over the useful life of the relevant capital assets, or the vintage weights. The data source that we previously used to develop the useful lives of capital is no longer available. We researched alternative data sources and found that the Bureau of Economic Analysis (BEA) provided enough data for us to derive the useful lives of both fixed and movable capital.

Estimates of useful lives for movable and fixed assets are 9 and 22 years, respectively. These estimates are based on data from the BEA which publishes various useful life-related statistics, including asset service lives and average ages. We note, however, that these data in their published form are not directly applicable to SNFs. However, we can use the BEA data to produce our own useful life estimates for SNFs.

BEA service life data are published at a detailed asset level and not at an aggregate level, such as movable and fixed assets. There are 43 detailed movable assets in the BEA estimates. Some examples include computer software (34 months service life), electromedical equipment (9 years), medical instruments and related equipment (12 years), communication equipment (15 years), and office equipment (8 years). There are 23 detailed fixed assets in the BEA estimates. Some examples of detailed fixed assets are medical office buildings (36 years), hospitals and special care buildings (48 years), lodging (32 years), and so on (Bureau of Economic Analysis, *Fixed Assets and Consumer Durable Goods in the United States, 1925–97*, September 2003; Carol E. Moylan and Brooks B. Robinson, "Preview of the 2003 Comprehensive Revision of the National Income and Product Accounts: Statistical Changes," *Survey of Current Business*, Volume 83, No. 9 (September 2003), pp. 17–32).

However, BEA also publishes average asset age estimates. Data are available (1) by detailed and aggregate asset levels and (2) by industry, and were last published in 2002. In these estimates, SNFs are included in the Standard Industrial Classification (SIC) "health services." We recognize, though, that this industry classification encompasses far more than SNFs (that is, hospitals and other health-related facilities, physician and dental services, medical laboratories, home health services, kidney dialysis centers, and more). In 2003, BEA changed their industry classification system to a North American Industrial Classification System (NAICS) basis. SNFs are now included in "nursing and residential care services," a more relevant industry. Unfortunately, at the time of this analysis, BEA had not published average ages based on these new industry classifications.

Nonetheless, we have approximated average movable and fixed asset ages for nursing and residential care services using other published BEA numbers such as those noted previously. At the time of our analysis, 2001 was the latest year of age estimates data. We took average ages for each asset and weighted them using stock levels for each of these assets in the nursing and residential care services industry. The stocks for each specific asset come from BEA's Detailed Fixed Asset Tables (*http://www.bea.gov/national/FA2004/Details/xls/detailnonres_stk1.xls*). This produced average age data for movable and fixed assets of 4.3 and 11.2 years. As average asset ages stay relatively constant from one year to the next, we have assumed these results would remain the same for 2004. Further, as averages are measures of central tendency, we multiplied each of these estimates by two to produce estimates of useful lives of 8.6 and 22.4 years for movable and fixed assets, which we would round to 9 and 22 years, respectively.

We are proposing to use this methodology to develop the vintage weights in the proposed 2004-based SNF market basket. We are proposing an interest vintage weight time span of 20 years, obtained by weighting the movable and fixed vintage weights (9 years and 22 years, respectively) by the moveable and fixed split (14 percent and 86 percent, respectively). We calculated the split between moveable and fixed capital expenses from Worksheet G of the 2004 SNF Medicare cost reports.

Below is a table comparing the market basket percent changes using the proposed useful lives of 9 years for movable assets, 22 years for fixed assets, and 20 years for interest with the 1997-based useful lives of 10 years for movable assets, 23 years for fixed assets, and 23 years for interest. For both the historical and forecasted periods between FY 2002 and FY 2010, the difference between the two market baskets is minor.

Table 14
Comparing the Market Basket Percent Changes using the Proposed and Current Useful Lives

Fiscal Year (FY)	FY04-based Market Basket using Proposed Useful Lives	FY04-based Market Basket using Current Useful Lives
Historical data:		
FY 2002	3.7	3.8
FY 2003	3.4	3.4
FY 2004	3.3	3.3
FY 2005	3.3	3.3
FY 2006	3.6	3.5
Average FY 2002-2006	3.5	3.5
Forecast:		
FY 2007	3.3	3.3
FY 2008	3.3	3.3
FY 2009	3.1	3.1
FY 2010	2.9	2.9
Average FY 2007-2010	3.2	3.2

Source: Global Insight, Inc. 1st Qtr 2007, @USMACRO/CNTL0307@CISSIM/TL0207.SIM

In addition to the proposed methodology, we also researched alternative data sources, including the Medicare cost reports. An asset's useful life can be determined by taking the current year's depreciation costs divided by the depreciable assets. This methodology is used to derive the useful lives of fixed and movable assets in the 2002-based Capital Input Price Index. However, unlike the hospital Medicare cost reports, the SNF Medicare cost reports do not provide depreciation costs for fixed and movable assets separately. We attempted to calculate the 2004 depreciation costs for fixed and movable equipment separately using the SNF Medicare cost reports. Specifically, we subtracted the accumulated depreciation for fixed and moveable assets separately for 2003 and 2002, as reported in the balance sheet (Worksheet G), using a matched sample of SNFs with consecutive cost reporting periods. However, we were unable to use this methodology as less than 1,000 SNF providers reported these data, while approximately 9,000 SNFs reported salary, benefit, and contract labor data. We are hopeful that at our next rebasing of the SNF market basket, there will be sufficient balance sheet data to calculate the useful lives of fixed and movable equipment.

Given the expected useful life of capital and debt instruments, we must determine the proportion of capital expenditures attributable to each year of the expected useful life by cost category. These proportions represent the vintage weights. We were not able to find a historical time series of capital expenditures by SNFs. Therefore, we approximated the capital expenditure patterns of SNFs over time using alternative SNF data sources. For building and fixed equipment, we used the stock of beds in nursing homes from the CMS National Health Accounts for 1962 through 1999. Due to a lack of data for 2000 through 2003, we extrapolated the 1999 bed data forward to 2004 using a 10-year moving average of bed growth. We then used the change in the stock of beds each year to approximate building and fixed equipment purchases for that year. This procedure assumes that bed growth reflects the growth in capital-related costs in SNFs for building and fixed equipment. We believe that this assumption is reasonable because the number of beds reflects the size of a SNF, and as a SNF adds beds, it also adds fixed capital.

For movable equipment, we used available SNF data to capture the changes in intensity of SNF services that would cause SNFs to purchase movable equipment. We estimated the change in intensity as the change in the ratio of non-therapy ancillary costs to routine costs from 1989 through 2004 using Medicare cost reports. We estimated this ratio for 1962 through 1988 using regression analysis. The time series of the ratio of non-therapy ancillary costs to routine costs for SNFs measures changes in intensity in SNF services, which are assumed to be associated with movable equipment purchase patterns. The assumption here is that as non-therapy ancillary costs increase compared to routine costs, the SNF caseload becomes more complex and would require more movable equipment. Again, the lack of movable equipment purchase data for SNFs over time required us to use alternative SNF data sources. Although we are proposing to use the ratio of non-therapy ancillary costs to routine costs as the proxy for changes in the intensity of SNF services, we are also reviewing the possibility (and feasibility) of using the ratio of total ancillary costs (including therapy and non-therapy costs) to routine costs such as a proxy. We recognize that therapy utilization in SNFs has increased over the last decade and, therefore, the therapy equipment purchases have also likely increased, although perhaps at a different rate than those of non-therapy ancillary equipment. We plan to review this methodology between the publication of the proposed and final rules. We welcome any comments and/or equipment purchase data that would help enhance this review. Depending upon whether the latter methodology is appropriate and feasible, we may adopt the use of this ratio of total ancillary costs to total routine costs as the proxy for changes in intensity of SNF services that would cause SNFs to purchase movable equipment. The resulting two time series, determined from beds and the ratio of non-therapy ancillary to routine costs, would reflect real capital purchases of building and fixed equipment and movable equipment over time, respectively.

To obtain nominal purchases, which are used to determine the vintage weights for interest, we converted the two real capital purchase series from 1963 through 2004 determined above to nominal capital purchase series using their respective price proxies (the Boeckh Institutional Construction Index and the PPI for Machinery and Equipment). We then combined the two nominal series into one nominal capital purchase series for 1963 through 2004. Nominal capital purchases are needed for interest vintage weights to capture the value of debt instruments.

Once we created these capital purchase time series for 1963 through 2004, we averaged different periods to obtain an average capital purchase pattern over time. For building and fixed equipment we averaged twenty-one 22-year periods, for movable equipment we averaged thirty-four 9-year periods, and for interest we averaged twenty-four 20-year periods. We calculate the vintage weight for a given year by dividing the capital purchase amount in any given year by the total amount of purchases during the expected useful life of the equipment or debt instrument. We described this methodology in the May 12, 1998 interim final rule (63 FR 26252). Table 15 shows the resulting vintage weights for each of these cost categories.

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Table 15
Vintage Weights for Proposed 2004-Based SNF PPS Capital-Related Price Proxies

Year	Building and Fixed Equipment	Movable Equipment	Interest
1	0.078	0.133	0.039
2	0.073	0.153	0.039
3	0.071	0.129	0.04
4	0.066	0.075	0.04
5	0.06	0.084	0.042
6	0.05	0.098	0.043
7	0.046	0.106	0.045
8	0.042	0.108	0.047
9	0.037	0.115	0.049
10	0.034		0.052
11	0.035		0.055
12	0.037		0.057
13	0.037		0.058
14	0.036		0.057
15	0.035		0.054
16	0.035		0.054
17	0.035		0.055
18	0.036		0.056
19	0.037		0.057
20	0.039		0.059
21	0.04		
22	0.042		
Total	1.000*	1.000*	1.000*

SOURCES: 2004 SNF Medicare Cost Reports; CMS,
*NOTE: Totals may not sum to 1.000 due to rounding.

We divided the residual "all other" cost category into subcategories, using the BEA's Benchmark Input-Output Tables for the nursing home industry aged to 2004 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, we derive approximately 80 percent of the 2004-based SNF market basket from FY 2004 Medicare cost report data for freestanding SNFs.

Below is a table comparing the proposed 2004-based SNF market basket using the proposed Medicare allowable methodology and the proposed 2004-based SNF market basket using the total facility methodology.

Table 16
Comparison of the Proposed 2004-based SNF Market Basket (Medicare Allowable Methodology) and the 2004-based SNF Total Facility Market Basket Cost Weights

Cost Category	Proposed 2004-based SNF Market Basket (Medicare Allowable Methodology) Weights	2004-based SNF Total Facility Market Basket Weights
Compensation	65.458	62.604
Wages and Salaries	53.563	51.498
Employee benefits	11.895	11.106
Nonmedical professional fees	1.426	1.914
Professional Liability Insurance	1.784	1.457
Utilities	1.673	2.120
Electricity	0.992	1.063
Fuels, nonhighway	0.488	0.483
Water and sewerage	0.193	0.574
All Other	22.141	23.774
Other Products	15.219	15.352
Pharmaceuticals	3.209	2.725
Food, wholesale purchase	3.135	3.308
Food, retail purchase	3.398	3.606
Chemicals	0.636	0.551
Rubber and plastics	1.632	1.712
Paper products	1.504	1.478
Miscellaneous products	1.706	1.972
Other Services	6.922	8.422
Telephone Services	0.469	0.478
Postage	0.490	0.522
Labor-intensive Services	3.798	4.150
Non labor-intensive services	2.166	3.272
Capital-related Expenses	7.518	8.129
Total Depreciation	2.981	3.224
Building & Fixed Equipment	2.556	2.764
Movable Equipment	0.426	0.460
Total Interest	3.168	3.425
For-Profit SNFs	1.919	2.075
Government & Nonprofit SNFs	1.249	1.350
Other Capital-related Expenses	1.369	1.480
Total	100.000*	100.000*

* NOTE: Totals may not sum to 100.000 due to rounding.

Using the Medicare allowable methodology does affect the individual cost weights of the SNF market basket. The compensation cost weight using the Medicare allowable methodology is higher than that calculated using the total facility methodology. This is primarily due to the exclusion of long term care hospital (LTCH) and nonreimbursable inpatient costs (including, but not limited to gift, flower, coffee, barber shops and physician private offices) from the Medicare allowable cost weight. In addition, LTCH and nonreimbursable

services tend to be less labor intensive; therefore, the exclusion of these costs from the Medicare allowable market basket results in a higher compensation weight than the compensation weight in the total facility market basket.

The capital cost weight using the Medicare allowable methodology is slightly lower than the total facility methodology. This is also primarily due to the exclusion of LTCH and nonreimbursable inpatient costs.

Below is a table comparing the proposed 2004-based SNF market basket with the currently used 1997-based SNF market basket.

Table 17
Comparison of the Proposed 2004-based SNF Market Basket (Medicare Allowable Methodology) and the 1997-based SNF Market Basket Cost Weights

Cost Category	Proposed 2004-based SNF Market Basket (Medicare Allowable Methodology) Weights	1997-based SNF Market Basket Weights
Compensation	65.458	62.998
Wages and Salaries	53.563	52.263
Employee benefits	11.895	10.734
Nonmedical professional fees	1.426	2.634
Professional Liability Insurance	1.784	n/a
Utilities	1.673	2.368
Electricity	0.992	1.420
Fuels, nonhighway	0.488	0.426
Water and sewerage	0.193	0.522
Other Expenses	22.141	22.123
Other Products	15.219	13.522
Pharmaceuticals	3.209	3.006
Food, wholesale purchase	3.135	3.198
Food, retail purchase	3.398	0.937
Chemicals	0.636	0.891
Rubber and plastics	1.632	1.611
Paper products	1.504	1.289
Miscellaneous products	1.706	2.589
Other Services	6.922	8.602
Telephone Services	0.469	0.448
Postage	0.490	n/a
Labor-intensive Services	3.798	4.094
Non labor-intensive services	2.166	4.059
Capital-related Expenses	7.518	9.877
Total Depreciation	2.981	5.266
Building & Fixed Equipment	2.556	3.609
Movable Equipment	0.426	1.657
Total Interest	3.168	3.852
For-Profit SNFs	1.919	1.962
Government & Nonprofit SNFs	1.249	1.890
Other Capital-related Expenses	1.369	0.760
Total	100.000*	100.000*

* NOTE: Totals may not sum to 100.000 due to rounding.

C. Price Proxies Used To Measure Cost Category Growth

After developing the 23 cost weights for the proposed revised and rebased SNF market basket, we selected the most appropriate wage and price proxies currently available to monitor the rate of change for each expenditure category. With four exceptions (three for the capital-related expenses cost categories and one for PLI), we base the wage and price proxies on Bureau of Labor Statistics (BLS) data, and group them into one of the following BLS categories:

- *Employment Cost Indexes.* Employment Cost Indexes (ECIs)

measure the rate of change in employment 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. ECIs are superior to Average Hourly Earnings (AHE) as price proxies for input price indexes because they are not affected by shifts in occupation or industry mix, and because they measure pure price change and are available by both occupational group and by industry. ECIs were based on NAICS (North American Industrial Classification System) rather than SIC (Standard Industrial Classification) in April 2006 with the publication of March 2006 data.

- *Producer Price Indexes.* Producer Price Indexes (PPIs) measure price changes for goods sold in markets other than retail markets. PPIs are used when the purchases of goods or services are made at the wholesale level.
- *Consumer Price Indexes.* Consumer Price Indexes (CPIs) measure changes in the prices of final goods and services bought by consumers. CPIs are only used when the purchases are similar to those of retail consumers rather than purchases at the wholesale level, or if no appropriate PPI were available.

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. Widely accepted statistical methods ensure that the data were collected and aggregated in a way that can be replicated. Low sampling variability is desirable because it indicates that the sample reflects the typical members of the population. (Sampling variability is variation that occurs by chance because only a sample was surveyed rather than the entire population.) Timeliness implies that the proxy is published regularly, preferably at least once a quarter. The market baskets are updated quarterly and, therefore, it is important for the underlying price proxies to be up-to-date, reflecting the most recent data available. We believe that using proxies that are published regularly (at least quarterly, whenever possible) helps to ensure that we are using the most recent data available to update the market basket. We strive to use publications that are disseminated frequently, because we believe that this is an optimal way to stay abreast of the most current data available. Availability means that the proxy is publicly available. We prefer that our proxies are publicly available because this will help ensure that our market basket updates are as transparent to the public as possible. In addition, this enables the public to be able to obtain the price proxy data on a regular basis. 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 that we have selected to propose in this regulation meet these criteria. Therefore, we believe that they continue to be the best measure of price changes for the cost categories to which they would be applied.

Table 19 lists all price proxies for the proposed revised and rebased SNF market basket. Below is a detailed explanation of the price proxies used for each cost category weight.

1. Wages and Salaries

For measuring price growth in the wages and salaries cost component of the proposed 2004-based SNF market basket, we propose using the percentage change of a blended index based on 50 percent of the ECI for wages and salaries for nursing and residential care facilities (NAICS 623) and 50 percent of the ECI for wages and salaries for hospital workers (NAICS 622).

The 1997-based SNF market basket uses the ECI for nursing and residential care facilities as a proxy, which is based on the Standard Industrial Code (SIC) 805. Beginning in April 2006 with the publication of March 2006 data, ECIs were converted from an SIC basis to an NAICS basis. The ECI for wages and salaries for nursing and residential care facilities was replaced with an index that was less representative of skilled nursing facilities, NAICS 623. NAICS 623 represents facilities that provide residential care combined with nursing, supervisory, or other types of care. The care provided is a mix of health and social services with the health services being largely some level of nursing services. Within NAICS 623 is NAICS 623100, nursing care facilities primarily engaged in providing inpatient nursing and rehabilitative services. These facilities, which are most comparable to Medicare-certified SNFs, provide skilled nursing and continuous personal care services for an extended period of time and therefore, have a permanent core staff of registered or licensed practical nurses.

Employment in nursing care facilities (NAICS 623100) represents approximately 56 percent of 2003 and 2004 employment in nursing and residential care (NAICS 623). The SIC-based wage proxy, the ECI for nursing and personal care facilities based on SIC 805, includes skilled nursing care facilities (SIC 8051), which accounts for approximately 75 percent of the employment. Therefore, the SIC based ECI is more representative of Medicare-certified skilled nursing facilities than the NAICS based ECI.

BLS began publishing ECI data for the more detailed nursing care facilities (NAICS 623100) beginning with 2006, first quarter. However, given the lack of historical data, Global Insight Inc., the economic forecasting firm used to forecast the price proxies of the market basket, is unable to develop a forecasting model for this detailed NAICS ECI. In the future, when sufficient data are available to forecast the ECI for NAICS 623100, we will evaluate the use of this price proxy in the SNF market basket. For now, we have researched and developed several alternative wage and salary price proxies, which we describe in detail below. All of the five alternative wage and salary price proxies use the Occupational Employment Statistics (OES) survey published by BLS to develop occupational weights. The first four options use the OES data to create economy-wide occupational groups while the fifth option uses OES data to measure healthcare specific occupational groups.

The first proxy (option 1) is a blended wage index composed of four occupational groups that appear in NAICS. The weights of the four economy-wide occupational groups (professional and technical, services, clerical, and managers) are equal to the shares of total payroll for NAICS 6231 that each occupational group constitutes. We proxied each occupational group by a representative ECI to create a blended wage index. Therefore, the professional and technical (P&T) occupational group is a proxy to the ECI for professional and technical workers. The services occupational group is a proxy to the ECI for service workers. The clerical occupational group is a proxy to the ECI for clerical workers. The managers occupational group is a proxy to the ECI for executive, administrative, and managerial occupations.

The second alternative index (option 2) uses the same methodology as the option 1 wage proxy, except that we would base the occupational group weights on employment data rather than payroll data from the BLS OES.

The third alternative index (option 3) again uses a methodology similar to options 1 and 2, but would increase the weight for P&T workers by one-half of the difference between the hospital P&T employment share and the nursing care facility P&T employment share. As the P&T share increases, the other weights

would be normalized and would decrease slightly so the weights for all occupational groups add to 1.0.

The fourth alternative index (option 4) increases the weight of P&T workers by one-third of the difference between the hospital P&T employment share and the nursing care facility P&T employment share. Again, as the P&T share increases, the weights of the other 4 occupational groups would decrease through the normalization.

The last proposed alternative index (option 5) is a blended wage index based on 50 percent of the ECI for hospital workers (NAICS 622) and 50 percent of the ECI nursing and residential care facility (NAICS 623). We estimate the weights of 50 percent from BLS OES data, which show that the share of payroll attributable to registered nurses, licensed practical and licensed vocational nurses, and health care practitioners and technical occupations for nursing care facilities (NAICS 623) is 50 percent of the share of payroll for the same occupations as for hospitals.

We propose to use the option 5 index, because we believe that the new ECI for nursing and residential care facilities based on NAICS 623 will no longer accurately represent the skilled nursing and healthcare staff employed at Medicare-certified SNFs. Using a blended index of the ECI for nursing and residential care and the ECI for hospital workers gives more weight to the percent changes of wages and salaries for these skilled healthcare workers, who are also employed at hospitals. As the data indicate, the hospital industry occupational mix is more skilled than that of a Medicare-certified SNF, so we believe that a blend of the two indexes would be the best alternative given the data limitations.

We believe the major drawback of options 1 through 4 is that while these indexes may reflect the use of more skilled healthcare staff, the types of P&T workers represented in the ECI for P&T workers are not heavily weighted toward healthcare professional and technical workers.

2. Employee Benefits

For measuring price growth in the benefit cost component of the 2004-based SNF market basket, we propose using the percentage change of a blended index based on 50 percent of the ECI for benefits for nursing and residential care facilities (NAICS 623) and 50 percent of the ECI for benefits for hospital workers (NAICS 622). For the same reasons noted above for the wages and salaries cost category, we believe this blended index is the best proxy for employee benefit price growth.

Below is a table comparing the market basket percent changes using the proposed wage and benefit proxies and the alternative wage and benefit proxies (options 1 through 4). For the historical period between FY 2002 and FY 2006, the difference between the proposed market basket and the market baskets using the alternative compensation price proxies is significant. This is the result of the healthcare professional and technical occupations' compensation increasing faster than overall professional and technical occupations. The largest difference occurred in FY 2002, when the proposed market basket increased 3.7 percent compared to an increase in the alternative compensation market baskets of 2.5 percent.

For the forecasted time period (FY 2007 to FY 2010), the difference between the proposed market basket and the alternative compensation market baskets is less than the historical difference. This is a result of the expectation that compensation inflationary pressures in the healthcare industry will lessen and the price changes associated with healthcare professional and technical compensation will be comparable to the price changes associated with overall professional and technical compensation. As stated previously, we believe the blended index of the ECI for nursing and residential care and the ECI for hospital workers best reflects the occupational mix (specifically, skilled healthcare workers) of SNFs serving Medicare patients.

Table 18
Comparison of the 2004-based SNF Market Basket Percent Changes using the Alternative Compensation Proxies

Fiscal Year (FY)	Proposed	Option 1	Option 2	Option 3	Option 4
	50/50 Blend				
Historical data:					
FY 2002	3.7	2.6	2.6	2.6	2.6
FY 2003	3.4	2.8	2.8	2.8	2.8
FY 2004	3.3	3.2	3.1	3.3	3.3
FY 2005	3.3	3.1	3.0	3.3	3.2
FY 2006	3.6	3.1	3.0	3.2	3.1
Average FY 2002-2006	3.5	3.0	2.9	3.0	3.0
Forecast:					
FY 2007	3.3	3.1	3.1	3.2	3.2
FY 2008	3.3	3.1	3.1	3.1	3.1
FY 2009	3.1	2.8	2.8	2.8	2.8
FY 2010	2.9	2.6	2.7	2.6	2.6
Average FY 2007-2010	3.2	2.9	2.9	2.9	2.9

Source: Global Insight, Inc. 1st Qtr 2007, @USMACRO/CNTL0307@CISSIM/TL0207.SIM

3. All Other Expenses

• *Nonmedical professional fees:* We are proposing to use the ECI for compensation for Private Industry Professional, Technical, and Specialty Workers to measure price changes in nonmedical professional fees. We used the same index in the 1997-based SNF market basket.

• *Professional liability insurance:* We were unable to find a price proxy that directly tracks the prices associated with SNF malpractice costs. Our desired price proxy would calculate the price changes for a fixed coverage of SNF general liability insurance (for example, $1 million/$3 million liability coverage). It would not, by definition of a fixed weight index, reflect the increase in costs associated with increases in coverage, because that is found in the malpractice cost weight.

We have met with representatives for the SNF industry on this subject. We have also reviewed several studies on nursing home and long-term care liability insurance, all of which state that the cost of malpractice insurance has increased significantly over the last five years. Our own analysis of SNF malpractice costs, as reported on the Medicare cost reports, shows that from 1999 to 2003, malpractice costs per bed have increased over 300 percent. This increase in costs is also seen in the malpractice cost weight, which has more than doubled over the same time period.

The difficulties associated with pricing malpractice costs are experienced in all healthcare sectors, including hospitals and physicians. In addition to the lack of comprehensive data, the questions of how to proxy self-insurance, how to allocate paid losses over time, and how to account for those providers who are unable to purchase the insurance, make the process of measuring price changes associated with malpractice insurance extremely difficult. We are currently researching alternative data sources, such as obtaining the data directly from the individual states' Departments of Insurance. Given the lack of SNF-specific data, we are proposing to use the CMS Hospital Professional Liability Index, which tracks price changes for commercial insurance premiums for a fixed level of coverage, holding non-price factors constant (such as a change in the level of coverage).

• *Electricity:* For measuring price change in the electricity cost category, we are proposing to use the PPI for Commercial Electric Power. We used the same index in the 1997-based SNF market basket.

• *Fuels, nonhighway:* For measuring price change in the Fuels, Nonhighway cost category, we are proposing to use the PPI for Commercial Natural Gas. We used the same index in the 1997-based SNF market basket.

• *Water and Sewerage:* For measuring price change in the Water and Sewerage cost category, we are proposing to use the CPI-U (Consumer Price Index for All Urban Consumers) for Water and Sewerage. We used the same index in the 1997-based SNF market basket.

• *Food-wholesale purchases:* For measuring price change in the Food-wholesale purchases cost category, we are proposing to use the PPI for Processed Foods. We used the same index in the 1997-based SNF market basket.

• *Food-retail purchases:* For measuring price change in the Food-retail purchases cost category, we are proposing to use the CPI-U for Food Away From Home. This reflects the use of contract food service by some SNFs. We used the same index in the 1997-based SNF market basket.

• *Pharmaceuticals:* For measuring price change in the Pharmaceuticals cost category, we are proposing to use the PPI for Prescription Drugs. We used the same index in the 1997-based SNF market basket.

• *Chemicals:* For measuring price change in the Chemicals cost category, we are proposing to use a blended PPI composed of the PPIs for soap and other detergent manufacturing (NAICS 325611), polish and other sanitation good manufacturing (NAICS 325612), and all other miscellaneous chemical product manufacturing (NAICS 325998). Using the 1997 Benchmark I-O data, we found that the latter NAICS industries accounted for approximately 65 percent of SNF chemical expenses. Therefore, we are proposing to use this index because we believe it better reflects purchasing patterns of SNFs than PPI for Industrial Chemicals, the proxy used in the 1997-based market basket.

• *Rubber and Plastics:* For measuring price change in the Rubber and Plastics cost category, we are proposing to use the PPI for Rubber and Plastic Products. We used the same index in the 1997-based SNF market basket.

• *Paper Products:* For measuring price change in the Paper Products cost category, we are proposing to use the PPI for Converted Paper and Paperboard. We used the same index in the 1997-based SNF market basket.

• *Miscellaneous Products:* For measuring price change in the Miscellaneous Products cost category, we are proposing to use the PPI for Finished Goods less Food and Energy. Both food and energy are already adequately represented in separate cost categories and should not also be reflected in this cost category. We used the same index in the 1997-based SNF market basket.

• *Telephone Services:* For measuring the price change in the telephone services, we are proposing to use the CPI-U applied to this component. We used the same index in the 1997-based SNF market basket.

• *Postage:* For measuring the price change in postage costs, we are proposing to use the CPI for postage. The 1997-based index did not have a separate cost category for postage.

• *Labor-Intensive Services:* For measuring price change in the Labor-Intensive Services cost category, we are proposing to use the ECI for Compensation for Private Service Occupations. We used the same index in the 1997-based SNF market basket.

• *Non Labor-Intensive Services:* For measuring price change in the Non Labor-Intensive Services cost category, we are proposing to use the CPI–U for All Items. We used the same index in the 1997-based SNF market basket.

4. Capital-Related

All capital-related expense categories have the same price proxies as those used in the 1992-based SNF PPS market basket described in the May 12, 1998 interim final rule (63 FR 26252) and the 1997-based SNF PPS market basket described in the July 31, 2001 final rule (66 FR 39581). We describe the price proxies for the SNF capital-related expenses below:

• *Depreciation—Building and Fixed Equipment:* For measuring price change in this cost category, we are proposing to use the Boeckh Institutional Construction Index.

• *Depreciation—Movable Equipment:* For measuring price change in this cost category, we are proposing to use the PPI for Machinery and Equipment.

• *Interest—Government and Nonprofit SNFs:* For measuring price change in this cost category, we are proposing to use the Average Yield for Municipal Bonds from the Bond Buyer Index of 20 bonds. CMS input price indexes, including this rebased and revised SNF market basket, appropriately reflect the rate of change in the price proxy and not the level of the price proxy. While SNFs may face different interest rate levels than those included in the Bond Buyer Index, the rate of change between the two is not significantly different.

• *Interest—For-profit SNFs:* For measuring price change in this cost category, we are proposing to use the

Average Yield for Moody's AAA Corporate Bonds. Again, the proposed rebased SNF index focuses on the rate of change in this interest rate, not on the level of the interest rate.

• *Other Capital-related Expenses:* For measuring price change in this cost category, we are proposing the CPI–U for Residential Rent.

Below is a table showing the proposed price proxies for the FY 2004-based SNF Market Basket.

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Table 19
Proposed Price Proxies for the
FY 2004-based SNF Market Basket

Cost Category	Weight	Proposed Price Proxy
Compensation	65.458	
Wages and Salaries	53.563	Blended proxy of 50 percent ECI for Wages and Salaries for Nursing and Residential care facilities and 50 percent for Wages and Salaries for Hospital Workers
Employee benefits	11.895	Blended proxy of 50 percent ECI for Benefits for Nursing and Residential care facilities and 50 percent for Benefits for Hospital Workers
Nonmedical professional fees	1.426	ECI for Compensation for Private Professional, Technical and Specialty workers
Professional Liability Insurance	1.784	CMS Hospital Professional Liability Index.
Utilities	1.673	
Electricity	0.992	PPI for Commercial Electric Power
Fuels, nonhighway	0.488	PPI for Commercial Natural Gas
Water and sewerage	0.193	CPI-U for Water and Sewerage
All Other	22.141	
Other Products	15.219	
Pharmaceuticals	3.209	PPI for Prescription Drugs
Food, wholesale purchase	3.135	PPI for Processed Foods
Food, retail purchase	3.398	CPI-U for Food Away From Home
Chemicals	0.636	Blended PPI for Chemicals
Rubber and plastics	1.632	PPI for Rubber and Plastic Products
Paper products	1.504	PPI for Converted Paper and Paperboard
Miscellaneous products	1.706	PPI for Finished Goods less Food and Energy
Other Services	6.922	
Telephone Services	0.469	CPI-U for Telephone Services
Postage	0.490	CPI - Postage
Labor-intensive Services	3.798	ECI for Compensation for Private Service Occupations
Non labor-intensive services	2.166	CPI-U for All Items
Capital-related Expenses	7.518	
Total Depreciation	2.981	
Building & Fixed Equipment	2.556	Boeckh Institutional Construction Index (vintage-weighted over 22 years)
Movable Equipment	0.426	PPI for Machinery & Equipment (vintage-weighted over 9 years)
Total Interest	3.168	
For-Profit SNFs	1.919	Average Yield Moody's AAA Bonds (vintage-weighted over 20 years)
Government & Nonprofit SNFs	1.249	Average Yield Municipal Bonds (Bond Buyer Index-20 bonds) (vintage-weighted over 20 years)
Other Capital-related Expenses	1.369	CPI-U for Residential Rent
Total	100.000*	

*NOTE: Total may not sum to 100.000 due to rounding.

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D. Proposed Market Basket Estimate for the FY 2008 SNF Update

As discussed previously in this proposed rule, beginning with the FY 2008 SNF PPS update, we are proposing to adopt the FY 2004-based SNF market basket as the appropriate market basket of goods and services for the SNF PPS.

Based on Global Insight's 1st quarter 2007 forecast with history through the 4th quarter of 2006, the most recent estimate of the proposed 2004-based SNF market basket for FY 2008 is 3.3 percent. Global Insight, Inc. is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of CMS's market baskets. Based on Global Insight's 1st quarter 2007 forecast with historical data through the 4th quarter of 2006, the estimate of the current 1997-based SNF market basket for FY 2008 is 3.5 percent.

Table 20 compares the proposed FY 2004-based SNF market basket and the FY 1997-based SNF market basket percent changes. For the historical period between FY 2002 and FY 2006, the average difference between the two market baskets is 0.3 percentage points. This is primarily the result of a higher compensation cost weight and higher compensation price increases in the 2004-based market basket compared to the 1997-based SNF market basket. Also contributing is the separate cost category weight for malpractice in the 2004-based SNF market basket and the relatively higher price increases. For the forecasted period between FY 2007 and FY 2010, the average difference in the market basket forecasts is minor.

Table 20
Proposed FY 2004-based SNF Market Basket and FY 1997-based SNF Market Basket, Percent Changes: 2002-2010

Fiscal Year (FY)	Proposed Rebased FY 2004-based SNF Market Basket	FY 1997-based SNF Basket
Historical data:		
FY 2002	3.7	3.7
FY 2003	3.4	3.2
FY 2004	3.3	3.0
FY 2005	3.3	2.9
FY 2006	3.6	3.4
Average FY 2002-2006	3.5	3.2
Forecast:		
FY 2007	3.3	3.3
FY 2008	3.3	3.5
FY 2009	3.1	3.1
FY 2010	2.9	2.7
Average FY 2007-2010	3.2	3.2

Source: Global Insight, Inc. 1st Qtr 2007, @USMACRO/CNTL0307@CISSIM/TL0207.SIM

V. Consolidated Billing

[If you choose to comment on issues in this section, please include the caption "Consolidated Billing" at the beginning of your comments.]

Section 4432(b) of the BBA established a consolidated billing requirement that places with the SNF the Medicare billing responsibility for virtually all of the services that the SNF's residents receive, except for a small number of services that the statute specifically identifies as being excluded from this provision. As noted previously in section I. of this proposed rule, subsequent legislation enacted a number of modifications in the consolidated billing provision.

Specifically, section 103 of the BBRA amended this provision by further excluding a number of individual "high-cost, low-probability" services, identified by the Healthcare Common Procedure Coding System (HCPCS) codes, within several broader categories (chemotherapy and its administration, radioisotope services, and customized prosthetic devices) that otherwise remained subject to the provision. We discuss this BBRA amendment in greater detail in the proposed and final rules for FY 2001 (65 FR 19231–19232, April 10, 2000, and 65 FR 46790–46795, July 31, 2000), as well as in Program Memorandum AB–00–18 (Change Request #1070), issued March 2000, which is available online at *www.cms.hhs.gov/transmittals/downloads/ab001860.pdf*.

Section 313 of the BIPA further amended this provision by repealing its Part B aspect; that is, its applicability to Part B services furnished to a resident during an SNF stay that Medicare Part A does not cover. However, physical, occupational, and speech-language therapy remain subject to consolidated billing, regardless of whether the resident who receives these services is in a covered Part A stay. We discuss this BIPA amendment in greater detail in the proposed and final rules for FY 2002 (66 FR 24020–24021, May 10, 2001, and 66 FR 39587–39588, July 31, 2001).

In addition, section 410 of the MMA amended this provision by excluding certain practitioner and other services furnished to SNF residents by RHCs and FQHCs. We discuss this MMA

amendment in greater detail in the update notice for FY 2005 (69 FR 45818–45819, July 30, 2004), as well as in Program Transmittal #390 (Change Request #3575), issued December 10, 2004, which is available online at *www.cms.hhs.gov/transmittals/downloads/r390cp.pdf.*

To date, the Congress has enacted no further legislation affecting the consolidated billing provision. However, as noted above and explained in the proposed rule for FY 2001 (65 FR 19232, April 10, 2000), the amendments enacted in section 103 of the BBRA not only identified for exclusion from this provision a number of particular service codes within four specified categories (that is, chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices), but also gave the Secretary " * * * the authority to designate additional, individual services for exclusion within each of the specified service categories." In the proposed rule for FY 2001, we also noted that the BBRA Conference report (H.R. Rep. No. 106–479 at 854 (1999) (Conf. Rep.)) characterizes the individual services that this legislation targets for exclusion as " * * * high-cost, low probability events that could have devastating financial impacts because their costs far exceed the payment [SNFs] receive under the prospective payment system * * *" According to the conferees, section 103(a) "is an attempt to exclude from the PPS certain services and costly items that are provided infrequently in SNFs * * *" By contrast, we noted that the Congress declined to designate for exclusion any of the remaining services within those four categories (thus leaving all of those services subject to SNF consolidated billing), because they are relatively inexpensive and are furnished routinely in SNFs.

As we further explained in the final rule for FY 2001 (65 FR 46790, July 31, 2000), and as our longstanding policy, any additional service codes that we might designate for exclusion under our discretionary authority must meet the same criteria that the Congress used in identifying the original codes excluded from consolidated billing under section 103(a) of the BBRA: they must fall within one of the four service categories specified in the BBRA, and they also must meet the same standards of high cost and low probability in the SNF setting. Accordingly, we characterized this statutory authority to identify additional service codes for exclusion "* * * as essentially affording the flexibility to revise the list of excluded codes in response to changes of major significance that may occur over time (for example, the development of new medical technologies or other advances in the state of medical practice)" (65 FR 46791). In view of the time that has elapsed since we last invited comments on this issue, we believe it is appropriate at this point once again to invite public comments that identify codes in any of these four service categories representing recent medical advances that might meet our criteria for exclusion from SNF consolidated billing.

We note that the original BBRA legislation (as well as the implementing regulations) identified a set of excluded services by means of specifying HCPCS codes that were in effect as of a particular date (in that case, as of July 1, 1999). Identifying the excluded services in this manner made it possible for us to utilize program issuances as the vehicle for accomplishing routine updates of the excluded codes, in order to reflect any minor revisions that might subsequently occur in the coding system itself (for example, the assignment of a different code number to the same service). Accordingly, in the event that we identify through the current rulemaking cycle any new services that would actually represent a substantive change in the scope of the exclusions from SNF consolidated billing, we would identify these additional excluded services by means of the HCPCS codes that are in effect as of a specific date (in this case, as of October 1, 2007). By making any new exclusions in this manner, we could similarly accomplish routine future updates of these additional codes through the issuance of program instructions.

VI. Application of the SNF PPS to SNF Services Furnished by Swing-Bed Hospitals

[If you choose to comment on issues in this section, please include the caption "Swing-Bed Hospitals" at the beginning of your comments.]

In accordance with section 1888(e)(7) of the Act as amended by section 203 of the BIPA, Part A pays CAHs on a reasonable cost basis for SNF services furnished under a swing-bed agreement, as previously indicated in sections I.A. and I.D. of this proposed rule. However, effective with cost reporting periods beginning on or after July 1, 2002, the swing-bed services of non-CAH rural hospitals are paid under the SNF PPS. As explained in the final rule for FY 2002 (66 FR 39562, July 31, 2001), we selected this effective date consistent with the statutory provision to integrate non-CAH swing-bed rural hospitals into the SNF PPS by the end of the SNF transition period, June 30, 2002.

Accordingly, all non-CAH swing-bed rural hospitals have come under the SNF PPS as of June 30, 2003. Therefore, all rates and wage indexes outlined in earlier sections of this proposed rule for the SNF PPS also apply to all non-CAH swing-bed rural hospitals. A complete discussion of assessment schedules, the MDS and the transmission software (Raven-SB for Swing Beds) appears in the final rule for FY 2002 (66 FR 39562, July 31, 2001). The latest changes in the MDS for non-CAH swing-bed rural hospitals appear on our SNF PPS website, *www.cms.hhs.gov/snfpps.*

VII. Provisions of the Proposed Rule

[If you choose to comment on issues in this section, please include the caption "Provisions of the Proposed Rule" at the beginning of your comments.]

We propose to update the payment rates used under the prospective payment system for SNFs for FY 2008. In addition, we propose to rebase the market basket to a base year of 2004 and propose the following market basket revisions: using Medicare allowable total cost data instead of facility total cost data to derive the SNF market basket cost weights; using new wage and salary, benefits and chemical price proxies; using new data to estimate useful lives for fixed and moveable equipment; and adding new cost categories for professional liability insurance and postage. Also, as discussed previously in sections I.F.2 and III.B of this proposed rule, we are proposing to raise the current 0.25 percentage point threshold for the forecast error adjustment under the SNF PPS to 0.5 percentage point, effective with FY 2008.

VIII. Collection of Information Requirements

[If you choose to comment on issues in this section, please include the caption "Collection of Information" at the beginning of your comments.]

This document does not impose any information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501).

IX. Regulatory Impact Analysis

[If you choose to comment on issues in this section, please include the caption "Impact Analysis" at the beginning of your comments.]

A. Overall Impact

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA, Pub. L. 96–354, September 16, 1980), section 1102(b) of the Social Security Act (the 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 only 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 one year). This proposed rule is major, as defined in Title 5, United States Code, section 804(2), because we estimate the impact of the standard update will be to increase payments to SNFs by approximately $690 million.

The proposed update set forth in this proposed rule would apply to payments in FY 2008. Accordingly, the analysis that follows describes the impact of this one year only. In accordance with the requirements of the Act, we will publish a notice for each subsequent FY that will provide for an update to the payment rates and include an associated impact analysis.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most SNFs and most other providers and suppliers are small entities, either by their nonprofit status or by having revenues of $11.5 million or less in any one year. For purposes of the RFA, approximately 53 percent of SNFs are considered small businesses according to the Small Business Administration's latest size standards, with total revenues of $11.5 million or less in any one year (for further information, see 65 FR 69432, November 17, 2000). Individuals and States are not included in the definition of a small entity. In addition, approximately 29 percent of SNFs are nonprofit organizations.

This proposed rule would update the SNF PPS rates published in the update notice for FY 2007 (71 FR 43158, July 31, 2006) and the associated correction notice (71 FR 57519, September 29, 2006), thereby increasing aggregate payments by an estimated $690 million. As indicated in Table 20, the effect on facilities will be an aggregate positive impact of 3.3 percent. We note that some individual providers may experience larger increases in payments than others due to the distributional impact of the FY 2008 wage indexes and the degree of Medicare utilization. While this proposed rule is considered major, its overall impact is extremely small; that is, less than 3 percent of total SNF revenues from all payor sources. As the overall impact is positive on the industry as a whole, and on small entities specifically, it is not necessary to consider regulatory alternatives.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Because the proposed increase in SNF payment rates set forth in this proposed rule also applies to rural non-CAH hospital swing-bed services, we believe that this proposed rule would have a positive fiscal impact on non-CAH swing-bed rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. This proposed rule would not have a substantial effect on State, local, or tribal governments, or on private sector costs.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates regulations that impose substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. As stated above, this proposed rule would have no substantial effect on State and local governments.

B. Anticipated Effects

This proposed rule sets forth proposed updates of the SNF PPS rates contained in the update notice for FY 2007 (71 FR 43158, July 31, 2006) and the associated correction notice (71 FR 57519, September 29, 2006). Based on the above, we estimate the FY 2008 impact will be a net increase of $690 million in payments to SNF providers. The impact analysis of this proposed rule represents the projected effects of the changes in the SNF PPS from FY 2007 to FY 2008. We estimate the effects by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as days or case-mix.

We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, very susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events include new legislation requiring funding changes to the Medicare, or legislative changes that specifically affect SNFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the BIPA, the MMA, or new statutory provisions. Although these changes may not be specific to the SNF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon SNFs.

In accordance with section 1888(e)(4)(E) of the Act, we update the payment rates for FY 2008 by a factor equal to the full market basket index percentage increase to determine the payment rates for FY 2008. The special AIDS add-on established by section 511 of the MMA remains in effect until "* * * such date as the Secretary certifies that there is an appropriate adjustment in the case mix * * *." We have not provided a separate impact analysis for the MMA provision. Our latest estimates indicate that there are less than 2,000 beneficiaries who qualify for the AIDS add-on payment. The impact to Medicare is included in the "total" column of Table 21. In proposing to update the rates for FY 2008, we made a number of standard annual revisions and clarifications mentioned elsewhere in this proposed rule (for example, the update to the wage and market basket indexes used for adjusting the Federal rates). These revisions would increase payments to SNFs by approximately $690 million.

The impacts are shown in Table 21. The breakdown of the various categories of data in the table follows.

The first column shows the breakdown of all SNFs by urban or rural

status, hospital-based or freestanding status, and census region.

The first row of figures in the first column describes the estimated effects of the various changes on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban, and rural categories. The urban and rural designations are based on the location of the facility under the CBSA designation. The next twenty-two rows show the effects on urban versus rural status by census region.

The second column in the table shows the number of facilities in the impact database.

The third column of the table shows the effect of the annual update to the wage index. This represents the effect of using the most recent wage data available. The total impact of this change is zero percent; however, there are distributional effects of the change.

The fourth column shows the effect of all of the changes on the FY 2008 payments. The market basket increase of 3.3 percentage points is constant for all providers and, though not shown individually, is included in the total column. It is projected that aggregate payments will increase by 3.3 percent in total, assuming facilities do not change their care delivery and billing practices in response.

As can be seen from this table, the combined effects of all of the changes vary by specific types of providers and by location. For example, though facilities in the rural Outlying region experience a payment decrease of 0.5 percent, some providers (such as those in the urban Outlying region) show a significant increase of 5.7 percent. Payment increases for facilities in the urban Outlying area of the country are the highest for any provider category.

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Table 21
Projected Impact to the SNF PPS for FY 2008

	Number of facilities	Update wage data	Total FY 2008 change
Total	15,271	0.0%	3.3%
Urban	10,442	-0.1%	3.2%
Rural	4,829	0.6%	3.9%
Hospital based urban	1,424	0.0%	3.3%
Freestanding urban	9,018	-0.1%	3.2%
Hospital based rural	1,114	0.7%	4.0%
Freestanding rural	3,715	0.5%	3.8%
Urban by region			
New England	864	0.0%	3.3%
Middle Atlantic	1,477	-0.6%	2.7%
South Atlantic	1,732	0.0%	3.3%
East North Central	1,995	-0.4%	2.9%
East South Central	522	-0.1%	3.2%
West North Central	822	0.4%	3.7%
West South Central	1,141	0.2%	3.5%
Mountain	467	0.3%	3.6%
Pacific	1,414	0.3%	3.6%
Outlying	8	2.3%	5.7%
Rural by region			
New England	127	0.4%	3.7%
Middle Atlantic	259	0.9%	4.2%
South Atlantic	607	0.4%	3.7%
East North Central	925	0.5%	3.8%
East South Central	556	0.6%	3.9%
West North Central	1,134	0.4%	3.7%
West South Central	810	0.4%	3.7%
Mountain	258	1.2%	4.5%
Pacific	151	1.4%	4.7%
Outlying	2	-3.7%	-0.5%
Ownership			
Government	672	0.0%	3.3%
Proprietary	11,135	0.0%	3.3%
Voluntary	3,464	-0.1%	3.2%

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C. Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 22 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 change in Medicare payments under the SNF PPS as a result of the policies in this proposed rule based on the data for 15,271 SNFs in our database. All expenditures are classified as transfers to Medicare providers (that is, SNFs).

TABLE 22.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2007 SNF PPS RATE YEAR TO THE 2008 SNF PPS RATE YEAR

[In millions]

Category	Transfers
Annualized Monetized Transfers	$690 million.
From Whom To Whom?	Federal Government to SNF Medicare Providers.

D. Alternatives Considered

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for cost reporting periods beginning on or after July 1, 1998. This section of the statute prescribes a detailed formula for calculating payment rates under the SNF PPS, and does not provide for the use of any alternative methodology. It specifies that the base year cost data to be used for computing the SNF PPS payment rates must be from FY 1995 (October 1, 1994 through September 30, 1995.) In accordance with the statute, we also incorporated a number of elements into the SNF PPS, such as case-mix classification methodology, the MDS assessment schedule, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the Federal rates. Further, section 1888(e)(4)(H) of the Act specifically requires us to disseminate the payment rates for each new fiscal year through the **Federal Register**, and to do so before the August 1 that precedes the start of the new fiscal year. Accordingly, we are not pursuing alternatives with respect to the payment methodology as discussed above.

The proposed rule would raise the threshold for triggering a forecast error adjustment under the SNF PPS from the current 0.25 percentage point to 0.5 percentage point, effective with FY 2008. However, as discussed in sections I.F.2 and III.B of this proposed rule, we are considering a higher threshold for the forecast error adjustment, up to 1.0 percentage point. We are also considering delaying implementation of this change until FY 2009. We specifically invite comments on increasing the forecast error adjustment threshold and the effective date.

E. Conclusion

This proposed rule does not propose to initiate any policy changes with regard to the SNF PPS; rather, it simply proposes an update to the rates for FY 2008. Therefore, for the reasons set forth in the preceding discussion, we are not preparing analyses for either the RFA or section 1102(b) of the Act, because we have determined that this proposed rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. Also, an analysis as outlined in section 202 of the UMRA has not been completed because this proposed rule would not have a substantial effect on the governments mentioned, or on private sector costs.

Finally, in accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: March 8, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: March 28, 2007.

Michael O. Leavitt,

Secretary.

[**Note:** The following Addendum will not appear in the Code of Federal Regulations]

Addendum—FY 2008 CBSA Wage Index Tables

In this addendum, we provide Tables 8 and 9 which indicate the CBSA-based wage index values for urban and rural providers.

Table 8. FY 2008 Wage Index For Urban Areas Based On CBSA Labor Market Areas

CBSA Code	Urban Area (Constituent Counties)	Wage Index
10180	Abilene, TX Callahan County, TX Jones County, TX Taylor County, TX	0.7958
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	0.3398
10420	Akron, OH Portage County, OH Summit County, OH	0.8795
10500	Albany, GA Baker County, GA Dougherty County, GA Lee County, GA Terrell County, GA Worth County, GA	0.8515

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	0.9569
10780	Alexandria, LA Grant Parish, LA Rapides Parish, LA	0.7981
10900	Allentown-Bethlehem-Easton, PA-NJ Warren County, NJ Carbon County, PA Lehigh County, PA Northampton County, PA	0.9868
11020	Altoona, PA Blair County, PA	0.8620
11100	Amarillo, TX Armstrong County, TX Carson County, TX Potter County, TX Randall County, TX	0.9101
11180	Ames, IA Story County, IA	1.0048
11260	Anchorage, AK Anchorage Municipality, AK Matanuska-Susitna Borough, AK	1.1915
11300	Anderson, IN Madison County, IN	0.8828
11340	Anderson, SC Anderson County, SC	0.9088
11460	Ann Arbor, MI Washtenaw County, MI	1.0541
11500	Anniston-Oxford, AL Calhoun County, AL	0.7927
11540	Appleton, WI Calumet County, WI Outagamie County, WI	0.9632

CBSA Code	Urban Area (Constituent Counties)	Wage Index
11700	Asheville, NC Buncombe County, NC Haywood County, NC Henderson County, NC Madison County, NC	0.9190
12020	Athens-Clarke County, GA Clarke County, GA Madison County, GA Oconee County, GA Oglethorpe County, GA	1.1086
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	0.9859
12100	Atlantic City, NJ Atlantic County, NJ	1.2200
12220	Auburn-Opelika, AL Lee County, AL	0.8099

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	0.9643
12420	Austin-Round Rock, TX Bastrop County, TX Caldwell County, TX Hays County, TX Travis County, TX Williamson County, TX	0.9557
12540	Bakersfield, CA Kern County, CA	1.1223
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	1.0209
12620	Bangor, ME	0.9952
12700	Penobscot County, ME Barnstable Town, MA Barnstable County, MA	1.2605
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	0.8036
12980	Battle Creek, MI Calhoun County, MI	1.0164
13020	Bay City, MI Bay County, MI	0.8899

CBSA Code	Urban Area (Constituent Counties)	Wage Index
13140	Beaumont-Port Arthur, TX Hardin County, TX Jefferson County, TX Orange County, TX	0.8499
13380	Bellingham, WA Whatcom County, WA	1.1476
13460	Bend, OR Deschutes County, OR	1.0944
13644	Bethesda-Frederick-Gaithersburg, MD Frederick County, MD Montgomery County, MD	1.0513
13740	Billings, MT Carbon County, MT Yellowstone County, MT	0.8670
13780	Binghamton, NY Broome County, NY Tioga County, NY	0.8951
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	0.8911
13900	Bismarck, ND Burleigh County, ND Morton County, ND	0.7226
13980	Blacksburg-Christiansburg-Radford, VA Giles County, VA Montgomery County, VA Pulaski County, VA Radford City, VA	0.8136
14020	Bloomington, IN Greene County, IN Monroe County, IN Owen County, IN	0.8916
14060	Bloomington-Normal, IL McLean County, IL	0.9326

CBSA Code	Urban Area (Constituent Counties)	Wage Index
14260	Boise City-Nampa, ID Ada County, ID Boise County, ID Canyon County, ID Gem County, ID Owyhee County, ID	0.9467
14484	Boston-Quincy, MA Norfolk County, MA Plymouth County, MA Suffolk County, MA	1.1649
14500	Boulder, CO Boulder County, CO	1.0431
14540	Bowling Green, KY Edmonson County, KY Warren County, KY	0.8160
14740	Bremerton-Silverdale, WA Kitsap County, WA	1.0906
14860	Bridgeport-Stamford-Norwalk, CT Fairfield County, CT	1.2838
15180	Brownsville-Harlingen, TX Cameron County, TX	0.9284
15260	Brunswick, GA Brantley County, GA Glynn County, GA McIntosh County, GA	0.9476
15380	Buffalo-Niagara Falls, NY Erie County, NY Niagara County, NY	0.9563
15500	Burlington, NC Alamance County, NC	0.8748
15540	Burlington-South Burlington, VT Chittenden County, VT Franklin County, VT Grand Isle County, VT	0.9662
15764	Cambridge-Newton-Framingham, MA Middlesex County, MA	1.1169
15804	Camden, NJ Burlington County, NJ Camden County, NJ Gloucester County, NJ	1.0396
15940	Canton-Massillon, OH Carroll County, OH Stark County, OH	0.8935

CBSA Code	Urban Area (Constituent Counties)	Wage Index
15980	Cape Coral-Fort Myers, FL Lee County, FL	0.9397
16180	Carson City, NV Carson City, NV	0.9354
16220	Casper, WY Natrona County, WY	0.9386
16300	Cedar Rapids, IA Benton County, IA Jones County, IA Linn County, IA	0.8853
16580	Champaign-Urbana, IL Champaign County, IL Ford County, IL Piatt County, IL	0.9392
16620	Charleston, WV Boone County, WV Clay County, WV Kanawha County, WV Lincoln County, WV Putnam County, WV	0.8290
16700	Charleston-North Charleston, SC Berkeley County, SC Charleston County, SC Dorchester County, SC	0.9159
16740	Charlotte-Gastonia-Concord, NC-SC Anson County, NC Cabarrus County, NC Gaston County, NC Mecklenburg County, NC Union County, NC York County, SC	0.9523
16820	Charlottesville, VA Albemarle County, VA Fluvanna County, VA Greene County, VA Nelson County, VA Charlottesville City, VA	0.9674
16860	Chattanooga, TN-GA Catoosa County, GA Dade County, GA Walker County, GA Hamilton County, TN Marion County, TN Sequatchie County, TN	0.8995

CBSA Code	Urban Area (Constituent Counties)	Wage Index
16940	Cheyenne, WY Laramie County, WY	0.9309
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	1.0575
17020	Chico, CA Butte County, CA	1.1291
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	0.9773
17300	Clarksville, TN-KY Christian County, KY Trigg County, KY Montgomery County, TN Stewart County, TN	0.8252
17420	Cleveland, TN Bradley County, TN Polk County, TN	0.8054
17460	Cleveland-Elyria-Mentor, OH Cuyahoga County, OH Geauga County, OH Lake County, OH Lorain County, OH Medina County, OH	0.9355

CBSA Code	Urban Area (Constituent Counties)	Wage Index
17660	Coeur d'Alene, ID Kootenai County, ID	0.9533
17780	College Station-Bryan, TX Brazos County, TX Burleson County, TX Robertson County, TX	0.9359
17820	Colorado Springs, CO El Paso County, CO Teller County, CO	0.9721
17860	Columbia, MO Boone County, MO Howard County, MO	0.8662
17900	Columbia, SC Calhoun County, SC Fairfield County, SC Kershaw County, SC Lexington County, SC Richland County, SC Saluda County, SC	0.8758
17980	Columbus, GA-AL Russell County, AL Chattahoochee County, GA Harris County, GA Marion County, GA Muscogee County, GA	0.8731
18020	Columbus, IN Bartholomew County, IN	0.9539
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	1.0105
18580	Corpus Christi, TX Aransas County, TX Nueces County, TX San Patricio County, TX	0.8589
18700	Corvallis, OR Benton County, OR	1.0961

CBSA Code	Urban Area (Constituent Counties)	Wage Index
19060	Cumberland, MD-WV Allegany County, MD Mineral County, WV	0.8296
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	0.9922
19140	Dalton, GA Murray County, GA Whitfield County, GA	0.8761
19180	Danville, IL Vermilion County, IL	0.8960
19260	Danville, VA Pittsylvania County, VA Danville City, VA	0.8426
19340	Davenport-Moline-Rock Island, IA-IL Henry County, IL Mercer County, IL Rock Island County, IL Scott County, IA	0.8831
19380	Dayton, OH Greene County, OH Miami County, OH Montgomery County, OH Preble County, OH	0.9192
19460	Decatur, AL Lawrence County, AL Morgan County, AL	0.7992
19500	Decatur, IL Macon County, IL	0.8075
19660	Deltona-Daytona Beach-Ormond Beach, FL Volusia County, FL	0.9033

CBSA Code	Urban Area (Constituent Counties)	Wage Index
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	1.0749
19780	Des Moines-West Des Moines, IA Dallas County, IA Guthrie County, IA Madison County, IA Polk County, IA Warren County, IA	0.9228
19804	Detroit-Livonia-Dearborn, MI Wayne County, MI	0.9990
20020	Dothan, AL Geneva County, AL Henry County, AL Houston County, AL	0.7270
20100	Dover, DE Kent County, DE	1.0101
20220	Dubuque, IA Dubuque County, IA	0.9053
20260	Duluth, MN-WI Carlton County, MN St. Louis County, MN Douglas County, WI	1.0040
20500	Durham, NC Chatham County, NC Durham County, NC Orange County, NC Person County, NC	0.9889
20740	Eau Claire, WI Chippewa County, WI Eau Claire County, WI	0.9462
20764	Edison, NJ Middlesex County, NJ Monmouth County, NJ Ocean County, NJ Somerset County, NJ	1.1175

CBSA Code	Urban Area (Constituent Counties)	Wage Index
20940	El Centro, CA Imperial County, CA	0.8915
21060	Elizabethtown, KY Hardin County, KY Larue County, KY	0.8712
21140	Elkhart-Goshen, IN Elkhart County, IN	0.9504
21300	Elmira, NY Chemung County, NY	0.8265
21340	El Paso, TX El Paso County, TX	0.8991
21500	Erie, PA Erie County, PA	0.8497
21660	Eugene-Springfield, OR Lane County, OR	1.0934
21780	Evansville, IN-KY Gibson County, IN Posey County, IN Vanderburgh County, IN Warrick County, IN Henderson County, KY Webster County, KY	0.8663
21820	Fairbanks, AK Fairbanks North Star Borough, AK	1.1052
21940	Fajardo, PR Ceiba Municipio, PR Fajardo Municipio, PR Luquillo Municipio, PR	0.4129
22020	Fargo, ND-MN Cass County, ND Clay County, MN	0.8043
22140	Farmington, NM San Juan County, NM	0.9591
22180	Fayetteville, NC Cumberland County, NC Hoke County, NC	0.9374
22220	Fayetteville-Springdale-Rogers, AR-MO Benton County, AR Madison County, AR Washington County, AR McDonald County, MO	0.8744
22380	Flagstaff, AZ Coconino County, AZ	1.1688

CBSA Code	Urban Area (Constituent Counties)	Wage Index
22420	Flint, MI Genesee County, MI	1.1283
22500	Florence, SC Darlington County, SC Florence County, SC	0.8236
22520	Florence-Muscle Shoals, AL Colbert County, AL Lauderdale County, AL	0.7994
22540	Fond du Lac, WI Fond du Lac County, WI	0.9669
22660	Fort Collins-Loveland, CO Larimer County, CO	0.9898
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Broward County, FL	1.0231
22900	Fort Smith, AR-OK Crawford County, AR Franklin County, AR Sebastian County, AR Le Flore County, OK Sequoyah County, OK	0.7934
23020	Fort Walton Beach-Crestview-Destin, FL Okaloosa County, FL	0.8742
23060	Fort Wayne, IN Allen County, IN Wells County, IN Whitley County, IN	0.9285
23104	Fort Worth-Arlington, TX Johnson County, TX Parker County, TX Tarrant County, TX Wise County, TX	0.9699
23420	Fresno, CA Fresno County, CA	1.0993
23460	Gadsden, AL Etowah County, AL	0.8143
23540	Gainesville, FL Alachua County, FL Gilchrist County, FL	0.9197
23580	Gainesville, GA Hall County, GA	0.9218

CBSA Code	Urban Area (Constituent Counties)	Wage Index
23844	Gary, IN Jasper County, IN Lake County, IN Newton County, IN Porter County, IN	0.9225
24020	Glens Falls, NY Warren County, NY Washington County, NY	0.8257
24140	Goldsboro, NC Wayne County, NC	0.9290
24220	Grand Forks, ND-MN Polk County, MN Grand Forks County, ND	0.7883
24300	Grand Junction, CO Mesa County, CO	0.9865
24340	Grand Rapids-Wyoming, MI Barry County, MI Ionia County, MI Kent County, MI Newaygo County, MI	0.9316
24500	Great Falls, MT Cascade County, MT	0.8674
24540	Greeley, CO Weld County, CO	0.9660
24580	Green Bay, WI Brown County, WI Kewaunee County, WI Oconto County, WI	0.9728
24660	Greensboro-High Point, NC Guilford County, NC Randolph County, NC Rockingham County, NC	0.9012
24780	Greenville, NC Greene County, NC Pitt County, NC	0.9403
24860	Greenville, SC Greenville County, SC Laurens County, SC Pickens County, SC	0.9911
25020	Guayama, PR Arroyo Municipio, PR Guayama Municipio, PR Patillas Municipio, PR	0.3064

CBSA Code	Urban Area (Constituent Counties)	Wage Index
25060	Gulfport-Biloxi, MS Hancock County, MS Harrison County, MS Stone County, MS	0.8780
25180	Hagerstown-Martinsburg, MD-WV Washington County, MD Berkeley County, WV Morgan County, WV	0.9015
25260	Hanford-Corcoran, CA Kings County, CA	1.0497
25420	Harrisburg-Carlisle, PA Cumberland County, PA Dauphin County, PA Perry County, PA	0.9287
25500	Harrisonburg, VA Rockingham County, VA Harrisonburg City, VA	0.8944
25540	Hartford-West Hartford-East Hartford, CT Hartford County, CT Litchfield County, CT Middlesex County, CT Tolland County, CT	1.0889
25620	Hattiesburg, MS Forrest County, MS Lamar County, MS Perry County, MS	0.7368
25860	Hickory-Lenoir-Morganton, NC Alexander County, NC Burke County, NC Caldwell County, NC Catawba County, NC	0.9030
25980	Hinesville-Fort Stewart, GA[1] Liberty County, GA Long County, GA	0.9237
26100	Holland-Grand Haven, MI Ottawa County, MI	0.9006
26180	Honolulu, HI Honolulu County, HI	1.1535
26300	Hot Springs, AR Garland County, AR	0.9110
26380	Houma-Bayou Cane-Thibodaux, LA Lafourche Parish, LA Terrebonne Parish, LA	0.7893

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	0.9987
26580	Huntington-Ashland, WV-KY-OH Boyd County, KY Greenup County, KY Lawrence County, OH Cabell County, WV Wayne County, WV	0.9004
26620	Huntsville, AL Limestone County, AL Madison County, AL	0.9303
26820	Idaho Falls, ID Bonneville County, ID Jefferson County, ID	0.9265
26900	Indianapolis-Carmel, 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	0.9846
26980	Iowa City, IA Johnson County, IA Washington County, IA	0.9569
27060	Ithaca, NY Tompkins County, NY	0.9620
27100	Jackson, MI Jackson County, MI	0.9331

CBSA Code	Urban Area (Constituent Counties)	Wage Index
27140	Jackson, MS Copiah County, MS Hinds County, MS Madison County, MS Rankin County, MS Simpson County, MS	0.8101
27180	Jackson, TN Chester County, TN Madison County, TN	0.8672
27260	Jacksonville, FL Baker County, FL Clay County, FL Duval County, FL Nassau County, FL St. Johns County, FL	0.9038
27340	Jacksonville, NC Onslow County, NC	0.8081
27500	Janesville, WI Rock County, WI	0.9659
27620	Jefferson City, MO Callaway County, MO Cole County, MO Moniteau County, MO Osage County, MO	0.8479
27740	Johnson City, TN Carter County, TN Unicoi County, TN Washington County, TN	0.7727
27780	Johnstown, PA Cambria County, PA	0.7544
27860	Jonesboro, AR Craighead County, AR Poinsett County, AR	0.7791
27900	Joplin, MO Jasper County, MO Newton County, MO	0.9050
28020	Kalamazoo-Portage, MI Kalamazoo County, MI Van Buren County, MI	1.0435
28100	Kankakee-Bradley, IL Kankakee County, IL	1.1781

CBSA Code	Urban Area (Constituent Counties)	Wage Index
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	0.9503
28420	Kennewick-Richland-Pasco, WA Benton County, WA Franklin County, WA	1.0076
28660	Killeen-Temple-Fort Hood, TX Bell County, TX Coryell County, TX Lampasas County, TX	0.8250
28700	Kingsport-Bristol-Bristol, TN-VA Hawkins County, TN Sullivan County, TN Bristol City, VA Scott County, VA Washington County, VA	0.7677
28740	Kingston, NY Ulster County, NY	0.9492
28940	Knoxville, TN Anderson County, TN Blount County, TN Knox County, TN Loudon County, TN Union County, TN	0.8065
29020	Kokomo, IN Howard County, IN Tipton County, IN	0.9592
29100	La Crosse, WI-MN Houston County, MN La Crosse County, WI	0.9686

CBSA Code	Urban Area (Constituent Counties)	Wage Index
29140	Lafayette, IN Benton County, IN Carroll County, IN Tippecanoe County, IN	0.8870
29180	Lafayette, LA Lafayette Parish, LA St. Martin Parish, LA	0.8245
29340	Lake Charles, LA Calcasieu Parish, LA Cameron Parish, LA	0.7778
29404	Lake County-Kenosha County, IL-WI Lake County, IL Kenosha County, WI	1.0291
29420	Lake Havasu City - Kingman, AZ Mohave, County, AZ	0.9334
29460	Lakeland, FL Polk County, FL	0.8663
29540	Lancaster, PA Lancaster County, PA	0.9259
29620	Lansing-East Lansing, MI Clinton County, MI Eaton County, MI Ingham County, MI	1.0120
29700	Laredo, TX Webb County, TX	0.8076
29740	Las Cruces, NM Dona Ana County, NM	0.8677
29820	Las Vegas-Paradise, NV Clark County, NV	1.1779
29940	Lawrence, KS Douglas County, KS	0.8262
30020	Lawton, OK Comanche County, OK	0.8024
30140	Lebanon, PA Lebanon County, PA	0.8194
30300	Lewiston, ID-WA Nez Perce County, ID Asotin County, WA	0.9456
30340	Lewiston-Auburn, ME Androscoggin County, ME	0.9195

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	0.9213
30620	Lima, OH Allen County, OH	0.9426
30700	Lincoln, NE Lancaster County, NE Seward County, NE	1.0010
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	0.8864
30860	Logan, UT-ID Franklin County, ID Cache County, UT	0.9184
30980	Longview, TX Gregg County, TX Rusk County, TX Upshur County, TX	0.8717
31020	Longview, WA Cowlitz County, WA	1.0829
31084	Los Angeles-Long Beach-Glendale, CA Los Angeles County, CA	1.1753
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	0.9077

CBSA Code	Urban Area (Constituent Counties)	Wage Index
31180	Lubbock, TX Crosby County, TX Lubbock County, TX	0.8714
31340	Lynchburg, VA Amherst County, VA Appomattox County, VA Bedford County, VA Campbell County, VA Bedford City, VA Lynchburg City, VA	0.8593
31420	Macon, GA Bibb County, GA Crawford County, GA Jones County, GA Monroe County, GA Twiggs County, GA	0.9540
31460	Madera, CA Madera County, CA	0.8071
31540	Madison, WI Columbia County, WI Dane County, WI Iowa County, WI	1.0937
31700	Manchester-Nashua, NH Hillsborough County, NH Merrimack County, NH	1.0069
31900	Mansfield, OH[1] Richland County, OH	0.9273
32420	Mayagüez, PR Hormigueros Municipio, PR Mayagüez Municipio, PR	0.3712
32580	McAllen-Edinburg-Pharr, TX Hidalgo County, TX	0.9124
32780	Medford, OR Jackson County, OR	1.0320
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	0.9224

CBSA Code	Urban Area (Constituent Counties)	Wage Index
32900	Merced, CA Merced County, CA	1.2101
33124	Miami-Miami Beach-Kendall, FL Miami-Dade County, FL	1.0003
33140	Michigan City-La Porte, IN LaPorte County, IN	0.8916
33260	Midland, TX Midland County, TX	1.0326
33340	Milwaukee-Waukesha-West Allis, WI Milwaukee County, WI Ozaukee County, WI Washington County, WI Waukesha County, WI	1.0211
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	1.1154
33540	Missoula, MT Missoula County, MT	0.8947
33660	Mobile, AL Mobile County, AL	0.8032
33700	Modesto, CA Stanislaus County, CA	1.1926
33740	Monroe, LA Ouachita Parish, LA Union Parish, LA	0.7833
33780	Monroe, MI Monroe County, MI	0.9415
33860	Montgomery, AL Autauga County, AL Elmore County, AL Lowndes County, AL Montgomery County, AL	0.8335

CBSA Code	Urban Area (Constituent Counties)	Wage Index
34060	Morgantown, WV Monongalia County, WV Preston County, WV	0.8322
34100	Morristown, TN Grainger County, TN Hamblen County, TN Jefferson County, TN	0.7377
34580	Mount Vernon-Anacortes, WA Skagit County, WA	1.0531
34620	Muncie, IN Delaware County, IN	0.8215
34740	Muskegon-Norton Shores, MI Muskegon County, MI	0.9799
34820	Myrtle Beach-Conway-North Myrtle Beach, SC Horry County, SC	0.8637
34900	Napa, CA Napa County, CA	1.4332
34940	Naples-Marco Island, FL Collier County, FL	0.9619
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	0.9743
35004	Nassau-Suffolk, NY Nassau County, NY Suffolk County, NY	1.2569
35084	Newark-Union, NJ-PA Essex County, NJ Hunterdon County, NJ Morris County, NJ Sussex County, NJ Union County, NJ Pike County, PA	1.1864

CBSA Code	Urban Area (Constituent Counties)	Wage Index
35300	New Haven-Milford, CT New Haven County, CT	1.1877
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	0.8915
35644	New York-Wayne-White Plains, 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	1.3097
35660	Niles-Benton Harbor, MI Berrien County, MI	0.9143
35980	Norwich-New London, CT New London County, CT	1.1493
36084	Oakland-Fremont-Hayward, CA Alameda County, CA Contra Costa County, CA	1.5620
36100	Ocala, FL Marion County, FL	0.8628
36140	Ocean City, NJ Cape May County, NJ	1.0660
36220	Odessa, TX Ector County, TX	1.0044
36260	Ogden-Clearfield, UT Davis County, UT Morgan County, UT Weber County, UT	0.9006

CBSA Code	Urban Area (Constituent Counties)	Wage Index
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	0.8822
36500	Olympia, WA Thurston County, WA	1.1552
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	0.9503
36740	Orlando, FL Lake County, FL Orange County, FL Osceola County, FL Seminole County, FL	0.9320
36780	Oshkosh-Neenah, WI Winnebago County, WI	0.9568
36980	Owensboro, KY Daviess County, KY Hancock County, KY McLean County, KY	0.8752
37100	Oxnard-Thousand Oaks-Ventura, CA Ventura County, CA	1.1828
37340	Palm Bay-Melbourne-Titusville, FL Brevard County, FL	0.9326
37380	Palm Coast, FL Flagler County, FL	0.8946
37460	Panama City-Lynn Haven, FL Bay County, FL	0.8171
37620	Parkersburg-Marietta, WV-OH Washington County, OH Pleasants County, WV Wirt County, WV Wood County, WV	0.8103

CBSA Code	Urban Area (Constituent Counties)	Wage Index
37700	Pascagoula, MS George County, MS Jackson County, MS	0.8649
37764	Peabody, MA Essex County, MA	1.0258
37860	Pensacola-Ferry Pass-Brent, FL Escambia County, FL Santa Rosa County, FL	0.8283
37900	Peoria, IL Marshall County, IL Peoria County, IL Stark County, IL Tazewell County, IL Woodford County, IL	0.9285
37964	Philadelphia, PA Bucks County, PA Chester County, PA Delaware County, PA Montgomery County, PA Philadelphia County, PA	1.0935
38060	Phoenix-Mesa-Scottsdale, AZ Maricopa County, AZ Pinal County, AZ	1.0268
38220	Pine Bluff, AR Cleveland County, AR Jefferson County, AR Lincoln County, AR	0.7840
38300	Pittsburgh, PA Allegheny County, PA Armstrong County, PA Beaver County, PA Butler County, PA Fayette County, PA Washington County, PA Westmoreland County, PA	0.8520
38340	Pittsfield, MA Berkshire County, MA	1.0106
38540	Pocatello, ID Bannock County, ID Power County, ID	0.9428
38660	Ponce, PR Juana Díaz Municipio, PR Ponce Municipio, PR Villalba Municipio, PR	0.4343

CBSA Code	Urban Area (Constituent Counties)	Wage Index
38860	Portland-South Portland-Biddeford, ME Cumberland County, ME Sagadahoc County, ME York County, ME	1.0044
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	1.1500
38940	Port St. Lucie-Fort Pierce, FL Martin County, FL St. Lucie County, FL	1.0018
39100	Poughkeepsie-Newburgh-Middletown, NY Dutchess County, NY Orange County, NY	1.0849
39140	Prescott, AZ Yavapai County, AZ	1.0021
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	1.0725
39340	Provo-Orem, UT Juab County, UT Utah County, UT	0.9558
39380	Pueblo, CO Pueblo County, CO	0.8852
39460	Punta Gorda, FL Charlotte County, FL	0.9255
39540	Racine, WI Racine County, WI	0.9500
39580	Raleigh-Cary, NC Franklin County, NC Johnston County, NC Wake County, NC	0.9536
39660	Rapid City, SD Meade County, SD Pennington County, SD	0.8812

CBSA Code	Urban Area (Constituent Counties)	Wage Index
39740	Reading, PA Berks County, PA	0.9357
39820	Redding, CA Shasta County, CA	1.3553
39900	Reno-Sparks, NV Storey County, NV Washoe County, NV	1.0954
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	0.9427
40140	Riverside-San Bernardino-Ontario, CA Riverside County, CA San Bernardino County, CA	1.0931
40220	Roanoke, VA Botetourt County, VA Craig County, VA Franklin County, VA Roanoke County, VA Roanoke City, VA Salem City, VA	0.8618
40340	Rochester, MN Dodge County, MN Olmsted County, MN Wabasha County, MN	1.1033

CBSA Code	Urban Area (Constituent Counties)	Wage Index
40380	Rochester, NY Livingston County, NY Monroe County, NY Ontario County, NY Orleans County, NY Wayne County, NY	0.8836
40420	Rockford, IL Boone County, IL Winnebago County, IL	0.9660
40484	Rockingham County-Strafford County, NH Rockingham County, NH Strafford County, NH	1.0113
40580	Rocky Mount, NC Edgecombe County, NC Nash County, NC	0.9008
40660	Rome, GA Floyd County, GA	0.9040
40900	Sacramento--Arden-Arcade--Roseville, CA El Dorado County, CA Placer County, CA Sacramento County, CA Yolo County, CA	1.3428
40980	Saginaw-Saginaw Township North, MI Saginaw County, MI	0.8813
41060	St. Cloud, MN Benton County, MN Stearns County, MN	1.0551
41100	St. George, UT Washington County, UT	0.9365
41140	St. Joseph, MO-KS Doniphan County, KS Andrew County, MO Buchanan County, MO DeKalb County, MO	0.8764

CBSA Code	Urban Area (Constituent Counties)	Wage Index
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	0.8923
41420	Salem, OR Marion County, OR Polk County, OR	1.0573
41500	Salinas, CA Monterey County, CA	1.4581
41540	Salisbury, MD Somerset County, MD Wicomico County, MD	0.8995
41620	Salt Lake City, UT Salt Lake County, UT Summit County, UT Tooele County, UT	0.9404
41660	San Angelo, TX Irion County, TX Tom Green County, TX	0.8581
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	0.8851
41740	San Diego-Carlsbad-San Marcos, CA San Diego County, CA	1.1418

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41780	Sandusky, OH Erie County, OH	0.8824
41884	San Francisco-San Mateo-Redwood City, CA Marin County, CA San Francisco County, CA San Mateo County, CA	1.5154
41900	San Germán-Cabo Rojo, PR Cabo Rojo Municipio, PR Lajas Municipio, PR Sabana Grande Municipio, PR San Germán Municipio, PR	0.4730
41940	San Jose-Sunnyvale-Santa Clara, CA San Benito County, CA Santa Clara County, CA	1.5639

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	0.4516
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA	1.2442

CBSA Code	Urban Area (Constituent Counties)	Wage Index
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA	1.1745
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara County, CA	1.1697
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA	1.6117
42140	Santa Fe, NM Santa Fe County, NM	1.0735
42220	Santa Rosa-Petaluma, CA Sonoma County, CA	1.4482
42260	Sarasota-Bradenton-Venice, FL Manatee County, FL Sarasota County, FL	0.9917
42340	Savannah, GA Bryan County, GA Chatham County, GA Effingham County, GA	0.9226
42540	Scranton--Wilkes-Barre, PA Lackawanna County, PA Luzerne County, PA Wyoming County, PA	0.8459
42644	Seattle-Bellevue-Everett, WA King County, WA Snohomish County, WA	1.1556
42680	Sebastian-Vero Beach, FL Indian River County, FL	0.9414
43100	Sheboygan, WI Sheboygan County, WI	0.8977
43300	Sherman-Denison, TX Grayson County, TX	0.8321
43340	Shreveport-Bossier City, LA Bossier Parish, LA Caddo Parish, LA De Soto Parish, LA	0.8535
43580	Sioux City, IA-NE-SD Woodbury County, IA Dakota County, NE Dixon County, NE Union County, SD	0.9383
43620	Sioux Falls, SD Lincoln County, SD McCook County, SD Minnehaha County, SD Turner County, SD	0.9565

CBSA Code	Urban Area (Constituent Counties)	Wage Index
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN Cass County, MI	0.9618
43900	Spartanburg, SC Spartanburg County, SC	0.9424
44060	Spokane, WA Spokane County, WA	1.0444
44100	Springfield, IL Menard County, IL Sangamon County, IL	0.8945
44140	Springfield, MA Franklin County, MA Hampden County, MA Hampshire County, MA	1.0151
44180	Springfield, MO Christian County, MO Dallas County, MO Greene County, MO Polk County, MO Webster County, MO	0.9095
44220	Springfield, OH Clark County, OH	0.8665
44300	State College, PA Centre County, PA	0.8770
44700	Stockton, CA San Joaquin County, CA	1.1775
44940	Sumter, SC Sumter County, SC	0.8600
45060	Syracuse, NY Madison County, NY Onondaga County, NY Oswego County, NY	0.9868
45104	Tacoma, WA Pierce County, WA	1.1056
45220	Tallahassee, FL Gadsden County, FL Jefferson County, FL Leon County, FL Wakulla County, FL	0.9026
45300	Tampa-St. Petersburg-Clearwater, FL Hernando County, FL Hillsborough County, FL Pasco County, FL Pinellas County, FL	0.9020

CBSA Code	Urban Area (Constituent Counties)	Wage Index
45460	Terre Haute, IN Clay County, IN Sullivan County, IN Vermillion County, IN Vigo County, IN	0.8806
45500	Texarkana, TX-Texarkana, AR Miller County, AR Bowie County, TX	0.8127
45780	Toledo, OH Fulton County, OH Lucas County, OH Ottawa County, OH Wood County, OH	0.9435
45820	Topeka, KS Jackson County, KS Jefferson County, KS Osage County, KS Shawnee County, KS Wabaunsee County, KS	0.8540
45940	Trenton-Ewing, NJ Mercer County, NJ	1.0700
46060	Tucson, AZ Pima County, AZ	0.9312
46140	Tulsa, OK Creek County, OK Okmulgee County, OK Osage County, OK Pawnee County, OK Rogers County, OK Tulsa County, OK Wagoner County, OK	0.8343
46220	Tuscaloosa, AL Greene County, AL Hale County, AL Tuscaloosa County, AL	0.8304
46340	Tyler, TX Smith County, TX	0.9120
46540	Utica-Rome, NY Herkimer County, NY Oneida County, NY	0.8483

CBSA Code	Urban Area (Constituent Counties)	Wage Index
46660	Valdosta, GA Brooks County, GA Echols County, GA Lanier County, GA Lowndes County, GA	0.8099
46700	Vallejo-Fairfield, CA Solano County, CA	1.4628
47020	Victoria, TX Calhoun County, TX Goliad County, TX Victoria County, TX	0.8306
47220	Vineland-Millville-Bridgeton, NJ Cumberland County, NJ	1.0134
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	0.8823
47300	Visalia-Porterville, CA Tulare County, CA	1.0092
47380	Waco, TX McLennan County, TX	0.8520
47580	Warner Robins, GA Houston County, GA	0.9130
47644	Warren-Troy-Farmington Hills, MI Lapeer County, MI Livingston County, MI Macomb County, MI Oakland County, MI St. Clair County, MI	1.0004

CBSA Code	Urban Area (Constituent Counties)	Wage Index
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	1.0845
47940	Waterloo-Cedar Falls, IA Black Hawk County, IA Bremer County, IA Grundy County, IA	0.8520
48140	Wausau, WI Marathon County, WI	0.9680
48260	Weirton-Steubenville, WV-OH Jefferson County, OH Brooke County, WV Hancock County, WV	0.7925
48300	Wenatchee, WA Chelan County, WA Douglas County, WA	1.1471
48424	West Palm Beach-Boca Raton-Boynton Beach, FL Palm Beach County, FL	0.9735
48540	Wheeling, WV-OH Belmont County, OH Marshall County, WV Ohio County, WV	0.6962

CBSA Code	Urban Area (Constituent Counties)	Wage Index
48620	Wichita, KS Butler County, KS Harvey County, KS Sedgwick County, KS Sumner County, KS	0.9129
48660	Wichita Falls, TX Archer County, TX Clay County, TX Wichita County, TX	0.8192
48700	Williamsport, PA Lycoming County, PA	0.8044
48864	Wilmington, DE-MD-NJ New Castle County, DE Cecil County, MD Salem County, NJ	1.0824
48900	Wilmington, NC Brunswick County, NC New Hanover County, NC Pender County, NC	0.9419
49020	Winchester, VA-WV Frederick County, VA Winchester City, VA Hampshire County, WV	0.9914
49180	Winston-Salem, NC Davie County, NC Forsyth County, NC Stokes County, NC Yadkin County, NC	0.9120
49340	Worcester, MA Worcester County, MA	1.1268
49420	Yakima, WA Yakima County, WA	1.0268
49500	Yauco, PR Guánica Municipio, PR Guayanilla Municipio, PR Peñuelas Municipio, PR Yauco Municipio, PR	0.3284
49620	York-Hanover, PA York County, PA	0.9237
49660	Youngstown-Warren-Boardman, OH-PA Mahoning County, OH Trumbull County, OH Mercer County, PA	0.9004

CBSA Code	Urban Area (Constituent Counties)	Wage Index
49700	Yuba City, CA Sutter County, CA Yuba County, CA	1.0758
49740	Yuma, AZ Yuma County, AZ	0.9489

[1] At this time, there are no hospitals located in this urban area on which to base a wage index.

Table 9. FY 2008 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS

CBSA Code	Nonurban Area	Wage Index
1	Alabama	0.7560
2	Alaska	1.1826
3	Arizona	0.8655
4	Arkansas	0.7371
5	California	1.1887
6	Colorado	0.9703
7	Connecticut	1.1475
8	Delaware	0.9659
10	Florida	0.8470
11	Georgia	0.7659
12	Hawaii	1.0618
13	Idaho	0.7981
14	Illinois	0.8342
15	Indiana	0.8604
16	Iowa	0.8568
17	Kansas	0.7984
18	Kentucky	0.7792
19	Louisiana	0.7376
20	Maine	0.8476
21	Maryland	0.9035
22	Massachusetts[1]	1.1665
23	Michigan	0.8941
24	Minnesota	0.9185
25	Mississippi	0.7872
26	Missouri	0.7886
27	Montana	0.8378
28	Nebraska	0.8848
29	Nevada	0.9254
30	New Hampshire	1.0865
31	New Jersey[1]	------

CBSA Code	Nonurban Area	Wage Index
32	New Mexico	0.8937
33	New York	0.8261
34	North Carolina	0.8604
35	North Dakota	0.7183
36	Ohio	0.8715
37	Oklahoma	0.7490
38	Oregon	0.9895
39	Pennsylvania	0.8391
40	Puerto Rico[1]	0.4047
41	Rhode Island[1]	------
42	South Carolina	0.8744
43	South Dakota	0.8538
44	Tennessee	0.7718
45	Texas	0.7970
46	Utah	0.8185
47	Vermont	0.9918
48	Virgin Islands	0.6831
49	Virginia	0.7915
50	Washington	1.0262
51	West Virginia	0.7440
52	Wisconsin	0.9614
53	Wyoming	0.9288
65	Guam	0.9611

[1] 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 2008. The rural Massachusetts wage index is calculated as the average of all contiguous CBSAs. The Puerto Rico wage index is the same as FY 2007.

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Federal Register

Friday,
May 4, 2007

Part V

Department of Health and Human Services

Centers for Medicare and Medicaid Services

Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System Payment Update for Rate Year Beginning July 1, 2007 (RY 2008); Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1479–N]

RIN 0938–AO40

Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System Payment Update for Rate Year Beginning July 1, 2007 (RY 2008)

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

ACTION: Notice.

SUMMARY: This notice updates the prospective payment rates for Medicare inpatient psychiatric hospital services provided by inpatient psychiatric facilities (IPFs). These changes are applicable to IPF discharges occurring during the rate year beginning July 1, 2007 through June 30, 2008.

EFFECTIVE DATE: The updated IPF prospective payment rates are effective for discharges occurring on or after July 1, 2007 through June 30, 2008.

FOR FURTHER INFORMATION CONTACT:

Dorothy Myrick or Jana Lindquist, (410) 786–4533 (for general information).

Heidi Oumarou, (410) 786–7942 (for information regarding the market basket and labor-related share).

Theresa Bean, (410) 786–2287 (for information regarding the regulatory impact analysis).

Matthew Quarrick, (410) 786–9867 (for information on the wage index).

SUPPLEMENTARY INFORMATION:

Table of Contents

To assist readers in referencing sections contained in this document, we are providing the following table of contents.

Acronyms

Because of the many terms to which we refer by acronym in this notice, we are listing the acronyms used and their corresponding terms in alphabetical order below:

BBRA Medicare, Medicaid and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, (Pub. L. 106–113)
CBSA Core-Based Statistical Area
CCR Cost-to-charge ratio
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
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
MSA Metropolitan Statistical Area
RY Rate Year
TEFRA Tax Equity and Fiscal Responsibility Act of 1982, (Pub. L. 97–248)

I. Background

A. Annual Requirements for Updating the IPF PPS

In November 2004, we implemented the IPF PPS in a final rule that appeared in the November 15, 2004 **Federal Register** (69 FR 66922). In developing the IPF PPS, in order to ensure that the IPF PPS is 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.

In that final rule, we explained that we believe it is important to delay updating the adjustment factors derived from the regression analysis until we have IPF PPS data that includes as much information as possible regarding the patient-level characteristics of the population that each IPF serves. Therefore, we indicated that we did not intend to update the regression analysis and recalculate the Federal per diem base rate and the patient- and facility-level adjustment until we complete that analysis. Until that analysis is complete, we stated our intention to publish a notice in the **Federal Register** each spring to update the IPF PPS (71 FR 27041).

Updates to the IPF PPS as specified in 42 CFR 412.428 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 section 1886(b)(3)(B)(ii) of the Act for each year.
- For discharges occurring on or after July 1, 2006, the rate of increase factor for the Federal portion of the IPF's payment, which is based on the rehabilitation, psychiatric, and long-term care (RPL) market basket.
- For discharges occurring on or after October 1, 2005, the rate of increase factor for the reasonable cost portion of the IPF's payment, which is based on the 2002-based excluded hospital market with capital basket.
- The best available hospital wage index and information regarding whether an adjustment to the Federal per diem base rate, which is needed to maintain budget neutrality.
- Updates to the fixed dollar loss threshold 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 (IPPS) regulations.

• Update to the electroconvulsive therapy (ECT) payment by a factor specified by CMS.

• Update to the national urban and rural cost to charge ratio medians and ceilings.

• Update to the cost of living adjustment factors for IPFs located in Alaska and Hawaii if appropriate.

Our most recent annual update occurred in a final rule (71 FR 27040, May 9, 2006) that set forth updates to the IPF PPS payment rates for RY 2007. We subsequently published a correction notice (71 FR 37505, June 30, 2006) with respect to those payment rate updates.

This notice does not initiate any policy changes with regard to the IPF PPS; rather, it simply provides an update to the rates for RY 2008 (that is, the prospective payment rates applicable for discharges beginning July 1, 2007 through June 30, 2008). In establishing these payment rates, we update the IPF per diem payment rates that were published in the May 2006 IPF PPS final rule in accordance with our established polices.

B. Overview of the Legislative Requirements for the IPF PPS

Section 124 of the BBRA required implementation of the IPF PPS. Specifically, section 124 of the BBRA mandated that the Secretary develop a per diem PPS for inpatient hospital services furnished in psychiatric hospitals and psychiatric units that includes in the PPS an adequate patient classification system that reflects the differences in patient resource use and costs among psychiatric hospitals and psychiatric units.

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).

To implement these provisions, we published various proposed and final rules in the **Federal Register**. For more information regarding these rules, see the CMS websites *http://www.cms.hhs.gov/InpatientPsychFacilPPS/* and *www.cms.hhs.gov/InpatientpsychfacilPPS/02_regulations.asp.*

C. IPF PPS—General Overview

The November 2004 IPF PPS final rule (69 FR 66922) established the IPF PPS, as authorized under section 124 of the BBRA and codified at subpart N of part 412 of the Medicare regulations. The November 2004 IPF PPS final rule set forth the per diem Federal rates for the implementation year (that is, the 18-month period from January 1, 2005 through June 30, 2006) that provided payment for the inpatient operating and capital costs to IPF's for covered psychiatric services they furnish (that is, routine, ancillary, and capital costs), but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IPF PPS. Covered psychiatric services include services for which benefits are provided under the fee-for-service Part A (Hospital Insurance Program) Medicare program.

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-level payment adjustments that were found in the regression analysis to be associated with statistically significant per diem cost differences.

The patient-level adjustments include age, DRG assignment, comorbidities, and variable per diem adjustments to reflect a higher per diem cost 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); interrupted stays; and a per treatment adjustment for patients who undergo ECT.

A complete discussion of the regression analysis appears in the November 2004 IPF PPS final rule (69 FR 66933 through 66936).

Section 124 of Medicare, Medicaid and SCHIP (State Children's Health Insurance Program) Balanced Budget Refinement Act of 1999, (Pub. L. 106–113) (BBRA) does not specify an annual update rate strategy for the IPF PPS and is broadly written to give the Secretary discretion in establishing an update methodology. Therefore, in the November 2004 IPF PPS final rule (69 FR 66966), we implemented 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 of 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 on or after July 1, 2006 through June 30, 2007.

II. Transition Period for Implementation of the IPF PPS

In the November 2004 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. The purpose of the transition period is to allow existing IPFs time to adjust their cost structures and to integrate the effects of changing to the IPF PPS.

New IPFs, as defined in § 412.426(c), are paid 100 percent of the Federal per diem payment amount. For those IPFs that are transitioning to the new system, payment is based on an increasing percentage of the PPS payment and a decreasing percentage of each IPF's facility-specific Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) reimbursement rate.

TABLE 1.—IPF PPS 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. However, regardless of when an IPF's cost reporting year begins, the payment update will be effective for discharges occurring on or after July 1, 2007 through June 30, 2008.

We are currently in the third year of the transition period. As a result, for discharges occurring during IPF cost reporting periods beginning in calendar year (CY) 2007, IPFs would receive a blended payment consisting of 25 percent of the facility-specific TEFRA payment and 75 percent of the IPF PPS payment amount.

For RY 2008, we are not making any changes to the transition period established in the November 2004 IPF PPS final rule.

III. Updates to the IPF PPS for RY Beginning July 1, 2007

The IPF PPS is based on a standardized Federal per diem base rate calculated from FY 2002 IPF average costs per day and adjusted for budget-neutrality and updated to the midpoint of 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.

A detailed explanation of how we calculated the average per diem cost appears in the November 2004 IPF PPS final rule (69 FR 66926).

A. Determining the Standardized Budget-Neutral Federal Per Diem Base Rate

Section 124(a)(1) of the BBRA requires that we implement the IPF PPS in a budget neutral manner. 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, 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.

For the IPF PPS methodology, we calculated the final Federal per diem base rate to be budget neutral during the IPF PPS implementation period (that is, the 18-month period from January 1, 2005 through June 30, 2006) using a July 1 update cycle.

We updated the average cost per day to the midpoint of the IPF PPS implementation period (that is, October 1, 2005), and this amount was used in the payment model to establish the budget-neutrality adjustment.

A step-by-step description of the methodology used to estimate payments under the TEFRA payment system appears in the November 2004 IPF PPS final rule (69 FR 66926).

1. Standardization of the Federal Per Diem Base Rate and Electroconvulsive Therapy Rate

In the November 2004 IPF PPS final rule, we describe how 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 FY 2002 Medicare Provider Analysis and Review (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 described in detail in the May 2006 IPF PPS final rule (71 FR 27045), in reviewing the methodology used to simulate the IPF PPS payments used for the November 2004 IPF PPS final rule, we discovered that due to a computer code error, total IPF PPS payments were underestimated by about 1.36 percent. 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 Federal per diem base rate and the ECT rate should have been reduced by 0.8254 instead of 0.8367.

To resolve this issue, in RY 2007, we amended the Federal per diem base rate and the ECT payment rate prospectively. Using the standardization factor of 0.8254, the average cost per day was effectively reduced by 17.46 percent (100 percent minus 82.54 percent = 17.46 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 complete discussion of how we calculate each component of the budget neutrality adjustment appears in the November 2004 IPF PPS final rule (69 FR 66932 through 66933) and the May 2006 IPF PPS final rule (71 FR 27044 through 27046).

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 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 November 2004 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. As a result, the standardized Federal per diem base rate was reduced by 0.39 percent to account for stop-loss payments.

c. Behavioral Offset

As explained in the November 2004 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 make 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 PPSs, 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 account for behavioral changes. As indicated in the November 2004 IPF PPS final rule, we do not plan to change adjustment factors or projections, including the behavioral offset, until we analyze IPF PPS data. At that time, we will re-assess the accuracy of the behavioral offset along with the other factors impacting budget neutrality.

If we find that an adjustment is warranted, the percent difference may be applied prospectively to the established PPS rates to ensure the rates accurately reflect the payment level intended by the statute. In conducting this analysis, we will be interested in the extent to which improved documentation and coding of patients' primary and other diagnoses, which may not reflect real increases in underlying resource demands, has occurred under the PPS.

B. Update of the Federal Per Diem Base Rate and Electroconvulsive Therapy Rate

1. Market Basket for IPFs Reimbursed Under the IPF PPS

As described in the November 2004 IPF PPS final rule, the average per diem cost was updated to the midpoint of the implementation year (69 FR 66931). This updated average per diem cost of $724.43 was reduced by 17.46 percent to account for standardization to projected TEFRA 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 to account for the behavioral offset. The Federal per diem base rate in the implementation year was $575.95, and for RY 2007, it was $595.09.

Applying the market basket increase of 3.2 percent and the wage index budget neutrality factor of 1.0014 yields a Federal per diem base rate of $614.99 for RY 2008. Similarly, applying the market basket increase and wage index budget neutrality factor to the RY 2007 ECT rate yields an ECT rate of $264.77 for RY 2008.

a. Market Basket Index for the IPF PPS

The market basket index that was used to develop the IPF PPS was the excluded hospital with capital market basket. The market basket was based on 1997 Medicare cost report data and included data for Medicare participating IPFs, inpatient rehabilitation facilities (IRFs), long-term care hospitals (LTCHs), cancer, and children's hospitals.

We are presently unable to create a separate market basket specifically for psychiatric hospitals due to the following two reasons: (1) There is a very small sample size for free-standing psychiatric facilities; and (2) there are limited expense data for some categories on the free-standing psychiatric cost reports (for example, approximately 4 percent of free-standing psychiatric facilities reported contract labor cost data for FY 2002). However, since all IRFs, LTCHs, and IPFs are now paid under a PPS, we are updating PPS payments made under the IRF PPS, the LTCH PPS, and the IPF PPS using a market basket reflecting the operating and capital cost structures for IRFs, IPFs, and LTCHs (hereafter referred to as the rehabilitation, psychiatric, long-term care (RPL) market basket).

We have excluded cancer and children's 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 are implemented in regulations at § 413.40. They are not reimbursed under a PPS. Also, the FY 2002 cost structures for cancer and children's 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 cancer and children's hospitals.

A complete discussion of the RPL market basket appears in the May 2006 IPF PPS final rule (71 FR 27046 through 27054).

b. Overview of the RPL Market Basket

The RPL market basket is a fixed weight, Laspeyres-type price index. 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. In 2006 we rebased and revised the market basket used to update the IPF PPS.

Table 2 below sets forth the completed 2002-based RPL market basket including the cost categories, weights, and price proxies.

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Table 2--FY 2002-based RPL Market Basket Cost Categories, Weights, and Proxies

Expense Categories	FY 2002-based RPL Market Basket	FY 2002 RPL Market Basket Price Proxies
TOTAL	100.000	
Compensation	65.877	
Wages and Salaries*	52.895	ECI-Wages and Salaries, Civilian Hospital Workers
Employee Benefits*	12.982	ECI-Benefits, Civilian Hospital Workers
Professional Fees, Non-Medical*	2.892	ECI-Compensation for Professional, Specialty & Technical Workers
Utilities	0.656	
Electricity	0.351	PPI-Commercial Electric Power
Fuel Oil, Coal, etc.	0.108	PPI-Commercial Natural Gas
Water and Sewage	0.197	CPI-U – Water & Sewage Maintenance
Professional Liability Insurance	1.161	CMS Professional Liability Premium Index
All Other Products and Services	19.265	
All Other Products	13.323	
Pharmaceuticals	5.103	PPI Prescription Drugs
Food: Direct Purchase	0.873	PPI Processed Foods &

Expense Categories	FY 2002-based RPL Market Basket	FY 2002 RPL Market Basket Price Proxies
		Feeds
Food: Contract Service	0.620	CPI-U Food Away From Home
Chemicals	1.100	PPI Industrial Chemicals
Medical Instruments	1.014	PPI Medical Instruments & Equipment
Photographic Supplies	0.096	PPI Photographic Supplies
Rubber and Plastics	1.052	PPI Rubber & Plastic Products
Paper Products	1.000	PPI Converted Paper & Paperboard Products
Apparel	0.207	PPI Apparel
Machinery and Equipment	0.297	PPI Machinery & Equipment
Miscellaneous Products**	1.963	PPI Finished Goods less Food & Energy
All Other Services	5.942	
Telephone	0.240	CPI-U Telephone Services
Postage	0.682	CPI-U Postage
All Other: Labor Intensive	2.219	ECI-Compensation for Private Service Occupations
All Other: Non-labor Intensive	2.800	CPI-U All Items
Capital-Related Costs	10.149	
Depreciation	6.186	
Fixed Assets	4.250	Boeckh Institutional Construction 23-year useful life
Movable Equipment	1.937	WPI Machinery & Equipment 11- year useful life
Interest Costs	2.775	
Nonprofit	2.081	Average yield on domestic municipal bonds (Bond Buyer 20 bonds) vintage-weighted (23 years)
For Profit	0.694	Average yield on Moody's Aaa bond vintage-weighted (23 years)
Other Capital-Related Costs	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.

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For RY 2008, 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 Consumer Price Indexes (CPIs), Producer Price Indexes (PPIs), and Employment Cost Indexes (ECIs) used as proxies in this market basket 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 August 1, 2002 IPPS final rule (67 FR at 50042).

The RY 2008 (that is, beginning July 1, 2007) update for the IPF PPS using

the FY 2002-based RPL market basket and Global Insight's 1st quarter 2007 forecast for the market basket components is 3.2 percent. This includes increases in both the operating section and the capital section for the 12-month RY period (that is, July 1, 2007 through June 30, 2008). Global Insight, Inc. is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of the market baskets.

2. Labor-Related Share

Due to the variations in costs and geographic wage levels, we believe that payment rates under the IPF PPS should continue to be adjusted by a geographic wage index. This wage index applies to the labor-related portion of the 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 used the FY 2002-based RPL market basket costs to determine the labor-related share for the IPF PPS.

The labor-related share for RY 2008 is the sum of the RY 2008 relative importance of each labor-related cost category, and reflects the different rates of price change for these cost categories between the base year (FY 2002) and RY 2008. The sum of the relative importance for the RY 2008 operating costs (wages and salaries, employee benefits, professional fees, and labor-intensive services) is 71.767, as shown in Table 3 below. The portion of capital that is influenced by the local labor market is 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 is 8.742 percent of the FY 2002-based RPL market basket in RY 2008, we are taking 46 percent of 8.742 percent to determine the labor-related share of capital for RY 2008. The result is 4.021 percent, which we added to 71.767 percent for the operating cost amount to determine the total labor-related share for RY 2008. Thus, the labor-related share that we are using for IPF PPS in RY 2008 is 75.788 percent. Table 3 below shows the RY 2008 relative importance of labor-related shares using the FY 2002-based RPL market basket. We note that this labor-related share is determined by using the same methodology as employed in calculating all previous IPF labor-related shares.

A complete discussion of the IPF labor-related methodology appears in the November 2004 IPF PPS final rule (69 FR 66952 through 66954).

TABLE 3.—TOTAL LABOR-RELATED SHARE—RELATIVE IMPORTANCE FOR RY 2008

Cost category	FY 2002-based RPL market basket relative importance (Percent) RY 2007	FY 2002 RPL market basket relative importance (Percent) RY 2008
Wages and salaries	52.506	52.588
Employee benefits	14.042	14.127
Professional fees	2.886	2.907
All other labor-intensive services	2.152	2.145
Subtotal	71.586	71.767
Labor-related share of capital costs	4.079	4.021
Total	75.665	75.788

3. IPFs Paid Based on a Blend of the Reasonable Cost-Based Payments

As stated in the FY 2006 IPPS 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 chose FY 2002 as the base year for the excluded hospital market basket because this was 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. The FY 2008 update factor for the portion of the IPF PPS transitional blend payment based on reasonable costs will be published in the FY 2008 IPPS proposed and final rules.

IV. Update of the IPF PPS Adjustment Factors

A. Overview of the IPF PPS Adjustment Factors

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 used the same results of this regression analysis to implement the November 2004 and May 2006 IPF PPS final rules. We also use the same results of this regression analysis to update the IPF PPS for RY 2008.

As previously stated, we do not plan to update the regression analysis until we analyze IPF PPS data. We plan 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 psychiatric units of general hospitals, and other issues of importance to psychiatric facilities.

A complete discussion of the data file used for the regression analysis appears in the November 2004 IPF PPS final rule (69 FR 66935 through 66936).

B. Patient-Level Adjustments

In the May 2006 IPF PPS final rule (71 FR 27040) for RY 2007, we provided payment adjustments for the following patient-level characteristics: DRG assignment of the patient's principal diagnosis; selected comorbidities; patient age; and the variable per diem adjustments. As previously stated in the November 2004 IPF PPS final rule, we do not intend to update the adjustment factors derived from the regression analysis until we have IPF PPS data that includes as much information as possible regarding the patient-level

characteristics of the population that each IPF serves.

1. 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 May 2006 IPF PPS final rule (71 FR 27040), we explained that the IPF PPS includes 15 diagnosis-related group (DRG) adjustment factors. The adjustment factors were expressed relative to the most frequently reported psychiatric DRG in FY 2002, that is, DRG 430 (psychoses). 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.

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 under the IPF PPS, all other applicable adjustments, and a DRG adjustment. 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 would not include a DRG adjustment.

We continue to believe that 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. All changes to the ICD–9–CM coding system that would impact the IPF PPS are addressed 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 2007 version can be ordered by contacting the Superintendent of Documents, U.S. Government Printing Office, Department 50, Washington, DC 20402–9329, telephone number (202) 512–1800. 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, Hospital and Ambulatory Policy Group, Division of Acute Care, Mailstop C4–08–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Further information concerning the official version of the ICD–9–CM can be found in the IPPS final regulation, "Revision to Hospital Inpatient Prospective Payment Systems—2007 FY Occupational Mix Adjustment to Wage Index Implementation; Final Rule," in the August 18, 2006 **Federal Register** (71 FR 47870) and at *http://www.cms.hhs.gov/QuarterlyProviderUpdates/Downloads/CMS1488F.pdf.*

The three tables below list the FY 2007 new ICD–9–CM diagnosis codes, the one FY 2007 revised diagnosis code title, and the one invalid FY 2007 ICD diagnosis code, respectively, that group to one of the 15 DRGs for which the IPF PPS provides an adjustment. These tables are only a listing of FY 2007 changes and do not reflect all of the currently valid and applicable ICD–9–CM codes classified in the DRGs.

Table 4 below lists the new FY 2007 ICD–9–CM 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 receive the correlating DRG adjustment.

TABLE 4.—FY 2007 NEW DIAGNOSIS CODES

Diagnosis code	Description	DRG
331.83	Mild cognitive impairment.	12
333.71	Althetoid cerebral palsy.	12

Table 5 below lists the ICD–9–CM diagnosis code whose title has been modified in FY 2007. Title changes do not impact the DRG adjustment. When used as a principal diagnosis, these codes still receive the correlating DRG adjustment.

TABLE 5.—REVISED DIAGNOSIS CODE TITLE

Diagnosis code	Description	DRG
333.6	Genetic torsion dystonia.	12

Table 6 below lists the invalid ICD–9–CM diagnosis code no longer applicable for the DRG adjustment in FY 2007.

TABLE 6.—INVALID DIAGNOSIS CODE TITLE

Diagnosis code	Description	DRG
333.7	Symptomatic torsion dystonia.	12

Since we do not plan to update the regression analysis until we analyze IPF PPS data, the DRG adjustments factors, shown in Table 7 below, will continue to be paid for RY 2008.

2. Payment for Comorbid Conditions

The intent of the comorbidity adjustment is 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.

In the May 2006 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 principal 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 should not be reported on IPF claims. Comorbid conditions must exist at the time of admission or develop subsequently, and affect the treatment received, affect the length of stay (LOS) or affect both treatment and LOS.

For each claim, 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 develop subsequently.

The comorbidity adjustments were determined based on the regression analysis using the diagnoses reported by hospitals 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 May 2006 IPF PPS final rule (71 FR 27040), 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, the comorbidity adjustment factors currently in effect will remain in effect for RY 2008. As previously stated, we do not plan to update the regression analysis until we analyze IPF PPS data. The comorbidity adjustments are shown in Table 8 below.

TABLE 7--RY 2008 DRGs Adjustment Factors

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
DRG 23	Non-traumatic Stupor & Coma	1.07

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, in this update notice, we are continuing to use the most current FY 2007 ICD codes. They are reflected in the FY 2007 GROUPER, version 24.0 and are effective for discharges occurring on or after October 1, 2006.

Table 8 below lists the FY 2007 new ICD diagnosis codes that impact the comorbidity adjustments under the IPF PPS, Table 9 lists the revised ICD codes, and Table 10 lists the invalid ICD codes no longer applicable for the comorbidity adjustment. Table 11 lists all of the currently valid ICD codes applicable for the IPF PPS comorbidity adjustments.

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TABLE 8 -- FY 2007 New ICD Codes Applicable for the Comorbidity Adjustments

Diagnosis Code	Description	DRG	Comorbidity Category
052.2	Postvaricella myelitis	561	Infectious Diseases
053.14	Herpes zoster myelitis	561	Infectious Diseases
238.71	Essential thrombocythemia	398 – 399	Oncology Treatment
238.72	Low grade myelodysplastic syndrome lesions	395 – 396	Oncology Treatment
238.73	High grade myelodysplastic syndrome lesions	395 – 396	Oncology Treatment
238.74	Myelodysplastic syndrome with 5q deletion	395 – 396	Oncology Treatment
238.75	Myelodysplastic syndrome, unspecified	395 – 396	Oncology Treatment
238.76	Myelofibrosis with myeloid metaplasia	401 – 404, 539 – 540	Oncology Treatment
238.79	Other lymphatic and hematopoietic tissues	401 – 404, 539 – 540	Oncology Treatment

Table 9 below, which lists the FY 2007 revised ICD codes, does not reflect all of the currently valid ICD codes applicable for the IPF PPS comorbidity adjustments.

TABLE 9--FY 2007 Revised ICD Codes

Diagnosis Code	Description	DRG	Comorbidity Category
403.01	Hypertensive chronic kidney disease, malignant, with chronic kidney disease stage V or end stage renal disease	315 – 316	Renal Failure, Chronic
403.11	Hypertensive chronic kidney disease, benign, with chronic kidney disease stage V or end stage renal disease	315 – 316	Renal Failure, Chronic
403.91	Hypertensive chronic kidney disease, unspecified, with chronic kidney disease stage V or end stage renal disease	315 – 316	Renal Failure, Chronic
404.02	Hypertensive heart and chronic kidney disease, malignant, without heart failure and with chronic kidney disease stage V or end stage renal disease	315 – 316	Renal Failure, Chronic
404.03	Hypertensive heart and chronic kidney disease, malignant, with heart failure and with chronic kidney disease stage V or end stage renal disease	121, 124, 127, 535, 547, 549, 551, 553, 555, 557	Cardiac Conditions
404.12	Hypertensive heart and chronic kidney disease, benign, without heart failure and with chronic kidney disease stage V or end stage renal disease	315 – 316	Renal Failure, Chronic
404.13	Hypertensive heart and chronic kidney disease, benign, with heart failure and	121, 124, 127, 535, 547, 549, 551, 553, 555,	Renal Failure, Chronic
	chronic kidney disease stage V or end stage renal disease	557	
404.92	Hypertensive heart and chronic kidney disease, unspecified, without heart failure and with chronic kidney disease stage V or end stage renal disease	315 – 316	Renal Failure, Chronic
404.93	Hypertensive heart and chronic kidney disease, unspecified, with heart failure and chronic kidney disease stage V or end stage renal disease	121, 124, 127, 535, 547, 549, 551, 553, 555, 557	Renal Failure, Chronic

In Table 10 below, we list the FY 2007 invalid ICD diagnosis code 238.7.

TABLE 10.—FY 2007 INVALID ICD CODES NO LONGER APPLICABLE FOR THE COMORBIDITY ADJUSTMENTS

Diagnosis code	Description	DR	Comorbidity category
238.7	Other lymphatic and hematopoietic tissues	413–414	Oncology Treatment.

The seventeen comorbidity categories for which we are providing an adjustment, their respective codes, including the new FY 2007 ICD codes, and their respective adjustment factors, are listed below in Table 11.

TABLE 11-- RY 2008 Diagnosis Codes and Adjustment Factors for Comorbidity Categories

Description of Comorbidity	ICD-9CM Code	Adjustment Factor
Developmental Disabilities	317, 3180, 3181, 3182, and 319	1.04
Coagulation Factor Deficits	2860 through 2864	1.13
Tracheostomy	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	1.09
Poisoning	96500 through 96509, 9654, 9670 through 9699, 9770, 9800 through 9809, 9830 through 9839, 986, 9890 through 9897	1.11

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3. Patient Age Adjustments

As explained in the November 2004 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 age group, the differences in per diem cost increase for each successive age group, and the differences are statistically significant.

We do not plan to update the regression analysis until we analyze IPF PPS data. For RY 2008, we are continuing to use the patient age adjustments currently in effect and as 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

TABLE 12.—AGE GROUPINGS AND ADJUSTMENT FACTORS—Continued

Age	Adjustment factor
70 and under 75	1.13
75 and under 80	1.15
80 and over	1.17

4. Variable Per Diem Adjustments

We explained in the November 2004 IPF PPS final rule that a regression analysis indicated that per diem cost declines as the LOS increases (69 FR 66946). 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 a regression analysis to estimate the average differences in per diem cost among stays of different lengths. 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 ED. If an IPF has a qualifying ED, it receives a 1.31 adjustment factor for day 1 of each patient stay. If an IPF does not have a qualifying ED, it receives a 1.19 adjustment factor for day 1 of the stay. The ED adjustment is explained in more detail in section IV.C.5 of this notice.

As previously stated, we do not plan to make changes to the regression analysis until we analyze IPF PPS data. Therefore, for RY 2008, we are continuing to use the variable per diem adjustment factors currently in effect as shown in Table 13 below.

A complete discussion of the variable per diem adjustments appears in the November 2004 IPF PPS final rule (69 FR 66946).

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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
After Day 21	0.92

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C. Facility-Level Adjustments

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

As discussed in the May 2006 IPF PPS final rule, in providing an adjustment for area wage levels, the labor-related portion of an IPF's Federal prospective payment is adjusted using an appropriate wage index. An IPF's area wage index value is determined based on the actual location of the IPF in an urban or rural area as defined in § 412.64(b)(1)(ii)(A) through (C).

Since the inception of a PPS for IPFs, we have used hospital wage data in developing a wage index to be applied to IPFs. We are continuing that practice for RY 2008. We apply the wage index adjustment to the labor-related portion of the Federal rate, which is 75.788 percent. This percentage reflects the labor-related relative importance of the RPL market basket for RY 2008. The IPF PPS uses the pre-floor, pre-reclassified hospital wage index. Changes to the

wage index are made in a budget neutral manner, so that updates do not increase expenditures.

For RY 2008, we are applying the most recent hospital wage index using the hospital wage data, and applying an adjustment in accordance with our budget neutrality policy. This policy requires us to estimate the total amount of IPF PPS payments in RY 2007 and divide that amount by the total estimated IPF PPS payments in RY 2008. The estimated payments are based on FY 2005 IPF claims, inflated to the appropriate RY. This quotient is the wage index budget neutrality factor, and it is applied in the update of the Federal per diem base rate for RY 2008. The wage index budget neutrality factor for RY 2008 is 1.0014.

The wage index applicable for RY 2008 appears in Table 1 and Table 2 in the Addendum of this notice. As explained in the May 2006 IPF PPS final rule for RY 2007 (71 FR 27061), the IPF PPS applies the hospital wage index without a hold-harmless policy, and without an out-commuting adjustment or out-migration adjustment because we feel these policies apply only to the IPPS.

In the May 2006 IPF PPS final rule for RY 2007 (71 FR 27061), we adopted the changes discussed in the Office of Management and Budget (OMB) Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for Metropolitan Statistical Areas (MSAs), and the creation of Micropolitan Statistical Areas and Combined Statistical Areas. In adopting the OMB Core-Based Statistical Area (CBSA) geographic designations, since the IPF PPS is already in a transition period from TEFRA payments to PPS payments, we did not provide a separate transition for the wage index.

As was the case in RY 2007, for RY 2008, we will be using the full CBSA-based wage index values as presented in Tables 1 and 2 in the Addendum of this notice.

Finally, we continue to use the same methodology discussed in the IPF PPS proposed rule for RY 2007 (71 FR 3633) and finalized in the May 2006 IPF PPS final rule for RY 2007 (71 FR 27061) to address those geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation of the RY 2008 IPF PPS wage index. For RY 2008, those areas consist of rural Massachusetts, rural Puerto Rico and urban CBSA (25980) Hinesville-Fort Stewart, GA.

A complete discussion of the CBSA labor market definitions appears in the May 2006 IPF PPS final rule (71 FR 27061 through 27067).

2. Adjustment for Rural Location

In the November 2004 IPF PPS final rule, 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. As previously stated, we do not intend to update the regression analysis until we analyze the IPF PPS 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.

For RY 2008, we are applying a 17 percent payment adjustment for IPFs located in a rural area as defined at § 412.64(b)(1)(ii)(C).

A complete discussion of the adjustment for rural locations appears in the November 2004 IPF PPS final rule (69 FR 66954).

3. Teaching Adjustment

In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(1)(iii) to establish 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. Payments are made based on the number of full-time equivalent interns and residents training in the IPF.

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. 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.

The results of the regression analysis of FY 2002 IPF data established the basis for the payment adjustments included in the November 2004 IPF PPS final rule. The results 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 regression analysis, 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. We note that the coefficient value of 0.5150 was based on the regression analysis holding all other components of the payment system constant.

As with other adjustment factors derived through the regression analysis, we do not plan to rerun the regression analysis until we analyze IPF PPS data. Therefore, for RY 2008, we are retaining the coefficient value of 0.5150 for the teaching status adjustment to the Federal per diem base rate.

A complete discussion of how the teaching status adjustment was calculated appears in the November 2004 IPF PPS final rule (69 FR 66954 through 66957) and the May 2006 IPF PPS final rule (71 FR 27067 through 27070).

4. 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 November 2004 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 PPSs (for example, the 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 in the November 2004 IPF PPS final rule.

In general, the COLA accounts for the higher costs in the IPF and eliminates the projected loss that IPFs in Alaska

and Hawaii would experience absent the COLA. A COLA factor 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 COLA area in which the IPF is located.

As previously stated, we will update the COLA factors if applicable, as updated by OPM. On August 2, 2006, the U.S. Office of Personnel Management (OPM) issued a final rule to change COLA rates effective September 1, 2006.

The COLA factors are published on the OPM Web site at (*http://www.opm.gov/oca/cola/rates.asp*).

We note that the COLA areas for Alaska are not defined by county as are the COLA areas for Hawaii. In 5 CFR § 591.207, the OPM established the following COLA areas:

(a) City of Anchorage, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;

(b) City of Fairbanks, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;

(c) City of Juneau, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;

(d) Rest of the State of Alaska.

In the November 2004 and May 2006 IPF PPS final rules, we showed only one COLA for Alaska because all four areas were the same amount (1.25). Effective September 1, 2006, the OPM updated the COLA amounts and there are now two different amounts for the Alaska COLA areas (1.24 and 1.25).

For RY 2008, IPFs located in Alaska and Hawaii will receive the updated COLA factors based on the COLA area in which the IPF is located and as shown in Table 14 below.

TABLE 14.—COLA FACTORS FOR ALASKA AND HAWAII IPFS

Location	COLA
	Alaska
Anchorage	1.24
Fairbanks	1.24
Juneau	1.24
Rest of Alaska	1.25
	Hawaii
Honolulu County	1.25
Hawaii County	1.17
Kauai County	1.25
Maui County	1.25
Kalawao County	1.25

5. Adjustment for IPFs With a Qualifying Emergency Department (ED)

Currently, the IPF PPS includes a facility-level adjustment for IPFs with qualifying EDs. 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 the Medicare Outpatient Prospective Payment System (OPPS) 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 an adjustment factor of 1.31 as the variable per diem adjustment for day 1 of each stay. If an IPF does not have a qualifying ED, it receives an adjustment factor of 1.19 as the variable per diem adjustment for day 1 of each patient stay.

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. 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 previously stated, we do not intend to conduct a new regression analysis for this IPF PPS update. Rather, we plan to wait until we analyze IPF PPS data.

For RY 2008, we are retaining the 1.31 adjustment factor for IPFs with qualifying EDs.

A complete discussion of the steps involved in the calculation of the ED adjustment factor appears in the November 2004 IPF PPS final rule (69 FR 66959 through 66960) and the May 2006 IPF PPS final rule (71 FR 27070 through 27072).

D. Other Payment Adjustments and Policies

For RY 2008, the IPF PPS includes the following payment adjustments: an outlier adjustment 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, and 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.

1. Outlier Payments

In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(3)(i) to provide a per-case payment for IPF stays that are extraordinarily costly. 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.

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 LOS 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 PPSs) might provide an incentive under the IPF per diem payment system to increase LOS in order to receive additional payments. After establishing the loss sharing ratios, we determined the current fixed dollar loss threshold amount of $6,200 through payment simulations designed to compute a dollar loss beyond which payments are estimated to meet the 2 percent outlier spending target.

a. Update to the Outlier Fixed Dollar Loss Threshold Amount

In accordance with the update methodology described in § 412.428(d), we are updating 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 which strikes 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 believe it is necessary to update the fixed dollar loss threshold amount because analysis of the latest available data (that is, FY 2005 IPF claims) and rate increases 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.

In the May 2006 IPF PPS Final Rule (71 FR 27072), we describe the process by which we calculate the outlier fixed dollar loss threshold amount. We will continue to use this process for RY 2008. We begin by simulating aggregate payments with and without an outlier policy, and applying an iterative process to a fixed dollar loss amount that will result in outlier payments being equal to 2 percent of total estimated payments under the simulation.

Based on this process, for RY 2008, the IPF PPS will use $6,488 as the fixed dollar loss threshold amount in the outlier calculation in order to maintain the 2 percent outlier policy.

b. Statistical Accuracy of Cost-to-Charge Ratios

As previously stated, 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 its overall cost to charge ratio (CCR). This approach to determining an IPF's cost is consistent with the approach used under the IPPS and other PPSs. 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 November 2004 IPF PPS final rule, because we believe that 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 (69 FR 66961). Therefore, we adopted the following procedure in the November 2004 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 upper threshold CCR for IPFs in RY 2008 is 1.7255 for rural IPFs, and 1.7947 for urban IPFs, based on CBSA-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.

We are applying 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 Medicare contractor obtains inaccurate or incomplete data with which to calculate either an operating or capital CCR or both.

For new IPFs, we are using these national CCRs until the facility's actual CCR can be computed using the first tentatively settled or final settled cost report, which will then be used for the subsequent cost report period.

We are not making any changes to the procedures for ensuring the statistical accuracy of CCRs in RY 2008. However, we are updating the national urban and rural CCRs (ceilings and medians) for IPFs for RY 2008 based on the CCRs entered in the latest available IPF PPS Provider Specific File.

The national CCRs for RY 2008 are 0.71 for rural IPFs and 0.55 for urban IPFs and will be used in each of the three situations listed above. These calculations are based on the IPF's location (either urban or rural) using the CBSA-based geographic designations.

A complete discussion regarding the national median CCRs appears in the November 2004 IPF PPS final rule (69 FR 66961 through 66964).

2. Stop-Loss Provision

In the November 2004 IPF PPS final rule, we implemented a stop-loss policy that reduces financial risk to IPFs expected to experience substantial reductions in Medicare payments during the period of transition to the IPF PPS. 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. During the first year, for transitioning IPFs, three-quarters of the payment was based on TEFRA and one-quarter on the IPF PPS payment amount. In the second year, one-half of the payment is based on TEFRA and one-half on the IPF PPS payment amount. In the third year, one-quarter of the payment is based on TEFRA and three-quarters on the IPF PPS. For cost report periods beginning on or after January 1, 2008, payments will be based 100 percent on the IPF PPS.

The combined effects of the transition and the stop-loss policies ensure that the total estimated IPF PPS payments are no less than 92.5 percent in the first year, 85 percent in the second year, and 77.5 percent in the third year. Under the 70 percent policy, in the third year, 25 percent of an IPF's payment is TEFRA payments, and 75 percent is IPF PPS payments, which are guaranteed to be at least 70 percent of the TEFRA payments. The resulting 77.5 percent of TEFRA payments is the sum of 25 percent and 75 percent times 70 percent (which equals 52.5 percent).

In the implementation year, the 70 percent of TEFRA payment stop-loss policy required a reduction in the standardized Federal per diem and ECT base rates of 0.39 percent in order to make the stop-loss payments budget neutral.

For the RY 2008, we are not making any changes to the stop-loss policy. We will continue to monitor expenditures under this policy to evaluate its effectiveness in targeting stop-loss payments to IPFs facing the greatest financial risk.

V. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect. We can waive this procedure, however, if we find good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public

interest and we incorporate a statement of finding and its reasons in the notice.

We find it is unnecessary to undertake notice and comment rulemaking for the update in this notice because the update does not make any substantive changes in policy, but merely reflects the application of previously established methodologies. Therefore, under 5 U.S.C. § 553(b)(3)(B), for good cause, we waive notice and comment procedures.

VI. Collection of Information Requirement

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

A. Overall Impact

We have examined the impacts of this notice 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). For purposes of Title 5, United States Code, section 804(2), we treat this notice as a major rule because we estimate that the total impact of these changes would be an increase in payments of approximately $130 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 due to the update to the payment rates, which results in an increase of approximately $130 million in overall IPF payments from RY 2007 to RY 2008. The transition blend has a minimal impact on overall IPF payments in RY 2008. The distribution of these impacts is summarized in Table 15. The effect of the updates described in this notice result in an overall $130 million increase in payments from RY 2007 to RY 2008.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most IPFs and most other providers and suppliers are considered small entities, either by nonprofit status or by having revenues of $6.5 million to $31.5 million in any 1 year. (For details, see the Small Business Administration's Interim final rule that set forth size standards at 70 FR 72577, December 6, 2005.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IPFs or the proportion of IPFs' revenue that is derived from Medicare payments. Therefore, we assume that all IPFs are considered small entities. As shown in Table 15, we estimate that the net revenue impact of this notice on all IPFs is to increase payments by about 3.1 percent. Thus, we anticipate that this notice may have a significant impact on a substantial number of small entities. However, the estimated impact of this notice is a net increase in revenues across all categories of IPFs, so we believe that this notice would not impose a significant burden on small entities. Medicare contractors are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. 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, we 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 notice will have a substantial impact on hospitals classified as located in rural areas. As discussed earlier in this preamble, we will 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 final 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 notice will 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 final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

We have reviewed this notice under the criteria set forth in Executive Order 13132 and have determined that the notice will not have any substantial impact on the rights, roles, and responsibilities of State, local, or tribal governments.

B. Anticipated Effects of the Notice

We discuss below the historical background of the IPF PPS and the impact of this notice on the Federal Medicare budget and on IPFs.

1. Budgetary Impact

As discussed in the November 2004 and May 2006 IPF PPS final rules, we applied a budget neutrality factor to the Federal per diem and ECT base rates to ensure that total estimated 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. The budget neutrality factor includes the following components: Outlier adjustment, stop-loss adjustment, and the behavioral offset. We do not plan to change any of these adjustment factors or projections until we analyze IPF PPS data. In accordance with § 412.424(c)(3)(ii), we will evaluate the accuracy of the budget neutrality adjustment within the first 5 years after implementation of the payment system. We may make a one-time prospective adjustment to the Federal per diem and ECT base rates to account for differences

between the historical data on cost-based TEFRA payments (the basis of the budget neutrality adjustment) and estimates of TEFRA payments based on actual data from the first year of the IPF PPS. As part of that process, we will re-assess the accuracy of all of the factors impacting budget neutrality.

In addition, as discussed in section IV.C.1. of this notice, we are adopting the wage index 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 due to the market basket updates (see section III.B. of this notice) 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 notice on providers, it is necessary to compare estimated payments under the IPF PPS rates and factors for RY 2008 to estimated payments under the IPF PPS rates and factors for RY 2007. The estimated payments for RY 2007 are a blend of: 50 percent of the facility-specific TEFRA payment and 50 percent of the IPF PPS payment with stop-loss payment. The estimated payments for the RY 2008 IPF PPS are a blend of: 25 percent of the facility-specific TEFRA payment and 75 percent of the IPF PPS payment with stop-loss payment. We determined the percent change of estimated RY 2008 IPF PPS payments to estimated RY 2007 IPF PPS 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 wage index changes for the RY 2008 IPF PPS, the market basket update to IPF PPS payments, and the transition blend for the RY 2008 IPF PPS payment and the facility-specific TEFRA payment.

To illustrate the impacts of the final RY 2008 changes, our analysis begins with a RY 2007 baseline simulation model based on FY 2005 IPF payments inflated to the midpoint of RY 2007 using Global Insight's most recent forecast of the market basket update (see section III.B. of this notice); the estimated outlier payments in RY 2007; the estimated stop-loss payments in RY 2007; the CBSA designations for IPFs based on OMB's MSA definitions after June 2003; the FY 2006 pre-floor, pre-reclassified hospital wage index; the RY 2007 labor-market share; and the RY 2007 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 changes is added incrementally to this baseline model in order for us to isolate the effects of each change:

- The FY 2007 pre-floor, pre-reclassified hospital wage index and RY 2008 final labor-related share.
- A blended market basket update of 3.2 percent resulting in an update to the hospital-specific TEFRA payment amount and an update to the IPF PPS base rates.
- The transition to 75 percent IPF PPS payment and 25 percent facility-specific TEFRA payment.
- Our final comparison illustrates the percent change in payments from RY 2007 (that is, July 1, 2006 to June 30, 2007) to RY 2008 (that is, July 1, 2007 to June 30, 2008).

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TABLE 15--Projected Impacts

Facility By Type (1)	Number of Facilities (2)	CBSA Wage Index and Labor Share (3)	Market Basket (4)	Transition Blend (5)	Total (6)
All Facilities	1,712	0.0%	3.2%	-0.1%	3.1%
Urban	1,345	0.0%	3.2%	0.0%	3.2%
Rural	367	0.1%	3.2%	-0.8%	2.4%
Urban unit	987	0.0%	3.2%	-2.0%	1.1%
Rural unit	317	0.1%	3.2%	-2.1%	1.1%
Freestanding IPFs By Type of Ownership:					
Urban Psychiatric Hospitals					

Facility By Type (1)	Number of Facilities (2)	CBSA Wage Index and Labor Share (3)	Market Basket (4)	Transition Blend (5)	Total (6)
Government	142	0.1%	3.2%	8.7%	12.4%
Non-Profit	79	-0.1%	3.2%	1.2%	4.4%
For-Profit	137	0.1%	3.2%	6.4%	9.9%
Rural Psychiatric Hospitals					
Government	39	0.1%	3.2%	8.8%	12.4%
Non-Profit	5	-0.3%	3.2%	-3.0%	-0.1%
For-Profit	6	0.3%	3.2%	5.9%	9.6%
By Teaching Status:					
Non-teaching	1,450	0.0%	3.2%	-0.1%	3.1%
Less than 10% interns and residents to beds	155	0.0%	3.2%	0.8%	4.0%
10% to 30% interns and residents to beds	72	0.0%	3.2%	-1.2%	2.0%
More than 30% interns and residents to beds	35	0.1%	3.2%	-1.9%	1.3%
By Region:					
New England	128	-0.2%	3.2%	-1.8%	1.2%
Mid-Atlantic	289	0.0%	3.2%	2.7%	6.0%
South Atlantic	221	-0.1%	3.2%	0.3%	3.4%
East North Central	301	0.1%	3.2%	-1.6%	1.7%
East South Central	155	0.0%	3.2%	-0.3%	2.8%
West North Central	167	0.0%	3.2%	-1.5%	1.7%
West South Central	211	-0.2%	3.2%	-1.1%	1.8%
Mountain	84	0.5%	3.2%	1.1%	4.9%
Pacific	148	0.1%	3.2%	-0.4%	3.0%
By Bed Size:					
Psychiatric Hospitals					
Under 12 beds	23	0.1%	3.2%	-2.0%	1.3%
12 to 25 beds	46	0.2%	3.2%	-0.2%	3.2%
25 to 50 beds	92	-0.1%	3.2%	3.7%	6.9%
50 to 75 beds	77	0.2%	3.2%	6.0%	9.6%
Over 75 beds	170	0.0%	3.2%	7.8%	11.3%
Psychiatric Units					
Under 12 beds	532	0.0%	3.2%	-4.4%	-1.3%
12 to 25 beds	451	0.0%	3.2%	-2.5%	0.6%
25 to 50 beds	223	-0.1%	3.2%	-1.1%	2.0%
50 to 75 beds	56	-0.1%	3.2%	0.1%	3.1%
Over 75 beds	42	0.0%	3.2%	1.5%	4.8%

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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 Provider of Services (POS) file, the IPF provider specific file, and 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 1,712 IPFs included in the analysis.

In column 3, we present the effects of the budget-neutral update to the labor-related share and the wage index adjustment under the CBSA geographic area definitions announced by OMB in June 2003. This is a comparison of the simulated RY 2008 payments under the FY 2007 hospital wage index under CBSA classification and associated labor-related share to the simulated RY 2007 payments under the FY 2006 hospital wage index under CBSA classifications and associated labor-related share. There is no projected change in aggregate payments to IPFs, as indicated in the first row of column 3. There would, however, be small distributional effects among different categories of IPFs. For example, rural non-profit IPFs will experience a 0.3 percent decrease in payments. IPFs located in the Mountain region will receive the largest increase of 0.5 percent.

In column 4, we present the effects of the market basket update to the IPF PPS payments by applying the TEFRA and PPS updates to payments under the revised budget neutrality factor and labor-related share and wage index under CBSA classification. In the aggregate this update is projected to be a 3.2 percent increase in overall payments to IPFs.

In column 5, we present the effects of the payment change in transition blend percentages to the third year of the transition (TEFRA Rate Percentage = 25 percent, IPF PPS Federal Rate Percentage = 75 percent) from the second year of the transition (TEFRA Rate Percentage = 50 percent, IPF PPS Federal Rate Percentage = 50 percent) of the IPF PPS under the revised budget neutrality 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, is projected to be a 0.1 percent decrease in payments to IPFs. There are distributional effects of these changes among different categories of IPFs. Government psychiatric hospitals will receive the largest increase, with urban government hospitals receiving an 8.7 percent increase and rural government hospitals receiving an 8.8 percent increase. Alternatively, psychiatric units with fewer than 12 beds will receive the largest decrease of 4.4 percent.

Column 6 compares our estimates of the changes reflected in this notice for RY 2008, to our estimates of payments for RY 2007 (without these changes). This column reflects all RY 2008 changes relative to RY 2007 (as shown in columns 3 through 5). The average increase for all IPFs is approximately 3.1 percent. This increase includes the effects of the market basket updates resulting in a 3.2 percent increase in total RY 2008 payments and a 0.1 percent decrease in RY 2008 payments for the transition blend.

Overall, the largest payment increase is projected to be among government IPFs. Urban and rural government psychiatric hospitals will receive a 12.4 percent increase. Rural non-profit IPFs will receive a 0.1 percent decrease and psychiatric units with fewer than 12 beds will receive a 1.3 percent decrease.

It is important to note that the projected impact on government IPFs has decreased from last year even though they are receiving a greater percentage of PPS payments in their transition blend. We believe the primary reason for this decrease is that the first "year" under the IPF PPS was actually 18 months in order to move the update for the IPF PPS to July 1 each year. As a result, the market basket increase and payments were projected to be greater. Subsequent updates are for a 12-month period and are of a smaller magnitude.

In addition, the basis of payment under the TEFRA payment system was an IPF's fixed average cost per discharge. Thus, when the cost of a patient's care exceeded the average cost per discharge, psychiatric units of acute care hospitals that were not generally set up for patients with long-term psychiatric care needs often transferred these patients to government IPFs. Also, government and other freestanding IPFs that were not usually staffed to accommodate patients with comorbid medical conditions typically transferred these patients to psychiatric units of acute care hospitals. The IPF PPS, which provides comorbidity adjustments and is a per diem system, eliminates certain incentives to transfer. We believe that certain categories of IPFs are projected to receive increases in payment based on their ability to manage their longer-term patients as well as treat their more medically intensive cases.

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, 2007 to June 30, 2008 ...	$4,245
July 1, 2008 to June 30, 2009 ...	4,440
July 1, 2009 to June 30, 2010 ...	4,606
July 1, 2010 to June 30, 2011 ...	4,803
July 1, 2011 to June 30, 2012 ...	5,032

These estimates are based on the current estimate of increases in the RPL market basket as follows:

- 3.2 percent for RY 2008;
- 3.2 percent for RY 2009;
- 2.8 percent for RY 2010;
- 3.1 percent for RY 2011; and
- 3.2 percent for RY 2012.

We estimate that there would be a change in fee-for-service Medicare beneficiary enrollment as follows:

- −0.1 percent in RY 2008;
- 0.7 percent in RY 2009;
- 0.3 percent in RY 2010;
- 0.6 percent in RY 2011; and
- 1.1 percent in RY 2012.

5. Effect on Beneficiaries

Under the IPF PPS, IPFs will 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 RY 2008 IPF PPS. In fact, we believe that access to IPF services will 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.

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 notice. 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 notice based on the data for 1,712 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 2007 IPF PPS RY TO THE 2008 IPF PPS RY

[In millions]

Category	Transfers
Annualized Monetized Transfers.	$130.
From Whom To Whom?	Federal Government To IPFs Medicare Providers.

D. Conclusion

This notice does not initiate any policy changes with regard to the IPF PPS; rather, it simply provides an update to the rates for RY 2008 using established methodologies. In accordance with the provisions of Executive Order 12866, this rule was previously reviewed by OMB.

(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: March 8, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: March 29, 2007.

Michael O. Leavitt,

Secretary.

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Addendum A--Rate and Adjustment Factors

Per Diem Rate:

Federal Per Diem Base Rate	$614.99
Labor Share (0.75788)	$466.09
Non-Labor Share (0.24212)	$148.90

Fixed Dollar Loss Threshold Amount:

$6488

Wage Index Budget Neutrality Factor:

1.0014

National Rural and Urban Cost-to-Charge Ratio Medians and Ceilings:

Area	Median	Ceiling
Rural	0.71	1.7255
Urban	0.55	1.7947

Facility Adjustments:

Rural Adjustment Factor	1.17
Teaching Adjustment Factor	0.5150
Wage Index	Pre-reclassified Hospital Wage Index (FY2007)

Cost of Living Adjustments (COLAs):

Alaska	
Anchorage	1.24
Fairbanks	1.24
Juneau	1.24
Rest of Alaska	1.25
Hawaii	
Honolulu County	1.25
Hawaii County	1.17
Kauai County	1.25
Maui County	1.25
Kalawao County	1.25

Patient Adjustments:

ECT – Per Treatment	$264.77

Variable Per Diem Adjustments:

	Adjustment Factor
Day 1 -- Facility Without a Qualifying Emergency Department	1.19
Day 1 -- Facility With a Qualifying 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	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	DRG Definition	Adjustment Factor
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
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
Severe Musculoskeletal & Connective Tissue Diseases	1.09
Poisoning	1.11

Addendum B—RY 2008 CBSA Wage Index Tables

In this addendum, we provide Tables 1 and 2 which indicate the CBSA-based wage index values for urban and rural providers.

Table 1--RY 2008 Wage Index For Urban Areas Based On CBSA Labor Market Areas

CBSA Code	Urban Area (Constituent Counties)	Wage Index
10180	Abilene, TX Callahan County, TX Jones County, TX Taylor County, TX	0.8000
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	0.3915
10420	Akron, OH Portage County, OH Summit County, OH	0.8654
10500	Albany, GA Baker County, GA Dougherty County, GA Lee County, GA Terrell County, GA Worth County, GA	0.8991
10580	Albany-Schenectady-Troy, NY Albany County, NY Rensselaer County, NY Saratoga County, NY Schenectady County, NY Schoharie County, NY	0.8720

CBSA Code	Urban Area (Constituent Counties)	Wage Index
10740	Albuquerque, NM Bernalillo County, NM Sandoval County, NM Torrance County, NM Valencia County, NM	0.9458
10780	Alexandria, LA Grant Parish, LA Rapides Parish, LA	0.8006
10900	Allentown-Bethlehem-Easton, PA-NJ Warren County, NJ Carbon County, PA Lehigh County, PA Northampton County, PA	0.9947
11020	Altoona, PA Blair County, PA	0.8812
11100	Amarillo, TX Armstrong County, TX Carson County, TX Potter County, TX Randall County, TX	0.9169
11180	Ames, IA Story County, IA	0.9760
11260	Anchorage, AK Anchorage Municipality, AK Matanuska-Susitna Borough, AK	1.2023
11300	Anderson, IN Madison County, IN	0.8681
11340	Anderson, SC Anderson County, SC	0.9017
11460	Ann Arbor, MI Washtenaw County, MI	1.0826
11500	Anniston-Oxford, AL Calhoun County, AL	0.7770
11540	Appleton, WI Calumet County, WI Outagamie County, WI	0.9455

CBSA Code	Urban Area (Constituent Counties)	Wage Index
11700	Asheville, NC Buncombe County, NC Haywood County, NC Henderson County, NC Madison County, NC	0.9216
12020	Athens-Clarke County, GA Clarke County, GA Madison County, GA Oconee County, GA Oglethorpe County, GA	0.9856
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	0.9762
12100	Atlantic City, NJ Atlantic County, NJ	1.1831

CBSA Code	Urban Area (Constituent Counties)	Wage Index
12220	Auburn-Opelika, AL Lee County, AL	0.8096
12260	Augusta-Richmond County, GA-SC Burke County, GA Columbia County, GA McDuffie County, GA Richmond County, GA Aiken County, SC Edgefield County, SC	0.9667
12420	Austin-Round Rock, TX Bastrop County, TX Caldwell County, TX Hays County, TX Travis County, TX Williamson County, TX	0.9344
12540	Bakersfield, CA Kern County, CA	1.0725
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	1.0088
12620	Bangor, ME Penobscot County, ME	0.9711
12700	Barnstable Town, MA Barnstable County, MA	1.2539
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	0.8084
12980	Battle Creek, MI Calhoun County, MI	0.9762

CBSA Code	Urban Area (Constituent Counties)	Wage Index
13020	Bay City, MI Bay County, MI	0.9251
13140	Beaumont-Port Arthur, TX Hardin County, TX Jefferson County, TX Orange County, TX	0.8595
13380	Bellingham, WA Whatcom County, WA	1.1104
13460	Bend, OR Deschutes County, OR	1.0743
13644	Bethesda-Frederick-Gaithersburg, MD Frederick County, MD Montgomery County, MD	1.0903
13740	Billings, MT Carbon County, MT Yellowstone County, MT	0.8712
13780	Binghamton, NY Broome County, NY Tioga County, NY	0.8786
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	0.8894
13900	Bismarck, ND Burleigh County, ND Morton County, ND	0.7240
13980	Blacksburg-Christiansburg-Radford, VA Giles County, VA Montgomery County, VA Pulaski County, VA Radford City, VA	0.8213

CBSA Code	Urban Area (Constituent Counties)	Wage Index
14020	Bloomington, IN Greene County, IN Monroe County, IN Owen County, IN	0.8533
14060	Bloomington-Normal, IL McLean County, IL	0.8944
14260	Boise City-Nampa, ID Ada County, ID Boise County, ID Canyon County, ID Gem County, ID Owyhee County, ID	0.9401
14484	Boston-Quincy, MA Norfolk County, MA Plymouth County, MA Suffolk County, MA	1.1679
14500	Boulder, CO Boulder County, CO	1.0350
14540	Bowling Green, KY Edmonson County, KY Warren County, KY	0.8148
14740	Bremerton-Silverdale, WA Kitsap County, WA	1.0913
14860	Bridgeport-Stamford-Norwalk, CT Fairfield County, CT	1.2659
15180	Brownsville-Harlingen, TX Cameron County, TX	0.9430
15260	Brunswick, GA Brantley County, GA Glynn County, GA McIntosh County, GA	1.0164
15380	Buffalo-Niagara Falls, NY Erie County, NY Niagara County, NY	0.9424
15500	Burlington, NC Alamance County, NC	0.8674

CBSA Code	Urban Area (Constituent Counties)	Wage Index
15540	Burlington-South Burlington, VT Chittenden County, VT Franklin County, VT Grand Isle County, VT	0.9474
15764	Cambridge-Newton-Framingham, MA Middlesex County, MA	1.0970
15804	Camden, NJ Burlington County, NJ Camden County, NJ Gloucester County, NJ	1.0392
15940	Canton-Massillon, OH Carroll County, OH Stark County, OH	0.9031
15980	Cape Coral-Fort Myers, FL Lee County, FL	0.9342
16180	Carson City, NV Carson City, NV	1.0025
16220	Casper, WY Natrona County, WY	0.9145
16300	Cedar Rapids, IA Benton County, IA Jones County, IA Linn County, IA	0.8888
16580	Champaign-Urbana, IL Champaign County, IL Ford County, IL Piatt County, IL	0.9644
16620	Charleston, WV Boone County, WV Clay County, WV Kanawha County, WV Lincoln County, WV Putnam County, WV	0.8542

CBSA Code	Urban Area (Constituent Counties)	Wage Index
16700	Charleston-North Charleston, SC Berkeley County, SC Charleston County, SC Dorchester County, SC	0.9145
16740	Charlotte-Gastonia-Concord, NC-SC Anson County, NC Cabarrus County, NC Gaston County, NC Mecklenburg County, NC Union County, NC York County, SC	0.9554
16820	Charlottesville, VA Albemarle County, VA Fluvanna County, VA Greene County, VA Nelson County, VA Charlottesville City, VA	1.0125
16860	Chattanooga, TN-GA Catoosa County, GA Dade County, GA Walker County, GA Hamilton County, TN Marion County, TN Sequatchie County, TN	0.8948
16940	Cheyenne, WY Laramie County, WY	0.9060
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	1.0751
17020	Chico, CA Butte County, CA	1.1053

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	0.9601
17300	Clarksville, TN-KY Christian County, KY Trigg County, KY Montgomery County, TN Stewart County, TN	0.8436
17420	Cleveland, TN Bradley County, TN Polk County, TN	0.8109
17460	Cleveland-Elyria-Mentor, OH Cuyahoga County, OH Geauga County, OH Lake County, OH Lorain County, OH Medina County, OH	0.9400
17660	Coeur d'Alene, ID Kootenai County, ID	0.9344
17780	College Station-Bryan, TX Brazos County, TX Burleson County, TX Robertson County, TX	0.9045
17820	Colorado Springs, CO El Paso County, CO Teller County, CO	0.9701

CBSA Code	Urban Area (Constituent Counties)	Wage Index
17860	Columbia, MO Boone County, MO Howard County, MO	0.8542
17900	Columbia, SC Calhoun County, SC Fairfield County, SC Kershaw County, SC Lexington County, SC Richland County, SC Saluda County, SC	0.8933
17980	Columbus, GA-AL Russell County, AL Chattahoochee County, GA Harris County, GA Marion County, GA Muscogee County, GA	0.8239
18020	Columbus, IN Bartholomew County, IN	0.9318
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	1.0107
18580	Corpus Christi, TX Aransas County, TX Nueces County, TX San Patricio County, TX	0.8564
18700	Corvallis, OR Benton County, OR	1.1546
19060	Cumberland, MD-WV Allegany County, MD Mineral County, WV	0.8446

CBSA Code	Urban Area (Constituent Counties)	Wage Index
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	1.0075
19140	Dalton, GA Murray County, GA Whitfield County, GA	0.9093
19180	Danville, IL Vermilion County, IL	0.9266
19260	Danville, VA Pittsylvania County, VA Danville City, VA	0.8451
19340	Davenport-Moline-Rock Island, IA-IL Henry County, IL Mercer County, IL Rock Island County, IL Scott County, IA	0.8846
19380	Dayton, OH Greene County, OH Miami County, OH Montgomery County, OH Preble County, OH	0.9037
19460	Decatur, AL Lawrence County, AL Morgan County, AL	0.8159
19500	Decatur, IL Macon County, IL	0.8172
19660	Deltona-Daytona Beach-Ormond Beach, FL Volusia County, FL	0.9263

CBSA Code	Urban Area (Constituent Counties)	Wage Index
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	1.0930
19780	Des Moines-West Des Moines, IA Dallas County, IA Guthrie County, IA Madison County, IA Polk County, IA Warren County, IA	0.9214
19804	Detroit-Livonia-Dearborn, MI Wayne County, MI	1.0281
20020	Dothan, AL Geneva County, AL Henry County, AL Houston County, AL	0.7381
20100	Dover, DE Kent County, DE	0.9847
20220	Dubuque, IA Dubuque County, IA	0.9133
20260	Duluth, MN-WI Carlton County, MN St. Louis County, MN Douglas County, WI	1.0042
20500	Durham, NC Chatham County, NC Durham County, NC Orange County, NC Person County, NC	0.9826
20740	Eau Claire, WI Chippewa County, WI Eau Claire County, WI	0.9630

CBSA Code	Urban Area (Constituent Counties)	Wage Index
20764	Edison, NJ Middlesex County, NJ Monmouth County, NJ Ocean County, NJ Somerset County, NJ	1.1190
20940	El Centro, CA Imperial County, CA	0.9076
21060	Elizabethtown, KY Hardin County, KY Larue County, KY	0.8697
21140	Elkhart-Goshen, IN Elkhart County, IN	0.9426
21300	Elmira, NY Chemung County, NY	0.8240
21340	El Paso, TX El Paso County, TX	0.9053
21500	Erie, PA Erie County, PA	0.8827
21604	Essex County, MA Essex County, MA	1.0418
21660	Eugene-Springfield, OR Lane County, OR	1.0876
21780	Evansville, IN-KY Gibson County, IN Posey County, IN Vanderburgh County, IN Warrick County, IN Henderson County, KY Webster County, KY	0.9071
21820	Fairbanks, AK Fairbanks North Star Borough, AK	1.1059
21940	Fajardo, PR Ceiba Municipio, PR Fajardo Municipio, PR Luquillo Municipio, PR	0.4036

CBSA Code	Urban Area (Constituent Counties)	Wage Index
22020	Fargo, ND-MN Cass County, ND Clay County, MN	0.8250
22140	Farmington, NM San Juan County, NM	0.8589
22180	Fayetteville, NC Cumberland County, NC Hoke County, NC	0.8945
22220	Fayetteville-Springdale-Rogers, AR-MO Benton County, AR Madison County, AR Washington County, AR McDonald County, MO	0.8865
22380	Flagstaff, AZ Coconino County, AZ	1.1601
22420	Flint, MI Genesee County, MI	1.0969
22500	Florence, SC Darlington County, SC Florence County, SC	0.8388
22520	Florence-Muscle Shoals, AL Colbert County, AL Lauderdale County, AL	0.7843
22540	Fond du Lac, WI Fond du Lac County, WI	1.0063
22660	Fort Collins-Loveland, CO Larimer County, CO	0.9544
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Broward County, FL	1.0133
22900	Fort Smith, AR-OK Crawford County, AR Franklin County, AR Sebastian County, AR Le Flore County, OK Sequoyah County, OK	0.7731

CBSA Code	Urban Area (Constituent Counties)	Wage Index
23020	Fort Walton Beach-Crestview-Destin, FL Okaloosa County, FL	0.8643
23060	Fort Wayne, IN Allen County, IN Wells County, IN Whitley County, IN	0.9517
23104	Fort Worth-Arlington, TX Johnson County, TX Parker County, TX Tarrant County, TX Wise County, TX	0.9569
23420	Fresno, CA Fresno County, CA	1.0943
23460	Gadsden, AL Etowah County, AL	0.8066
23540	Gainesville, FL Alachua County, FL Gilchrist County, FL	0.9277
23580	Gainesville, GA Hall County, GA	0.8958
23844	Gary, IN Jasper County, IN Lake County, IN Newton County, IN Porter County, IN	0.9334
24020	Glens Falls, NY Warren County, NY Washington County, NY	0.8324
24140	Goldsboro, NC Wayne County, NC	0.9171
24220	Grand Forks, ND-MN Polk County, MN Grand Forks County, ND	0.7949
24300	Grand Junction, CO Mesa County, CO	0.9668

CBSA Code	Urban Area (Constituent Counties)	Wage Index
24340	Grand Rapids-Wyoming, MI Barry County, MI Ionia County, MI Kent County, MI Newaygo County, MI	0.9455
24500	Great Falls, MT Cascade County, MT	0.8598
24540	Greeley, CO Weld County, CO	0.9602
24580	Green Bay, WI Brown County, WI Kewaunee County, WI Oconto County, WI	0.9787
24660	Greensboro-High Point, NC Guilford County, NC Randolph County, NC Rockingham County, NC	0.8866
24780	Greenville, NC Greene County, NC Pitt County, NC	0.9432
24860	Greenville, SC Greenville County, SC Laurens County, SC Pickens County, SC	0.9804
25020	Guayama, PR Arroyo Municipio, PR Guayama Municipio, PR Patillas Municipio, PR	0.3235
25060	Gulfport-Biloxi, MS Hancock County, MS Harrison County, MS Stone County, MS	0.8915

CBSA Code	Urban Area (Constituent Counties)	Wage Index
25180	Hagerstown-Martinsburg, MD-WV Washington County, MD Berkeley County, WV Morgan County, WV	0.9038
25260	Hanford-Corcoran, CA Kings County, CA	1.0282
25420	Harrisburg-Carlisle, PA Cumberland County, PA Dauphin County, PA Perry County, PA	0.9402
25500	Harrisonburg, VA Rockingham County, VA Harrisonburg City, VA	0.9073
25540	Hartford-West Hartford-East Hartford, CT Hartford County, CT Litchfield County, CT Middlesex County, CT Tolland County, CT	1.0894
25620	Hattiesburg, MS Forrest County, MS Lamar County, MS Perry County, MS	0.7430
25860	Hickory-Lenoir-Morganton, NC Alexander County, NC Burke County, NC Caldwell County, NC Catawba County, NC	0.9010
25980	Hinesville-Fort Stewart, GA[1] Liberty County, GA Long County, GA	0.9178
26100	Holland-Grand Haven, MI Ottawa County, MI	0.9163
26180	Honolulu, HI Honolulu County, HI	1.1096

CBSA Code	Urban Area (Constituent Counties)	Wage Index
26300	Hot Springs, AR Garland County, AR	0.8782
26380	Houma-Bayou Cane-Thibodaux, LA Lafourche Parish, LA Terrebonne Parish, LA	0.8082
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	1.0008
26580	Huntington-Ashland, WV-KY-OH Boyd County, KY Greenup County, KY Lawrence County, OH Cabell County, WV Wayne County, WV	0.8997
26620	Huntsville, AL Limestone County, AL Madison County, AL	0.9007
26820	Idaho Falls, ID Bonneville County, ID Jefferson County, ID	0.9088

CBSA Code	Urban Area (Constituent Counties)	Wage Index
26900	Indianapolis-Carmel, 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	0.9895
26980	Iowa City, IA Johnson County, IA Washington County, IA	0.9714
27060	Ithaca, NY Tompkins County, NY	0.9928
27100	Jackson, MI Jackson County, MI	0.9560
27140	Jackson, MS Copiah County, MS Hinds County, MS Madison County, MS Rankin County, MS Simpson County, MS	0.8271
27180	Jackson, TN Chester County, TN Madison County, TN	0.8853
27260	Jacksonville, FL Baker County, FL Clay County, FL Duval County, FL Nassau County, FL St. Johns County, FL	0.9165
27340	Jacksonville, NC Onslow County, NC	0.8231

CBSA Code	Urban Area (Constituent Counties)	Wage Index
27500	Janesville, WI Rock County, WI	0.9655
27620	Jefferson City, MO Callaway County, MO Cole County, MO Moniteau County, MO Osage County, MO	0.8332
27740	Johnson City, TN Carter County, TN Unicoi County, TN Washington County, TN	0.8043
27780	Johnstown, PA Cambria County, PA	0.8620
27860	Jonesboro, AR Craighead County, AR Poinsett County, AR	0.7662
27900	Joplin, MO Jasper County, MO Newton County, MO	0.8605
28020	Kalamazoo-Portage, MI Kalamazoo County, MI Van Buren County, MI	1.0704
28100	Kankakee-Bradley, IL Kankakee County, IL	1.0083

CBSA Code	Urban Area (Constituent Counties)	Wage Index
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	0.9495
28420	Kennewick-Richland-Pasco, WA Benton County, WA Franklin County, WA	1.0343
28660	Killeen-Temple-Fort Hood, TX Bell County, TX Coryell County, TX Lampasas County, TX	0.8901
28700	Kingsport-Bristol-Bristol, TN-VA Hawkins County, TN Sullivan County, TN Bristol City, VA Scott County, VA Washington County, VA	0.7985
28740	Kingston, NY Ulster County, NY	0.9367
28940	Knoxville, TN Anderson County, TN Blount County, TN Knox County, TN Loudon County, TN Union County, TN	0.8249

CBSA Code	Urban Area (Constituent Counties)	Wage Index
29020	Kokomo, IN Howard County, IN Tipton County, IN	0.9669
29100	La Crosse, WI-MN Houston County, MN La Crosse County, WI	0.9426
29140	Lafayette, IN Benton County, IN Carroll County, IN Tippecanoe County, IN	0.8931
29180	Lafayette, LA Lafayette Parish, LA St. Martin Parish, LA	0.8289
29340	Lake Charles, LA Calcasieu Parish, LA Cameron Parish, LA	0.7914
29404	Lake County-Kenosha County, IL-WI Lake County, IL Kenosha County, WI	1.0570
29460	Lakeland, FL Polk County, FL	0.8879
29540	Lancaster, PA Lancaster County, PA	0.9589
29620	Lansing-East Lansing, MI Clinton County, MI Eaton County, MI Ingham County, MI	1.0088
29700	Laredo, TX Webb County, TX	0.7811
29740	Las Cruces, NM Dona Ana County, NM	0.9273
29820	Las Vegas-Paradise, NV Clark County, NV	1.1430

CBSA Code	Urban Area (Constituent Counties)	Wage Index
29940	Lawrence, KS Douglas County, KS	0.8365
30020	Lawton, OK Comanche County, OK	0.8065
30140	Lebanon, PA Lebanon County, PA	0.8679
30300	Lewiston, ID-WA Nez Perce County, ID Asotin County, WA	0.9853
30340	Lewiston-Auburn, ME Androscoggin County, ME	0.9126
30460	Lexington-Fayette, KY Bourbon County, KY Clark County, KY Fayette County, KY Jessamine County, KY Scott County, KY Woodford County, KY	0.9181
30620	Lima, OH Allen County, OH	0.9042
30700	Lincoln, NE Lancaster County, NE Seward County, NE	1.0092
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	0.8890
30860	Logan, UT-ID Franklin County, ID Cache County, UT	0.9022

CBSA Code	Urban Area (Constituent Counties)	Wage Index
30980	Longview, TX Gregg County, TX Rusk County, TX Upshur County, TX	0.8788
31020	Longview, WA Cowlitz County, WA	1.0011
31084	Los Angeles-Long Beach-Glendale, CA Los Angeles County, CA	1.1760
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	0.9118
31180	Lubbock, TX Crosby County, TX Lubbock County, TX	0.8613
31340	Lynchburg, VA Amherst County, VA Appomattox County, VA Bedford County, VA Campbell County, VA Bedford City, VA Lynchburg City, VA	0.8694

CBSA Code	Urban Area (Constituent Counties)	Wage Index
31420	Macon, GA Bibb County, GA Crawford County, GA Jones County, GA Monroe County, GA Twiggs County, GA	0.9519
31460	Madera, CA Madera County, CA	0.8154
31540	Madison, WI Columbia County, WI Dane County, WI Iowa County, WI	1.0840
31700	Manchester-Nashua, NH Hillsborough County, NH Merrimack County, NH	1.0243
31900	Mansfield, OH[1] Richland County, OH	0.9271
32420	Mayagüez, PR Hormigueros Municipio, PR Mayagüez Municipio, PR	0.3848
32580	McAllen-Edinburg-Pharr, TX Hidalgo County, TX	0.8773
32780	Medford, OR Jackson County, OR	1.0818
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	0.9373
32900	Merced, CA Merced County, CA	1.1471

CBSA Code	Urban Area (Constituent Counties)	Wage Index
33124	Miami-Miami Beach-Kendall, FL Miami-Dade County, FL	0.9812
33140	Michigan City-La Porte, IN LaPorte County, IN	0.9118
33260	Midland, TX Midland County, TX	0.9786
33340	Milwaukee-Waukesha-West Allis, WI Milwaukee County, WI Ozaukee County, WI Washington County, WI Waukesha County, WI	1.0218
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	1.0946
33540	Missoula, MT Missoula County, MT	0.8928
33660	Mobile, AL Mobile County, AL	0.7913
33700	Modesto, CA Stanislaus County, CA	1.1729
33740	Monroe, LA Ouachita Parish, LA Union Parish, LA	0.7997
33780	Monroe, MI Monroe County, MI	0.9707

CBSA Code	Urban Area (Constituent Counties)	Wage Index
33860	Montgomery, AL Autauga County, AL Elmore County, AL Lowndes County, AL Montgomery County, AL	0.8009
34060	Morgantown, WV Monongalia County, WV Preston County, WV	0.8423
34100	Morristown, TN Grainger County, TN Hamblen County, TN Jefferson County, TN	0.7933
34580	Mount Vernon-Anacortes, WA Skagit County, WA	1.0517
34620	Muncie, IN Delaware County, IN	0.8562
34740	Muskegon-Norton Shores, MI Muskegon County, MI	0.9941
34820	Myrtle Beach-Conway-North Myrtle Beach, SC Horry County, SC	0.8810
34900	Napa, CA Napa County, CA	1.3374
34940	Naples-Marco Island, FL Collier County, FL	0.9941
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	0.9847

CBSA Code	Urban Area (Constituent Counties)	Wage Index
35004	Nassau-Suffolk, NY Nassau County, NY Suffolk County, NY	1.2662
35084	Newark-Union, NJ-PA Essex County, NJ Hunterdon County, NJ Morris County, NJ Sussex County, NJ Union County, NJ Pike County, PA	1.1892
35300	New Haven-Milford, CT New Haven County, CT	1.1953
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	0.8831
35644	New York-Wayne-White Plains, 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	1.3177
35660	Niles-Benton Harbor, MI Berrien County, MI	0.8915
35980	Norwich-New London, CT New London County, CT	1.1932
36084	Oakland-Fremont-Hayward, CA Alameda County, CA Contra Costa County, CA	1.5819

CBSA Code	Urban Area (Constituent Counties)	Wage Index
36100	Ocala, FL Marion County, FL	0.8867
36140	Ocean City, NJ Cape May County, NJ	1.0472
36220	Odessa, TX Ector County, TX	1.0073
36260	Ogden-Clearfield, UT Davis County, UT Morgan County, UT Weber County, UT	0.8995
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	0.8843
36500	Olympia, WA Thurston County, WA	1.1081
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	0.9450
36740	Orlando, FL Lake County, FL Orange County, FL Osceola County, FL Seminole County, FL	0.9452
36780	Oshkosh-Neenah, WI Winnebago County, WI	0.9315

CBSA Code	Urban Area (Constituent Counties)	Wage Index
36980	Owensboro, KY Daviess County, KY Hancock County, KY McLean County, KY	0.8748
37100	Oxnard-Thousand Oaks-Ventura, CA Ventura County, CA	1.1546
37340	Palm Bay-Melbourne-Titusville, FL Brevard County, FL	0.9443
37460	Panama City-Lynn Haven, FL Bay County, FL	0.8027
37620	Parkersburg-Marietta, WV-OH Washington County, OH Pleasants County, WV Wirt County, WV Wood County, WV	0.7977
37700	Pascagoula, MS George County, MS Jackson County, MS	0.8215
37860	Pensacola-Ferry Pass-Brent, FL Escambia County, FL Santa Rosa County, FL	0.8000
37900	Peoria, IL Marshall County, IL Peoria County, IL Stark County, IL Tazewell County, IL Woodford County, IL	0.8982
37964	Philadelphia, PA Bucks County, PA Chester County, PA Delaware County, PA Montgomery County, PA Philadelphia County, PA	1.0996
38060	Phoenix-Mesa-Scottsdale, AZ Maricopa County, AZ Pinal County, AZ	1.0287

CBSA Code	Urban Area (Constituent Counties)	Wage Index
38220	Pine Bluff, AR Cleveland County, AR Jefferson County, AR Lincoln County, AR	0.8383
38300	Pittsburgh, PA Allegheny County, PA Armstrong County, PA Beaver County, PA Butler County, PA Fayette County, PA Washington County, PA Westmoreland County, PA	0.8674
38340	Pittsfield, MA Berkshire County, MA	1.0266
38540	Pocatello, ID Bannock County, ID Power County, ID	0.9400
38660	Ponce, PR Juana Díaz Municipio, PR Ponce Municipio, PR Villalba Municipio, PR	0.4842
38860	Portland-South Portland-Biddeford, ME Cumberland County, ME Sagadahoc County, ME York County, ME	0.9908
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	1.1416
38940	Port St. Lucie-Fort Pierce, FL Martin County, FL St. Lucie County, FL	0.9833

CBSA Code	Urban Area (Constituent Counties)	Wage Index
39100	Poughkeepsie-Newburgh-Middletown, NY Dutchess County, NY Orange County, NY	1.0911
39140	Prescott, AZ Yavapai County, AZ	0.9836
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	1.0783
39340	Provo-Orem, UT Juab County, UT Utah County, UT	0.9537
39380	Pueblo, CO Pueblo County, CO	0.8753
39460	Punta Gorda, FL Charlotte County, FL	0.9405
39540	Racine, WI Racine County, WI	0.9356
39580	Raleigh-Cary, NC Franklin County, NC Johnston County, NC Wake County, NC	0.9864
39660	Rapid City, SD Meade County, SD Pennington County, SD	0.8833
39740	Reading, PA Berks County, PA	0.9622
39820	Redding, CA Shasta County, CA	1.3198
39900	Reno-Sparks, NV Storey County, NV Washoe County, NV	1.1963
40060	Richmond, VA Amelia County, VA Caroline County, VA Charles City County, VA	0.9177

CBSA Code	Urban Area (Constituent Counties)	Wage Index
	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	
40140	Riverside-San Bernardino-Ontario, CA Riverside County, CA San Bernardino County, CA	1.0904
40220	Roanoke, VA Botetourt County, VA Craig County, VA Franklin County, VA Roanoke County, VA Roanoke City, VA Salem City, VA	0.8647
40340	Rochester, MN Dodge County, MN Olmsted County, MN Wabasha County, MN	1.1408
40380	Rochester, NY Livingston County, NY Monroe County, NY Ontario County, NY Orleans County, NY Wayne County, NY	0.8994
40420	Rockford, IL Boone County, IL Winnebago County, IL	0.9989

CBSA Code	Urban Area (Constituent Counties)	Wage Index
40484	Rockingham County-Strafford County, NH Rockingham County, NH Strafford County, NH	1.0159
40580	Rocky Mount, NC Edgecombe County, NC Nash County, NC	0.8854
40660	Rome, GA Floyd County, GA	0.9193
40900	Sacramento--Arden-Arcade--Roseville, CA El Dorado County, CA Placer County, CA Sacramento County, CA Yolo County, CA	1.3372
40980	Saginaw-Saginaw Township North, MI Saginaw County, MI	0.8874
41060	St. Cloud, MN Benton County, MN Stearns County, MN	1.0362
41100	St. George, UT Washington County, UT	0.9265
41140	St. Joseph, MO-KS Doniphan County, KS Andrew County, MO Buchanan County, MO DeKalb County, MO	1.0118

CBSA Code	Urban Area (Constituent Counties)	Wage Index
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	0.9005
41420	Salem, OR Marion County, OR Polk County, OR	1.0438
41500	Salinas, CA Monterey County, CA	1.4337
41540	Salisbury, MD Somerset County, MD Wicomico County, MD	0.8953
41620	Salt Lake City, UT Salt Lake County, UT Summit County, UT Tooele County, UT	0.9402
41660	San Angelo, TX Irion County, TX Tom Green County, TX	0.8362

CBSA Code	Urban Area (Constituent Counties)	Wage Index
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	0.8844
41740	San Diego-Carlsbad-San Marcos, CA San Diego County, CA	1.1354
41780	Sandusky, OH Erie County, OH	0.9302
41884	San Francisco-San Mateo-Redwood City, CA Marin County, CA San Francisco County, CA San Mateo County, CA	1.5165
41900	San Germán-Cabo Rojo, PR Cabo Rojo Municipio, PR Lajas Municipio, PR Sabana Grande Municipio, PR San Germán Municipio, PR	0.4885
41940	San Jose-Sunnyvale-Santa Clara, CA San Benito County, CA Santa Clara County, CA	1.5543

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	0.4452

CBSA Code	Urban Area (Constituent Counties)	Wage Index
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA	1.1598
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA	1.1473
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara County, CA	1.1091
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA	1.5457
42140	Santa Fe, NM Santa Fe County, NM	1.0824
42220	Santa Rosa-Petaluma, CA Sonoma County, CA	1.4464
42260	Sarasota-Bradenton-Venice, FL Manatee County, FL Sarasota County, FL	0.9868
42340	Savannah, GA Bryan County, GA Chatham County, GA Effingham County, GA	0.9351
42540	Scranton--Wilkes-Barre, PA Lackawanna County, PA Luzerne County, PA Wyoming County, PA	0.8347
42644	Seattle-Bellevue-Everett, WA King County, WA Snohomish County, WA	1.1434
42680	Sebastian-Vero Beach, FL Indian River County, FL	0.9573
43100	Sheboygan, WI Sheboygan County, WI	0.9026
43300	Sherman-Denison, TX Grayson County, TX	0.8502

CBSA Code	Urban Area (Constituent Counties)	Wage Index
43340	Shreveport-Bossier City, LA Bossier Parish, LA Caddo Parish, LA De Soto Parish, LA	0.8865
43580	Sioux City, IA-NE-SD Woodbury County, IA Dakota County, NE Dixon County, NE Union County, SD	0.9200
43620	Sioux Falls, SD Lincoln County, SD McCook County, SD Minnehaha County, SD Turner County, SD	0.9559
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN Cass County, MI	0.9842
43900	Spartanburg, SC Spartanburg County, SC	0.9174
44060	Spokane, WA Spokane County, WA	1.0447
44100	Springfield, IL Menard County, IL Sangamon County, IL	0.8890
44140	Springfield, MA Franklin County, MA Hampden County, MA Hampshire County, MA	1.0079
44180	Springfield, MO Christian County, MO Dallas County, MO Greene County, MO Polk County, MO Webster County, MO	0.8469

CBSA Code	Urban Area (Constituent Counties)	Wage Index
44220	Springfield, OH Clark County, OH	0.8593
44300	State College, PA Centre County, PA	0.8784
44700	Stockton, CA San Joaquin County, CA	1.1442
44940	Sumter, SC Sumter County, SC	0.8083
45060	Syracuse, NY Madison County, NY Onondaga County, NY Oswego County, NY	0.9691
45104	Tacoma, WA Pierce County, WA	1.0789
45220	Tallahassee, FL Gadsden County, FL Jefferson County, FL Leon County, FL Wakulla County, FL	0.8942
45300	Tampa-St. Petersburg-Clearwater, FL Hernando County, FL Hillsborough County, FL Pasco County, FL Pinellas County, FL	0.9144
45460	Terre Haute, IN Clay County, IN Sullivan County, IN Vermillion County, IN Vigo County, IN	0.8765
45500	Texarkana, TX-Texarkana, AR Miller County, AR Bowie County, TX	0.8104
45780	Toledo, OH Fulton County, OH Lucas County, OH Ottawa County, OH Wood County, OH	0.9586

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	0.8730
45940	Trenton-Ewing, NJ Mercer County, NJ	1.0835
46060	Tucson, AZ Pima County, AZ	0.9202
46140	Tulsa, OK Creek County, OK Okmulgee County, OK Osage County, OK Pawnee County, OK Rogers County, OK Tulsa County, OK Wagoner County, OK	0.8103
46220	Tuscaloosa, AL Greene County, AL Hale County, AL Tuscaloosa County, AL	0.8542
46340	Tyler, TX Smith County, TX	0.8811
46540	Utica-Rome, NY Herkimer County, NY Oneida County, NY	0.8396
46660	Valdosta, GA Brooks County, GA Echols County, GA Lanier County, GA Lowndes County, GA	0.8369
46700	Vallejo-Fairfield, CA Solano County, CA	1.5137

CBSA Code	Urban Area (Constituent Counties)	Wage Index
47020	Victoria, TX Calhoun County, TX Goliad County, TX Victoria County, TX	0.8560
47220	Vineland-Millville-Bridgeton, NJ Cumberland County, NJ	0.9832
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	0.8790
47300	Visalia-Porterville, CA Tulare County, CA	0.9968
47380	Waco, TX McLennan County, TX	0.8633
47580	Warner Robins, GA Houston County, GA	0.8380
47644	Warren-Troy-Farmington Hills, MI Lapeer County, MI Livingston County, MI Macomb County, MI Oakland County, MI St. Clair County, MI	1.0054

CBSA Code	Urban Area (Constituent Counties)	Wage Index
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	1.1054
47940	Waterloo-Cedar Falls, IA Black Hawk County, IA Bremer County, IA Grundy County, IA	0.8408
48140	Wausau, WI Marathon County, WI	0.9722
48260	Weirton-Steubenville, WV-OH Jefferson County, OH Brooke County, WV Hancock County, WV	0.8063
48300	Wenatchee, WA Chelan County, WA Douglas County, WA	1.0346
48424	West Palm Beach-Boca Raton-Boynton Beach, FL Palm Beach County, FL	0.9649

CBSA Code	Urban Area (Constituent Counties)	Wage Index
48540	Wheeling, WV-OH Belmont County, OH Marshall County, WV Ohio County, WV	0.7010
48620	Wichita, KS Butler County, KS Harvey County, KS Sedgwick County, KS Sumner County, KS	0.9063
48660	Wichita Falls, TX Archer County, TX Clay County, TX Wichita County, TX	0.8311
48700	Williamsport, PA Lycoming County, PA	0.8139
48864	Wilmington, DE-MD-NJ New Castle County, DE Cecil County, MD Salem County, NJ	1.0684
48900	Wilmington, NC Brunswick County, NC New Hanover County, NC Pender County, NC	0.9835
49020	Winchester, VA-WV Frederick County, VA Winchester City, VA Hampshire County, WV	1.0091
49180	Winston-Salem, NC Davie County, NC Forsyth County, NC Stokes County, NC Yadkin County, NC	0.9276
49340	Worcester, MA Worcester County, MA	1.0722

CBSA Code	Urban Area (Constituent Counties)	Wage Index
49420	Yakima, WA Yakima County, WA	0.9847
49500	Yauco, PR Guánica Municipio, PR Guayanilla Municipio, PR Peñuelas Municipio, PR Yauco Municipio, PR	0.3854
49620	York-Hanover, PA York County, PA	0.9397
49660	Youngstown-Warren-Boardman, OH-PA Mahoning County, OH Trumbull County, OH Mercer County, PA	0.8802
49700	Yuba City, CA Sutter County, CA Yuba County, CA	1.0730
49740	Yuma, AZ Yuma County, AZ	0.9109

[1] 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--RY 2008 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS

CBSA Code	Nonurban Area	Wage Index
1	Alabama	0.7591
2	Alaska	1.0661
3	Arizona	0.8908
4	Arkansas	0.7307
5	California	1.1454
6	Colorado	0.9325
7	Connecticut	1.1709
8	Delaware	0.9705

CBSA Code	Nonurban Area	Wage Index
10	Florida	0.8594
11	Georgia	0.7593
12	Hawaii	1.0448
13	Idaho	0.8120
14	Illinois	0.8320
15	Indiana	0.8538
16	Iowa	0.8681
17	Kansas	0.7998
18	Kentucky	0.7768
19	Louisiana	0.7438
20	Maine	0.8443
21	Maryland	0.8926
22	Massachusetts[1]	1.0216
23	Michigan	0.9062
24	Minnesota	0.9153
25	Mississippi	0.7738
26	Missouri	0.7927
27	Montana	0.8590
28	Nebraska	0.8677
29	Nevada	0.8944
30	New Hampshire	1.0853
31	New Jersey[1]	------
32	New Mexico	0.8332
33	New York	0.8232
34	North Carolina	0.8588
35	North Dakota	0.7215
36	Ohio	0.8658
37	Oklahoma	0.7629
38	Oregon	0.9753
39	Pennsylvania	0.8320
40	Puerto Rico[1]	0.4047
41	Rhode Island[1]	------

CBSA Code	Nonurban Area	Wage Index
42	South Carolina	0.8566
43	South Dakota	0.8480
44	Tennessee	0.7827
45	Texas	0.7965
46	Utah	0.8140
47	Vermont	0.9744
48	Virgin Islands	0.8467
49	Virginia	0.7940
50	Washington	1.0263
51	West Virginia	0.7607
52	Wisconsin	0.9553
53	Wyoming	0.9295
65	Guam	0.9611

[1] 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 RY 2008. Because more recent data are not available for those areas, we are using last year's wage index value.

[FR Doc. 07–2172 Filed 4–30–07; 4:00 pm]
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Federal Register

Friday,
May 4, 2007

Part VI

Department of State

Preparation of Fourth U.S. Climate Action Report; Notice

DEPARTMENT OF STATE

[Public Notice 5791]

Preparation of Fourth U.S. Climate Action Report

AGENCY: Department of State.

ACTION: Notice; Request for public comments.

SUMMARY: In June 1992, the United States signed, and later ratified in October, the United Nations Framework Convention on Climate Change (UNFCCC). Pursuant to the national communication reporting requirements under Articles 4.2 and 12 of the Convention and to guidelines later adopted by the UNFCCC Conference of the Parties (COP), the United States submitted the first U.S. Climate Action Report (USCAR) to the UNFCCC Secretariat in 1994, the second in 1997 and the third in 2002. The U.S. Government has prepared an initial draft of the fourth national communication for public review. The purpose of this announcement is to notify interested members of the public of the opportunity to submit input on the draft text of the national communication before the final document is completed.

DATES: Written comments should be received on or before noon, May 18, 2007. Because of the tight time constraints on completing and printing the final text, a longer review period is not feasible.

ADDRESSES: Comments should be submitted via e-mail to *CAR4@state.gov.* Additionally, comments may be sent via postal mail to: CAR4 Comments, U.S. Department of State, Office of Global Change (Room 2480), 2201 "C" Street NW., Washington, DC 20520 or via fax to: (202) 647–0191.

FOR FURTHER INFORMATION CONTACT: Dr. Kirsten R. Jaglo, Office of Global Change, U.S. Department of State at (202) 736–7092.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the UNFCCC's reporting requirements as specified in Articles 4.2 and 12, and following reporting guidelines developed (and adopted by the UNFCCC COP at its first session), the United States prepared the first U.S. Climate Action Report (CAR) and submitted it to the UNFCCC Secretariat in October 1994.

At the eighth COP in 2002, in Decision 4/CP.8 the Parties requested that Parties included in Annex I to the convention submit to the secretariat a fourth national communication (see FCCC/CP/2002/7/Add.1). This document is available on the Internet at *http://unfccc.int/resource/docs/cop8/07a01.pdf#page=12.*

The Fourth United States Climate Action Report (CAR)

The draft fourth CAR provides an update on key activities conducted by the U.S. since the third CAR, an inventory of U.S. greenhouse gas emissions and sinks, an estimate of the effects of mitigation measures and policies on future emissions levels, and a description of U.S. leadership and involvement in international programs, including associated contributions and funding efforts.

In addition, the text discusses U.S. national circumstances that affect U.S. vulnerability and responses to climate change. Finally, the CAR presents information on the U.S. Climate Change Science Program, the U.S. Climate Change Technology Program, our efforts in systematic observations, including the U.S. Integrated Earth Observation System, and our education, training and outreach efforts.

Table of Contents of the Draft Fourth U.S. CAR

1. Introduction and overview
2. National circumstances
3. Greenhouse gas inventory
4. Policies and measures
5. Projected greenhouse gas emissions
6. Impacts and Adaptation
7. Financial resources and transfer of technology
8. Research and systematic observation
9. Education, training, and outreach

Public Input Process

This Federal Register notice solicits comments on the draft chapters listed above. The individual chapters are posted on the Internet and may be down-loaded from the following Web site: *http://www.state.gov/g/oes/climate.* Comments may be submitted to the contact listed above. Comments on each of the chapters will be due within 14 days of release.

The 2002 U.S. Climate Action Report may be viewed or downloaded via the Internet at: *http://www.gcrio.org/CAR2002/.*

Dated: April 30, 2007.

Christo Artusio,

Acting Director Office of Global Change, Department of State.

[FR Doc. 07–2251 Filed 5–3–07; 10:38 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 753/P.L. 110–20

To redesignate the Federal building located at 167 North Main Street in Memphis, Tennessee, as the ''Clifford Davis and Odell Horton Federal Building''. (May 2, 2007; 121 Stat. 86)

H.R. 1003/P.L. 110–21

To amend the Foreign Affairs Reform and Restructuring Act of 1998 to reauthorize the United States Advisory Commission on Public Diplomacy. (May 2, 2007; 121 Stat. 87)

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