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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. AMS–FV–07–0083; FV07–989–3 IFR]

Raisins Produced From Grapes Grown in California; Change in Requirements for Interhandler Transfers of Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the requirements for interhandler transfers of raisins under the administrative rules and regulations of the California raisin marketing order (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative California (Committee). This rule requires handlers who transfer raisins to other handlers within the State of California to certify to the Committee that only acquired, free-tonnage raisins that meet all applicable order requirements are being transferred to receiving handlers. This action should help maintain the integrity of the order by ensuring that handlers only transfer acquired, free-tonnage raisins that meet applicable order requirements.

DATES: Effective August 1, 2007; comments received by August 22, 2007 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. All comments should reference the 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.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Rose.Aguayo@usda.gov*, or *Kurt.Kimmel@usda.gov*.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule revises the requirements for interhandler transfers of raisins under the administrative rules and regulations of the California raisin order. This rule requires handlers who transfer raisins to other handlers within the State of California to certify to the Committee that only acquired, free-tonnage raisins that meet all applicable order requirements are being transferred.

Pursuant to § 989.17, ''acquire means to have or obtain physical possession of raisins by a handler at his packing or processing plant or at any other established receiving station operated by him.'' However, handlers are not deemed to acquire raisins if they are being stored for another, being reconditioned, or held for inspection. Also the term only applies to the handler who first obtains possession of the raisins. Free tonnage raisins are those raisins which have been acquired, not placed in the reserve pool, and for which producers receive payment for 100 percent of handler purchases. This change should help maintain the integrity of the order and was unanimously recommended by the Committee at a public meeting on April 12, 2007.

Section 989.59(e) of the order provides authority for handlers who acquire free-tonnage raisins to transfer such raisins to other handlers within the State of California. It also specifies that transferring handlers shall promptly report such transfers to the Committee, unless transfers are between plants owned or operated by the same handler. Further, it specifies that receiving handlers shall comply with all applicable order requirements before shipping or otherwise making final disposition of such raisins.

Section 989.73 of the order provides authority for the RAC to collect reports from handlers and specifies that, upon request by the RAC, with the approval of the Secretary, handlers shall furnish to the RAC other information as may be

necessary to enable it to exercise its powers and perform its duties. The RAC meets routinely to make decisions on various programs authorized under the order such as interhandler transfers. The RAC utilizes information collected under the order in its decision making.

Section 989.173 of the order's administrative rules and regulations specifies certain reports that handlers are currently required to submit to the RAC. Under § 989.173(d)(1) of the order's rules and regulations any handler who transfers free-tonnage raisins to another handler within the State of California shall submit a report to the Committee showing information regarding the interhandler transfer not later than five calendar days following such transfer.

Such information includes the transfer date; the names and addresses of the transferring parties; the variety, net weight, and condition of the raisins transferred; and the inspection certificate number, if the raisins have already been packed. Transferring handlers are required to forward two copies of the RAC Form No. 6, ''Interhandler Transfers of Free-Tonnage Raisins,'' to the receiving handler at the same time the report is submitted to the Committee. The receiving handler is required to certify receiving the raisins and to submit one copy of the certification report to the Committee within five calendar days of receiving the raisins or the copies of RAC Form No. 6, whichever is later.

The Committee is concerned that some handlers may be transferring California raisins which are not acquired or which do not meet all applicable order requirements. Such requirements include proper reporting, inspection, assessments, and volume regulation. To help ensure that handlers only transfer acquired, free-tonnage raisins that meet all applicable order requirements, the Committee unanimously recommended at its April, 12, 2007, meeting that the transferring handlers certify on RAC Form No. 6, ''Interhandler Transfer of Free-Tonnage Raisins,'' that only acquired, free-tonnage raisins that meet all applicable order requirements are being transferred. The Committee expects that requiring this certification should help maintain the integrity of the order.

This rule modifies § 989.173(d)(1) by deleting the word ''and'' from paragraph (iii); by changing the period to a semi-colon and adding the word ''and'' at end of paragraph (iv); and by adding a new subparagraph (v), which requires handlers to certify that the raisins being transferred are acquired, free-tonnage raisins that meet all applicable order requirements including proper reporting, incoming inspection, assessments, and volume regulation.

The current RAC Form No. 6, ''Interhandler Transfer of Free-Tonnage Raisins'' will be modified by the addition of the following paragraph: ''To Be Completed by Transferring Handler: The undersigned certifies that the raisins being transferred have met all Federal order requirements, including proper reporting, incoming inspection, assessments, and volume regulations, if applicable.'' No additional reporting burden is placed upon reporting handlers.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 23 handlers of California raisins who are subject to regulation under the order and approximately 4,000 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. No more than 10 handlers, and a majority of producers, of California raisins may be classified as small entities. Thirteen of the 23 handlers subject to regulation have annual sales estimated to be at least $6,500,000, and the remaining 10 handlers have sales less than $6,500,000, excluding receipts from any other sources.

This rule revises § 989.173(d)(1) of the order's administrative rules and regulations and requires handlers who transfer raisins to other handlers to certify on RAC Form No. 6, ''Interhandler Transfer of Free-Tonnage Raisins,'' that only acquired, free-tonnage raisins that meet all applicable order requirements are being transferred. This should help maintain the integrity of the order.

Section 989.173(d)(1) is modified by deleting the word ''and'' from paragraph (iii); by changing the period to a semi-colon and adding the word ''and'' to paragraph (iv); and by adding a new subparagraph (v) that requires handlers to certify that the raisins being transferred are acquired and meet all order requirements, including proper reporting, incoming inspection, assessments, and volume regulation, if applicable. Authority for interhandler transfers is provided in § 989.59, and authority to recommend this change is provided in § 989.73 of the order.

Regarding the impact of this action on affected entities, it requires handlers who transfer raisins to other handlers to certify on RAC Form No. 6, ''Interhandler Transfer of Free-Tonnage Raisins,'' that such raisins are acquired, free-tonnage raisins that meet all applicable order requirements.

The Committee considered not requiring handlers to certify that their transferred raisins are acquired free-tonnage raisins and that they meet all applicable order requirements. However, the Committee is concerned that some handlers may be transferring California raisins which are not acquired or which do not meet all applicable order requirements. Such requirements include proper reporting, incoming inspection, assessments, and volume regulation. As receiving handlers want additional assurance that they are receiving raisins which have been acquired and which meet applicable order requirements, the Committee unanimously recommended revising the requirements regarding interhandler transfers of free-tonnage raisins.

All handlers must currently report their interhandler transfers to the Committee on RAC Form No. 6, ''Interhandler Transfer of Free-Tonnage Raisins.'' This form is currently approved by the Office of Management and Budget (OMB) under OMB No. 0581–0178, Vegetable and Specialty Crops. This rule adds a certifying statement above the transferring handler's signature block to this form.

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

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen

access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

Further, the meetings were widely publicized throughout the California raisin industry and all interested persons were invited to attend the meetings and participate in deliberations on all issues. The Committee's Administrative Issues Work Group discussed this issue at length during meetings on January 23, and February 1, 2007. The Administrative Issues Subcommittee thus recommended the change to the Committee on April 12, 2007. All of these meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on a change to the handler reporting requirements currently prescribed under the California raisin marketing order. Any comments received will be considered prior to finalization of this rule.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee unanimously recommended this change at a public meeting after a recommendation by one of its subcommittees, and all interested parties had the opportunity to provide input; (2) handlers are aware of this change, which was discussed at four public meetings; and (3) the crop year begins August 1, 2007, and this change should be in place by that date.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 989.173, paragraph (d) is revised to read as follows:

§ 989.173 Reports.

* * * * *

(d) *Reports of interhandler transfers*—(1) *Free-tonnage.* Any handler who transfers free-tonnage raisins to another handler within the State of California shall submit to the Committee not later than five calendar days following such transfer a report showing:

(i) The date of transfer;

(ii) The name(s) and address(es) of the handler or handlers and the locations of the plants;

(iii) The varietal type of raisin, with organically produced raisins as specified in paragraph (g) of this section separated out, net weight, and condition of the raisins transferred: Provided, That, for the Other Seedless varietal type, handlers shall report such information for the different types of Other Seedless raisins;

(iv) If packed, the inspection certificate number in the event such raisins have been inspected prior to such transfer and a certificate issued. Two copies of such report shall be forwarded to the receiving handler at the time the report is submitted to the Committee, on one of which the receiving handler shall certify to the receipt of such raisins and submit it to the Committee within five calendar days after the raisins or the copies of such report have been received by him, whichever is later; and

(v) If packed, the transferring handler shall certify that such handler is transferring only acquired, free-tonnage raisins that meet all applicable marketing order requirements, including reporting, incoming inspection, assessments, and volume regulation.

(2) *Off-grade and other failing raisins.* Any handler who transfers off-grade raisins or other failing raisins including off-grade raisins unsuccessfully reconditioned, to another handler, other than a processor within the State of California, shall submit to the Committee (on forms furnished by it) no later than Wednesday following the week of the transfer:

(i) The date of transfer;

(ii) The name and address of the receiving handler and the location of his plant;

(iii) The name and address of the tenderer of each lot included in the transfer and the inspection certificate numbers applicable to the lot; and

(iv) The varietal type, net weight, and condition of the raisins.

* * * * *

Dated: August 2, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–3856 Filed 8–3–07; 9:12 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1740

RIN 0572–AC02

Public Television Station Digital Transition Grant Program

AGENCY: Rural Utilities Service, Agriculture.

ACTION: Final rule.

SUMMARY: This rule adopts as final, the interim final rule published in the **Federal Register**, (71 FR 3205) on January 20, 2006. The Rural Utilities Service, an agency which administers USDA Rural Development's Utilities Programs (hereinafter ''USDA Rural Development'' or the ''Agency'') is publishing this final rule to allow the Agency to make grants to enable Public Television Stations in rural areas to replace current analog television broadcasting equipment with digital television broadcasting equipment as part of the national transition to digital television service.

DATES: This rule is effective on August 7, 2007.

FOR FURTHER INFORMATION CONTACT: Orren E. Cameron III, Director, Advanced Services Division, USDA Rural Development, Room 2845–S, 1400 Independence Avenue, SW., STOP 1550, Washington, DC, 20250–1550. Telephone: 202–690–4493. FAX: 202–720–10551. E-mail: *ed.cameron@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: An interim final rule establishing 7 CFR part 1740, was published in the **Federal Register** on January 20, 2006 (71 FR 3205). The rule outlined statutory

requirements for applicants of the Public Television Station Digital Transition Grant program. A 60-day comment period was provided and ended on March 21, 2006. One comment was received which supported the rule.

At the time of publishing the Interim Final rule, the date for digital transition was December 31, 2006. On February 8, 2006, however, Congress passed the ''Digital Television Transition and Public Safety Act of 2005'' (see Title III of the Deficit Reduction Act of 2005, Pub. L. 109–171) which created a new deadline date of February 17, 2009, for the cessation of analog television broadcasts, when all television stations will broadcast entirely in digital. Based on the rationale set forth in the interim final rule, the Agency now adopts the interim final rule, as the final rule.

Executive Order 12866

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number assigned to the Public Television Station Digital Transition Grant Program is 10.861. The Catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Executive Order 12372

This program is not subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented under USDA's regulations at 7 CFR part 3015.

Executive Order 12988

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

Executive Order 13132 Federalism

The policies contained in this final rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

Regulatory Flexibility Certification

Pursuant to 5 U.S.C. 553(a)(2), this final rule related to grants is exempt from the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), including the requirement to provide prior notice and an opportunity for public comment. Because this interim final rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable.

Unfunded Mandates

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

Environmental Impact Statement

This final rule has been examined under Agency environmental regulations at 7 CFR part 1794. The Administrator has determined that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement or Assessment is not required.

Information Collection and Recordkeeping Requirements

This final rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0134 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

List of Subjects in 7 CFR Part 1740

Grant programs—Communications, Digital television; Rural areas; Television.

PART 1740—PUBLIC TELEVISION STATION DIGITAL TRANSITION GRANT PROGRAM

■ Accordingly, the interim final rule adding 7 CFR part 1740, which was published at 71 FR 3205 on January 20, 2006, is adopted as a final rule without change.

Dated: July 11, 2007.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E7–15263 Filed 8–6–07; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1291]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a final rule amending the staff commentary that interprets the requirements of Regulation Z (Truth in Lending). The Board is required to adjust annually the dollar amount that triggers requirements for certain home mortgage loans bearing fees above a certain amount. The Home Ownership and Equity Protection Act of 1994 (HOEPA) sets forth rules for home-secured loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. In keeping with the statute, the Board has annually adjusted the $400 amount based on the annual percentage change reflected in the Consumer Price Index that is in effect on June 1. The adjusted dollar amount for 2008 is $561.

DATES: *Effective Date:* January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For the users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Lending Act (TILA; 15 U.S.C. 1601–1666j) requires creditors to disclose credit terms and the cost of consumer credit as an annual percentage rate. The act requires additional disclosures for loans secured by a consumer's home, and permits

consumers to cancel certain transactions that involve their principal dwelling. TILA is implemented by the Board's Regulation Z (12 CFR part 226). The Board's official staff commentary (12 CFR part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions.

In 1995, the Board published amendments to Regulation Z implementing HOEPA, contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, 108 Stat. 2160 (60 FR 15463). These amendments, contained in §§ 226.32 and 226.34 of the regulation, impose substantive limitations and additional disclosure requirements on certain closed-end home mortgage loans bearing rates or fees above a certain percentage or amount. As enacted, the statute requires creditors to comply with the HOEPA rules if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. TILA and Regulation Z provide that the $400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1. (15 U.S.C. 1602(aa)(3) and 12 CFR 226.32(a)(1)(ii)). The Board adjusted the $400 amount to $547 for the year 2007.

The Bureau of Labor Statistics publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of each month. The Board uses the CPI–U index, which is based on all urban consumers and represents approximately 87 percent of the U.S. population, as the index for adjusting the $400 dollar figure. The adjustment to the CPI–U index reported by the Bureau of Labor Statistics on May 15, 2007, was the CPI–U index in effect on June 1, and reflects the percentage increase from April 2006 to April 2007. The adjustment to the $400 figure below reflects a 2.56 percent increase in the CPI–U index for this period and is rounded to whole dollars for ease of compliance.

II. Adjustment and Commentary Revision

Effective January 1, 2008, for purposes of determining whether a home mortgage transaction is covered by 12 CFR 226.32 (based on the total points and fees payable by the consumer at or before loan consummation), a loan is covered if the points and fees exceed the greater of $561 or 8 percent of the total loan amount. Comment 32(a)(1)(ii)–2, which lists the adjustments for each year, is amended to reflect the dollar adjustment for 2007. Because the timing and method of the adjustment is set by statute, the Board finds that notice and public comment on the change are unnecessary.

III. Regulatory Flexibility Analysis

The Board certifies that this amendment will not have a substantial effect on regulated entities because the only change is to raise the threshold for transactions requiring HOEPA disclosures.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

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

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

■ 2. In Supplement I to Part 226, under *Section 226.32—Requirements for Certain Closed-End Home Mortgages,* under Paragraph 32(a)(1)(ii), paragraph 2. xiii. is added.

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage

* * * * *

Paragraph 32(a)(1)(ii)

* * * * *

2. *Annual adjustment of $400 amount.*

* * * * *

xiii. For 2008, $561, reflecting a 2.56 percent increase in the CPI–U from June 2006 to June 2007, rounded to the nearest whole dollar.

* * * * *

Dated: August 1, 2007.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–15194 Filed 8–6–07; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30563; Amdt. No. 3230]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 7, 2007. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 7, 2007.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Ave, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

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

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) amends Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), which is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Code of Federal Regulations. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on July 27, 2007.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35, 97.37 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, LDA w/GS, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, MLS, TLS, GLS, WAAS PA, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; § 97.35 COPTER SIAPs, § 97.37 Takeoff Minima and Obstacle Departure Procedures. Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
07/19/07	AZ	Chandler	Chandler Muni	7/9231	Takeoff mininums and obstacle DP, ORIG–A.
07/23/07	CA	Long Beach	Long Beach/Daugherty Field	7/9592	Takeoff mininums and obstacle DP, AMDT 4A.
07/23/07	CA	San Andreas	Calaveras Co-Maury Rasmussen Field	7/9605	Takeoff mininums and obstacle DP, ORIG–A.
07/24/07	CA	Shafter	Shafter-Minter Field	7/9761	Takeoff mininums and obstacle DP, ORIG–A.
07/23/07	KS	Junction City	Freeman Field	7/9626	NDB or GPS–B, AMDT 4.

[FR Doc. E7–15139 Filed 8–6–07; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–1997–2364]

RIN 2126–AB08

Parts and Accessories Necessary for Safe Operation; Fire Extinguisher Exception for Driveaway-Towaway Operations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA amends part 393 of the Federal motor carrier safety regulations concerning parts and accessories necessary for safe operation in response to a petition for rulemaking filed by JHT Holdings, Inc. The petitioner requested that the previous provision excepting driveaway-towaway operations from supplying each power unit with a fire extinguisher be reinstated. This amendment is intended to correct that inadvertent omission in the final rule issued on August 15, 2005.

DATES: This rule is effective September 6, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey J. Van Ness, phone (202) 366–8802, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Legal Basis for the Rulemaking

The Motor Carrier Act of 1935 authorized the Interstate Commerce Commission (ICC) to regulate truck safety; that authority was transferred to the newly established Department of Transportation (DOT) in 1966 (see section 6(e)(6) of the DOT Act, 80 Stat. 939–940).

The ICC issued the Federal Motor Carrier Safety Regulations (FMCSRs) in the late 1930s and promulgated major revisions on May 15, 1952 (17 FR 4422). The amended regulations required fire extinguishers in most vehicles, but included an exception for driveaway-towaway operations (17 FR at 4445).

This rulemaking simply restores the driveaway-towaway exception, which was inadvertently deleted in the final rule FMCSA published on August 15, 2005 (70 FR 48008). Because the ICC fully explained the legal basis of the 1952 rulemaking (see 54 M.C.C. 337, at 338), and because all subsequent amendments to the driveaway-towaway exception—whether by the ICC or DOT—were ministerial in nature, no further discussion of the legal basis of this action is required.

Background

On August 15, 2005, FMCSA amended 49 CFR part 393, Parts and Accessories Necessary for Safe Operation. The amendments removed obsolete and redundant regulations; responded to several petitions for rulemaking; provided improved definitions of vehicle types, systems, and components; resolved inconsistencies between 49 CFR part 393 and the National Highway Traffic Safety Administration's (NHTSA) Federal Motor Vehicle Safety Standards (FMVSSs) (49 CFR part 571); and codified certain FMCSA regulatory guidance concerning the requirements of 49 CFR part 393. Generally, the amendments did not involve the establishment of new or more stringent requirements but clarified existing requirements. The final rule was intended to make many sections more concise, easier to understand, and more performance-oriented.

The final rule was based on a notice of proposed rulemaking (NPRM) published by the Federal Highway Administration (FHWA) on April 14, 1997 (62 FR 18170). FHWA had received numerous petitions for rulemaking and requests for interpretation of the requirements of 49 CFR part 393, which raised the need for amendments to clarify several provisions of the safety regulations.

Parts 393 and 396 of the FMCSRs include several exceptions for driveaway-towaway operations. The driveaway-towaway exceptions are intended to address situations in which compliance with some of the vehicle regulations is not practicable because of the circumstances surrounding the delivery or transportation of the vehicle. Examples of driveaway-towaway operations include the delivery of a newly manufactured CMV from a manufacturer to a dealership, the delivery of a new or used motor vehicle from the dealership to the purchaser, or certain movements of vehicles to a repair or maintenance facility. Among the provisions of 49 CFR parts 393 and 396 which do not apply to driveaway-towaway operations are the requirements for lamps and reflectors, brakes, driver vehicle inspection reports, maintenance records, and periodic inspection.

Technical Amendment of § 393.95

On December 9, 2005, JHT Holdings, Inc. (JHT) contacted FMCSA by telephone and asked why the longstanding provision excepting driveaway-towaway operations from the requirement in § 393.95(a) that every driven unit be equipped with a fire extinguisher had been deleted in the August 2005 final rule. Based on the conversation with JHT, FMCSA conducted a review of the August 2005 final rule to ensure there were no inconsistencies between the preamble and the accompanying regulatory text. This review confirmed the unintended removal of the provision excepting driveaway-towaway operations from the requirement in § 393.95(a). The provision was originally adopted on May 15, 1952 (17 FR 4422, at 4445).

On December 22, 2005, while conducting the review of the August 2005 final rule, the Agency received a Petition for Rulemaking from JHT. The petition formally requested that the Agency reinstate the provision excepting driveaway-towaway operations from the requirement in § 393.95(a) that every driven unit be equipped with a fire extinguisher.

FHWA did not specifically address the proposed removal of this exception in the preamble of the April 1997 NPRM, and FMCSA did not discuss the issue in the preamble of the August 2005 final rule. In addition, the proposed amendment was not addressed in the regulatory analyses prepared in support of the NPRM or the final rule. However, the regulatory language in both the NPRM and the final rule omitted the exception for driveaway-towaway operations. FMCSA has determined that the removal of this exception from the regulations was inadvertent.

Therefore, FMCSA is today publishing a technical amendment that reinstates the provision excepting driveaway-towaway operations from the requirement in § 393.95(a) that every driven unit be equipped with a fire extinguisher. The exception formerly appeared in § 393.95(a)(4) but is being recodified as § 393.95(a)(6) because paragraph (a) was reorganized in the August 2005 final rule.

Regulatory Analyses and Notices

Good Cause Exception to Notice and Comment

This final rule makes only a minor technical correction to § 393.95. The rule amends that section to reinstate a

provision inadvertently removed by the final rule published on August 15, 2005 (70 FR 48008). Therefore, FMCSA finds good cause to adopt the rule without prior notice or opportunity for public comment (5 U.S.C. 553(b)(3)(B)).

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or Department of Transportation regulatory policies and procedures. This document is not required to be reviewed by the Office of Management and Budget. Because this rulemaking merely makes a minor change that will not result in additional costs, a regulatory evaluation has not been prepared by the Agency.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA has considered the effects of this regulatory action on small entities and determined that this rule will not have a significant impact on a substantial number of small entities. Because this rulemaking merely makes a minor change that will not result in additional costs, a regulatory flexibility analysis has not been prepared by the Agency.

Unfunded Mandates Reform Act of 1995

This rulemaking will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments in the aggregate or by the private sector of $120.7 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

FMCSA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. It has been determined that this rulemaking will not have a substantial direct effect on States nor will it limit the policy-making discretion of the States. Nothing in this document will preempt any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This final rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004) that this action is categorically excluded (CE) under Appendix 2, paragraph 6.b. from further environmental documentation. This CE relates to establishing regulations and actions taken pursuant to these regulations that are editorial in nature. In addition, FMCSA believes that the action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

FMCSA also analyzed this final rule under the Clean Air Act (CAA), as amended section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it involves rulemaking activity which would not result in any emissions increase nor would it have any potential to result in emissions that are above the general conformity rule's de minimis emission threshold levels (40 CFR 93.153(c)(2)). Moreover, it is reasonably foreseeable that the rule would not increase total CMV mileage, change the routing of CMVs, change how CMVs operate, or change the CMV fleet-mix of motor carriers. This action merely reinstates inadvertently omitted text from a prior FMCSA final rule.

Executive Order 13211 (Energy Effects)

FMCSA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this action will not be a significant energy action under that order because it will not be economically significant and will not likely have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects for 49 CFR Part 393

Highways and roads, incorporation by reference, motor carriers, motor vehicle equipment, motor vehicle safety.

■ In consideration of the foregoing, FMCSA amends 49 CFR part 393 as follows:

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

■ 1. The authority citation for part 393 continues to read as follows:

Authority: 49 U.S.C. 322, 31136, and 31502; section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.73.

■ 2. Amend § 393.95 by adding paragraph (a)(6) to read as follows:

§ 393.95 Emergency equipment on all power units.

* * * * *

(a) * * *

(6) *Exception.* This paragraph (a) does not apply to the driven unit in a driveaway-towaway operation.

* * * * *

Issued on: July 30, 2007.

John H. Hill,

Administrator.

[FR Doc. E7–15206 Filed 8–6–07; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 72, No. 151
Tuesday, August 7, 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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. 2006N–0454]

RIN 0910–AF93

Use of Ozone-Depleting Substances; Removal of Essential-Use Designations; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule, extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to September 10, 2007, the comment period for the proposed rule published in the **Federal Register** of June 11, 2007 (72 FR 32030). The proposed rule would amend FDA's regulation on the use of ozone-depleting substances (ODSs) in self-pressurized containers to remove the essential-use designations for oral pressurized metered-dose inhalers (MDIs) containing flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil. FDA is taking this action in response to a request for an extension.

DATES: Submit written or electronic comments by September 10, 2007.

ADDRESSES: You may submit comments, identified by Docket No. 2006N–0454, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted directly to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and docket number and Regulatory Information Number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents, comments, a transcript of, and material submitted for, the Pulmonary-Allergy Advisory Committee meeting held on June 10, 2005, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell or Martha Nguyen, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2007 (72 FR 32030), we published a proposed rule (the proposed rule) to amend FDA's regulation on the use of ozone-depleting substances (ODSs) in self-pressurized containers (21 CFR 2.125) to remove the essential-use designations for MDIs containing flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil. In the **Federal Register** of July 9, 2007 (72 FR 37137), we published a notice of an open public meeting (meeting notice) to be held on August 2, 2007. In the proposed rule and meeting notice, we invited interested persons to comment on the proposed rule by August 10, 2007.

The agency has received a request for a 90-day extension of the comment period from Graceway Pharmaceuticals, LLC (Graceway) (Docket No. 2006N–0454/EXT1). Graceway subsequently supplemented this request with a request dated July 17, 2007, to reschedule the August 2, 2007, public meeting on the proposed rule. Graceway holds the new drug application (NDA) for MAXAIR AUTOHALER, a pirbuterol MDI that uses an ODS as a propellant. The proposed rule would remove from the market pirbuterol MDIs that contain an ODS.

Graceway requested that FDA extend the comment period by 90 days because the proposal presents complex medical, scientific, and economic issues and the existing comment period does not allow sufficient time to develop a meaningful or thoughtful response to the request for comments.

FDA has considered the request and is extending the comment period on the proposed rule for 30 days, until September 10, 2007. The agency believes this extension will allow adequate time for interested persons to submit comments while still permitting FDA and the U.S. Government to meet their obligations under the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) (September 16, 1987, 26 I.L.M. 1541 (1987)), available at *http://www.unep.org/ozone/pdfs/Montreal-Protocol2000.pdf*.[1] This rulemaking necessarily relates to other actions taken or to be taken by the U.S. Government, including requesting essential-use exemptions from the Parties to the Montreal Protocol for quantities of ODSs for use in MDIs and allocation of the ODSs to U.S. manufacturers for use in MDIs under section 604(d) of the Clean Air Act (42 U.S.C. 7671c). Delays in

[1] FDA has verified all Web site addresses cited in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document has published in the **Federal Register**.

finalizing this proposed rule potentially could delay or prevent the U.S. Government from taking actions to ensure a smooth transition to inhaled drug products for the treatment of asthma and chronic obstructive pulmonary disease that do not contain ODSs. We note that interested persons have had ample notice that FDA was considering removing the essential-use designation for pirbuterol and the six other drugs that are the subject of this rulemaking, including the following:

- This issue was first considered at the July 14, 2005, meeting of the Pulmonary-Allergy Advisory Committee (see 70 FR 24605, May 10, 2005). The trade press reported on this meeting; and minutes and a transcript of the meeting were placed on the Internet.[2]
- At the 17th Meeting of the Parties to Montreal Protocol (Dakar, Senegal, December 12 through 16, 2005), the Parties decided that developed countries should provide a date to the Ozone Secretariat before the 18th meeting of the Parties (New Delhi, October 30 through November 3, 2006), by which time a regulation or regulations will have been proposed to determine whether MDIs, other than those that have albuterol as the only active ingredient, are nonessential.[3] The U.S. Government provided information to the Ozone Secretariat that a proposed rule that would eliminate the essential-use designation of pirbuterol and the six other drugs that are the subject of the proposed rule should publish by the end of May 2007.
- We also announced our intention to publish a proposed rule by the end of May 2007 that would eliminate the essential-use designation of pirbuterol and the six other drugs that are the subject of the proposed rule in the Unified Agendas[4] published in the **Federal Register** on December 11, 2006 (71 FR 73195 at 73223), and April 30, 2007 (72 FR 22489 at 22156).

Because interested persons have had ample notice of this rulemaking dating back at least to May 2005, we do not intend to grant further requests for extension of the comment period on the proposed rule.

As discussed in the previous paragraphs, FDA believes this extension will allow adequate time for interested persons to submit comments on the proposed rule, and that rescheduling the public meeting was unnecessary. The deadline for registration passed soon after the request to reschedule the meeting was made and interested persons had already made travel and other arrangements to participate on the scheduled date. Anyone who was unable to participate in the meeting still has the opportunity to submit written comments for an additional 30 days, as outlined in this notice.

II. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the proposed rule (see **DATES**). Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 1, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–15372 Filed 8–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 622

Federal Highway Administration

23 CFR Part 771

[Docket No. FTA–2006–26604]

RIN 2132–AA87

Environmental Impact and Related Procedures

AGENCIES: Federal Transit Administration (FTA), Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice of proposed rulemaking (NPRM) provides interested parties with the opportunity to comment on proposed changes to the joint FTA/FHWA procedures that implement the National Environmental Policy Act (NEPA). The revisions are prompted by enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), which prescribes additional requirements for environmental review and project decisionmaking that are not appropriately reflected in the existing joint NEPA procedures. Pursuant to provisions of SAFETEA–LU, this NPRM proposes to add new categorical exclusions (CEs) from the NEPA process. This NPRM also proposes other minor changes to the joint procedures in order to improve the description of the procedures or to provide clarification with respect to the interpretation of certain provisions. The FTA and the FHWA seek comments on the proposals contained in this notice.

DATES: Comments must be received by October 9, 2007.

ADDRESSES: *Written Comments:* Submit written comments to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., Washington, DC 20590.

Comments. You may submit comments identified by the docket number (FTA–2006–26604) by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., Washington, DC 20590.
- *Hand Delivery:* To the Docket Management System; U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., Washington, DC 20590 between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) of this notice. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under **SUPPLEMENTARY INFORMATION.**

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to the Docket Management System. (See **ADDRESSES.**)

[2] ''CFC-Only Asthma Drugs Likely to Lose 'Essential Use' Designation,'' *The Pink Sheet*, July 18, 2005, p. 15; minutes of the meeting and a transcript of the meeting are available at *http://www.fda.gov/ohrms/dockets/* (select ''Advisory Committee Materials,'' then ''2005,'' then ''Pulmonary-Allergy Drugs Advisory Committee'').

[3] For more information, see the discussion in the proposed rule (72 FR 32030 at 32031 and 32032).

[4] The Unified Agenda (also known as the Semiannual Regulatory Agenda), published twice a year in the **Federal Register**, summarizes the rules and proposed rules that each Federal agency expects to issue during the next 6 months.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Carol Braegelmann, Office of Project Development and Environmental Review (HEPE), (202) 366–1701, or Janet Myers, Office of Chief Counsel (HCC), (202) 366–2019, Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. For the FTA: Joseph Ossi, Office of Planning and Environment (TPE), (202) 366–1613, or Christopher Van Wyk, Office of Chief Counsel (TCC), (202) 366–1733, Federal Transit Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., for FHWA, and 9 a.m. to 5:30 p.m., e.t., for FTA, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2005, President Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144). Section 6002 of SAFETEA–LU created 23 U.S.C. 139, which contains a number of new requirements that the FTA and the FHWA must meet in complying with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347). In addition to these new requirements, section 6010 of SAFETEA–LU requires the FTA and the FHWA to initiate rulemaking to establish, to the extent appropriate, CEs for activities that support the deployment of intelligent transportation infrastructure and systems.

In a **Federal Register** notice published on November 15, 2006 (71 FR 66576), the FTA and the FHWA made available final joint guidance implementing the provisions of section 6002 of SAFETEA–LU. The final guidance is available at *http://www.fhwa.dot.gov/hep/section6002/.*

This document proposes to codify changes mandated by section 6002 of SAFETEA–LU in the joint NEPA procedures at 23 CFR Part 771 to eliminate confusion or inconsistencies could otherwise result. For example, the joint procedures currently provide that a comment period of ''not less than 45 days'' shall be established for draft environmental impact statements (EISs), but there is no upper limit provided on the number of days for that comment period. Section 6002 of SAFETEA–LU establishes a comment period for draft EISs of ''not more than 60 days,'' with certain exceptions. A second example is the need under section 6002 to extend invitations to take an active role in the process to ''participating agencies,'' a newly created class of agencies that may have an interest in a project under study. There is no parallel requirement in the existing regulation. The joint NEPA procedures would be revised to accommodate these types of issues, as well as other changes to the environmental review process.

There are other environmental review requirements in section 6002 of SAFETEA–LU that are neither inconsistent with the current joint procedures, nor part and parcel of a ''routine'' environmental review process. Such provisions are accommodated adequately through guidance. For example, a participating agency ''issue resolution'' process is expressly provided for in section 6002, but the FTA and the FHWA propose not to incorporate processes of that type into the joint NEPA procedures. Since we propose to codify changes mandated by section 6002 of SAFETEA–LU in the joint NEPA procedures at 23 CFR part 771 only to the extent that confusion or inconsistencies could otherwise result, applicants and others participating in the environmental review process for highway or transit-related projects are advised to become thoroughly familiar with the provisions of section 6002. Those provisions supplement the NEPA implementing regulation of the Council on Environmental Quality (CEQ) and the joint FHWA–FTA environmental regulation, and must be followed.

This NPRM proposes to revise 23 CFR 771.117 by adding new CE provisions and revising one existing provision. One newly proposed CE is for stand-alone intelligent transportation systems (ITS) projects. Section 6010 of SAFETEA–LU mandates the initiation of a rulemaking process to establish, as appropriate, a CE from the need to prepare either EISs or environmental assessments (EAs) for activities that support the deployment of intelligent transportation infrastructure and systems. ITS, an initiative begun with enactment of the Intermodal Surface Transportation Efficiency Act (ISTEA) (Pub. L. 102–240, 105 Stat. 114) in 1991, encompass a broad range of wireless and wire line communications-based information and electronics technologies. When integrated into the transportation system's infrastructure, and into vehicles themselves, these types of technology may relieve congestion, improve safety, and enhance productivity.

ITS include many types of technology-based systems that are generally divided into intelligent infrastructure systems and intelligent vehicle systems. Information about these systems and how they can be applied, as well as their costs and benefits, is available at the DOT's ITS Applications Overview Web site, which can be found at *http://www.itsoverview.its.dot.gov.* A hyperlink to ''Lessons Learned'' that can be accessed at this Web site provides additional insights into deployment of intelligent infrastructure systems and intelligent vehicle systems at various locations throughout the United States.

There are presently scores of applications of ITS in both the infrastructure and vehicle categories. Virtually all applications of ITS fit within one or more existing CEs in the existing joint NEPA procedures, such as approval of utility installations (23 CFR 771.117(c)(2)), installation of signs, pavement markers, traffic signals, and railroad warning devices (where no substantial land acquisition or traffic disruption will occur) (23 CFR 771.117(c)(8)), ridesharing activities (23 CFR 771.117(c)(13)), and activities that do not involve or lead directly to construction (23 CFR 771.117(c)(1)).

Categorical exclusion of activities that support the deployment of intelligent transportation infrastructure and systems also finds substantiation in the CEs of other Federal departments and agencies, including the U.S. Department of Homeland Security (DHS) and agencies within that department. A 200-page ''Administrative Record for Categorical Exclusions (CATEX)'' supporting the DHS CEs provides additional substantiation for categorically excluding activities that support the deployment of intelligent transportation infrastructure and systems. That administrative record can be reviewed at *http://www.dhs.gov/xlibrary/assets/nepa/Mgmt_NEPA_AdminRecdetailedCATEXsupport.pdf.* The substantiation by the DHS includes a comparative review of other Federal agency CEs that reflect similar activities and impacts. The class of actions identified in the DHS administrative record is virtually identical to activities that support deployment of intelligent transportation infrastructure and systems: ''Construction, installation, operation, maintenance, and removal of utility and communication systems (such as mobile antennas, data processing cable, and similar electronic equipment) that use existing rights-of-way, easements, utility distribution systems, and/or facilities.'' (See CE E1 in the DHS administrative record referenced above). Those activities are similar to, and would have the same impacts as, the ITS activities proposed for a CE herein.

Several other classes of action identified in the DHS administrative record also support categorical exclusion of activities that support deployment of intelligent transportation infrastructure and systems. Foremost among those classes of action are those identified as CEs B8 and B9.[1] Actions categorically excluded under the DHS CE B8 include acquisition, installation, maintenance, operation, or evaluation of security equipment. Examples include cameras and biometric devices, as well as access controls, screening devices, and traffic management systems. Actions categorically excluded under CE B9 include acquisition, installation, operation, or evaluation of physical security devices, or controls to enhance physical security. Examples include motion detection systems, use of temporary barriers, fences, and jersey walls on or adjacent to existing facilities or on land that has already been disturbed or built upon, and remote video surveillance systems.

The environmental procedures of the Federal Railroad Administration (FRA) also contain a class of categorically excluded actions quite similar to activities that support deployment of intelligent transportation infrastructure and systems. Under section 4(c)(18) of the FRA's procedures, ''[r]esearch, development and/or demonstration of advances in signal communication and/or train control systems on existing rail lines provided that such research, development and/or demonstrations do not require the acquisition of a significant amount of right-of-way, and do not significantly alter the traffic density characteristics of the existing rail line'' qualifies for categorical exclusion from the need to prepare either an EIS or an EA. See FRA Procedures for Considering Environmental Impacts, 64 FR 28545, 28547 (May 26, 1999), also available at *http://www.fra.dot.gov/Downloads/RRDev/FRAEnvProcedures.pdf.*

Upon review and consideration, the FTA and the FHWA determined that the ITS activities proposed for inclusion as CEs herein are substantially equivalent to those of the DHS, the agencies within that department, and the FRA. The proposed ITS CE will continue to provide for unusual circumstances that would require an EIS or EA.

For purposes of establishing applications of ITS as normally categorically excluded from the need to prepare EISs and EAs, listing each ITS application separately would be burdensome, require continual updating, and would be wholly inconsistent with the CEQ's guidance encouraging agencies to consider broadly defined criteria that characterize the types of actions that, based on the agency's experience, do not cause significant environmental effects. Accordingly, this NPRM proposes to add a new CE for ITS activities, under broadly defined criteria, to the list in 23 CFR 771.117(c). Consistent with the statutory definitions of ''intelligent transportation infrastructure'' and ''intelligent transportation system'' in SAFETEA–LU section 5310, the deployment of ''electronics, photonics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system'' would be categorically excluded.

A second newly proposed CE arises from section 3024 of SAFETEA–LU, which added a provision at 49 U.S.C. 5324(c) that allows the FTA to participate in the acquisition of a pre-existing railroad right-of-way (ROW) prior to the completion of the NEPA process for any project that would eventually use that railroad ROW. This type of action contemplates only a change in ownership, usually from a private freight railroad company to a public transit agency. No operational changes or construction would be permitted on the ROW until such time as the environmental review of the proposed construction or change in operations has been completed. The action is fairly similar to an existing CE (23 CFR 771.117(d)(12)) and parallels in content and impact the types of activities that have been categorically excluded by the Surface Transportation Board (STB).

The STB's environmental procedures (49 CFR 1105.6(c)(2)) categorically exclude from the need to prepare either an EIS or an EA any action that does not result in significant changes in rail carrier operations, including acquisition of a rail line. The STB also categorically excludes actions that could result in some operational changes the grant of trackage rights, for example—which contemplates an arrangement where a company that owns the line retains all rights, but allows another company to operate over certain sections of its track (see 49 CFR 1105.6(c)(4)). Significant changes to rail carrier operations can cause certain environmental impact thresholds to be exceeded. The thresholds involve operational changes—basically increased rail operations—that may negatively affect energy consumption and air quality. Under the CE proposed here for acquisition of a pre-existing railroad ROW, operational changes or construction would not be permitted.

The environmental procedures of the FRA also contain a class of categorically excluded actions quite similar to acquisition of a pre-existing railroad ROW. Under section 4(c)(17) of the FRA's procedures, ''[a]cquisition of existing railroad equipment, track and bridge structures * * * and other existing railroad facilities or the right to use such facilities, for the purpose of conducting operations of a nature and at a level of use similar to those presently * * * existing on the subject properties'' qualifies for a CE from the need to prepare either an EIS or an EA. See FRA Procedures for Considering Environmental Impacts, 64 FR 28545, 28547 (May 26, 1999), also available at *http://www.fra.dot.gov/Downloads/RRDev/FRAEnvProcedures.pdf.*

This NPRM proposes to add the acquisition of pre-existing railroad ROW to the activities that are categorically excluded from the need to prepare either an EIS or an EA in 23 CFR 771.117(c). Under the CE proposed here, operational changes or construction would not be permitted. The context of this provision within chapter 53 of title 49 U.S.C. suggests that the proposed CE would apply to FTA actions only.

The proposed revision of an existing CE would amend 23 CFR 771.117(c)(5) to clarify the CE relating to Federal land transfers. A Federal land transfer is a conveyance by the FHWA of land owned by the United States to a State department of transportation (State DOT) or its nominee when such land or interest in land is necessary for a transportation project. The transfer typically uses a highway easement deed. The FHWA's regulations governing Federal land transfers are located at 23 CFR 710.601. This CE has been in the FHWA environmental regulation since 1980. See 45 FR 71972 (Oct. 30, 1980).

The current language of 771.117(c)(5) provides that the ''[t]ransfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action'' is categorically excluded. This language categorically excludes Federal land transfers for projects for which FHWA has no involvement apart from the Federal land transfer. An example of such a situation is the perfection of title to an existing highway over Federal land for which no document of title previously had been delivered to the State DOT and recorded. This situation may exist for any number of reasons, such as where a highway had been built

[1] Other parts of the DHS administrative record that describe categories of action that are similar in many respects to activities that support deployment of intelligent transportation infrastructure and systems include CEs A7, B7, D1, and E2.

based on a right-of-entry but was not followed by execution of a deed. The Federal land transfer in such cases is merely to perfect title and is not followed by project construction or any subsequent FHWA action. In the FHWA's experience, use of the CE for this situation is appropriate, but that use is not clear under the existing wording because in such cases there is no ''subsequent action'' following the land transfer.

In addition, there is confusion whether or not the existing CE applies to all Federal land transfers undertaken by the FHWA even if the transfer is part of a larger project undergoing NEPA review. We believe that the CE for Federal land transfers is intended to be applicable to a minority of Federal land transfers. The majority of Federal land transfers are for Federal-aid highway construction or re-construction projects. For those projects, there is no need for a CE for the Federal land transfer because the FHWA must comply with NEPA for the underlying transportation project itself. The NEPA documentation for the underlying project will include an analysis of environmental impacts resulting from the acquisition and use of all of the ROW needed for the highway project, including any ROW acquired through a Federal land transfer. Evidence supporting this view appears in 23 CFR 710.601(d)(7), which requires the application for a Federal land transfer to include ''[a] statement of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, *et seq.*) and any other applicable Federal environmental laws, including the National Historic Preservation Act (16 U.S.C. 470(f)), and 23 U.S.C. 138.''

The proposed revision to the CE in 771.117(c)(5) on Federal land transfers would amend the language to read: ''Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.'' This language will clarify the circumstances under which the CE applies. The reference to 23 U.S.C. 107(d) would be added because the authority for Federal land transfers for Interstate highway projects appears in 23 U.S.C. 107(d) and is in addition to the authority for other highway projects, which appears in 23 U.S.C. 317.

Another provision added by section 6002 of SAFETEA–LU establishes a 180-day statute of limitations for FTA and FHWA projects. That 180-day time period commences with publication in the **Federal Register** of a notice that informs the public that one or more Federal agency decisions on a project is final. The FTA and the FHWA propose to reference this new limitation on claims in their joint NEPA procedures. Detailed information on the actual mechanisms for carrying out this provision appear in the section 6002 final guidance that is available at *http://www.fhwa.dot.gov/hep/section6002/.*

One of the overarching goals of SAFETEA–LU is to relieve congestion on the nation's roadways in order to promote fuel savings, to improve air quality, and to enhance passenger safety, among other objectives. To pursue this goal in the most expeditious manner possible, consistent with applicable authorities, the Administration is contemplating the addition of one or more new CEs for projects that reduce transportation system congestion (see *http://www.fightgridlocknow.gov*) and meet the criteria for categorical exclusion from NEPA review.

Congestion management activities include measures such as value pricing [2] and converting existing high occupancy vehicle (HOV) lanes to high occupancy toll (HOT) lanes.[3] Based on experience to date, most of these types of projects would normally qualify for a CE because they are not major Federal actions affecting the quality of the human environment. Thus, the Administration is considering the addition of one or more CEs to explicitly identify those congestion management activities that typically meet CE criteria. To that end, the Administration requests comments, including data and information on the experiences of project sponsors and others with these types of projects, to assist with determining their appropriate class of action under NEPA. Interested parties are also invited to submit written evidence about particular congestion management activities that they believe qualify as CEs and specific regulatory language that might be used in one or more CEs for these types of projects.

We considered whether revisions are needed to part 771 to address non-CE projects that involve private sector participation, tolling, or contain other innovative financing or congestion management features. Examples of such projects include the conversion of an existing ''free'' highway to a tolled facility, or the construction of a new facility that includes tolls. Questions about the scope of NEPA analysis required in such cases have become more frequent as a result of SAFETEA–LU provisions that facilitate innovative financing and congestion management measures.

For example, we have been asked whether a ''no toll'' alternative must always be examined in the analysis of alternatives or whether the addition of tolls after the completion of an environmental impact statement requires a supplemental environmental impact statement. The analysis of alternatives must include all reasonable alternatives, and if ''no toll'' alternatives are demonstrably unreasonable, there is no reason to examine them in detail. Very often, the inclusion or absence of tolls has little or no additional or distinct environmental impact. In these cases, there is no reason to treat toll alternatives as different from ''no toll'' alternatives. Similarly, if tolls are added later in the project development process and do not result in different environmental impacts, no supplemental environmental impact statement would be required. However, if tolls do result in significantly different traffic behavior, further analysis will be required to determine if the environmental impacts are different, perhaps concluding that a supplemental environmental impact statement is necessary using the existing standards in 23 CFR 771.130. In other words, we have concluded that existing law and guidance sufficiently articulate the applicable standard, which is that the level of analysis is determined by the significance of the potential impacts of the project. The presence of tolling or other innovative measures does not change the standard for deciding the level of analysis needed. However, we are interested in comments on the need for revisions to part 771 on this topic.

The section-by-section analysis that follows cites the provisions of SAFETEA–LU that result in inconsistencies with the joint environmental procedures, as currently

[2] Value pricing concepts presently include variably priced lanes or tolls, cordon charges, or area-wide charges (see *http://ops.fhwa.dot.gov/publications/congestionpricing/sec2.htm).*

[3] An HOV lane, sometimes called a carpool lane, is a lane reserved for the use of carpools, vanpools and buses. HOV lanes usually are located next to the regular, unrestricted, (''general purpose'') lanes. HOV lanes enable those who carpool or ride the bus to bypass the traffic in the adjacent, unrestricted lanes. HOT lanes are limited-access, normally barrier-separated highway lanes that provide free or reduced cost access to qualifying HOVs and also provide access to other paying vehicles not meeting passenger occupancy requirements. By using price and occupancy restrictions to manage the number of vehicles traveling on them, HOT lanes maintain volumes consistent with non-congested levels of service during peak travel periods. HOT lanes utilize sophisticated electronic toll collection and traffic information systems that also make variable, real-time toll pricing of non-HOV vehicles possible. For more detailed information on HOV lanes, see *http://ops.fhwa.dot.gov/freewaymgmt/hov.htm* and on HOT lanes, see *http://www.itsdocs.fhwa.dot.gov//JPODOCS/REPTS_TE//13668.html.*

constituted, and advances proposed amendments that conform to the supplemental environmental review requirements. Other minor changes to help eliminate confusion among practitioners, or to bring the regulation into better alignment with current practice, are also proposed. Because of the limited scope of this rulemaking, there will continue to be some inconsistencies between provisions in the part 771 regulation and provisions of statutes and regulations adopted under Title 23 and Title 49 since the last comprehensive revision of part 771. The FTA and the FHWA anticipate addressing such matters in a subsequent, more comprehensive rulemaking proceeding.

Section-by-Section Analysis

General Note: This NPRM contains references to regulations or other documents that are the subject of current rulemaking proceedings, such as the regulations pertaining to Section 4(f) (49 U.S.C. 303) that currently are contained in 23 CFR 771.135. Any final rule resulting from this NPRM will adopt revised references as appropriate to reflect the final results of other rulemaking proceedings.

Section 771.101 Purpose

The Administration is proposing very minor changes to emphasize that this regulation is supplemental to the CEQ regulation at 40 CFR parts 1500–1508, to update the statutory references, and to use the statutorily defined term ''public transportation'' in referring to FTA actions (49 U.S.C. 5302(a), as amended by section 3004 of SAFETEA–LU).

Section 771.105 Policy

No change in policy is proposed, but the footnote in this section would be updated to reference recent Administration guidance on environmental matters and to give the Web sites where information is available.

Section 771.107 Definitions

Three new or revised definitions are proposed.

The definition of ''Administration,'' which has meant the FHWA or the FTA, would be extended to include a State that has been assigned responsibility for certain environmental requirements in accordance with 23 U.S.C. 325, 326, or 327, or other applicable law, to the extent that the required agreement between the State and the FHWA or the FTA allows the State to act in place of the Administration. Sections 325, 326, and 327 of Title 23 allow the FHWA and, in the case of section 326, the FTA, to assign certain specified environmental responsibilities to a State through a written memorandum of understanding (MOU) or agreement. When the FHWA or the FTA enters into such MOU or agreement, the State will act in lieu of the Administration for those responsibilities that are specified in this regulation as Administration responsibilities and that have been assigned to the State through the MOU or agreement.

One example of how this extended definition would operate is the delegation to a State, under 23 U.S.C. 326, of responsibility to determine whether projects satisfy the criteria for categorical exclusion from the need to prepare either EISs or EAs. Under 23 U.S.C. 326, when the FHWA enters into a MOU with a State, the MOU specifies the scope of the NEPA CE decision-making authority in 23 CFR 771.117(c) and (d) that the FHWA assigns to the State. That is, the MOU expressly identifies certain types of projects or activities for which the NEPA CE decision will be made by the State. The State will determine whether individual actions within those assigned types of projects or activities qualify for CE status under 771.117 and the CEQ regulation at 40 CFR 1508.4. When making those assigned CE decisions, the State acts in the place of the FHWA and carries out the functions of the ''Administration'' under the part 771 regulation.

The proposed definition of ''applicant'' is new. It is being proposed because of the provision in SAFETEA–LU section 6002 (codified at 23 U.S.C. 139) that gives different roles in the environmental review process to project sponsors who are recipients of FHWA or FTA funding and project sponsors who merely seek an approval, such as a change in access control, that does not involve funding. It is important to recognize this distinction between direct funding recipients and project sponsors that are not direct recipients of funding, such as private entities and local public agencies sponsoring highway projects. The Administration expects that the involvement of the latter type of project sponsors will increase in the coming years as the use of innovative financing techniques and public-private partnerships grows. The definition would also clarify that, under the Federal Lands Highway Program and in other situations where a Federal agency would actually implement the project, the Federal lead agencies must perform the responsibilities of the applicant specified in the rule.

The proposed definition of ''lead agencies'' is new. The new definition would implement the provision in section 6002 of SAFETEA–LU (23 U.S.C. 139(c)(3)) that requires that State and local governmental entities that are the direct recipients of FHWA or FTA funding serve as joint lead agencies with the Administration. Additional lead agencies, as envisioned by the CEQ regulation (40 CFR 1501.5(b)), may also be involved, and the proposed definition recognizes this possibility.

Section 771.109 Applicability and Responsibilities

Changes are proposed in paragraphs (a), (c), and (d).

The words ''by the Administration'' would be deleted in paragraph (a)(3) in recognition of the new role of non-Federal lead agencies described herein.

Paragraph (c) would be replaced in its entirety. The new paragraph would establish which agencies will serve as lead agencies in the environmental review process and would identify the rules that govern the roles of other agencies and private entities.

The role of an applicant that is a State or local governmental entity and is the direct recipient of Administration funding for the project was substantially altered by SAFETEA–LU section 6002 (23 U.S.C. 139(c)(3)). Such applicant must serve as a joint lead agency with the Administration in managing the environmental review process and the preparation of the appropriate environmental document. Paragraphs (c)(1) and (c)(2) would so provide.

SAFETEA–LU section 6002 defers to the CEQ regulation to establish some of the other roles of agencies. For example, the CEQ regulation (40 CFR 1501.5 and 1501.6) addresses when a lead agency other than those mandated by section 6002 should be brought into the process, and when an agency must be brought in as a cooperating agency. The proposed revisions in paragraphs (c)(3) and (c)(4) follow suit in deferring to the CEQ regulation on these roles.

Paragraph (c)(5) would retain provisions relating to the authority, provided by section 102(2)(D) of NEPA itself, of a statewide agency to prepare an EIS.

Paragraph (c)(6) substitutes the term ''project sponsor,'' from SAFETEA–LU section 6002, for ''applicant'' in order to update and clarify the existing regulatory language relating to the roles available to private institutions or firms in the environmental review process.

A statutory reference in paragraph (d) would be updated.

Section 771.111 Early Coordination, Public Involvement, and Project Development

Paragraph (a)(1) would be amended for consistency with section 6002 of SAFETEA–LU by deleting the sentence that suggests an oversight role, rather than a joint lead agency role, for the Administration. Paragraph (a)(2) would be added to acknowledge the relationship between the planning process under sections 3005, 3006, and 6001 of SAFETEA–LU and the environmental review process, and to provide a footnote reference to guidance issued by the Administration on linking planning and NEPA.

Paragraph (b) would be amended to eliminate an inconsistency with SAFETEA–LU section 6002 (23 U.S.C. 139(e)) regarding the initiation of the environmental review process.

Paragraph (d) would be amended for consistency with SAFETEA–LU section 6002 (23 U.S.C. 139(d)) regarding the identification of, and invitations to, participating agencies, and to distinguish between participating and cooperating agencies. A footnote reference to guidance the Administration has issued on SAFETEA–LU section 6002 would also be added.

Paragraph (h)(1) would be amended to add a reference to 23 U.S.C. 139, which includes certain new public involvement requirements that are relevant in this context. Paragraphs (h)(2)(vii) and (viii) are proposed to be added so that the list of public involvement requirements derived from various statutory provisions is complete. The new paragraphs would address, respectively, the requirements in SAFETEA–LU section 6002 (23 U.S.C. 139(f)(1) and 139(f)(4)(A)) that an opportunity for public involvement be provided in defining the purpose and need for the proposed action and in determining the range of alternatives, and in SAFETEA–LU section 6009 (49 U.S.C. 303(d)(3)(A)) that public notice and an opportunity for public review and comment be provided prior to a Section 4(f) de minimis impact determination.

Paragraph (i) would be revised to implement the provision in SAFETEA–LU section 3023 (49 U.S.C. 5323(b)) regarding public notice and hearings, and public review and comment, for transit capital projects. The requirement for a public hearing during the circulation period of a draft EIS accords with new 49 U.S.C. 5323(b)(1)(B) and is proposed to be retained. For other projects that substantially affect the community or its public transportation service, an adequate opportunity for public review and comment must be provided under 49 U.S.C. 5323(b)(1)(A). The past transit practice of printing legal notices in newspapers to offer an opportunity for a hearing on every section 5309 grant, regardless of the class of action, is no longer necessary.

Section 771.113 Timing of Administration activities

Paragraph (a) would be modified for consistency with SAFETEA–LU section 6002 (23 U.S.C. 139(c)). The proposed revision recognizes that the lead agencies, which in the majority of cases will include the Administration and the applicant, are jointly responsible for executing the environmental review process. The third sentence, which addresses limitations on actions mandated by CEQ regulation (40 CFR 1506.1), also would be amended. The change would remove the reference to the CE for hardship and protective acquisitions in 771.117(d)(12) and add language acknowledging that the law provides some exceptions to the timing in 771.113. The proposed revision would relocate the discussion of exceptions to paragraph (d). This paragraph, which is not intended to be all-inclusive, would include references to the existing CE for hardship and protective acquisitions in 771.117(d)(12), the new transit exception provided by SAFETEA–LU section 3024 (49 U.S.C. 5324(c)) for railroad ROW acquisitions, the exception in 49 U.S.C. 5309(h)(6) for certain rolling stock acquisitions, and existing exceptions applicable to the Federal-aid Highway Program that appear in FHWA regulations in 23 CFR part 710. These proposed changes are to provide clarity. The Administration requests comments on whether additional revisions are needed to clarify the alignment between the 771.113(a) timing provision and the CEQ regulations and judicial decisions on this topic.

Paragraph (a)(2) would be amended to use the term ''Administration,'' because responsibilities related to 23 U.S.C. 128 may be assigned to a State pursuant to 23 U.S.C. 325, 326, or 327.

Paragraph (b) was originally included in the regulation to address FHWA funding issues. The statement that the completion of NEPA and related requirements does not constitute a commitment of Federal funding applies equally to the FTA program, and always has. To eliminate the inference drawn by some that the statement is not true for FTA, paragraph (b) would therefore be amended by excising the lead-in phrase ''[f]or FHWA.''

Section 771.117 Categorical exclusions

The FHWA is proposing to revise the language of paragraph (c)(5) to clarify that the CE does not apply to all Federal land transfers. The majority of such transfers provide ROW for projects that are themselves subject to NEPA. In such instances, ''the FHWA's NEPA documentation for the project will consider all significant environmental impacts of the project, including any resulting from the acquisition and use of ROW needed for the project. Therefore, the proposed revision clarifies that this CE only applies when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.

The Administration is proposing to add a new CE to the list in subparagraph (c)(21) to implement SAFETEA–LU section 6010, which requires the Administration to initiate rulemaking that considers establishing CEs for activities that support the deployment of intelligent transportation infrastructure and systems. Intelligent transportation system is defined in section 5310(3) of SAFETEA–LU to be ''electronics, photonics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system.'' Intelligent transportation infrastructure is defined in SAFETEA–LU section 5310(2) to mean ''fully integrated public sector intelligent transportation system components as defined by the [DOT] Secretary.''

The Administration has much experience with deploying ITS, including stand-alone systems and systems that are elements of, or are associated with, major construction projects. An example of the former would be an incident management system, which may include video monitors installed along an existing freeway, together with a radio dispatch system for emergency response and towing. An example of the latter would be the construction of a bus rapid transit (BRT) line and stations on an urban arterial roadway, that includes, as part of the project, the installation of GPS sensors in buses, connected by radio to a central controller (i.e., a computer) that monitors the locations of buses and provides traffic signal pre-emption for buses traveling along the arterial.

The FTA and the FHWA experience has shown that a stand-alone ITS project that is not an element of a larger construction project typically does not have significant impacts on the human environment. The Administration is proposing in new paragraph (c)(21) that

the stand-alone ITS activities be categorically excluded, in accordance with SAFETEA–LU section 6010. The Administration is not proposing to exclude an ITS activity when it is an element of a larger construction project. In this case, the magnitude and location of the construction activities will, in all likelihood, dictate the appropriate class of action. In addition, even though an ITS project might satisfy CE criteria for NEPA purposes, that does not affect the requirements applicable to the ITS activity under other Federal and State environmental laws.

The FTA proposes to add a new CE to the list in subparagraph (c)(22) to facilitate the implementation of the provision in SAFETEA–LU section 3024 (49 U.S.C. 5324(c)). This new provision of law allows the Administration to assist in acquiring a pre-existing railroad ROW, usually from a private freight railroad company that is interested in liquidating the asset, without having first performed a NEPA review of any project that may in the future occupy that ROW.

On occasion, the FTA has been directed by Congress, through specific earmarks, to assist a public transportation agency financially in the acquisition of a private railroad ROW. In these cases, the project described in the earmark was strictly the acquisition of ROW, and the funding provided in the earmark was adequate only to acquire the ROW. No project that would use the ROW had been planned at all, or had not been planned to the point that it was sufficiently well-defined to permit its NEPA review. In these cases, FTA has, through its applicant, conducted environmental reviews of the acquisition itself, and has determined that the change in ownership of the ROW, without any change in the use of the ROW, would not have any significant environmental effects. For example, the railroad ROW on which the Trinity Railway Express, a commuter rail line, operates between Dallas and Fort Worth was acquired by the public transportation agencies with FTA assistance. It remained strictly a freight railroad operation for many years after its acquisition. No significant impacts resulted from the change in ownership. The construction of commuter rail was considered in a separate, unrelated NEPA review conducted many years later.

The FTA is therefore proposing to add the acquisition of pre-existing railroad ROW under 49 U.S.C. 5324(c) to the list actions that are known not to have significant environmental impacts. The proposed revision to paragraph (c)(22) specifies that no project development may proceed, including any project to intensify the transportation use of the acquired ROW, until that project has been subjected to a NEPA review that considers alternatives.

Paragraph (d)(12) would be amended by deleting advance land acquisition loans under 49 U.S.C. 5309(b). The authority to make such loans has been eliminated from 49 U.S.C. 5309 by SAFETEA–LU section 3011. The definitions of hardship and protective acquisition have been removed from a footnote added to the text of the paragraph. In addition, a typographical error is proposed to be corrected.

Section 771.119 Environmental Assessments

The FTA is proposing to delete the option provided exclusively to FTA applicants in the second sentence of paragraph (c) of circulating an EA without FTA approval. There are several reasons for this proposal: (1) SAFETEA–LU section 6002 (23 U.S.C. 139(c)(6)) requires that the FTA, as lead agency, take an active role in completing the environmental review process expeditiously. The FTA will facilitate the EA process through active involvement in developing an EA that meets Federal requirements prior to its circulation; (2) the FTA has experienced cases where an EA circulated by an applicant without FTA approval was so deficient that major revisions and recirculation were necessary. An up-front review by the FTA would avoid such duplication of effort and associated delay; and (3) the FTA began the process of conforming its NEPA requirements as closely as possible with the FHWA's, in accordance with a requirement to that effect that appeared in two previous surface transportation authorizing laws, ISTEA and the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat 107). As a result, the FTA's practice in most FTA regional offices already conforms with the proposed change. The change would provide consistency among all FTA regional offices and applicants.

A typographical error in paragraph (g) is proposed to be corrected.

Paragraph (j) is proposed to be added for consistency with SAFETEA–LU section 6002 (23 U.S.C. 139(b)(1)), which gives the Administration the discretion of applying the environmental review process described in SAFETEA–LU section 6002 to EA projects.

Section 771.123 Draft Environmental Impact Statements

The new requirement in SAFETEA–LU section 6002 (23 U.S.C. 139(e)) for project sponsor notification of the Administration is proposed to be added to paragraph (a).

Paragraphs (b) and (c) would also be modified for consistency with SAFETEA–LU section 6002 (23 U.S.C. 139(c)). The proposed revisions recognize that the lead agencies, which in the majority of cases will include the Administration and the applicant, are jointly responsible for scoping (paragraph (b)) and preparation of the draft EIS (paragraph (c)).

Paragraph (d) would be revised to acknowledge that, in accordance with CEQ regulation, any of the joint lead agencies may select and manage a contractor to assist in the preparation of the EIS.

Paragraph (i) would be modified for consistency with the comment deadline periods established in SAFETEA–LU section 6002 (23 U.S.C. 139(g)(2)).

Paragraph (j) is proposed to be revised in two ways: (1) The words that describe the FTA program in question would be changed for consistency with the latest definitions in 49 U.S.C. 5302(a) and the current statutory section heading in 49 U.S.C. 5309; and (2) the requirement for a locally preferred alternative report following the draft EIS would be deleted from this regulation. The locally preferred alternative report is a New Starts program requirement, not a NEPA requirement, and is more appropriately addressed in the New Starts regulation (49 CFR part 611).

Section 771.125 Final Environmental Impact Statements

Paragraph (a)(1) would be modified for consistency with SAFETEA–LU section 6002 (23 U.S.C. 139(c)). The revision would recognize that the lead agencies, which in the majority of cases will include the Administration and the applicant, are jointly responsible for the preparation of the final EIS. A cross-reference to paragraph 109(d) on mitigation that was inadvertently omitted from the original regulation would be added to assist the reader in connecting related provisions.

Paragraph (c)(3) requiring the prior concurrence of FTA Headquarters in all final EISs for major transit capital investments is deleted. This concurrence has become perfunctory as the size of the transit New Starts program has grown, and it is no longer needed. The FTA Headquarters can still require prior concurrence for final EISs that fall in the categories listed in

paragraphs (c)(1) and (2), including actions involving national policy issues, actions with major unresolved issues or opposition on environmental grounds by a State or local government, and any action which the Administration's Headquarters determines should require its prior concurrence. Paragraph (c)(1) is proposed to be revised to clarify that the list of the types of projects requiring prior FTA or FHWA Headquarters concurrence is not intended to be all inclusive, and that, at its discretion, the FTA or the FHWA Headquarters may require prior concurrence in other cases.

The FTA and the FHWA propose to clarify a reference in paragraph (e) and correct a capitalization error.

Section 771.129 Re-Evaluations

The proposed revision in this section is not substantive. The paragraphs would simply be rearranged, without any change in wording, into an order that most people would find more logical. The meaning would not be changed by the re-sequencing.

Section 771.130 Supplemental Environmental Impact Statements

A typographical error in paragraph (a)(2) would be corrected.

Paragraph (e) would be updated, without substantive change, for consistency with the latest definitions in 49 U.S.C. 5302(a) and the current statutory section heading in 49 U.S.C. 5309.

Section 771.131 Emergency Action Procedures

There is no change proposed to the wording of this section. However, the new definition of ''Administration'' would change the meaning of this section in certain circumstances, namely when a State acts in lieu of the Administration under an MOU signed in accordance with 23 U.S.C. 325, 326, or 327. The FTA and the FHWA intend that, in the absence of a provision in such MOU that explicitly addresses emergency action procedures, the responsibility and authority to develop emergency action procedures is retained by the FTA and the FHWA.

Section 771.133 Compliance With Other Requirements

We propose to substitute ''Administration's'' for ''FHWA'' in the final sentence of this section. The effect of the change would be to make it clear that when a State is acting in the place of the FHWA or FTA pursuant to 23 U.S.C. 325, 326, or 327, the State may be assigned the authority to certify compliance with the requirements of 23 U.S.C. 128. Additional edits to the last sentence are proposed for clarity, without changing the substance of the sentence.

Section 771.135 Section 4(f) (49 U.S.C. 303)

No revision to section 771.135 of the regulation is proposed in this NPRM. The FTA and the FHWA, however, are currently engaged in a separate rulemaking by the Administration that proposed, through an NPRM (71 FR 42611, July 27, 2006), to delete section 771.135 and create a new 23 CFR part 774 to implement Section 4(f), as amended by SAFETEA–LU.

Section 771.139 Statute of Limitations

The FTA and the FHWA propose to add this new section to provide, in accordance with 23 U.S.C. 139(*l*), that agency decisions under NEPA, Section 4(f) determinations, project-level air quality conformity determinations, and other final Federal decisions on a project, that are announced in the **Federal Register**, may not be challenged unless such claim is filed within 180 days of the publication of a **Federal Register** notice announcing the decisions(s). The proposed revision includes a reference to information on the Administration's interpretation of the provision, and detailed implementation guidance that applies to FHWA projects.

Regulatory Notices

All comments received on or before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA and the FTA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after the close of the comment period.

Executive Order 13132: Federalism

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may 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. This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA and the FTA have determined that this proposed action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The agencies have also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional government functions. We invite State and local governments with an interest in this rulemaking to comment on the effect that adoption of specific proposals may have on State or local governments.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that ''significantly or uniquely affect'' Indian communities and that impose ''substantial and direct compliance costs'' on such communities. We have analyzed this proposed rule under Executive Order 13175 and believe that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. Therefore, a tribal impact statement is not required. We invite Indian tribal governments to provide comments on the effect that adoption of specific proposals may have on Indian communities.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), we must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If your business or organization is a small entity and if adoption of proposals contained in this notice could have a significant economic impact on your operations, please submit a comment to explain how and to what extent your business or organization could be affected.

National Environmental Policy Act

This proposed action would not have any effect on the quality of the environment under the National

Environmental Policy Act of 1969 (NEPA) and is categorically excluded under 23 CFR 771.117(c)(20). The proposed action is intended to incorporate new statutory requirements into the agencies regulations and to add new CEs from the NEPA process. Additionally, this proposed rule seeks to improve the description of the procedures and to provide clarification with respect to the interpretation of certain provisions.

Statutory/Legal Authority for this Rulemaking

This rulemaking is issued under authority of sections 3023, 3024, 6002, 6003, 6004, 6005, and 6010 of the SAFETEA–LU, the latter of which requires the Secretary of Transportation to initiate rulemaking to establish, as appropriate, CEs for ITS projects. In addition, this NPRM implements changes made by section 6002 to the process by which the FTA and the FHWA comply with NEPA.

Executive Order 12866 and DOT Regulatory Policies and Procedures

The FTA and the FHWA have determined preliminarily that this action is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11032).

Executive Order 12866 requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' We anticipate that the direct economic impact of this rulemaking would be minimal. Some of the changes that this rule proposes are requirements mandated in SAFETEA–LU. We also consider this proposal as a means to clarify the existing regulatory requirements. These proposed changes would not adversely affect, in any material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This notice does not propose any new information collection burdens.

Regulation Identifier Number (RIN)

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

Privacy Act

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

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the agencies will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the affects on State, local, and tribal governments and the private sector.

Executive Order 12630 (Taking of Private Property)

We have analyzed this proposed rule under Executive Order 12630, Government Actions and Interface with Constitutionally Protected Property Rights. We do not anticipate that this proposed rule would effect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use dated May 18, 2001. We have determined that this is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 13045 (Protection of Children)

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

List of Subjects

49 CFR Part 622

Environmental impact statements, Grant programs—transportation, Public transit, Recreation areas, Reporting and recordkeeping requirements.

23 CFR Part 771

Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Public lands, Recreation areas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed to amend Chapter VI of Title 49 and Chapter I of Title 23, Code of Federal Regulations, by amending 49 CFR Part 622 and 23 CFR Part 771, respectively as set forth below:

Federal Transit Administration

Title 49—Transportation

PART 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Subpart A—Environmental Procedures

1. Revise the authority citation for part 622 to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 303, 5301(a) and (e), 5323(b), and 5324; 23 U.S.C. 139 and 326; Pub. L. 109–59, 119 Stat. 1144, section 6010; 40 CFR parts 1500–1508; 49 CFR 1.51.

Federal Highway Administration

Title 23—Highways

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

2. Revise the authority citation for part 771 to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 23 U.S.C. 106, 109, 128, 138, 139, 315, 325, 326, and 327; 49 U.S.C. 303, 5301(e), 5323(b), and 5324; Pub. L. 109–59, 119 Stat. 1144, section 6010; 40 CFR parts 1500–1508; 49 CFR 1.48(b) and 1.51.

3. Revise § 771.101 to read as follows:

§ 771.101 Purpose.

This regulation prescribes the policies and procedures of the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) for implementing the National Environmental Policy Act of 1969 as amended (NEPA), and supplements the regulation of the Council on Environmental Quality (CEQ), 40 CFR parts 1500 through 1508 (CEQ regulation). Together these regulations set forth all FHWA, FTA, and Department of Transportation (DOT) requirements under NEPA for the processing of highway and public transportation projects. This regulation also sets forth procedures to comply with 23 U.S.C. 109(h), 128, 138, 139, 325, 326, 327, and 49 U.S.C. 303, 5301(e), 5323(b), and 5324(b) and (c).

4. Amend § 771.105 by revising paragraph (a) and its footnote to read as follows:

§ 771.105 Policy.

* * * * *

(a) To the fullest extent possible, all environmental investigations, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental document required by this regulation.[1]

* * * * *

5. Amend § 771.107 by revising paragraph (d) and adding paragraphs (f) and (g) to read as follows:

§ 771.107 Definitions.

* * * * *

(d) *Administration.* FHWA or FTA, whichever is the designated Federal lead agency for the proposed action. A reference herein to the Administration means the State when the State is functioning as the FHWA or FTA in carrying out responsibilities delegated or assigned to the State in accordance with 23 U.S.C. 325, 326, or 327, or other applicable law.

* * * * *

(f) *Applicant.* Any State or local governmental entity, or federally-recognized Indian tribe, that requests funding approval or other action by the Administration and that the Administration works with to conduct environmental studies and prepare environmental documents. When another Federal agency, or the Administration itself, is implementing the action, then the lead agencies (as defined in this regulation) may assume the responsibilities of the applicant herein. If there is no applicant, then the Federal lead agency will assume the responsibilities of the applicant hereunder.

(g) *Lead agencies.* The Administration and any other agency designated to serve as a joint lead agency with the Administration under 23 U.S.C. 139(c)(3) or under the CEQ regulation.

6. Amend § 771.109 by removing the words ''by the Administration'' from paragraph (a)(3) and by revising paragraphs (c) and (d) to read as follows:

§ 771.109 Applicability and responsibilities.

* * * * *

(c) The following roles and responsibilities apply during the environmental review process:

(1) The lead agencies are responsible for managing the environmental review process and the preparation of the appropriate environmental document.

(2) Any applicant that is a State or local governmental entity that is, or is expected to be, a direct recipient of funds under title 23 U.S.C. or chapter 53 of title 49 U.S.C. for the action shall serve as a joint lead agency with the Administration in accordance with 23 U.S.C. 139, and may prepare environmental documents if the Federal lead agency furnishes guidance and independently evaluates the documents.

(3) The Administration may invite other Federal, State, or local governmental entities or federally-recognized Indian tribes to serve as joint lead agencies in accordance with the CEQ regulation. If the applicant is serving as a joint lead agency under 23 U.S.C. 139(c)(3), then the Administration and the applicant will decide jointly which other agencies to invite to serve as joint lead agencies.

(4) When the applicant seeks an Administration action other than the approval of funds, the role of the applicant will be determined by the Administration in accordance with the CEQ regulation and 23 U.S.C. 139.

(5) Regardless of its role under paragraphs (c)(2) through (c)(4) of this section, a public agency that has statewide jurisdiction (for example, a State highway agency or a State department of transportation) or a local unit of government acting through a statewide agency, that meets the requirements of section 102(2)(D) of NEPA, may prepare the EIS and other environmental documents with the Administration furnishing guidance, participating in the preparation, and independently evaluating the document. All FHWA applicants qualify under this paragraph.

(6) The role of project sponsors that are private institutions or firms is limited to providing technical studies and commenting on environmental documents.

(d) When entering into Federal-aid project agreements pursuant to 23 U.S.C. 106, it shall be the responsibility of the State highway agency to ensure that the project is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless the State requests and receives written FHWA approval to modify or delete such mitigation features.

7. Amend § 771.111 by revising paragraphs (a), (b), (d), (h)(1), and (i) and adding paragraphs (h)(2)(vii) and (h)(2)(viii) to read as follows:

§ 771.111 Applicability and responsibilities.

(a)(1) Early coordination with appropriate agencies and the public aids in determining the type of environmental document an action requires, the scope of the document, the level of analysis, and related environmental requirements. This involves the exchange of information from the inception of a proposal for action to preparation of the environmental document. Applicants intending to apply for funds should notify the Administration at the time that a project concept is identified.

(2) The information and results presented in publicly available documents produced by, or in support of, the transportation planning process in 23 CFR part 450 may be incorporated into NEPA documents.[3]

[1] FHWA and FTA have supplementary guidance on environmental documents and procedures for their programs. This guidance includes: the FHWA Technical Advisory T6640.8A, October 30, 1987; ''SAFETEA–LU Environmental Review Process: Final Guidance,'' November 15, 2006; Appendix A to 23 CFR part 450 titled ''Linking the Transportation Planning and NEPA Processes''; and ''Transit Noise and Vibration Impact Assessment,'' May 2006. The FHWA and the FTA supplementary guidance, and any updated versions of the guidance, are available from the respective FHWA and FTA headquarters and field offices as prescribed in 49 CFR part 7 and on their respective Web sites at *http://www.fhwa.dot.gov and http://www.fta.dot.gov,* or in hard copy by request.

[3] On February 14, 2007, FHWA and FTA issued guidance on incorporating products of the planning process into NEPA documents as Appendix A of 23 CFR part 450. Titled ''Linking the Transportation Planning and NEPA Processes,'' the guidance is available on the FHWA Web site at *http://www.fhwa.dot.gov,* or in hard copy by request.

(b) The Administration will identify the probable class of action as soon as sufficient information is available to identify the probable impacts of the action.

* * * * *

(d) During the early coordination process, the lead agencies may request other agencies having an interest in the action to participate, and must invite such agencies if the action is subject to the project development procedures in 23 U.S.C. 139.[4] Agencies with special expertise may be invited to become cooperating agencies. Agencies with jurisdiction by law must be requested to become cooperating agencies.

* * * * *

(h) * * *

(1) Each State must have procedures approved by the FHWA to carry out a public involvement/public hearing program pursuant to 23 U.S.C. 128 and 139 and 40 CFR parts 1500 through 1508.

(2) * * *

* * * * *

(vii) An opportunity for public involvement in defining the purpose and need and the range of alternatives, for any action subject to the project development procedures in 23 U.S.C. 139.

(viii) Public notice and an opportunity for public review and comment on a Section 4(f) de minimis impact finding, in accordance with 49 U.S.C. 303(d).

* * * * *

(i) Applicants for capital assistance in the FTA program achieve public participation on proposed projects by holding public hearings and seeking input from the public through the scoping process for environmental documents. For projects requiring EISs, an early opportunity for public involvement in defining the purpose and need for action and the range of alternatives must be provided, and a public hearing will be held during the circulation period of the draft EIS. For other projects that substantially affect the community or its public transportation service, an adequate opportunity for public review and comment must be provided, pursuant to 49 U.S.C. 5323(b).

* * * * *

8. Amend § 771.113 by revising the introductory text of paragraph (a), paragraph (a)(2), and first sentence of paragraph (b), and adding paragraph (d), to read as follows:

§ 771.113 Timing of Administration activities.

(a) The lead agencies, in cooperation with the applicant (if not a lead agency), will perform the work necessary to complete a FONSI or an EIS and comply with other related environmental laws and regulations to the maximum extent possible during the NEPA process. This work includes environmental studies, related engineering studies, agency coordination and public involvement. However, final design activities, property acquisition, purchase of construction materials or rolling stock, or project construction shall not proceed until the following have been completed, except as otherwise provided in law or in paragraph (d):

* * * * *

(2) For actions proposed for FHWA funding, the Administration has received and accepted the certifications and any required public hearing transcripts required by 23 U.S.C. 128;

* * * * *

(b) Completion of the requirements set forth in paragraphs (a)(1) and (2) of this section is considered acceptance of the general project location and concepts described in the environmental document unless otherwise specified by the approving official. * * *

* * * * *

(d) The prohibition in paragraph (a)(1) of this section is limited by the following exceptions:

(1) Section 771.117(c)(22) contains an exception for the acquisition of pre-existing railroad right-of-way for future transit use in accordance with 49 U.S.C. 5324(c).

(2) Exceptions for hardship and protective acquisitions of real property are addressed in § 771.117(d)(12).

(3) FHWA regulations at 23 CFR 710.503 establish conditions for FHWA approval of Federal-aid highway funding for hardship and protective acquisitions.

(4) FHWA regulations at 23 CFR 710.501 address early acquisition of right-of-way by a State prior to the execution of a project agreement with the FHWA or completion of NEPA. In 710.501(b) and (c), the regulation establishes conditions governing subsequent requests for Federal-aid credit or reimbursement for the acquisition. Any State-funded early acquisition for a Federal-aid highway project where there will not be Federal-aid highway credit or reimbursement for the early acquisition is subject to the limitations described in the CEQ regulations at 40 CFR 1506.1 and other applicable Federal requirements.

(5) A limited exception for rolling stock is provided in 49 U.S.C. 5309(h)(6).

9. Amend § 771.117 by adding paragraphs (c)(21) and (c)(22), and by revising paragraphs (c)(5) and (d)(12) to read as follows:

§ 771.117 Categorical exclusions.

* * * * *

(c) * * *

(5) Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.

* * * * *

(21) Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system.

(22) Acquisition of pre-existing railroad right-of-way pursuant to 49 U.S.C. 5324(c). No project development on the acquired railroad right-of-way may proceed until the NEPA process for such project development, including the consideration of alternatives, has been completed.

* * * * *

(d) * * *

* * * * *

(12) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

(ii) Protective acquisition is done to prevent imminent development of a parcel which is needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the

[4] FHWA and FTA have developed guidance on 23 U.S.C. 139 entitled ''SAFETEA-LU Environmental Review Process: Final Guidance,'' November 15, 2006, and available at *http://www.fhwa.dot.gov* or in hardcopy upon request.

land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

10. Amend § 771.119 as follows:

a. In paragraph (c), remove the second sentence.

b. In paragraph (g), capitalize the word ''administration''.

c. Add paragraph (j) to read as follows:

§ 771.119 Environmental assessments.

* * * * *

(j) If the Administration decides to apply 23 U.S.C. 139 to an action involving an EA, then the EA shall be prepared in accordance with the applicable provisions of that statute.

11. Amend § 771.123 by revising paragraphs (a), (b), (c), (d), (i), and (j) to read as follows:

§ 771.123 Draft environmental impact statements.

(a) A draft EIS shall be prepared when the Administration determines that the action is likely to cause significant impacts on the environment. When the applicant, after consultation with any project sponsor that is not the applicant, has notified the Administration in accordance with 23 U.S.C. 139(e) and the decision has been made by the Administration to prepare an EIS, the Administration will issue a Notice of Intent (40 CFR 1508.22) for publication in the **Federal Register**. Applicants are encouraged to announce the intent to prepare an EIS by appropriate means at the local level.

(b) After publication of the Notice of Intent, the lead agencies, in cooperation with the applicant (if not a lead agency), will begin a scoping process. The scoping process will be used to identify the range of alternatives and impacts and the significant issues to be addressed in the EIS and to achieve the other objectives of 40 CFR 1501.7. For FHWA, scoping is normally achieved through public and agency involvement procedures required by § 771.111. For FTA, scoping is achieved by soliciting agency and public responses to the action by letter or by holding scoping meetings. If a scoping meeting is to be held, it should be announced in the Administration's Notice of Intent and by appropriate means at the local level.

(c) The draft EIS shall be prepared by the lead agencies, in cooperation with the applicant (if not a lead agency). The draft EIS shall evaluate all reasonable alternatives to the action and discuss the reasons why other alternatives, which may have been considered, were eliminated from detailed study. The draft EIS shall also summarize the studies, reviews, consultations, and coordination required by environmental laws or Executive Orders to the extent appropriate at this stage in the environmental process.

(d) Any of the lead agencies may select a consultant to assist in the preparation of an EIS in accordance with applicable contracting procedures and with 40 CFR 1506.5(c).

* * * * *

(i) The **Federal Register** public availability notice (40 CFR 1506.10) shall establish a period of not fewer than 45 days nor more than 60 days for the return of comments on the draft EIS unless a different period is established in accordance with 23 U.S.C. 139(g)(2)(A). The notice and the draft EIS transmittal letter shall identify where comments are to be sent.

(j) For FTA-funded major public capital investments, at the conclusion of the Draft EIS circulation period, approval may be given to begin preliminary engineering on the principal alternative(s) under consideration. During the course of such preliminary engineering, the applicant will refine project costs, effectiveness, and impact information with particular attention to alternative designs, operations, detailed location decisions and appropriate mitigation measures. These studies will be used to prepare the final EIS or, where appropriate, a supplemental draft EIS.

12. Amend § 771.125 by removing paragraph (c)(3) and revising paragraphs (a)(1), (c)(1), and (e) to read as follows:

§ 771.125 Final environmental impact statements.

(a)(1) After circulation of a draft EIS and consideration of comments received, a final EIS shall be prepared by the lead agencies, in cooperation with the applicant (if not a lead agency). The final EIS shall identify the preferred alternative and evaluate all reasonable alternatives considered. It shall also discuss substantive comments received on the draft EIS and responses thereto, summarize public involvement, and describe the mitigation measures that are to be incorporated into the proposed action. Mitigation measures presented as commitments in the final EIS will be incorporated into the project as specified in § 771.109(b) and (d). The final EIS should also document compliance, to the extent possible, with all applicable environmental laws and Executive Orders, or provide reasonable assurance that their requirements can be met.

* * * * *

(c) * * *

(1) Any action for which the Administration determines that the final EIS should be reviewed at the Headquarters office. This would typically occur when the Headquarters office determines that (i) additional coordination with other Federal, State, or local government agencies is needed; (ii) the social, economic, or environmental impacts of the action may need to be more fully explored; (iii) the impacts of the proposed action are unusually great; (iv) major issues remain unresolved; (v) the action involves national policy issues; or (vi) other considerations warrant review at the Headquarters office.

* * * * *

(e) Approval of the final EIS is not an Administration action as defined in § 771.107(c) and does not commit the Administration to approve any future grant request to fund the preferred alternative.

* * * * *

13. Revise § 771.129 to read as follows:

§ 771.129 Re-evaluations.

(a) After approval of the EIS, FONSI, or CE designation, the applicant shall consult with the Administration prior to requesting any major approvals or grants to establish whether or not the approved environmental document or CE designation remains valid for the requested Administration action. These consultations will be documented when determined necessary by the Administration.

(b) A written evaluation of the draft EIS shall be prepared by the applicant in cooperation with the Administration if an acceptable final EIS is not submitted to the Administration within three years from the date of the draft EIS circulation. The purpose of this evaluation is to determine whether or not a supplement to the draft EIS or a new draft EIS is needed.

(c) A written evaluation of the final EIS will be required before further approvals may be granted if major steps to advance the action (e.g., authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of PS&E) have not occurred within three years after the approval of the final EIS, final EIS supplement, or the last major Administration approval or grant.

14. Amend § 771.130 as follows:

a. In paragraph (a)(2), revise the word ''bearings'' to read ''bearing''.

b. Revise the first sentence of paragraph (e) to read as follows:

§ 771.130 Supplemental environmental impact statements.

* * * * *

(e) A supplemental draft EIS may be necessary for FTA major public transportation capital investments if there is a substantial change in the level of detail on project impacts during project planning and development.

* * *

* * * * *

15. Amend § 771.133 by revising the last sentence to read as follows:

§ 771.133 Compliance with other requirements.

* * * The Administration's approval of a NEPA document constitutes its finding of compliance with the report requirements of 23 U.S.C. 128.

16. Add § 771.139 to read as follows:

§ 771.139 Statute of Limitations.

Notices announcing decisions by the Administration or by other Federal agencies on a transportation project may be published in the **Federal Register** indicating that such decisions are final within the meaning of 23 U.S.C. 139(*l*). Claims arising under Federal law seeking judicial review of any such decisions are barred unless filed within 180 days after publication of the notice. This 180-day time period does not lengthen any shorter time period for seeking judicial review that otherwise is established by the Federal law under which judicial review is allowed.[5] This provision does not create any right of judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or approval.

Issued in Washington, DC, this 23rd day of July, 2007.

James S. Simpson,

Administrator, Federal Transit Administration.

Issued in Washington, DC, this 23rd day of July, 2007.

J. Richard Capka,

Administrator, Federal Highway Administration.

[FR Doc. 07–3781 Filed 8–6–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF EDUCATION

34 CFR Part 691

[Docket ID ED–2007–OPE–0135]

RIN 1840–AC92

Academic Competitiveness Grant Program and National Science and Mathematics Access To Retain Talent Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Academic Competitiveness Grant (ACG) and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) programs. The Secretary is amending these regulations to reduce administrative burden for program participants and to clarify program requirements.

DATES: We must receive your comments on or before September 6, 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.* Under ''Search Documents'' go to ''Optional Step 2'' and select ''Department of Education'' from the ''Federal Department or Agency'' drop-down menu, then click ''Submit.'' In the Docket ID column, select ED–2007–OPE–0135 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 Sophia McArdle, U.S. Department of Education, 1990 K Street, NW., room 8019, Washington, DC 20006–8544.

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:

Topic	Contact person and information
General information and information related to recognition of rigorous secondary school programs and eligible majors.	Sophia McArdle. Telephone: (202) 219–7078 or via the Internet: *sophia.mcardle@ed.gov.*
Information related to successful completion of a rigorous secondary school program.	Jacquelyn Butler. Telephone: (202) 502–7890 or via the Internet: *jacquelyn.butler@ed.gov.*
Information related to grade point average	Anthony Jones. Telephone: (202) 502–7652 or via the Internet: *anthony.jones@ed.gov.*
Information related to academic year progression and prior enrollment	Fred Sellers. Telephone: (202) 502–7502 or via the Internet: *fred.sellers@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 first contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

As outlined in the section of this notice entitled ''Negotiated Rulemaking,'' significant public

[5] The FHWA published a detailed discussion of DOT's interpretation of 23 U.S.C. 139(*l*), together with information applicable to FHWA projects about implementation procedures for 23 U.S.C. 139(*l*), in Appendix E to the ''SAFETEA–LU Environmental Review Process: Final Guidance,'' dated November 15, 2006. The implementation procedures in Appendix E apply only to FHWA projects. The section 6002 guidance, including Appendix E, is available at *http://www.fhwa.dot.gov//*, or in hardcopy by request.

participation, through four public hearings and three negotiated rulemaking sessions, has occurred in developing this NPRM. Therefore, in accordance with the requirements of the Administrative Procedure Act, the Department invites you to submit comments regarding these proposed regulations within 30 days. 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 8019, 1990 K Street, NW., 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 first person listed under **FOR FURTHER INFORMATION CONTACT**.

Negotiated Rulemaking

Section 492 of the Higher Education Act of 1965, as amended (HEA), requires the Secretary, before publishing any proposed regulations for programs authorized by Title IV of the HEA (Title IV, HEA programs), to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary must subject the proposed regulations for the Title IV, HEA programs to a negotiated rulemaking process. The proposed regulations that the Department publishes must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants in that process stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process can be found at: *http://www.ed.gov/policy/highered/reg/hearulemaking/2007/nr.html.*

On August 18, 2006, the Department published a notice in the **Federal Register** (71 FR 47756) announcing our intent to establish up to four negotiated rulemaking committees to prepare proposed regulations. One committee would focus on issues related to the ACG and National SMART Grant programs. A second committee would address issues related to the Federal student loan programs. A third committee would address programmatic, institutional eligibility, and general provisions issues. Lastly, a fourth committee would address accreditation. The notice requested nominations of individuals for membership on the committees who could represent the interests of key stakeholder constituencies on each committee. The four committees met to develop proposed regulations over the course of several months, beginning in December 2006. This NPRM proposes regulations relating to the ACG and National SMART Grant programs that were discussed by the first committee mentioned in this paragraph (the ''ACG and National SMART Grant Committee'').

The Department developed a list of proposed regulatory changes from advice and recommendations submitted by individuals and organizations in testimony submitted to the Department in a series of four public hearings held on:

- September 19, 2006, at the University of California-Berkeley in Berkeley, California.
- October 5, 2006, at the Loyola University in Chicago, Illinois.
- November 2, 2006, at the Royal Pacific Hotel Conference Center in Orlando, Florida.
- November 8, 2006, at the U.S. Department of Education in Washington, DC.

In addition, the Department accepted written comments on possible regulatory changes submitted directly to the Department by interested parties and organizations. All regional meetings and a summary of all comments received orally and in writing are posted as background material in the docket and can also be accessed at *http://www.ed.gov/policy/highered/reg/hearulemaking/2007/hearings.html.* Staff within the Department also identified issues for discussion and negotiation.

The members of the ACG and National SMART Grant Committee were:

- Gabriel Pendas, United States Students Association, and Justin McMartin, Minnesota State Colleges and Universities (alternate).
- George Chin, City University of New York, and Catherine Simoneaux, Loyola University New Orleans (alternate).
- Thomas Babel, DeVry, Incorporated, and Matthew Hamill, National Association of College and University Business Officers (alternate).
- Margaret Heisel, University of California, and Katherine Haley Will, Gettysburg College (alternate).
- Cecilia Cunningham, Middle College National Consortium, and Tim Martin, University of Arkansas (alternate).
- Lee Carrillo, Central New Mexico Community College, and Patricia Hurley, Glendale Community College (alternate).
- June Streckfus, Maryland Business Roundtable for Education, and Denise Hedrick, Educational Collaborative (alternate).
- Stanley Jones, Indiana Commission for Higher Education.
- Joan Wodiska, National Governors Association, and Robin Gelinas, Texas Education Agency (alternate).
- Mary Beth Kelly, Pennsylvania Higher Education Assistance Agency.
- Linda France, Kentucky Department of Education, and Wandra Polk, North Carolina Department of Public Instruction (alternate).
- Joe McTighe, Council for American Private Education, and William Estrada, Home School Legal Defense Association (alternate).
- Elaine Copeland, Clinton Junior College.
- Bill Lucia, Educational Testing Service, and Nancy Segal, ACT (alternate).
- Carney McCullough, U.S. Department of Education.

During its meetings, the ACG and National SMART Grant Committee reviewed and discussed drafts of proposed regulations. It did not reach consensus on the proposed regulations in this NPRM. More information on the work of this committee can be found at: *http://www.ed.gov/policy/highered/reg/hearulemaking/2007/acg.html.*

Significant Proposed Regulations

We discuss substantive issues by subject matter. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Academic Year Progression (§ 691.6(a), (b), and (c))

Statute: Section 401A(c)(3)(A), (B), (C), and (d)(2) of the HEA requires that a student's eligibility for an ACG or National SMART Grant be based on the student's progression in academic years during the student's enrollment in an undergraduate program of study. For purposes of any program under Title IV of the HEA, which includes the ACG and National SMART Grant programs, section 481(a)(2) of the HEA defines an academic year based on two minimum measures—weeks of instructional time and credit or clock hours. Under section 481(a)(2) of the HEA, an academic year for an undergraduate program of study must be at least: (1) 30 weeks of instructional time for a course of study that measures its program length in credit hours, or 26 weeks of instructional time for a course of study that measures its program length in clock hours; and (2) 24 semester credit hours, 36 quarter credit hours, or 900 clock hours. Accordingly, a student may be eligible for an ACG during the first and second academic years of the student's undergraduate education and for a National SMART Grant during the third and fourth academic years of the student's undergraduate education. Section 401A(d)(2)(B) makes clear that a student may not receive more than two ACGs and two National SMART Grants.

General (§ 691.6(a), (b), and (c))

Current Regulations: Under current § 691.6(a), (b), and (c) an institution must determine a student's eligibility for ACGs and National SMART Grants by determining the student's academic year progression, taking into account the student's attendance in all ACG and National SMART Grant eligible programs at all institutions attended by the student during the course of that student's undergraduate education. Thus, under the current regulations, a student's academic year progression is not based on the student's enrollment in each eligible program separately, but rather is based on all eligible programs at all institutions in which a student has enrolled over the course of the student's undergraduate education. Under the current regulations, an institution must determine whether a student's previous enrollment, as measured in both weeks of instructional time and credit or clock hours, affects the student's eligibility for an ACG or National SMART Grant in an academic year. For example, consider a student who completes the weeks and hours of an academic year over three semesters at one institution while enrolled in an ACG eligible program. Although the student attended the institution on a full-time basis for only one semester and received only half of the first-year ACG, under the current regulations, because the student completed the weeks and hours of an academic year, the student is no longer eligible as a first-year student at any institution. If the student transferred to another institution and that institution accepted less than the credit hours of an academic year for that student, for purposes of determining ACG eligibility, the student would be unable to receive the second half of the first-year ACG because the student is considered to have completed the first academic year in an ACG eligible program.

Proposed Regulations: We are proposing to revise current § 691.6(a), (b), and (c) to require an institution to determine a student's academic year progression based on the student's attendance in all ACG and National SMART Grant eligible programs only at the institution in which the student is currently enrolled. Under the proposed regulations, the student who completes the weeks and hours of an academic year over three semesters at one institution while enrolled in an ACG eligible program may be eligible to receive the remaining portion of the first-year ACG at another institution upon transfer if the second institution determines that the student has remaining eligibility for a first-academic-year Scheduled Award and considers the student to be enrolled in the first academic year of an ACG eligible program because it accepted less than an academic year in credit hours.

Reason: We are proposing these changes because we believe that they would reduce the administrative burden for institutions implementing the ACG and National SMART Grant programs.

During negotiated rulemaking, the Committee discussed the issue of academic year progression at length. Many of the non-Federal negotiators were concerned about the impact the regulations would have on a student's eligibility and the resulting difficulties for institutions administering the grant programs. Specifically, many of the non-Federal negotiators asked the Department to interpret the terms ''first academic year,'' ''second academic year,'' ''third academic year,'' and ''fourth academic year'' in section 401A of the HEA as a student's grade level (*e.g.,* freshman, sophomore, junior and senior years).

Given that section 481(a)(2) of the HEA specifically describes the minimal requirements for an ''academic year'' for purposes of any Title IV, HEA program and that the ACG and National SMART Grant programs are Title IV, HEA programs, the Department is unable to interpret the term ''academic year'' in any way that would be contrary to the statutory requirements in section 481(a)(2) of the HEA. Many of the non-Federal negotiators disagreed with the Department's position and suggested that the Department has taken a more flexible approach when defining a ''year'' in other contexts. For example, section 428(b)(1)(A) of the HEA sets loan limits based on whether the student has ''successfully completed'' a ''year'' of a program of undergraduate education. We have interpreted the term ''successfully completed the first year of a program of undergraduate education'' in section 428 of the HEA to relate to a student's grade level, as determined by the institution. We have the authority to interpret the statutory language in this way because Congress had not provided us with a statutory definition of the term ''first year.'' In contrast, Congress clearly defines the minimum requirements of an ''academic year'' in section 481(a)(2) of the HEA. Accordingly, we are unable to interpret ''academic year'' as the student's grade level for purposes of the ACG and National SMART Grant programs because it would be contrary to the HEA.

We appreciate the impact of administering the academic year progression requirements for the ACG and National SMART Grant programs on institutions and share the objective of reducing the administrative burden of the programs. We believe that the proposed regulations, which require an institution to determine a student's academic year progression during the student's attendance in all ACG and National SMART Grant eligible programs only at the institution in which the student is currently enrolled, would simplify the academic year progression analysis for the institution, especially when administering aid for transfer students, as discussed in the following section.

Transfer Student (§ 691.6(d))

Current Regulations: None.

Proposed Regulations: We propose to modify § 691.6(d) to codify, with changes, the guidance provided in the preamble of the November 1, 2006 final regulations (71 FR 64401, 64405). Proposed § 691.6(d)(3) would provide that when determining the appropriate

academic year for a transfer student, the institution to which the student transferred must count both (a) the number of credit or clock hours earned by the student at prior institutions that are accepted for the student, and (b) an estimated number of weeks of instructional time completed by the student. Under the proposed regulations, the estimated number of weeks of instructional time that are counted must correspond to the credit or clock hours accepted in the same ratio as the weeks of instructional time in the eligible program's academic year is to the credit or clock hours in the academic year of the student's ACG or National SMART Grant eligible program. To determine how many weeks of instructional time to count, proposed § 691.6(d)(3)(ii) would require that an institution multiply the number of credit or clock hours that the institution accepted on transfer, except as prohibited under § 691.6(d)(2), by the number of weeks of instructional time in the academic year and divide the product of the multiplication by the credit or clock hours in the academic year. For example, consider an institution that accepts 12 semester hours on transfer into a student's eligible program that has an academic year of 24 semester hours and 30 weeks of instructional time. The institution would determine the estimated weeks of instructional time associated with the 12 semester hours by multiplying 12 times 30, which would equal 360, and dividing 360 by 24 and determine that the student is considered to have completed 15 weeks of instructional time based on the 12 hours transferred. Under these proposed regulations, institutions may not include in this estimate credit or clock hours that were not earned in an ACG or National SMART Grant eligible program.

Reason: We propose adding § 691.6(d)(3) because we believe this change would facilitate the implementation of proposed § 691.6(a), (b), and (c) by clarifying how an institution would determine the academic year progression—both in terms of credit and clock hours and weeks of instructional time—of students who transfer to the institution.

Alternative Methods for Determining Weeks of Instructional Time (§ 691.6(e), (f), (g), and (h))

Current Regulations: Section 691.6(d) of the current regulations allows programs with traditional academic calendars (*i.e.,* programs for which an institution determines payments under current § 691.63(b) and (c)) to treat summer terms as the same length as other terms when counting weeks of instructional time for purposes of determining a student's eligibility for an ACG or National SMART Grant. For these programs, ''traditional academic calendars'' are calendars that consist of two semesters or three quarters in the fall through spring and have a summer term with a minimum full-time enrollment standard of 12 semester or 12 quarter hours.

Proposed Regulations: We propose to remove current § 691.6(d) because this provision would be superseded by the alternative methods of determining weeks of instructional time included in proposed § 691.6(f), (g) and (h).

For programs with traditional academic calendars, proposed § 691.6(e)(2) would provide three alternative methods for determining the weeks of instructional time for a student's academic year progression. These methods would allow institutions with traditional academic calendar programs, based on specified criteria that assure general compliance with the academic year requirements, to (a) count weeks of instructional time based on the number of terms the student has attended, (b) attribute weeks of instructional time to the credit hours earned by the student, or (c) use the student's grade level as a basis for determining weeks of instructional time completed. Because these alternatives would not apply to eligible programs without traditional academic calendars, an institution would always be required to provide an exact determination of student academic year progression for these nontraditional programs.

Under the ''terms-attended'' alternative reflected in proposed § 691.6(f), an institution would determine the weeks of instructional time a student has attended at the institution based on the number of terms the student has attended. For each term completed, a student in an eligible program would be considered to have completed the same portion of an academic year (in weeks of instructional time) as the portion of the academic year used to calculate the student's payment for a payment period. For example, consider an eligible program with two semesters with 15 weeks of instructional time in each term and a summer term of 12 weeks of instructional time that has a defined academic year of 24 semester credit hours and 30 weeks of instructional time. A payment for a payment period in this eligible program would be one-half of a student's Scheduled Award under current § 691.63(b). Under proposed § 691.6(f), a student in this eligible program who has completed four consecutive terms, including a summer term, may be considered to have completed 60 weeks of instructional time without reference to the number of credits earned in those terms. The institution must, under § 691.6(a), determine both the number of credit hours the student earned as well as the weeks of instructional time completed by the student in order to determine the student's academic year progression. So, if the student in the example in this paragraph completed four terms with only six credits in each term, that student would not have been eligible for a first-year ACG because the student was enrolled as a less-than-full-time student. That student, therefore, would be considered a second-year student at the end of the fourth term despite the fact that the student completed the equivalent of two academic years in weeks of instructional time under the ''terms-attended'' alternative. This is because a student must meet both the ''weeks of instructional time'' and ''credit or clock hours'' requirements to progress from one academic year to the next. The student in this example did not meet the credit or clock hours requirement necessary to progress to third-year status. Therefore, regardless of the number of weeks of instructional time the student completed, he or she is not considered a third-year student. Based on both weeks of instructional time and credit hours, the student is a second-year student.

Under the ''credits-earned'' alternative reflected in proposed § 691.6(g), an institution would determine the weeks of instructional time that a student has attended based on the credit hours the student actually earned in his or her ACG or National SMART Grant eligible program. The weeks of instructional time attended would be considered to be in the same proportion to weeks of instructional time in the academic year as the credit hours that the student has earned are in proportion to the credit hours in the academic year. For example, consider an eligible program with two semesters with 16 weeks of instructional time in each term and a summer term of 12 weeks of instructional time that has an academic year of 30 semester credit hours and 32 weeks of instructional time. Under proposed § 691.6(g), a student who earned 60 credit hours in this eligible program would be considered to have completed 64 weeks of instructional time, while a student who earned 45 credit hours in this eligible program would be considered to have completed 48 weeks of

instructional time. The student who had earned 60 credit hours would be considered to have completed his or her second academic year, while the student who had earned 45 credit hours would still be considered to be in his or her second academic year.

To use the ''grade-level'' alternative reflected in proposed § 691.6(h)(1), an eligible program must qualify under proposed § 691.6(h)(1)(ii) and (2)(i) by establishing that at least two-thirds of the full-time students in the program are completing at least the weeks of instructional time in the academic year for each grade level completed. Thus, under this alternative method, a student who completes a grade level at the institution is considered to have completed the academic years through that grade level in weeks of instructional time as long as the student has also earned at least the minimum number of credit hours for the academic year. For example, consider an eligible program with two semesters with 15 weeks of instructional time in each term and a summer term of 12 weeks of instructional time that has an academic year of 24 semester hours and 30 weeks of instructional time. The institution considers a student in this eligible program to advance in grade level after earning 30 semester hours. Thus, under the ''grade-level'' alternative method, a student who has earned 60 credit hours would be classified as a junior in a National SMART Grant eligible program. As a junior, the student would be considered to have completed the weeks of instructional time of the first and second academic years because the student also would have met the credit hour requirement at the institution by earning 60 semester hours, which is more than the minimum number of credit hours required for two academic years (in this example, the minimum credit hours would be 48 semester hours).

Under proposed § 691.6(d)(2), the ''credits-earned'' and ''grade-level'' alternative methods reflected in proposed § 691.6(g) and (h), respectively, would not permit an institution to allocate weeks of instructional time to certain credits that were not earned at postsecondary institutions or as part of an ACG or National SMART Grant eligible program, as discussed under the next heading *Limitations on Determining Weeks of Instructional Time.*

In addition, under proposed § 691.6(e)(2)(ii), an institution that chooses to use one of the alternative methods of determining weeks of instructional time would need to do so for all students enrolled in the eligible program. Under proposed § 691.6(e)(3), upon request from a student, an institution must also provide an exact determination of the academic progression for that student. An exact accounting of academic year progression for a student would always preempt any use of the three alternative methods for determining the weeks of instructional time that the student has attended. We discuss the requirements of proposed § 691.6(e)(3) in more detail in the *Student Request to Determine Academic Year Level* section of this notice.

Reason: We propose the changes reflected in § 691.6(f), (g) and (h) because we believe that the proposed alternative methods for determining weeks of instructional time would help alleviate the administrative burden on institutions, especially those with traditional academic calendars, to calculate the weeks of instructional time component of a student's academic year progression.

Limitations on Determining Weeks of Instructional Time (§ 691.6(d)(2))

Current Regulations: None.

Proposed Regulations: In proposed § 691.6(d)(2), we make clear that an institution may not assign any weeks of instructional time to credit or clock hours accepted toward meeting a student's eligible program if the student earned (a) the credit or clock hours from Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or other similar competency measures, (b) the credit or clock hours while not enrolled as a regular student in an ACG or National SMART Grant eligible program, or (c) the credit or clock hours for coursework that is not at the postsecondary level, such as remedial coursework. Under these proposed regulations, an institution could not consider these credits when determining a student's weeks of instructional time under an exact accounting. Moreover, an institution would not be permitted to assign any weeks of instructional time to these credits when determining a transfer student's academic year progression, or when determining any student's academic year progression under the ''credits-earned'' or ''grade-level'' alternate methods reflected in proposed § 691.6(g) and § 691.6(h), respectively. Proposed § 691.6(d)(2)(ii) would provide an exception that would require an institution to assign weeks of instructional time to determine National SMART Grant eligibility for periods in which a student was enrolled in an ACG eligible program prior to declaring, or certifying his or her intent to declare, an eligible major.

Reason: Students earn the credits described in proposed § 691.6(d)(2)(i)(A) through (C) while not enrolled in an ACG or National SMART Grant eligible program, and, therefore, these credits do not have weeks of instructional time in an ACG or National SMART Grant eligible program associated with them. Proposed § 691.6(d)(2)(i) is intended to ensure that an institution accurately determines a student's academic year progression in his or her ACG or National SMART Grant eligible program. We believe that excluding the credits described in proposed § 691.6(d)(2)(i)(A) through (C) from the calculation of weeks of instructional time is appropriate because it would treat students consistently and would preserve two full years of ACG eligibility for many students who might otherwise have such credits counted in a way that could make them ineligible for a first-year ACG. We also believe that it is appropriate to consider weeks of instructional time completed by a student while enrolled in an ACG eligible program in determining a student's academic year progression for National SMART Grants.

Student Request To Determine Academic Year Level (§ 691.6(e))

Current Regulations: None.

Proposed Regulations: In proposed § 691.6(e)(2)(iii), we have added language to clarify that a student can request and receive an exact determination of the student's academic year standing at an institution based on his or her attendance in all ACG and National SMART Grant eligible programs at that institution and on any qualifying credit hours accepted on transfer into the student's ACG or National SMART Grant eligible program. Proposed § 691.6(e)(3) also would provide that if an institution performs an exact accounting of a student's standing, it may not use any of the alternative methods in proposed § 691.6(f), (g) and (h) for determining that student's academic year standing.

Reason: We believe that it is appropriate to add proposed § 691.6(e) to the regulations because we consider an exact determination of the weeks of instructional time completed by a student to always be the best evaluation of that student's academic year standing when determining the student's eligibility for an ACG or National SMART Grant. We encourage institutions to use an exact determination whenever possible because it is necessarily more accurate than any of the estimates obtained

under the alternative methods reflected in proposed § 691.6(f), (g) and (h).

Grade Point Average (GPA) (§ 691.15)

Statute: Section 401A(c) of the HEA establishes the general criteria for a student's eligibility for payment under the ACG and National SMART Grant Programs. Section 401A(c)(3)(B)(ii) of the HEA requires a student to have obtained a cumulative GPA of at least 3.0 (or the equivalent as determined under regulations prescribed by the Secretary) at the end of the student's first academic year in order to be eligible for ACG funds during the student's second academic year of a program of undergraduate education. For a student to be eligible to receive a National SMART Grant award for the third and fourth academic years, section 401A(c)(3)(C)(ii) of the HEA requires a student to have obtained a cumulative GPA of at least 3.0 (or the equivalent as determined under regulations prescribed by the Secretary) in the coursework required for the eligible major.

Numeric Equivalent (§ 691.15(b)(1)(iii)(D), 691.15(c)(3), and 691.15(g))

Current Regulations: Under current § 691.15(b)(1)(iii)(C), to receive second-year ACG funds, a student must have obtained a GPA of 3.0 or higher on a 4.0 scale, or the equivalent, for the first academic year of the student's enrollment in an ACG eligible program. Under current § 691.15(c)(3), to receive a National SMART Grant, a student must have obtained, through the most recently completed payment period, a cumulative GPA of 3.0 or higher on a 4.0 scale, or the equivalent, in the student's National SMART Grant eligible program.

Proposed Regulations: We propose to revise § 691.15 by clarifying in proposed § 691.15(b)(1)(iii)(D) and (c)(3) that, for purposes of eligibility for ACG and National SMART Grants, institutions that assess grade point averages on a numeric scale other than a 4.0 scale must ensure that the minimum GPA requirement on that scale is the numeric equivalent of a cumulative GPA of 3.0 or higher on a 4.0 scale. We also propose to add a new § 691.15(g) providing minimum standards for determining numeric equivalencies for purposes of the ACG and National SMART Grant programs.

Reason: During negotiated rulemaking, the non-Federal negotiators requested that the Department clarify the meaning of the words ''or the equivalent'' in current § 691.15(b)(1)(iii)(C) and (c)(3). Some of the non-Federal negotiators asked whether the ''or the equivalent'' language meant that an institution could determine its own equivalency of a grading scale or simply an equivalent measure on a different numeric scale. We believe Congress clearly intended for the equivalency to relate to an objective means of assessing a student's GPA and not to permit institutions to use a subjective measure. The non-Federal negotiators discussed this topic and, ultimately, agreed with the Department's interpretation of the HEA.

In accordance with proposed § 691.15(g), an institution that has one or more academic programs that measure academic performance using alternatives to standard numeric grading procedures would be required to develop and apply an academically defensible equivalency policy with a numeric scale for purposes of determining student eligibility under the ACG and National SMART Grant programs. That equivalency policy would need to be in writing and available to students upon request. The policy would also need to include clear differentiations of student performance to support a determination that a student has performed, in his or her ACG or National SMART Grant program, at a level commensurate with at least a 3.0 GPA on a 4.0 scale. Generally, a grading policy that includes only ''satisfactory/unsatisfactory'', ''pass/fail'', or other similar nonnumeric assessments would not be a numeric equivalent under the proposed regulations. However, such assessments would be considered numeric equivalents if the institution could demonstrate that the ''pass'' or ''satisfactory'' standard has the numeric equivalent of at least a 3.0 GPA on a 4.0 scale, or that a student's performance for tests and assignments in the ACG or National SMART Grant program yielded a numeric equivalent of a 3.0 GPA on a 4.0 scale. Under proposed § 691.15(g), the institution's equivalency policies would need to be consistent with any other standards that the institution may have developed for academic and other Title IV, HEA program purposes, such as graduate school applications, scholarship eligibility, and insurance certifications, to the extent such standards distinguish among various levels of a student's academic performance.

Transfer GPA—ACG (§ 691.15(f)(1))

Current Regulations: In the case of a transfer student who has completed the first academic year of enrollment in an ACG eligible program at the prior institution, for the first payment period of enrollment at the institution to which the student transfers, current § 691.15(d)(1) provides that the institution must calculate the student's GPA using the grades earned by the student in the coursework from any prior institution accepted toward the student's ACG eligible program, regardless of the number of weeks associated with the credit or clock hours accepted for the student on transfer. In instances when a student completes his or her first academic year after transferring, institutions have been able to use their own policies on how transfer credits are counted to determine whether the grades for the transfer credits are included in the GPA calculated to determine the student's eligibility for another ACG award.

Proposed Regulations: Proposed § 691.15(f)(1)(i) would provide that, for a student who transfers to an institution that accepts at least the credit or clock hours for an entire academic year, but less than for two academic years, the GPA to determine second-year eligibility is calculated using the grades from all coursework accepted by the current institution into the student's eligible program. Under proposed § 691.15(f)(1)(ii), for a student who transfers to an institution that accepts less than the credit or clock hours for an academic year from all prior postsecondary institutions attended by the student, the GPA to determine second-year eligibility is calculated by combining the grades from all coursework accepted on transfer by the current institution into the student's eligible program with the grades for coursework earned at the current institution through the payment period in which the student completes the credit or clock hours for the student's first academic year in the eligible program. In conjunction with the proposed changes to § 691.6(a), (b), and (c), an institution would no longer consider a student's GPA from the student's first academic year in an eligible program at another institution.

Reason: The changes in proposed § 691.15(f)(1) are being made in response to requests from the non-Federal negotiators to clarify how to determine the GPA for transfer students. The non-Federal negotiators said that the GPA calculations for the ACG and National SMART Grant programs were confusing because the programs have different requirements. The non-Federal negotiators also sought to reduce the administrative burden on institutions when determining transfer student GPA for ACGs.

Proposed § 691.15(f)(1) would clarify that, for a second-year ACG, the GPA

must be calculated at the end of the student's first academic year (in contrast to the requirement under the National SMART Grant Program that a 3.0 cumulative GPA be maintained for every payment period). The requirement that the GPA for a transfer student be determined based on the coursework accepted into the ACG-eligible program at the current institution, which is reflected in proposed § 691.15(f)(1)(i), would clarify that an institution only needs to track the coursework it accepts into the student's ACG-eligible program. Finally, under proposed § 691.15(f)(1)(ii), an institution could combine grades from coursework earned at prior institutions with grades from coursework earned at the current institution to calculate the GPA for the first academic year in an ACG eligible program for the purpose of establishing eligibility for the second-year ACG in a way that minimizes institutional burden.

Transfer GPA—National SMART Grant (§ 691.15(f)(2))

Current Regulations: Current § 691.15(c)(3) states that, in order to be eligible to receive a National SMART Grant for the third or fourth academic year of the student's eligible program, the student must have a cumulative GPA through the most-recently completed payment period of at least 3.0 or higher on a 4.0 scale, or the equivalent, consistent with other institutional measures for academic and Title IV, HEA program purposes, in the student's National SMART Grant eligible program. For a transfer student, current § 691.15(d) requires an institution to calculate the student's GPA for the student's first payment period of enrollment using the grades earned by the student in the coursework from any prior institution that it accepts towards the student's National SMART Grant eligible program if the student would be otherwise eligible for a National SMART Grant. However, under current § 691.15(d)(2), if the institution accepts no credits towards the student's eligible program, the institution must consider the student to be ineligible for National SMART Grant funds until the student completes at least one payment period in an eligible program with a qualifying GPA. Under the current regulatory framework, after the initial payment period, an institution should calculate a student's GPA consistent with its other measures for academic and Title IV, HEA program purposes.

Proposed Regulations: Under proposed § 691.15(f)(2), if a student transfers from one institution to an institution at which the student is eligible for a National SMART Grant, the institution to which the student transfers would be required to determine that student's eligibility for the first payment period using one of two methods, whichever method coincides with the institution's academic policy.

Under the first method, which is reflected in proposed § 691.15(f)(2)(i)(A), if an institution's academic policy does not incorporate grades from coursework that it accepts on transfer into the student's GPA at that institution, then it would be required to calculate the student's GPA for the first payment period of enrollment using the grades earned by the student in the coursework from any prior postsecondary institution that it accepts toward the student's National SMART Grant eligible program. That GPA would be used only for the first payment period of the student's program. The institution would then be required to apply its academic policy for subsequent payment periods and not incorporate, into the student's GPA, the student's grades from the coursework the institution accepts on transfer.

Under the second method, which is reflected in proposed § 691.15(f)(2)(i)(B), if an institution's academic policy incorporates grades from coursework that it accepts on transfer into the student's GPA at that institution, then the grades assigned to the coursework accepted by the institution into the student's National SMART Grant eligible program would be used as the student's cumulative GPA to determine eligibility for the first payment period of enrollment and would be included in the student's cumulative GPA for all subsequent payment periods in accordance with the institution's academic policy.

Reason: During negotiated rulemaking, the non-Federal negotiators believed the current regulations sufficiently and appropriately addressed the GPA calculation for a transfer student eligible for a National SMART Grant, but they requested that the proposed regulatory language clarify how an institution should calculate a GPA based on whether its academic policy incorporated transfer grades into the GPA at that institution. The proposed regulations for calculating a GPA for a transfer student who is eligible for a National SMART Grant would codify existing practice and the non-Federal negotiators were comfortable with taking this approach.

Prior Enrollment in a Postsecondary Educational Program and Student Eligibility (§ 691.15)

Statute: Section 401A(c)(3)(A)(ii) of the HEA provides that, for a student to be eligible for a first-year ACG, the student must not have been previously enrolled in a program of undergraduate education.

Current Regulations: Current § 691.15(b)(1)(ii)(B) provides that a student is eligible for a first-year ACG if the student was not previously enrolled as a regular student in an ACG eligible program while enrolled in high school. Under the current regulations, therefore, a student is eligible for a first-year ACG after graduating from high school even if—

- While in high school, the student enrolled in an ACG ineligible program, *e.g.*, a certificate program, or postsecondary courses without being admitted as a regular student; or
- After high school, the student was enrolled in an ACG eligible program as long as the student had not completed his or her first academic year of enrollment in the eligible program.

Under the current regulations, a student enrolled in dual-credit or early college programs may be eligible for an ACG after completing secondary school if the student is not admitted as a regular student in an eligible program while in secondary school.

Proposed Regulations: Proposed § 691.15(b)(1)(ii)(C)(2) would amend the current regulations by extending ACG eligibility to a postsecondary student who previously enrolled as a regular student in an ACG eligible program while in high school provided that the student was beyond the age of compulsory school attendance during that prior enrollment.

Reason: During discussions at negotiated rulemaking, the non-Federal negotiators noted current statutory and regulatory restrictions on postsecondary institutions that limit an eligible institution from admitting most high school students as regular students. The non-Federal negotiators considered potential problems under the current regulations, especially in relation to dual-credit and early college programs.

We agree with the concerns raised by the non-Federal negotiators and believe it is important to narrow this restriction on ACG student eligibility resulting from a student participating in dual-credit or early college programs while enrolled in secondary school. Thus, we propose to change current § 691.15(b)(1)(ii)(B) to ensure that a student would not be disqualified for a first-year ACG award if that student

enrolled in an ACG eligible program while in high school, so long as the student was above the age of compulsory school attendance at the time and never received Federal student aid funds while in high school. Because the student in this example could not qualify for any Federal student aid funds while enrolled in high school under section 484(a)(1) of the HEA, the student's enrollment would not disqualify the student for an ACG at a later date. This proposed change would conform with the institutional eligibility requirement in 34 CFR 600.4, 600.5, and 600.6 that an institution may admit as regular students only persons who have a high school diploma or the equivalent, or who are beyond the age of compulsory school attendance.

Eligible Majors (§§ 691.15 and 691.17)

Statute: Section 401A(c)(3)(C)(i) of the HEA provides that a student may receive a National SMART Grant if the student is pursuing a major in the physical, life, or computer sciences; mathematics; technology; or engineering (as determined by the Secretary); or a foreign language that the Secretary, in consultation with the Director of National Intelligence, determines to be critical to the national security of the United States.

Documenting Major (§ 691.15)

Current Regulations: Current § 691.15(c)(2) requires that, to be eligible for a National SMART Grant, a student must formally declare his or her eligible major in accordance with the institution's academic requirements. However, if under an institution's procedures, a student would not be able to formally declare a major in time to qualify for a National SMART Grant, the student must demonstrate his or her intent to declare an eligible major as documented by the institution. Under current § 691.15(c)(2), as soon as the student is able to formally declare a major, the student must do so in order to remain eligible for a National SMART Grant. In the case of a student who has declared or intends to declare an eligible major, the student must enroll in the courses necessary to complete the degree program and to fulfill the eligible major requirements.

Proposed Regulations: Proposed § 691.15(d)(1) and 691.15(e) would clarify how an institution must document a student's eligible major, and progress in the eligible program and major, by requiring the institution to maintain the following documentation: (a) Documentation of the declared major or, in the case of a student's intent to declare a major, a written declaration of intent provided by the student that has been received recently enough for the institution to determine that it still correctly reflects the student's stated intent; and (b) written documentation showing that the student is completing coursework at an appropriate pace in the student's declared eligible major or the eligible major that the student intends to declare.

Reason: During negotiated rulemaking, the non-Federal negotiators sought clarification on how institutions should document a student's intent to declare a major to ensure appropriate compliance. Specifically, the non-Federal negotiators asked the Department to provide examples of how institutions should document a student's intent to declare a major. The changes reflected in proposed § 691.15(d)(1) and 691.15(e) would clarify how institutions must document a student's declared major or intent to declare a specific major and also how institutions must confirm that the student is taking the appropriate courses for the student's eligible program and eligible major. We think that these procedures are appropriate because they would enable the Department to monitor compliance with the statutory requirement that, to be eligible for a National SMART Grant, a student must pursue an eligible major.

Determination of Eligible Majors (§ 691.2(d) and § 691.17)

Current Regulations: Current § 691.17(a) provides that, for each award year, the Secretary identifies eligible majors in the physical, life, or computer sciences; mathematics; technology; engineering; and, after consulting with the Director of National Intelligence, critical foreign languages.

Proposed Regulations: Proposed § 691.17(d) would provide a process by which institutions of higher education could request that additional majors be added to the Department's list of eligible majors for National SMART Grants. Under proposed § 691.17(d), an institution would identify a proposed additional eligible major by its Classification of Instructional Programs (CIP) code developed by the National Center for Education Statistics. For the sake of clarity, we also have proposed to add to current § 691.2(d) a definition of the term CIP as it pertains to the National SMART Grant Program.

Reason: The non-Federal negotiators requested a mechanism by which institutions of higher education could ask the Department to consider adding majors to its list of eligible majors. We believe it is reasonable to incorporate a process in the proposed regulations to facilitate requests from institutions to add additional majors in a consistent manner, for the purpose of establishing a student's National SMART Grant eligibility.

The CIP is a taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics. For purposes of the National SMART Grant Program, the CIP coding scheme is currently used to identify eligible majors. As part of the new process, reflected in proposed § 691.17(d), institutions would need to identify additional majors by referencing the name of the proposed additional major and its CIP code. We would continue the current process of publishing the final list of eligible majors for each award year on the Federal Student Aid Information for Financial Aid Professionals Web site.

Rigorous Secondary School Program of Study (§§ 691.15 and 691.16)

Successful Completion of a Rigorous Secondary School Program of Study (§ 691.15)

Statute: Section 401A(c)(3)(A)(i) and (B)(i) of the HEA requires that a student must have successfully completed a rigorous secondary school program of study, after January 1, 2006 for first-year students and after January 1, 2005 for second-year students, in order to receive an ACG.

Current Regulations: Under current § 691.15(b)(2)(i), an institution must document a student's completion of a rigorous secondary school program of study using documentation from the appropriate cognizant authority provided by that authority or by the student.

Proposed Regulations: Proposed § 691.15(b)(1)(ii)(A) and § 691.15(b)(1)(iii)(A) would clarify that, in order to successfully complete a rigorous secondary school program of study, a student must, in addition to completing the rigorous program of study, obtain a high school diploma or for a home-schooled student, receive a high school diploma or certification of completion of a secondary school education provided by the student's parent or guardian. Proposed § 691.15(b)(2)(i) would clarify that an institution must document a student's successful completion of a rigorous secondary school program of study using documentation provided by the student or cognizant authority.

Reason: The non-Federal negotiators requested that the regulations clarify the meaning of the term ''successful'' in the context of completing a rigorous

secondary school program of study. Specifically, the non-Federal negotiators asked that the proposed regulations clarify that to ''successfully'' complete a rigorous secondary school program of study, a student must both (a) receive a high school diploma or, for a home-schooled student, receive a high school diploma or certification of completion of a secondary school education provided by the student's parent or guardian; and (b) successfully complete a rigorous secondary school program of study as recognized by the Secretary under current § 691.16. We believe that the proposed changes address the non-Federal negotiators' concerns.

Under proposed § 691.16, in the case of a rigorous secondary school program of study established by a State educational agency (SEA) or local educational agency (LEA), the specific requirements for successfully completing a rigorous secondary school program of study would be determined by that SEA or LEA and may include, for example, a qualitative measure such as a minimum GPA, in addition to receiving a high school diploma or, for a home-schooled student, receiving a high school diploma or certification of completion of a secondary school education provided by the student's parent or guardian.

The concept of ''success'' in relationship to completing a rigorous secondary school program of study for ACG purposes is also addressed in proposed § 691.16(d), which is substantially the same as current § 691.16(d). First, the requirement for successfully completing the set of courses designated by the Secretary under proposed § 691.16(d)(2) would be that a student must receive credit for those courses, in addition to receiving a high school diploma or, for a home-schooled student, receiving a high school diploma or certification of completion of a secondary school education provided by the student's parent or guardian. The proposed regulations would not require that a student meet a minimum qualitative standard for the courses, such as receiving a minimum GPA, as long as the student received credit for those courses. Moreover, the proposed regulations would not include any minimum qualitative measure for successful completion of the coursework associated with AP or IB courses under current § 691.16(d)(4) and (5) as long as the student completes the AP or IB coursework and receives a passing grade. Thus, nothing in these proposed regulations would change current § 691.16(d)(4) and (5), under which a student is considered to have successfully completed a rigorous secondary school program of study by completing and passing the required IB or AP courses and scoring a 4 or higher on the corresponding IB exams or a 3 or higher on the corresponding AP exams, and obtaining a high school diploma or, for a home-schooled student, a high school diploma or certification of completion of a secondary school education provided by the student's parent or guardian.

Recognition of a Rigorous Secondary School Program of Study (§ 691.16)

Statute: Section 401A(f) of the HEA requires the Secretary to recognize at least one rigorous secondary school program of study in each State for the purpose of determining student eligibility for an ACG. Section 401A(c)(3)(A)(i) and (B)(i) provides that a rigorous secondary school program of study is established by an SEA or LEA.

Current Regulations: Current § 691.16 provides that, for an award year, the Secretary recognizes in each State at least one rigorous secondary school program of study established by an LEA the State has authorized to establish a separate secondary school program of study or an SEA. The current regulations also provide for the Secretary to recognize additional secondary school programs of study as rigorous, in addition to any that may subsequently be established by SEAs and LEAs and recognized by the Secretary. These additional programs include certain advanced and honors programs established by States and in existence for the 2004–2005 or 2005–2006 school year.

Proposed Regulations: Proposed § 691.16(b)(2) would allow SEAs and LEAs to request recognition of rigorous secondary school programs of study for school years beyond the immediate next school year. Proposed § 691.16(d)(1) would include a new element providing for the continued recognition of advanced or honors secondary school programs of study by the Secretary for school years subsequent to the 2005–2006 school year.

Reason: We believe that the proposed regulations would provide an efficient process for the Secretary to recognize rigorous secondary school programs of study for multiple years into the future. This process would allow SEAs and LEAs to provide students with information about what constitutes a rigorous secondary school program of study now and in future years. We believe that providing students with this information would have several positive outcomes. First, the information would provide certainty for a student that his or her secondary school program of study will qualify as rigorous for that student's State and graduation year. Second, having this information would allow a student to perform long-range planning of his or her secondary school program of study to ensure that a recognized rigorous secondary school program of study is completed. Third, SEAs and LEAs would be able to perform long-term resource allocation planning to ensure that the recognized rigorous secondary school program of study is actually available to students.

Executive Order 12866

1. Regulatory Impact Analysis

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

Pursuant to the terms of the Executive order, it has been determined that this proposed regulatory action would not have an annual effect on the economy of more than $100 million. Therefore, this action is not ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866. In accordance with the Executive order, the Secretary has assessed the potential costs and benefits of this regulatory action and has determined the benefits justify the costs.

Need for Federal Regulatory Action

These proposed regulations address a range of issues affecting students and institutions participating in the ACG and National SMART Grant programs. Prior to the start of negotiated rulemaking, through a notice in the **Federal Register** and four regional

hearings, the Department solicited testimony and written comments from interested parties to identify those areas of the Title IV regulations that they felt needed to be revised. Areas identified during this process that are addressed by these proposed regulations include:

- Difficulties experienced by institutions in determining academic year progression. The Department has proposed changes to simplify determination of academic year progression, in general, and for transfer students, in particular. The Department also has proposed certain alternative methods for determining weeks of instructional time.
- Concerns regarding student GPA calculation at an institution that uses a numeric scale other than a 4.0 scale. The Department has proposed changes to clarify how to calculate GPA at an institution that assesses GPA on a numeric scale other than a 4.0 scale.
- Confusion in both the ACG and National SMART Grant programs regarding GPA calculation for transfer students. The Department has proposed changes to clarify the GPA calculation for transfer students in each program.
- Concerns regarding a student's prior enrollment in a postsecondary educational program and student eligibility. The Department has proposed extending eligibility to students who enroll as regular students in an ACG eligible program while in high school and who are beyond the age of compulsory school attendance.
- Confusion regarding the documentation of a student's declared major or intent to declare a major, and the student's progress in the eligible major. The Department has proposed changes to clarify the documentation requirements.
- Lack of a process by which institutions of higher education can request additional majors to be added to the list of eligible majors under the National SMART Grant program. The Department has proposed a process by which institutions can request additional majors.
- Confusion regarding what constitutes successful completion of a rigorous secondary school program of study. The Department has proposed changes to clarify this requirement.
- Concerns regarding recognition of a rigorous secondary school program of study. The Department has proposed permitting State educational agencies and local educational agencies to request recognition of rigorous secondary school programs of study for school years beyond the immediate next school year.

Regulatory Alternatives Considered

A broad range of alternatives to the proposed regulations were considered as part of the negotiated rulemaking process. These alternatives are reviewed in detail elsewhere in this preamble under the *Reasons* sections accompanying the discussion of each proposed regulatory provision. In assessing the budgetary impact of these alternatives, the Department considered the effect of possible changes on student eligibility for ACG and National SMART Grants or on the size or timing of student awards. In all cases, the alternatives considered, which generally dealt with the clarification of existing definitions, procedures, or processes to simplify program administration, did not have a measurable effect on Federal costs.

Benefits

Many of the proposed regulations merely clarify the current regulations, codify subregulatory guidance, or make relatively minor changes intended to streamline program operations. In the absence of data to the contrary, the Department believes the additional clarity and enhanced efficiency resulting from the proposed changes represent benefits with little or no countervailing costs or additional burden. This belief is supported by the fact that the ACG and National SMART Grant committee reached tentative agreement in many areas, and, where it failed to reach tentative agreement, the failure generally did not reflect objections to the imposition of burdensome new or additional requirements. Nonetheless, the Department is interested in comments on possible administrative burdens related to the proposed regulations.

Benefits provided in these proposed regulations include the elimination of the requirement that institutions determine a student's academic year progression based on the student's attendance in ACG or National SMART Grant eligible programs at all institutions, rather than at the institution the student currently attends; the ability for institutions of higher education to use three alternative approaches for determining weeks of instructional time in a student's academic year progression; and clarification of how institutions determine a student's GPA for the purpose of determining eligibility for an ACG or National SMART Grant, document a student's intent to major in an eligible subject, and define successful completion of a rigorous secondary school program of study. In addition, the proposed regulations would allow States to designate a rigorous secondary school program of study for more than one year, and create a process for institutions to suggest additions to the list of majors in which students are eligible to receive a National SMART Grant. Lastly, the proposed regulations would allow students beyond the age of compulsory education who enroll as a regular student in an ACG eligible program while in high school to be eligible for an ACG if they meet the other eligibility requirements after graduating from high school. None of these provisions were determined to have a substantial economic impact.

Costs

The only provision included in the regulations that directly affected student eligibility and potentially could result in increased Federal costs involves extending eligibility to students who enroll in an ACG-eligible program while in high school and who are beyond the age of compulsory school attendance. These students, ineligible to receive an ACG under current regulations, would be eligible under the proposed regulations. The Department believes this provision will affect so few students that it will not result in measurable Federal costs.

Because institutions of higher education affected by these regulations already participate in the ACG and National SMART Grant programs, these schools must have already established systems and procedures in place to meet program eligibility requirements. The proposed regulations involve discrete changes in specific parameters associated with existing guidance rather than entirely new requirements. Accordingly, entities wishing to continue to participate in the programs have already absorbed most of the administrative costs related to implementing these proposed regulations. Marginal costs over this baseline are primarily related to one-time system changes that, while possibly significant in some cases, are an unavoidable cost of continued program participation. The Department is particularly interested in comments on possible administrative burdens related to these proposed regulations.

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*.

Accounting statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 1 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. As shown in the table, the Department estimates that these proposed regulations would have no impact on Federal student aid payments.

TABLE 1.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED SAVINGS

[In millions]

Category	Transfers
Annualized Monetized Transfers	$0

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, § 691.16 Recognition of a Rigorous Secondary School Program of Study.)
- 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 this 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. These proposed regulations would affect institutions of higher education, States, State agencies, and individual students. The U.S. Small Business Administration (SBA) Size Standards define these institutions as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. States, State agencies, and individuals are not defined as ''small entities'' under the Regulatory Flexibility Act.

A significant percentage of institutions participating in the ACG and National SMART Grant programs meet the definition of ''small entities'' under the Regulatory Flexibility Act. While these institutions fall within the SBA size guidelines, the proposed regulations would not impose significant new costs on these entities.

The Secretary invites comments from small institutions as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995

Sections 691.15 and 691.16 contain information collection requirements. We also address the potential for burden in proposed § 691.17. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of these sections to OMB for its review.

Collection of Information: Academic Competitiveness Grant (ACG) Program and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program, (Information Collection 1845–0078: State Proposals for Recognition of Rigorous Secondary School Programs of Study).

Section 691.15—Eligibility To Receive a Grant, Prior Enrollment in a Postsecondary Education Program, and Student Eligibility

The proposed regulations would extend eligibility to a student who may enroll as a regular student in an ACG eligible program while in high school if the student is beyond the age of compulsory school attendance. This proposed change does not represent a change in burden. The eligibility determination process would simply include an additional category of eligible students for the ACG Program.

Documenting Major

The proposed regulations would clarify how institutions may document a student's declaration of an eligible major or intent to declare an eligible major. This documentation is needed for a student to qualify for a National SMART Grant. The proposed changes would not result in a change in burden for the institution because an institution is currently required to document a student's declaration of an eligible major or intent to declare an eligible major.

Transfer GPA—ACG

The proposed regulations would provide clarification on how to calculate the GPA to determine a transfer student's second-year ACG eligibility as well as on the ACG requirement that GPA be calculated at the end of the student's first academic year. This proposed change would provide additional clarity about the determination of the transfer student's GPA from the grades of the coursework accepted by the current institution and therefore would not impose any additional institutional burden.

Transfer GPA—National SMART Grant

The proposed regulations would specify how an institution must calculate a GPA for a transfer student under the National SMART Grant program based on whether the institution's academic policy incorporated transfer grades into the GPA at that institution. The proposed changes would not result in a change in burden for the institution because an institution is currently required to calculate a GPA for a transfer student.

Successful Completion of a Rigorous Secondary School Program of Study

The proposed regulations would clarify that, for a student to successfully complete a rigorous secondary school program of study, the student must obtain a high school diploma, or for a home-schooled student, receive a high school diploma or a certification of completion of a secondary school education provided by the student's parent or guardian. The student also must successfully complete a rigorous secondary school program of study as identified under § 691.16. The proposed changes would not represent a change in burden because the changes will only clarify the term ''successfully'' and clarify that a student must receive a high school diploma or, in the case of a home-schooled student, a high school diploma or certification of completion provided by the student's parent or guardian.

Section 691.16 Recognition of a Rigorous Secondary School Program of Study

The proposed regulations would allow SEAs and LEAs to request recognition of rigorous secondary school programs of study for school years beyond the immediate next school year. The proposed regulations also would amend the provision regarding advanced or honors secondary school programs of study to provide for continued recognition of these programs by the Secretary for school years subsequent to the 2005–2006 school year. The proposed changes do not increase burden because there is an annual process for the recognition of a rigorous secondary school program of study currently in place. The proposed changes simply permit submission by the SEAs and LEAs, and recognition by the Secretary, for multiple years rather than a single year, and therefore do not increase the burden.

Determination of Eligible Majors

While the proposed regulations in 34 CFR 691.17(d) provide a process by which institutions of higher education may request that additional majors be added to the approved list of eligible majors for the National SMART Grant Program, we anticipate only one or two requests per year, thus the anticipated additional burden is below the minimum threshold to be considered a burden to the affected entity—institutions of higher education.

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC, 20503; Attention: Desk Officer for U.S. Department of Education. Send these comments by e-mail to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. Commenters need only submit comments via one submission method. You may also send a copy of these comments to the Department contact 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

These programs are 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.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would 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 Numbers: 84.375 Academic Competitiveness Grants; 84.376 National SMART Grants)

List of Subjects in 34 CFR Part 691

Colleges and universities, Elementary and secondary education, Grant programs—education, Student aid.

Dated: August 2, 2007.

Margaret Spellings,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 691 of title 34 of the Code of Federal Regulations as follows:

PART 691—ACADEMIC COMPETITIVENESS GRANT (ACG) AND NATIONAL SCIENCE AND MATHEMATICS ACCESS TO RETAIN TALENT GRANT (NATIONAL SMART GRANT) PROGRAMS

1. The authority citation for part 691 continues to read as follows:

Authority: 20 U.S.C. 1070a–1, unless otherwise noted.

2. Section 691.2(d) is amended by adding, in alphabetical order, the definition of ''Classification of Instructional Programs (CIP)'' to read as follows:

§ 691.2 Definitions.

* * * * *

(d) * * *

Classification of Instructional Programs (CIP): A taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics used to identify eligible majors for the National SMART Grant Program. Further information on CIP can be found at *http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2002165.*

* * * * *

3. Section 691.6 is amended by:

A. In paragraphs (a) and (b), removing the words ''undergraduate education'' and adding, in their place, the words ''enrollment at an institution''.

B. In paragraph (c), adding the words ''during the student's undergraduate education in all eligible programs'' before the punctuation ''.''.

C. Revising paragraph (d).

D. Adding new paragraphs (e), (f), (g), and (h).

The revision and additions read as follows:

§ 691.6 Duration of student eligibility—undergraduate course of study.

* * * * *

(d)(1)(i) Institutions must count credit or clock hours earned by a student toward a student's completion of the

credit or clock hours of an academic year if the institution accepts those hours toward the student's eligible program, including credit or clock hours that are earned—

(A) From Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures; or

(B) At an institution while not enrolled as a regular student in an eligible program.

(ii) Institutions may not count credit or clock hours awarded for coursework that is at less than the postsecondary level, such as remedial coursework. These credit or clock hours may not be considered in determining the credit or clock hours that a student has completed in an academic year.

(2)(i) An institution may not assign any weeks of instructional time to credit or clock hours accepted toward meeting the student's eligible program if the student earned the credit or clock hours—

(A) From Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures;

(B) At a postsecondary institution while not enrolled as a regular student in an eligible program except as provided in paragraph (d)(2)(ii) of this section; or

(C) For coursework that is not at the postsecondary level, such as remedial coursework.

(ii) An institution must assign weeks of instructional time to determining National SMART Grant eligibility for periods in which a student was enrolled in an ACG eligible program prior to declaring, or certifying his or her intent to declare, an eligible major.

(3) For a transfer student, an institution determining the academic years completed by the student must count—

(i) The number of credit or clock hours earned by the student at prior institutions that comply with paragraph (d)(1) of this section, and that the institution accepts on transfer into the student's eligible program; and

(ii) The weeks of instructional time, except as prohibited in paragraph (d)(2) of this section, determined by multiplying the number of credit or clock hours that the institution accepts on transfer by the number of weeks of instructional time in the academic year and dividing the product of the multiplication by the credit or clock hours in the academic year.

(e)(1) Except as provided in paragraph (e)(2) of this section, an institution must determine a student's progression in the weeks of instructional time of an academic year through an exact accounting of those weeks of instructional time.

(2) An institution may use, on an eligible program-by-program basis, an alternative method to determine the weeks of instructional time taken by its students during an academic year under paragraphs (f), (g), and (h) of this section if the institution—

(i) Determines payments for the student's eligible program under § 691.63(b) or (c);

(ii) Uses, for all students enrolled in the eligible program, the same alternative method described in paragraph (f), (g), or (h) of this section to determine the students' progression in the weeks of instructional time of an academic year; and

(iii) Upon request from a student, performs an exact accounting of the student's academic year progression for that student based on the actual weeks of instructional time the student attended in all eligible programs at the institution and on any qualifying credit or clock hours accepted on transfer into the student's eligible program.

(3) An institution may not use an alternative method under paragraphs (f), (g), or (h) of this section if it performs an exact accounting for a student, including an accounting pursuant to paragraph (e)(2)(ii) of this section. Once an institution initiates an exact accounting for a student under this section, the institution must use the determination for that student based on the exact accounting and not the determination based on an alternative method.

(f)(1) For an eligible program for which the institution may determine payments under § 691.63(b) or (c), an institution may determine a student's completion of the weeks of instructional time in an academic year under the procedures set forth in paragraphs (f)(2) and (f)(3) of this section.

(2) For an eligible student enrolled in an eligible program that has a single summer term that provides at least 12 semester, trimester, or quarter hours of coursework and for which payments are calculated under § 691.63(b), the student's term is considered to be—

(i) For an eligible program offered in semesters or trimesters, one-half of an academic year in weeks of instructional time if payments may be determined under § 691.63(b)(3)(i), or one-third of an academic year in weeks of instructional time if payments may be determined under § 691.63(b)(3)(ii); or

(ii) For an eligible program offered in quarters that has a single summer term, one-third of an academic year in weeks of instructional time if payments may be determined under § 691.63(b)(3)(i), or one-fourth of an academic year in weeks of instructional time if payments may be determined under § 691.63(b)(3)(ii).

(3) For an eligible student enrolled in an eligible program with a single summer term that provides at least 12 semester, trimester, or quarter hours of coursework for which the institution may determine payments under § 691.63(c), the student's term is considered to be—

(i) For an eligible program offered in semesters or trimesters, one-half of the weeks of instructional time in the fall through spring terms if payments may be determined under § 691.63(c)(4)(i), or one-third of an academic year in weeks of instructional time if payments may be determined under § 691.63(c)(4)(ii); or

(ii) For an eligible program offered in quarters, one-third of the weeks of instructional time in the fall through spring terms if payments may be determined under § 691.63(c)(4)(i), or one-fourth of an academic year in weeks of instructional time if payments may be determined under § 691.63(c)(4)(ii).

(g)(1) Except as provided in paragraph (d)(2) of this section, an institution with an eligible program for which the institution may determine payments under § 691.63(b) or 691.63(c) may determine a student's completion of the weeks of instructional time in an academic year under the procedures set forth in paragraph (g)(2) or (g)(3) of this section.

(2) For an eligible student enrolled in an eligible program for which payments may be determined under § 691.63(b), an institution must determine the number of weeks a student is considered to have completed in an academic year by multiplying the number of credit hours a student has earned in an eligible program by the number of weeks of instructional time in the academic year and dividing the product of the multiplication by the credit or clock hours in the academic year.

(3) For an eligible student enrolled in an eligible program for which payments may be determined under § 691.63(c), an institution must determine the number of weeks a student is considered to have completed in an academic year by multiplying the number of credit hours a student has earned in an eligible program by the number of weeks of instructional time in the fall through spring terms and dividing the product of the multiplication by the credit or clock hours in the academic year.

(h)(1) Except as provided in paragraph (d)(2) of this section, a student at a grade level can be assumed to have completed an academic year for each of the prior grade levels if for each grade level of a student's eligible program—

(i) A student has completed at least the minimum credit hours for the prior academic years for that program in accordance with this section; and

(ii) Most full-time students in the student's eligible program complete the weeks of instructional time of an academic year during the period of completing each grade level as determined in accordance with paragraph (h)(2) of this section.

(2)(i) For purposes of an award year, in making a determination under paragraph (h)(1)(ii) of this section, an institution must first determine that at least two-thirds of the full-time, full-year students complete at least the weeks of instructional time of an academic year while completing each grade level during the three most recently completed award years prior to the award year immediately preceding the award year for which the determination is made.

(ii) For each of the ACG or National SMART Grant programs, an institution may make a determination under paragraph (h)(2)(i) of this section on an eligible program basis or an institutional basis.

* * * * *

4. Section 691.15 is amended by:

A. Revising paragraphs (b), (c), and (d).

B. Adding new paragraphs (e), (f), and (g).

The revisions and additions read as follows:

§ 691.15 Eligibility to receive a grant.

* * * * *

(b) *ACG Program.* (1) A student is eligible to receive an ACG if the student—

(i) Meets the eligibility requirements in paragraph (a) of this section;

(ii) For the first academic year of his or her eligible program—

(A) Has received a high school diploma or, for a home-schooled student, a high school diploma or the certification of completion of a secondary school education by the cognizant authority;

(B) Has successfully completed after January 1, 2006, as determined by the institution, a rigorous secondary school program of study recognized by the Secretary under § 691.16; and

(C) Has not previously been enrolled as a regular student in an eligible program while—

(*1*) Enrolled in high school; and

(*2*) Being at or below the age of compulsory school attendance; and

(iii) For the second academic year of his or her eligible program—

(A) Has received a high school diploma or, for a home-schooled student, a high school diploma or the certification of completion of a secondary school education by the cognizant authority;

(B) Has successfully completed, after January 1, 2005, as determined by the institution, a rigorous secondary school program of study recognized by the Secretary under § 691.16;

(C) Has successfully completed the first academic year of his or her eligible program; and

(D) For the first academic year of his or her eligible program, obtained a grade point average (GPA) of 3.0 or higher on a 4.0 scale, or the numeric equivalent, consistent with other institutional measures for academic and title IV, HEA program purposes.

(2)(i) An institution must document a student's successful completion of a rigorous secondary school program of study under paragraphs (b)(1)(ii)(A), (b)(1)(ii)(B), (b)(1)(iii)(A) and (b)(1)(iii)(B) of this section using—

(A) Documentation provided directly to the institution by the cognizant authority; or

(B) Documentation from the cognizant authority provided by the student.

(ii) If an institution has reason to believe that the documentation provided by the student under paragraph (b)(2)(i)(B) of this section is inaccurate or incomplete, the institution must confirm the student's successful completion of a rigorous secondary school program of study by using documentation provided directly to the institution by the cognizant authority.

(3) For purposes of paragraph (b) of this section—

(i) A cognizant authority includes, but is not limited to—

(A) An LEA;

(B) An SEA or other State agency;

(C) A public or private high school; or

(D) A testing organization such as the College Board or State agency; or

(ii) A home-schooled student's parent or guardian is the cognizant authority for purposes of providing the documentation required under paragraph (b) of this section. This documentation must show that the home-schooled student successfully completed a rigorous secondary school program under § 691.16(d)(2). This documentation may include a transcript or the equivalent or a detailed course description listing the secondary school courses completed by the student.

(4) For a student who transfers from an eligible program at one institution to an eligible program at another institution, the institution to which the student transfers may rely upon the prior institution's determination that the student successfully completed a rigorous secondary school program of study in accordance with paragraphs (b)(1)(ii)(A), (b)(1)(ii)(B), (b)(1)(iii)(A), and (b)(1)(iii)(B) of this section based on documentation that the prior institution may provide, or based on documentation of the receipt of an ACG disbursement at the prior institution.

(c) *National SMART Grant Program.* A student is eligible to receive a National SMART Grant for the third or fourth academic year of his or her eligible program if the student—

(1) Meets the eligibility requirements in paragraph (a) of this section;

(2)(i)(A) In accordance with the institution's academic requirements, formally declares an eligible major; or

(B) Is at an institution where the academic requirements do not allow a student to declare an eligible major in time to qualify for a National SMART Grant on that basis and the student demonstrates his or her intent to declare an eligible major in accordance with paragraph (d) of this section; and

(ii) Enrolls in the courses necessary both to complete the degree program and to fulfill the requirements of the eligible major as determined and documented by the institution in accordance with paragraph (e) of this section;

(3) Has a cumulative GPA through the most recently completed payment period of 3.0 or higher on a 4.0 scale, or the numeric equivalent measure, consistent with other institutional measures for academic and title IV, HEA program purposes, in the student's eligible program;

(4) For the third academic year, has successfully completed the second academic year of his or her eligible program; and

(5) For the fourth academic year, has successfully completed the third academic year of his or her eligible program.

(d) *Intent to declare a major.* (1) For a student whose institution's academic policies do not allow the student to declare an eligible major in time to qualify for a National SMART Grant disbursement, the institution must obtain and keep on file a recent self-certification of intent to declare an eligible major that is signed by the student.

(2) The student described in paragraph (d)(1) of this section must formally declare an eligible major when he or she is able to do so under the institution's academic requirements.

(e) *Documentation of progression in the major.* The institution must document a student's progress in taking the courses necessary to complete the intended or declared major that establishes eligibility for a National SMART Grant. Documentation of coursework progression in the eligible program and major under paragraph(c)(2)(ii) of this section may include, but is not limited to:

(1) Written counselor or advisor tracking of coursework progress toward a degree in the intended or declared eligible major at least annually.

(2) Written confirmation from an academic department within the institution that the student is progressing in coursework leading to a degree in the intended or declared eligible major. This confirmation must be signed by a departmental representative for the intended eligible major at least annually.

(3) Other written documentation of coursework that satisfies the ongoing nature of monitoring student coursework progression in the intended or declared eligible major at least annually.

(f) *Transfer students.* (1)(i) Under the ACG Program, if a student transfers to an institution that accepts for enrollment at least the credit or clock hours for one academic year but less than the credit or clock hours for two academic years from all prior postsecondary institutions attended by the student, the GPA to determine second-year eligibility for an ACG is calculated using the grades from all coursework accepted by the current institution into the student's eligible program.

(ii) Under the ACG Program, if a student transfers to an institution that accepts for enrollment less than the credit or clock hours for one academic year from all prior postsecondary institutions attended by the student, the GPA to determine second-year eligibility for an ACG is calculated using the grades from—

(A) All coursework accepted from all prior postsecondary institutions by the current institution into the student's eligible program; and

(B) The coursework earned at the current institution through the payment period in which the student completes the credit or clock hours of the student's first academic year in an eligible program based on the total of the credit or clock hours accepted on transfer and the credit or clock hours earned at the current institution.

(2)(i) Under the National SMART Grant Program, if a student transfers from one institution to the current institution, the current institution must determine that student's eligibility for a National SMART Grant for the first payment period using either the method described in paragraph (f)(2)(i)(A) of this section or the method described in paragraph (f)(2)(i)(B) of this section, whichever method coincides with the current institution's academic policy. For an eligible student who transfers to an institution that—

(A) Does not incorporate grades from coursework that it accepts on transfer into the student's GPA at the current institution, the current institution, for the courses accepted in the eligible program upon transfer—

(*1*) Must calculate the student's GPA for the first payment period of enrollment using the grades earned by the student in the coursework from any prior postsecondary institution that it accepts toward the student's eligible program; and

(*2*) Must, for all subsequent payment periods, apply its academic policy and not incorporate the grades from the coursework that it accepts on transfer into the GPA at the current institution; or

(B) Incorporates grades from the coursework that it accepts on transfer into the student's GPA at the current institution, an institution must use the grades assigned to the coursework accepted by the current institution into the eligible program as the student's cumulative GPA to determine eligibility for the first payment period of enrollment and all subsequent payment periods in accordance with its academic policy.

(ii) If the institution accepts no credit or clock hours toward the student's eligible program, the institution must consider the student to be ineligible until the student completes at least one payment period in an eligible program with a qualifying GPA.

(g) *Numeric equivalent.* (1) If an otherwise eligible program measures academic performance using an alternative to standard numeric grading procedures, the institution must develop and apply an equivalency policy with a numeric scale for purposes of establishing ACG or National SMART Grant eligibility. That institution's equivalency policy must be in writing and available to students upon request and must include clear differentiations of student performance to support a determination that a student has performed at a level commensurate with at least a 3.0 GPA on a 4.0 scale in that program.

(2) A grading policy that includes only ''satisfactory/unsatisfactory'', ''pass/fail'', or other similar nonnumeric assessments qualifies as a numeric equivalent only if—

(i) The institution demonstrates that the ''pass'' or ''satisfactory'' standard has the numeric equivalent of at least a 3.0 GPA on a 4.0 scale awarded in that program, or that a student's performance for tests and assignments yielded a numeric equivalent of a 3.0 GPA on a 4.0 scale; and

(ii) The institution's equivalency policy is consistent with any other standards the institution may have developed for academic and other title IV, HEA program purposes, such as graduate school applications, scholarship eligibility, and insurance certifications, to the extent such standards distinguish among various levels of a student's academic performance.

* * * * *

5. Section 691.16 is amended by:

A. Revising paragraph (b).

B. In the introductory text of paragraph (c), removing the word ''identifying'' and adding, in its place, the word ''establishing''.

C. In paragraph (c)(2), removing the word ''successfully'' before the punctuation '';'' and adding the word ''successfully'' immediately before the word ''pursue''.

D. In the introductory text of paragraph (d), removing the word ''identified'' and adding, in its place, the word ''established''.

E. In paragraph (d)(1), removing the words ''or 2005–2006 school year'' and adding, in their place, the words ''school year or later school years''.

F. In the introductory text of paragraph (d)(2) adding the word ''successfully'' immediately after the word ''student''.

The revision reads as follows:

§ 691.16 Recognition of a rigorous secondary school program of study.

* * * * *

(b) For each award year, the Secretary establishes a deadline for SEAs and LEAs to submit information about the secondary school program or programs that the SEA or LEA establishes as a rigorous secondary school program of study, and, in the case of an LEA, documentation that the LEA is legally authorized by the State to establish a separate secondary school program of study. An SEA and LEA, if applicable, may submit information—

(1) For students graduating during the current school year; and

(2) For students graduating during one or more specified upcoming school years.

* * * * *

6. Section 691.17 is amended by redesignating paragraph (c) as paragraph (e), and adding new paragraphs (c) and (d) to read as follows:

§ 691.17 Determination of eligible majors.

* * * * *

(c) *Designation of eligible majors.* For each award year, the Secretary publishes a list of eligible majors identified by CIP code.

(d) *Designation of an additional eligible major.* For each award year, the Secretary establishes a deadline for an institution to request designation of an additional eligible major.

(1) Requests for designation of an additional eligible major must include—

(i) The CIP code and program title of the additional major;

(ii) The reason or reasons the institution believes the additional major should be considered an eligible program under this part; and

(iii) Documentation showing that the institution has actually awarded or plans to award a bachelor's degree in the requested major.

(2) For each award year, the Secretary will confirm the final list of eligible majors.

* * * * *

§ 691.75 [Amended]

7. Section 691.75 is amended by:

A. In paragraph (b)(2), removing the regulatory citation ''691.15(b)(1)(iii)(C)'' and adding, in its place, the regulatory citation ''691.15(b)(1)(iii)(D)''.

B. In paragraph (c), removing the regulatory citation ''691.15(b)(1)(iii)(C)'' and adding, in its place, the regulatory citation ''691.15(b)(1)(iii)(D)''.

C. In paragraph (d)(1)(i), removing the regulatory citation ''691.15(b)(1)(iii)(C)'' and adding, in its place, the regulatory citation ''691.15(b)(1)(iii)(D)''.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AV40

Endangered and Threatened Wildlife and Plants; Notice of Scoping Meetings and Intent To Prepare an Environmental Impact Statement and Socio-Economic Assessment for the Proposed Amendment of the Rule Establishing a Nonessential Experimental Population of the Arizona and New Mexico Population of the Gray Wolf (''Mexican Gray Wolf'')

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking; notice of intent; and notice of public scoping meetings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service, us, or we), will prepare a draft environmental impact statement (EIS) and socio-economic assessment, pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, in conjunction with a proposed rule to amend the 1998 final rule that authorized the establishment of a nonessential experimental population of the ''Mexican gray wolf'' in Arizona and New Mexico, under section 10(j) of the Endangered Species Act of 1973, as amended (Act). We will hold 12 public informational sessions and scoping meetings.

Through this notice and the public scoping meetings, we are seeking comments or suggestions from the public, concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning the scope of the EIS, pertinent issues we should address, and alternatives that should be analyzed.

DATES: Comments should be submitted directly to the Service's New Mexico Ecological Services Field Office (see **ADDRESSES** section) on or before December 31, 2007 or at any of the 12 scoping meetings to be held in November and December 2007. See **SUPPLEMENTARY INFORMATION** for the locations and dates of these scoping meetings.

ADDRESSES: Information, comments, or questions related to preparation of the draft EIS through the NEPA process should be submitted to Brian Millsap, State Administrator, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, NM 87113. Alternatively, information presented at the 12 public scoping meetings can be viewed on a ''virtual public meeting'' Web site at *http://www.mexicanwolfeis.org* and comments can be submitted from the same Web site. Written comments may also be sent by facsimile to (505) 346–2542 or by e-mail to *R2FWE_AL@fws.gov.* For directions on how to submit electronic comments, see the ''Public Comments Solicited'' section below.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process or development of a proposed rule amending the 1998 NEP final rule should be directed to John Morgart at (505) 346–2525. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Listed Entity

The Mexican gray wolf was listed as an endangered subspecies in 1976 (April 28, 1976; 41 FR 17736) under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). In 1978, the Service listed the gray wolf species in North America south of Canada as endangered, except in Minnesota where it was listed as threatened, in 1978 (March 9, 1978; 43 FR 9607). The 1978 listing of the gray wolf species as a whole, subsumed the subspecies listing, however, the preamble to the rule continued to recognize the Mexican gray wolf as valid biological subspecies for purposes of research and conservation (43 FR 9607). After the 1978 listing of the gray wolf, the 50 CFR 17.11(h) List of Endangered and Threatened Wildlife (List) did not explicitly refer to an entity called the ''Mexican gray wolf.'' Due to its previous status as a subspecies, the Service has continued to refer to the gray wolves in the southwestern United States as the ''Mexican gray wolf.'' A 1998 final rule (January 12, 1998; 63 FR 1752) established a nonessential experimental population (NEP) of the Mexican gray wolf in Arizona and New Mexico.

In 2007, we published a final rule (February 8, 2007; 72 FR 6052) designating the Western Great Lakes Distinct Population Segment (DPS) of the gray wolf and removing that DPS from the List. On the same date, we also published a proposed rule (72 FR 6105) to designate the Northern Rocky Mountain DPS of the gray wolf and remove that DPS from the List as well. The nonessential experimental

population of the gray wolf in the southwest is listed as endangered. In the table at 50 CFR 17.11(h), the official listed entity for the NEP is the gray wolf in Arizona and New Mexico. However, because the 1998 NEP final rule referred to the NEP as the ''Mexican gray wolf'' we will continue to use the term throughout the remainder of this document for ease of reference.

Public Comments Solicited

We seek comment from Federal, State, local, or Tribal government agencies; the scientific or business community; ranchers; landowners; or any other interested party. To promulgate a proposed rule and prepare a draft EIS, including an assessment of socio-economic impacts, we will take into consideration all comments and any additional information received. All comments, including names and addresses, will become part of the supporting record.

If you wish to provide comments and/or information, you may submit your comments and materials by any one of several methods (see **ADDRESSES**). Comments submitted electronically should be in the body of the e-mail message itself or attached as a text file (ASCII), and should not use special characters or encryption. Please also include ''Attn: Mexican Gray Wolf NEPA Scoping,'' your full name, and your return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact us directly by calling our New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at New Mexico Ecological Services Field Office in Albuquerque, New Mexico (see **ADDRESSES**).

We intend for the draft EIS to consider reasonable alternatives for amendment of the 1998 NEP final rule (January 12, 1998; 63 FR 1752) for the Mexican gray wolf in Arizona and New Mexico. We also wish to ensure that any proposed rulemaking to amend the existing NEP effectively evaluates all potential issues and impacts. Therefore, we are seeking comments and suggestions on the following issues for consideration in preparation of the draft EIS and the proposed amendment concerning the 1998 NEP final rule for the Mexican gray wolf. This list is not intended to be all inclusive, and comments on any other pertinent issues related to the Mexican gray wolf NEP are welcome and solicited.

Issues Related to the Scope of the NEP

(a) *Current management stipulations that require wolves that establish home ranges outside the Blue Range Wolf Recovery Area (BRWRA) to be removed and re-released into the BRWRA or taken into captivity.* This stipulation stemmed from the intention in the 1998 NEP final rule that wolves would not be reestablished throughout the entire Mexican Wolf Experimental Population Area (MWEPA), but only within the BRWRA, which is a subarea of the MWEPA. However, analysis indicates that removals for boundary violations due to wolves dispersing or establishing territories outside the BRWRA are not conducive to achieving the reintroduction project objective of ''re-establishing a viable, self-sustaining population of at least 100 Mexican [gray] wolves'' (U.S. Fish and Wildlife Service 1982, p. 23). In other words, change in this aspect of the 1998 NEP final rule would provide the Service with the authority to allow wolves to establish territories outside the boundaries of the BRWRA.

(b) *Current management stipulations allow for initial Mexican gray wolf releases from captivity only into the primary recovery zone of the BRWRA.* Management experience has demonstrated that this stipulation in the 1998 NEP final rule sets impractical limits on available release sites and wolves that can be released into the secondary recovery zone, limits the Mexican Gray Wolf Reintroduction Project's (Project) ability to address genetic issues, and results in a misperception that the secondary recovery zone is composed largely of ''problem'' animals that have been translocated to the secondary zone after management removal due to livestock depredation events. In other words, a change in this aspect of the 1998 NEP final rule would possibly provide the Service the authority to release Mexican gray wolves from the captive breeding population into New Mexico.

(c) *The definition of the White Sands Missile Range, which is within the MWEPA, as the White Sands Wolf Recovery Area.* However, the White Sands Wolf Recovery Area is not of sufficient size nor does it have sufficient prey density to function as an independent recovery area.

(d) *Limited provisions for private individuals to ''harass'' wolves engaged in nuisance behavior or livestock depredation, or which are attacking domestic pets on private, public, or Tribal lands.* Current provisions in the 1998 NEP final rule allow for ''opportunistic, noninjurious harassment'' of wolves by private individuals; that is, individuals are not allowed to harass wolves in such a manner as to even potentially result in bodily injury or death of a Mexican gray wolf. Management experience in the BRWRA, as well as the Northern Rocky Mountain DPS gray wolf recovery program, suggests that a variety of harassment methods could provide an effective deterrent to problem Mexican gray wolf behavior, as well as increasing public acceptance of Mexican gray wolf recovery. All possible alternatives and remedies need to be explored.

(e) *Current provisions in the 1998 NEP final rule that do not allow for ''take'' of wolves in the act of attacking domestic dogs on private or Tribal Trust lands.* However, domestic dog injuries and mortalities have occurred within the BRWRA due to interactions between wolves and dogs, primarily near people's homes. Lack of take authority in instances where take may have been warranted has resulted in substantial negative impacts on some local residents and visitors to the BRWRA.

(f) *Among other issues, the need to clarify definitions of: ''breeding pair,'' ''depredation incident,'' and ''thresholds for permanent removal.*'' In addition, there is a need to identify other possible impediments to establishing wolves, such as the livestock carcass management and disposal issue identified in the 3-year review of the project (Paquet *et al.* 2001, p. 69). The authors of this report recommended that the Service ''require livestock operators on public land to take some responsibility for carcass management/disposal to reduce the likelihood that wolves become habituated to feeding on livestock.'' In other words, if a new final rule is promulgated that incorporates this recommendation from the 3-year review, it may result in redefining ''nuisance wolves'' and ''problem wolves'' so as to exclude animals that

scavenge on the carcasses of livestock that died of non-wolf causes.

(g) The issues addressed in this scoping process include issues addressed in a petition for Rulemaking dated March 29, 2004 provided to the Service by the Center for Biological Diversity. This Notice, and the subsequent public notice and comment period, will provide the public an opportunity to comment on the issues provided in the Center for Biological Diversity's Petition for Rulemaking.

Issues Related to Evaluation of the Environmental Impacts

We are seeking comments on the identification of direct, indirect, beneficial, and adverse effects that might be caused by amendment of the 1998 NEP final rule that established the current NEP of Mexican gray wolf. You may wish to consider the following issues when providing comments:

(a) Impacts on floodplains, wetlands, wild and scenic rivers, or ecologically sensitive areas;

(b) Impacts on park lands and cultural or historic resources;

(c) Impacts on human health and safety;

(d) Impacts on air, soil, and water;

(e) Impacts on prime agricultural lands;

(f) Impacts to other species of wildlife, including other endangered or threatened species;

(g) Disproportionately high and adverse impacts on minority and low-income populations;

(h) Any other potential or socioeconomic effects; and

(i) Any potential conflicts with other Federal, State, local, or Tribal environmental laws or requirements.

We will give separate notice of the availability of the draft EIS when completed, so that interested and affected people may comment on the draft and have input into the final decision.

Public Scoping Meetings

We will hold informal public informational sessions, present currently identified issues, and conduct scoping meetings at the following dates and times:

1. November 26, 2007: Flagstaff, AZ
   Informational session: 5 p.m. to 6 p.m.; Presentation of known issues: 6 p.m. to 6:30 p.m., Scoping meeting: 6:30 p.m. to 9 p.m.
2. November 27, 2007: Hon-dah, AZ
   Informational session: 5 p.m. to 6 p.m.; Presentation of known issues: 6 p.m. to 6:30 p.m., Scoping meeting: 6:30 p.m. to 9 p.m.
3. November 28, 2007: Alpine, AZ
   Informational session: 5 p.m. to 6 p.m.; Presentation of known issues: 6 p.m. to 6:30 p.m.; Scoping meeting: 6:30 p.m. to 9 p.m.
4. November 29, 2007: Grants, NM
   Informational session: 5 p.m. to 6 p.m.; Presentation of known issues: 6 p.m. to 6:30 p.m.; Scoping meeting: 6:30 p.m. to 9 p.m.
5. November 30, 2007: Albuquerque, NM
   Informational session: 5 p.m. to 6 p.m.; Presentation of known issues: 6 p.m. to 6:30 p.m.; Scoping meeting: 6:30 p.m. to 9 p.m.
6. December 1, 2007: Socorro, NM
   Informational session: 11 a.m. to 12 p.m.; Presentation of known issues: 12 p.m. to 12:30 p.m.; Scoping meeting: 12:30 p.m. to 3 p.m.
7. December 3, 2007: Alamogordo, NM
   Informational session: 5 p.m. to 6 p.m.; Presentation of known issues: 6 p.m. to 6:30 p.m.; Scoping meeting: 6:30 p.m. to 9 p.m.
8. December 4, 2007: Las Cruces, NM
   Informational session: 5 p.m. to 6 p.m. Presentation of known issues: 6 p.m. to 6:30 p.m.; Scoping meeting: 6:30 p.m. to 9 p.m.
9. December 5, 2007: Glenwood, NM
   Informational session: 5 p.m. to 6 p.m. Presentation of known issues: 6 p.m. to 6:30 p.m.; Scoping meeting: 6:30 p.m. to 9 p.m.
10. December 6, 2007: Safford, AZ
    Informational session: 5 p.m. to 6 p.m.; Presentation of known issues: 6 p.m. to 6:30 p.m.; Scoping meeting: 6:30 p.m. to 9 p.m.
11. December 7, 2007: Tucson, AZ
    Informational session: 5 p.m. to 6 p.m. Presentation of known issues: 6 p.m. to 6:30 p.m.; Scoping meeting: 6:30 p.m. to 9 p.m.
12. December 8, 2007: Phoenix, AZ
    Informational session: 11 a.m. to 12 p.m.; Presentation of known issues: 12 p.m. to 12:30 p.m.; Scoping meeting: 12:30 p.m. to 3 p.m.

The Service will provide additional notification of the public information sessions, issue presentations, and scoping meetings and specific address information through newspaper advertisements and other appropriate media.

Background

Historically, Mexican gray wolves were distributed across much of the southwestern United States, and northern and central Mexico. This range included eastern and central Arizona, southern New Mexico, and west Texas (Brown 1988, pp. 10–11; Parsons 1996, pp. 102–104). In addition, results from recent genetics examining historic Mexican gray wolf specimens collected in 1916 and earlier (Leonard et al. 2005, pp. 10, 15) suggest that Mexican gray wolves genetically intergraded with more northern subspecies well into Colorado and Utah. However, the Mexican gray wolf was extirpated from the southwestern United States by the early 1970s as a consequence of an aggressive eradication program (Brown 1988, pp. 31–32). More information about the life history and decline of the Mexican gray wolf in the southwestern United States can be found in the Mexican Wolf Recovery Plan (U.S. Fish and Wildlife Service 1982, pp. 5–8, 11–12), the Final EIS, entitled ''Reintroduction of the Mexican Wolf within its Historic Range in the Southwestern United States'' (U.S. Fish and Wildlife Service 1996, pp. 1–2 to 1–7), the NEP final rule (January 12, 1998; 63 FR 1752), and the Mexican Wolf Blue Range Reintroduction Project 5-Year Review (Mexican Wolf Blue Range Adaptive Management Oversight Committee and Interagency Field Team 2005, pp. TC–1 to TC–24; March 16, 2006, 71 FR 13624).

Recovery Efforts

The Mexican Wolf Recovery Team was formed in 1979, and the United States and Mexico signed the Mexican Wolf Recovery Plan in September 1982 (U.S. Fish and Wildlife Service 1982, signature page). The prime objective of the 1982 Recovery Plan is: ''To conserve and ensure the survival of *Canis lupus baileyi* by maintaining a captive breeding program and re-establishing a viable, self-sustaining population of at least 100 Mexican [gray] wolves in the middle to high elevations of a 5,000-square-mile area within the Mexican [gray] wolf's historic range'' (U.S. Fish and Wildlife Service 1982, p. 23). As of July 2006, there were just under 300 Mexican gray wolves held in captivity in 44 facilities in the United States and Mexico under the direction of a Species Survival Plan (Siminski and Spevak 2006, p. 5). We completed the Final EIS on the ''Reintroduction of the Mexican Wolf Within its Historic Range in the Southwestern United States'' in November 1996 (U.S. Fish and Wildlife Service 1996). We published the final rule to establish an NEP of the Mexican gray wolf in Arizona and New Mexico in 1998 (January 12, 1998; 63 FR 1752). Mexican gray wolves were first introduced to the BRWRA in March 1998, when 11 captive-born and reared animals were ''initial-released'' into the primary recovery zone of the BRWRA (initial-release means that wolves that have been born and reared in captivity are released for the first time into the wild). Additional individuals and

family groups have been initial-released or translocated into various parts of the BRWRA each year through 2007. Minimum estimates of the number of wolves and breeding pairs in the BRWRA at the end of 2006 were 59 and 7, respectively. This falls significantly short of the projection in the 1996 Final EIS of 102 wolves and 18 breeding pairs for the same timeframe.

In December 2005, the Mexican Wolf Blue Range Adaptive Management Oversight Committee (AMOC) and Interagency Field Team completed a 5-Year Review of the Mexican Wolf Blue Range Reintroduction Project (this project-focused review is different and separate from a species' 5-year review required under section 4(c)(2)(A) of the Act). The project 5-year review was a requirement of the 1998 NEP final rule, which states under 50 CFR 17.84(k)(13): ''The Service will evaluate Mexican [gray] wolf reintroduction progress and prepare periodic progress reports, detailed annual reports, and full evaluations after 3 and 5 years that recommend continuation, modification, or termination of the reintroduction effort'' (63 FR 1771). Included in the 5-year review was a list of 37 recommendations that included ''continuing the Reintroduction Project with modifications'' (Mexican Wolf Blue Range Adaptive Management Oversight Committee and Interagency Field Team 2005, p. ARC–3). Upon receipt, the Service took the 5-year review and submitted it for an additional 7 weeks of public comment (March 16, 2006, 71 FR 13624; May 15, 2006, 71 FR 28049). On July 24, 2006, the acting Southwest Regional Director issued his determination in a letter to the Chair of the AMOC that ''the Mexican [gray] wolf Reintroduction Program will continue with modifications as generally outlined within the recommendations component of the 5-Year Review. Furthermore, the Service will work with the cooperating agencies and the AMOC to begin the process of developing a new 10(j) proposed rule and associated NEPA analysis'' (Tuggle 2006, p. 4). The 37 recommendations from the 5-year review can be viewed on the Service's Mexican gray wolf Web page at: *http://www.fws.gov/southwest/es/mexicanwolf/*.

Experimental Populations

Congress made significant changes to the Act in 1982 with the addition of section 10(j), which provides for designation of specific reintroduced populations of listed species as ''experimental populations.'' Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range, but within its historic range, as ''experimental.'' On the basis of the best scientific and commercial data available, we must determine whether an experimental population is ''essential'' or ''nonessential'' to the continued existence of the species. This determination was made for the Mexican gray wolf in the 1998 NEP final rule (January 12, 1998, 63 FR 1752).

The Service is considering a potential amendment of the 1998 NEP final rule because we believe management constraints contained in that rule are too restrictive to meet management objectives expressed in the 1982 Recovery Plan (U.S. Fish and Wildlife Service 1982, p. 23), the Record of Decision to the 1996 Final EIS (U.S. Fish and Wildlife Service 1997, pp. 11, 17), and the 2005 Mexican Wolf Blue Range Reintroduction Project 5-Year Review (Mexican Wolf Blue Range Adaptive Management Oversight Committee and Interagency Field Team 2005, p. TC–2). Some of the issues that need to be evaluated include:

(a) Internal and external boundaries of the BRWRA, which limit management opportunities in terms of initial releases and translocations;

(b) The requirement to capture any wolves that stray outside the BRWRA and establish home ranges and return them to the BRWRA or to captivity;

(c) The limited size and prey density of the White Sands Missile Range, which is an alternative Recovery Area in the MWEPA; and

(d) Limited provisions for private individuals to ''harass'' wolves engaged in nuisance behavior or livestock depredation, and for ''take'' of wolves in the act of attacking domestic dogs on private or Tribal Trust lands.

Under the Act, species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of endangered wildlife. ''Take'' is defined in section 3 of the Act as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.'' Service regulations (50 CFR 17.31) generally extend the prohibition of take to threatened wildlife. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitats. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency. In addition, section 6 addresses authorities, relative to endangered species, delegated to States that are signatories to section 6 cooperative agreements.

For purposes of section 9 of the Act, a population designated as experimental is treated as threatened regardless of the species' designation elsewhere in its range. Threatened designation allows greater discretion in devising management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt regulations that are necessary to provide for the conservation of a threatened species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the section 10(j) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species. Regulations issued under section 10(j) for NEPs are usually more compatible with routine human activities in the reestablishment area.

For the purposes of section 7 of the Act, we treat an NEP as a threatened species when the NEP is located within a National Wildlife Refuge or National Park, and section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to conserve listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. When NEPs are located outside a National Wildlife Refuge or National Park, we treat the population as proposed for listing and only two provisions of section 7 would apply: Section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are optional as

the agencies carry out, fund, or authorize activities.

In order to amend an NEP, we must issue a proposed rule and consider public comments on it prior to publishing a final rule. In addition, we must comply with NEPA (42 U.S.C. 4321 *et seq.*). Also, our regulations require that, to the maximum extent practicable, a regulation issued under section 10(j) of the Act represents an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of the experimental population (see 50 CFR 17.81(d)).

We have not yet identified possible alternatives for accomplishing our goals of amending the 1998 NEP final rule to better enable progress toward reintroduction and recovery goals, and we do not know what the preferred alternative (the proposed action) or other alternatives might entail. Once identified, the alternatives will be carried forward into detailed analyses pursuant to NEPA.

We will take the following steps prior to making a decision regarding any proposed amendment to the 1998 Mexican gray wolf NEP final rule:

(1) Compile and analyze all new biological information on the species;

(2) Review and update the administrative record covering previous Federal actions for the species;

(3) Review the overall approach to conservation and recovery of the gray wolf in the United States in general, and the Mexican gray wolf in the southwestern United States in particular;

(4) Review available information that pertains to the management and habitat requirements of this species, including material received during the public comment period for this advance notice of proposed rulemaking, during the scoping meetings, and from previous rulemakings;

(5) Review actions identified in the Recovery Plan (U.S. Fish and Wildlife Service 1982, pp. 28–40);

(6) Coordinate with State, county, local, and Federal partners;

(7) Coordinate with Tribal partners;

(8) Coordinate with Mexican authorities;

(9) Conduct a socioeconomic analysis of the consequences of amending the existing 1998 NEP final rule;

(10) Write a draft EIS and present alternatives to the public for review and comment;

(11) Incorporate public input and use current knowledge of Mexican gray wolf habitat use, needs, and availability to precisely map any potential changes to the existing MWEPA and BRWRA;

(12) Publish in the **Federal Register** a proposed rule to revise the 1998 NEP final rule and solicit comments from the public;

(13) Finalize the draft EIS and issue a Record of Decision; and

(14) If we determine that it is prudent to proceed with an amendment to the 1998 NEP Final Rule, publish a new final rule, potentially identifying an amended NEP area as one component for continuing the reintroduction project for the conservation and eventual recovery of the Mexican gray wolf in the southwestern United States.

We are the lead Federal agency for compliance with NEPA for this action. Thus far, the Arizona Game and Fish Department, New Mexico Department of Game and Fish, U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service—Wildlife Services, and USDA Forest Service have agreed to be cooperating agencies in the NEPA process. The draft EIS will incorporate public concerns in the analysis of impacts associated with the proposed action and associated project alternatives. The draft EIS will be sent out for a minimum 90-day public review period, during which time additional public meetings may be held and comments will be solicited on the adequacy of the document. The final EIS will address the comments we receive during public review and will be furnished to all who commented on the draft EIS and made available to anyone who requests a copy. This notice is provided pursuant to regulations for implementing NEPA (40 CFR 1506.6).

References

A complete list of all references cited in this notice is available, upon request, from the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Dated: July 19, 2007.

Todd Willens,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–14626 Filed 8–6–07; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU34

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Piperia yadonii* (Yadon's Piperia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, notice of availability of draft economic analysis, and amended Required Determinations.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the comment period on the proposed designation of critical habitat for *Piperia yadonii* (Yadon's piperia). We also announce the availability of the draft economic analysis of the proposed critical habitat designation and an amended Required Determinations section of the proposal. The draft economic analysis for *Piperia yadonii* identifies estimated costs associated with conservation efforts for *Piperia yadonii* to range from $9.6 to $12.9 million (undiscounted) over a 20-year period as a result of the proposed designation of critical habitat, including those costs coextensive with listing and recovery. Discounted future costs are estimated to be $7.1 to $9.6 million ($0.47 to $0.63 million annualized) at a 3 percent discount rate or $5.1 to $6.8 million ($0.45 to $0.60 million annualized) at a 7 percent discount rate. The amended Required Determinations section provides our determination concerning compliance with applicable statutes and Executive Orders that we have deferred until the information from the draft economic analysis of this proposal was available. We are reopening the comment period for the proposed rule to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated draft economic analysis, and the amended Required Determinations section. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period, and will be fully considered in preparation of the final designation.

DATES: We will accept public comments until September 6, 2007.

ADDRESSES: You may submit written comments and materials to us by any one of the following methods:

(1) You may mail or hand-deliver written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

(2) You may fax your comments to 805/644–3958.

(3) You may send comments by electronic mail (e-mail) to: *fw8piya@fws.gov,* or to the Federal eRulemaking Portal at *http://www.regulations.gov.* For directions on how to file comments electronically, see the ''Public Comments Solicited'' section below. In the event that our Internet connection is not functional, please submit your comments by one of the alternate methods mentioned above.

Copies of the draft economic analysis and the proposed rule for critical habitat designation are available on the Internet at *http://www.fws.gov/ventura* or from the Ventura Fish and Wildlife Office at the address and contact numbers above.

FOR FURTHER INFORMATION CONTACT: Diane Steeck, Ecologist, or Connie Rutherford, Listing and Recovery Coordinator, Ventura Fish and Wildlife Office, at the address listed in **ADDRESSES** (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

During this reopened comment period we solicit comments on the proposed critical habitat designation (71 FR 61546; October 18, 2006), this document, and our draft economic analysis of the proposed designation. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why habitat should or should not be designated as critical habitat under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh threats to the species caused by designation such that the designation of critical habitat is prudent;

(2) Specific information on the amount and distribution of *Piperia yadonii* habitat, what areas within the geographical area occupied by *Piperia yadonii* at the time of listing and that contain the features that are essential to the conservation of the species should be included in the designation and why, and what areas outside of the geographical area occupied at the time of listing are essential to the conservation of the species and why;

(3) Our mapping methodology and criteria used for determining critical habitat as well as any additional information on features essential for the conservation of the species;

(4) The possible impacts of the proposed designation of critical habitat on land use designation and current or planned activities.

(5) Information on whether, and, if so, how many of, the State and local environmental protection measures referenced in the draft economic analysis were adopted largely as a result of the listing of *Piperia yadonii*, and how many were either already in place at the time of listing or enacted for other reasons;

(6) Information on whether the draft economic analysis identifies all State and local costs and benefits attributable to the proposed critical habitat designation, and information on any costs or benefits that have been inadvertently overlooked;

(7) Information on whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes that would be imposed as a result of the designation of critical habitat;

(8) Information on whether the draft economic analysis correctly assesses the effect on regional costs associated with any land use controls that may derive from the designation of critical habitat;

(9) Information related to the expectation that the Pebble Beach Company Del Monte Forest Preservation and Development Plan, for which a permit has recently been denied by the California Coastal Commission, will go forward;

(10) Information on areas that could potentially be disproportionately impacted by *Piperia yadonii* critical habitat designation. The draft economic analysis indicates the potential economic effects of undertaking conservation efforts for this species in particular areas within Monterey County. Based on this information, we may consider excluding portions of these areas from the final designation per our discretion under section 4(b)(2) of the Act;

(11) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts; the reasons why our conclusion that the proposed designation of critical habitat would not result in a disproportionate effect on small businesses should or should not warrant further consideration; and other information that would indicate that the designation of critical habitat would or would not have any impacts on small entities;

(12) Information on whether the draft economic analysis appropriately identifies all costs that could result from the designation;

(13) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments;

(14) Whether the benefit of excluding any particular area from the critical habitat designation under section 4(b)(2) of the Act outweighs the benefit of including the area in the designation; and

(15) Economic data on the incremental effects that would result from designating any particular area as critical habitat.

The Secretary shall designate critical habitat on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of including a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

Comments and information submitted during the initial comment period on the October 18, 2006, proposed rule (71 FR 61546) need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and the proposed rule by any one of several methods (see **ADDRESSES** section). Our final designation of critical habitat will take into consideration all comments and any additional information we receive during both comment periods. On the basis of public comment on the draft economic analysis, the critical habitat proposal, and the final economic analysis, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: RIN 1018–AU34'' in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Before including your address, phone number, e-mail address, or other

personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public view your personal identifying information, we cannot guarantee that we will be able to do so. Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for public inspection, by appointment during normal business hours, at the Ventura Fish and Wildlife Office at the address listed under **ADDRESSES**.

Copies of the proposed rule and draft economic analysis are available on the Internet at: *http://www.fws.gov/ventura/*. You may also obtain copies of the proposed rule and draft economic analysis by contacting the Ventura Fish and Wildlife Office at the address listed in **ADDRESSES**, or by calling 805/644–1766 extension 301.

Background

Pursuant to the terms of a December 21, 2004, settlement agreement, we agreed to submit for publication in the **Federal Register** a proposed critical habitat designation for *Piperia yadonii* on or before October 5, 2006. We published a proposed rule to designate critical habitat for *Piperia yadonii* on October 18, 2006 (71 FR 61546). The proposed critical habitat totals approximately 2,306 acres (ac) (930 hectares (ha)) for *Piperia yadonii* in Monterey County, California.

Critical habitat is defined in section 3 of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, in accordance with section 7(a)(2) of the Act.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. Based on the October 18, 2006, proposed rule to designate critical habitat for *Piperia yadonii* (71 FR 61546), we have prepared a draft economic analysis of the proposed critical habitat designation for *Piperia yadonii*.

The draft economic analysis is intended to quantify the economic impacts of all potential conservation efforts for *Piperia yadonii*; some of these costs will likely be incurred regardless of whether critical habitat is designated. The draft economic analysis provides estimated costs of conservation-related measures that are likely to be associated with future economic activities that may adversely affect the habitat within the proposed boundaries over a twenty year period. It also considers past costs associated with conservation of the species from the time it was listed (August 12, 1998; 63 FR 43100). For a further description of the methodology of the analysis, see section 4 (methodology) of the draft economic analysis.

Based on our draft economic analysis of the proposed designation of critical habitat for *Piperia yadonii* costs associated with conservation efforts for *Piperia yadonii* are estimated to be approximately $9.6 to $12.9 million (undiscounted) over a 20-year period as a result of the proposed designation of critical habitat, including those costs coextensive with listing and recovery. Discounted future costs are estimated to be $7.1 to $9.6 million ($0.47 to $0.63 million annualized) at a 3 percent discount rate or $5.1 to $6.8 million ($0.45 to $0.60 million annualized) at a 7 percent discount rate.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of *Piperia yadonii*, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for *Piperia yadonii* in areas containing features essential to the conservation of the species. The draft analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (e.g., lost economic opportunities associated with restrictions on land use).

The draft analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the draft analysis looks retrospectively at costs that have been incurred since the date *Piperia yadonii* was listed as endangered (August 12, 1998; 63 FR 43100) and considers those costs that may occur in the 20 years following a designation of critical habitat. Forecasts of economic conditions and other factors beyond this point would be speculative.

As stated earlier, we solicit data and comments from the public on the draft economic analysis, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion would not result in the extinction of the species.

Required Determinations—Amended

In our October 18, 2006, proposed rule (71 FR 61546), we indicated that we would be deferring our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders was available in the draft economic analysis. Those data are now available for our use in making these determinations. In this notice we are affirming the information contained in the proposed rule concerning Executive Order (E.O.) 13132; E.O. 12988, the Paperwork Reduction Act; and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). Based on the information made available to us in the draft economic analysis, we are amending our Required Determinations, as provided below, concerning E.O. 12866 and the Regulatory Flexibility

Act, E.O. 13211, E.O. 12630, and the Unfunded Mandates Reform Act.

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. Based on our draft economic analysis of the proposed designation of critical habitat for *Piperia yadonii* costs associated with conservation efforts for *Piperia yadonii* are estimated to be approximately $9.6 to $12.9 million (undiscounted) over a 20-year period as a result of the proposed designation of critical habitat, including those costs coextensive with listing and recovery. Discounted future costs are estimated to be $7.1 to $9.6 million ($0.47 to $0.63 million annualized) at a 3 percent discount rate or $5.1 to $6.8 million ($0.45 to $0.60 million annualized) at a 7 percent discount rate. As described in the draft economic analysis, two entities are anticipated to experience the highest estimated costs. These include Pebble Beach Company, with potential economic impacts estimated at $6.9 million (undiscounted) over 20 years; and a single developer, with potential economic impacts ranging from $0.47 to $3.5 million (undiscounted) over 20 years. Therefore, based on our draft economic analysis, we have determined that the proposed designation of critical habitat for *Piperia yadonii* will not result in an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) did not formally review the proposed rule.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will then need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), we must evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat provided the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)) (SBREFA), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based upon our draft economic analysis of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments received, this determination is subject to revision as part of the final rulemaking.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for *Piperia yadonii* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., residential and commercial development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our draft economic analysis of the proposed critical habitat designation, we evaluate the potential economic effects on small business entities resulting from conservation actions related to the listing of *Piperia yadonii* and proposed designation of critical habitat. We determined from our draft analysis that the small business entities that may be affected include two nonprofit organizations (Elkhorn Slough Foundation and Del Monte Forest Foundation), one city government (City of Pacific Grove), and one private developer. Estimated costs over 20 years to the two nonprofit organizations range from $2,037 to $48,554 per year at a 3 percent discount rate; estimated costs to the City of Pacific Grove are $1,331 per year at a 3 percent discount rate; and estimated costs to the private developer are $168,359 per year at a 3 percent discount rate.

Potential impacts described in Section VI of the draft economic analysis for the Elkhorn Slough Foundation, Del Monte Forest Foundation, and the City of Pacific Grove are predominantly due to carrying out management activities (including trail maintenance, sign installation, invasive species management, and erosion control) that any entity engaged in the conservation of park lands and natural lands would

normally undertake. The number of potentially affected park lands and natural lands are few compared to the total amount of lands in Monterey County that are within park lands, natural lands, preserves, and conservation easements. As a result, entities that are engaged in natural lands management in the Monterey County area as a whole are not expected to be measurably affected by *Piperia yadonii* conservation.

Potential impacts described in Section VI of the draft economic analysis for one single developer are based on the cost of possible mitigation measures and range from a negligible cost of $0 to $3.0 million if a permit to develop the developer's property were denied. The number of potentially affected developers is small compared to the total number of housing developers in the Monterey County area. As a result, entities that are engaged in housing construction in the Monterey County areas as a whole are not expected to be measurably affected by *Piperia yadonii* conservation. From this analysis, we have determined that this proposed designation will not have a significant economic impact on a substantial number of small business entities.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. One critical habitat unit (Vierra Canyon) comprises private lands overlain by a utility easement held by Pacific Gas and Electric Company. Pacific Gas and Electric Company maintains power lines that cross this unit; however, because the company does not plan to develop this land any further, the designation of critical habitat is not expected to have an adverse effect on energy production. Although the proposed designation of critical habitat for *Piperia yadonii* is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the draft economic analysis of the proposed designation of critical habitat for *Piperia yadonii*, the impacts on nonprofits and small governments is expected to be small. There is no record of consultations between the Service and any of these governments since *Piperia yadonii* was listed as endangered on August 12, 1998 (63 FR 43100). It is likely that small governments involved with developments and infrastructure projects will be interested parties or involved with projects involving section 7 consultations for *Piperia yadonii* within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a local government's budget. Consequently, we do not believe that the designation of critical habitat for the *Piperia yadonii* would significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for *Piperia yadonii*. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the proposed designation of critical habitat for *Piperia yadonii* does not pose significant takings implications.

Author

The primary author of this notice is the staff of the Ventura Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 26, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–15193 Filed 8–6–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 0612242929–7038–01]

RIN 0648–AT93

Fisheries in the Western Pacific; Precious Corals Fisheries

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

ACTION: Proposed rule; request for comments.

SUMMARY: Black coral resources in the Au'au Channel, Hawaii, have declined, possibly due to fishing pressure and alien invasive species. Current fishing regulations impose size requirements for the harvest of living black coral colonies of 48 inches (122 cm) in height or one inch (2.54 cm) in stem diameter. Current regulations also exempt certain fishermen from the minimum stem diameter requirement, allowing the harvest of black coral with a 3/4 inch (1.91 cm) stem diameter by anyone who reported black coral harvests to the State of Hawaii within the five years prior to April 17, 2002. This proposed rule would remove that exemption, and is intended to reduce the impacts of fishing on Au'au Channel black coral resources.

DATES: Comments on the proposed rule must be received by September 6, 2007.

ADDRESSES: You may submit comments, identified by ''AT93BlackCoral'', by any of the following methods:

- E-mail: *AT93BlackCoral@noaa.gov*. Include ''AT93'' in the subject line of the message. Comments sent via e-mail, including all attachments, must not exceed a file size of 10 megabytes.
- Federal e-Rulemaking Portal: www.regulations.gov. Follow the instructions for submitting comments.
- Mail: William L. Robinson, Regional Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd. 1110, Honolulu, HI 96814.

The regulatory amendment is available from Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop St. 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Karla Gore, NMFS PIR, 808–944–2273.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the World Wide Web at the Office of the Federal Register:
www.gpoaccess.gov/fr/index.html.

Background

The fishery for black coral in Federal waters around Hawaii is managed under the Fishery Management Plan for Precious Corals of the Western Pacific Region (FMP). The FMP was developed by the Council under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Regulations implementing the FMP appear at Subpart F of 50 CFR part 665 and subpart H of 50 CFR part 600.

Black corals are slow-growing and have low rates of natural mortality and recruitment. Natural populations are relatively stable and a wide range of age classes is generally present. These life-history characteristics (longevity and many year classes) have two important consequences with respect to exploitation: the response of the population to over-harvesting is drawn out over many years, and, because of the longevity of individuals and the associated slow rates of turnover in the populations, a long period of reduced fishing effort is required to restore the ability of the stock to produce at the maximum sustainable yield (MSY) if a stock has been over-exploited for several years.

Since the harvesting of Hawaii black coral began in the late 1950s, generally fewer than 10 fishermen have been active in the fishery at any time. Participation has probably been limited by the relatively small market for black coral in Hawaii, and by the dangers of fishing operations--harvesting is done by hand using scuba at depths as great as 230 ft (70 m). Most of the catch comes from the Au'au Channel, south of Maui. Three commercial black coral harvesters are permitted by the State of Hawaii, and one is Federally-permitted. Nonetheless, landings of black coral have increased over the past two decades, and landings in the last seven years have comprised 58 percent of the total catch since 1985.

Black coral biomass in the Au'au Channel decreased almost 25 percent between 1976 and 2001. The causes of the reduction in biomass appear to be a combination of fishing pressure and the invasion of *Carijoa riisei*, an alien species of snowflake coral that smothers black coral colonies. The purpose of this proposed rule is to reduce the impacts of fishing on black coral resources in Federal waters of the Au'au Channel.

Current regulations at 50 CFR 665.86(b)(1) contain minimum size requirements for the harvest of black coral colonies in the Exclusive Economic Zone (EEZ) around Hawaii. Colonies must be 48 inches (122 cm) tall or one inch (2.54 cm) in stem diameter. The stem measurement must be made no closer than one inch (2.54 cm) from the top of the living holdfast. Current regulations also contain a provision at 50 CFR 665.86(b)(2) that exempts certain fishermen from the minimum stem diameter requirement, allowing the harvest of black coral with a 3/4 inch (1.91 cm) stem diameter by anyone who reported harvests to the State of Hawaii within the five years prior to April 17, 2002. In response to concerns about the declining black coral resource, the Council examined a range of alternatives and has recommended removing that exemption, limiting all further harvests of live black corals to those colonies that are at least 48 inches (122 cm) tall or one inch (2.54 cm) in stem diameter.

At its 129th Meeting on October 18, 2005, the Council voted to recommend that NMFS amend the regulations governing the minimum size requirements for the black coral fishery in Hawaii to remove the stem diameter exemption. The revised regulations would require that all harvested living black coral have a stem diameter of one inch (2.54 cm) or a height of 48 inches (122 cm). The Council prepared a regulatory amendment that contains background information on the issue, biological and economic impact analyses, and proposed regulatory changes.

Classification

NMFS has determined that the proposed rule is consistent with the FMP, and has preliminarily determined that the rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS, based on the Council's analysis, prepared the following initial regulatory flexibility analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble.

There are three permitted vessels in the fishery, but only two have reported landings in Hawaii. Both vessels are

considered to be small entities under the Small Business Administration definition of a small entity, i.e., they are engaged in the business of fish harvesting, are not independently-owned or operated, are not dominant in its field of operation, and have annual gross receipts not in excess of $4 million. Specific net revenues by individual vessels cannot be presented in this IRFA due to confidentiality restraints, but the potential economic impacts are discussed below. There are no disproportionate impacts between vessels participating in the fishery based on home port, vessel size, or gear type.

Description of Alternatives

Six alternatives were considered by the Council. Preferred Alternative 3 would remove the minimum size exemption provision; the minimum stem diameter requirement of one inch (2.54 cm) and minimum height of 48 inches (122 cm) would be in effect for all participants fishing in EEZ waters of the Au'au Channel. Under Alternative 1, the no-action alternative, the black coral fishery would continue to be conducted according to existing regulations. Alternative 2 would modify existing regulations to remove the black coral minimum height requirement. Alternative 4 would modify existing regulations to remove the black coral minimum base diameter requirement and the exemption. Alternative 5 would modify existing regulations to remove the minimum height requirement, and remove the base diameter exemption. Alternative 6 would modify existing regulations to establish a moratorium for black coral harvest in the Au'au Channel for five years, during which time scientific research would be conducted on recruitment and stock recovery.

Economic Impacts of Alternatives

The preferred Alternative 3, which would remove the exemption from minimum size requirements, and Alternative 6, which would implement a 5–year moratorium on black coral landings, would cause adverse economic impacts to the three entities that comprise the current fishery because they would not be allowed to harvest black coral in the way they are now allowed to under the current management regime, thus potentially limiting their landings. It is estimated that black coral harvesters would be impacted by a reduction of approximately 15 percent gross receipts under Alternative 6, and could be impacted by as much as a 15 percent reduction in gross receipts under the preferred Alternative 3. A 15 percent reduction would occur only if all corals currently harvested in Federal waters are harvested under the base requirement exemption. Otherwise, gross receipt reductions of 0 to 15 percent would occur under the preferred alternative depending upon the relative contribution of currently exempted products to the overall harvest. All other alternatives described above, excluding the no-action Alternative 1, which represents no change in net benefits to the affected small entities, could yield potential beneficial impacts to the fishery participants relative to the proposed alternative. However, these alternatives were not chosen since they would not be consistent with the objectives of the FMP and the MSA in that they would weaken the regulatory protection to black corals resources by removing size restrictions.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian Natives, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: July 31, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 665 is proposed to be amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

l. The authority citation for part 665 continues to read as follows:

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

2. In § 665.86, revise paragraph (b) to read as follows:

§ 665.86 Size restrictions.

* * * * *

(b) *Black Coral.* Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

* * * * *

[FR Doc. E7–15209 Filed 8–6–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 72, No. 151

Tuesday, August 7, 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

Forest Service

Notice of Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Kootenai National Forest's Lincoln County Resource Advisory Committee will meet on Thursday, August 23, 2007 at 6 p.m. at the Forest Supervisor's Office in Libby, Montana for a business meeting. The meeting is open to the public.

DATES: August 23, 2007.

ADDRESSES: Forest Supervisor's Office, 1101 U.S. Hwy. 2 West, Libby, Montana.

FOR FURTHER INFORMATION CONTACT: Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 283–7764, or e-mail *bedgmon@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include: Accept project proposals for funding in Fiscal Year 2008, election of chair and co-chair, and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, Montana.

Dated: July 31, 2007.

Paul Bradford,

Forest Supervisor.

[FR Doc. 07–3839 Filed 8–6–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA): Section 515 Multi-Family Housing Preservation Revolving Loan Fund (PRLF) Demonstration Program for Fiscal Year 2007

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

Overview Information

SUMMARY: The Rural Housing Service (RHS) announces the availability of funds and the timeframe to submit applications for loans to private non-profit organizations, or such non-profit organizations' affiliate loan funds and State and local housing finance agencies, to carry out a housing demonstration program to provide revolving loans for the preservation and revitalization of low-income multi-family housing. Housing that is assisted by this demonstration program must be financed by RHS through its multi-family housing loan program under Section 515 of the Housing Act of 1949. The goals of this demonstration program will be achieved through loans making to intermediaries. The intermediaries will establish their programs for the purpose of providing loans to ultimate recipients for the preservation and revitalization of Section 515 multi-family housing as affordable housing.

DATES: The deadline for receipt of all applications in response to this NOFA is 5 p.m., Eastern Time, September 6, 2007. The application closing deadline is firm as to date and hour. The Agency will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Henry Searcy, Jr., Senior Loan Specialist, Multi-Family Housing Processing Division, STOP 0781 (Room 1263–S), or Bonnie Edwards-Jackson, Senior Loan Specialist, Multi-Family Housing Processing Division, STOP 0781 (Room 1239–S), U.S. Department of Agriculture, Rural Housing Service, 1400 Independence Ave., SW., Washington, DC 20250–0781 or by telephone at (202) 720–1753 or (202) 690–0759, or via e-mail at *Henry.Searcy@wdc.usda.gov* or *Bonnie.Edwards@wdc.usda.gov.* (Please note the phone numbers are not toll free numbers.)

SUPPLEMENTARY INFORMATION

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 (2005) et seq., OMB must approve all ''collections of information'' by RHS. The Act defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *.'' (44 U.S.C. 3502(3)(A)). Because this NOFA will receive less than 10 respondents, the Paperwork Reduction Act does not apply.

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.415.

Overview

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2007 (Division A of Pub. L. 110–5) provided funding for, and authorizes RHS to, establish a revolving loan fund demonstration program for the preservation and revitalization of the Section 515 multi-family housing portfolio. The section 515 multi-family housing program is authorized by section 515 of the Housing Act of 1949 (42 U.S.C. 1485) and provides RHS the authority to make loans for low income multi-family housing and related facilities.

Program Administration

I. Funding Opportunities Description

This NOFA requests applications from eligible applicants for loans to establish and operate revolving loan funds for the preservation of low-income multi-family housing within the Agency's section 515 multi-family housing portfolio. Agency regulations for the section 515 multi-family housing program are published at 7 CFR part 3560.

Housing that is constructed or repaired must meet the Agency design and construction standards and the

development standards contained in 7 CFR part 1924, subparts A and C, respectively. Once constructed, section 515 multi-family housing must be managed in accordance with the program's management regulation, 7 CFR part 3560, subpart C. Tenant eligibility is limited to persons who qualify as a very low-, low-, or moderate-income household or who are eligible under the requirements established to qualify for housing benefits provided by sources other than the Agency, such as U.S. Department of Housing and Urban Development section 8 assistance or Low Income Housing Tax Credit Assistance, when a tenant receives such housing benefits. Additional tenant eligibility requirements are contained in 7 CFR 3560.152.

II. Award Information

Public Law 110–5, (February 15, 2007) made funding available for loans to private non-profit organizations, or such non-profit organizations' affiliate loan funds and State and local housing finance agencies, to carry out a housing demonstration program to provide revolving loans for the preservation of the section 515 multi-family housing portfolio. The total amount of funding available for this program is $6,300,769.55. Loans to intermediaries under this demonstration program shall have an interest rate of no more than one percent and the Secretary of Agriculture may defer the interest and principal payment to RHS for up to three years during the first three years of the loan. The term of such loans shall not exceed 30 years. Funding priority will be given to entities with equal or greater matching funds, including housing tax credits for rural housing assistance and to entities with experience in the administration of revolving loan funds and the preservation of multi-family housing.

III. Eligibility Information

Applicant Eligibility

(1) Eligibility requirements—Intermediary.

(a) The types of entities which may become intermediaries are private non-profit organizations, which may include faith based organizations, or such non-profit organizations' affiliate loan funds and State and local housing finance agencies.

(b) The intermediary must have:

(i) The legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan.

(ii) A proven record of successfully assisting low-income multi-family housing projects. Such record will include recent experience in loan making and servicing with loans that are similar in nature to those proposed for the PRLF demonstration program and a delinquency and loss rate acceptable to the Agency. The applicant will be responsible for providing such information to the Agency.

(iii) A staff with loan making and servicing expertise acceptable to the Agency.

(iv) A plan acceptable to the Agency, that the Ultimate recipients will only use the funds to preserve or purchase through a transfer and assumption 515 housing.

(c) No loans will be extended to an intermediary unless:

(i) There is adequate assurance of repayment of the loan evidenced by the fiscal and managerial capabilities of the proposed intermediary.

(ii) The amount of the loan, together with other funds available, is adequate to assure completion preservation or revitalization of the project or achieve the purposes for which the loan is made.

(iii) At least 51 percent of the outstanding interest or membership in any nonpublic body intermediary must be composed of citizens of the United States or individuals who reside in the United States after being legally admitted for permanent residence.

(iv) The Intermediary's prior calendar year audit indicates an unqualified audited opinion as a result of the audit which provides a statement relating to the accuracy of the financial statements.

(d) Intermediaries, and the principals of the intermediaries, must not be suspended, debarred, or excluded based on the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs.'' In addition, intermediaries and their principals must not be delinquent on Federal debt or be Federal judgments debtors.

(e) The intermediary and its principal officers (including immediate family) must hold no legal or financial interest or influence in the ultimate recipient.

(2) The intermediary's Debt Service Coverage Ratio (DSCR) must be greater than 1.25 for the fiscal year immediately prior to the year of application. The DSCR is the financial ratio the loan committee will use to determine an applicant's capacity to borrow and service additional debt.

The loan committee will use two methodologies when calculating DSCR. The first methodology the loan committee will use is Earnings Before Interest and Taxes (EBIT). This is determined by adding net profit or net loss to depreciation and interest expense. The loan committee will compare the principal and interest payment multiplied by the DSCR to the EBIT derived from the applicants consolidated income statement. For example, if an applicant requests a loan amount of $2,000,000 at a 1 percent interest rate amortized over 30 years, the principal and interest payments will be $77,193, annually. Therefore, an applicant who requests $2,000,000 needs an EBIT of at least $96,491.00 ($77,193 × 1.25) .

The second methodology used is Net Operating Income (NOI) divided by Total Debt Service (TDS) which is the principal and interest. NOI, also known as the bottom line, is equal to operating revenues minus operating expenses, minus non-operating interest expense or plus non-operating interest income. TDS is the amount of money necessary to pay interest and principal on maturing bonds.

Eligibility will be determined using methodology 1. Only eligible applicants will be scored and ranked. Cost Sharing or Matching. Funding priority will be given to entities with equal or greater matching funds, including housing tax credits for rural housing assistance. Refer to the Selection Criteria section of the NOFA for further information on funding priorities.

(3) Eligibility requirements—Ultimate recipients.

(a) To be eligible to receive loans from the PRLF, ultimate recipients must:

(i) Currently have a RHS section 515 loan for the property being assisted by the PRLF demonstration program, or be a transferee of such a loan before receiving any benefits from the PRLF demonstration program.

(ii) Be unable to provide funding to preserve and revitalize existing 515 properties the necessary housing from its own resources and, except for State or local public agencies and Indian tribes, be unable to obtain the necessary credit from other sources upon terms and conditions the applicant could reasonably be expected to fulfill.

(iii) Certify that the ultimate recipient along with its principal officers (including their immediate family), hold no legal or financial interest or influence in the intermediary.

(iv) Be in compliance with all Agency program requirements or have an Agency approved workout plan in place which will correct a non-compliance status.

(b) Any delinquent debt to the Federal Government, by the ultimate recipient or any of its principals, shall cause the proposed ultimate recipient to be ineligible to receive a loan from the

PRLF. PRLF loan funds may not be used to satisfy the delinquency.

Equal Opportunity and Nondiscrimination Requirements

(1) In accordance with the Fair Housing Act, title VI of the Civil Rights Act of 1964, the Equal Credit Opportunity Act, the Age Discrimination Act of 1975, Executive Order 12898, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973, neither the intermediary nor the Agency will discriminate against any employee, proposed intermediary or proposed ultimate recipient on the basis of sex, marital status, race, color, religion, national origin, age, physical or mental disability (provided the proposed intermediary or proposed ultimate recipient has the capacity to contract), because all or part of the proposed intermediary's or proposed ultimate recipient's income is derived from public assistance of any kind, or because the proposed intermediary or proposed ultimate recipient has in good faith exercised any right under the Consumer Credit Protection Act, with respect to any aspect of a credit transaction anytime Agency loan funds are involved.

(2) The policies and regulations contained in 7 CFR part 1901, subpart E apply to this program.

(3) The Rural Housing Service Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with the Fair Housing Act, title VI of the Civil Rights Act of 1964, the Equal Credit Opportunity Act, the Age Discrimination Act of 1975, Executive Order 12898, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973.

(4) All housing must meet the accessibility requirements found at 7 CFR 3560.60(d).

Other Administrative Requirements

(1) The following policies and regulations apply to loans to intermediaries made in response to this NOFA:

(a) PRLF intermediaries will be required to provide the Agency with the following reports:

(i) An annual audit;

(A) The dates of the audit report period need not coincide with other reports on the PRLF. Audit reports shall be due 90 days following the audit period. Audits must cover all of the intermediary's activities. Audits will be performed by an independent certified public accountant. An acceptable audit will be performed in accordance with Generally Accepted Government Auditing Standards and include such tests of the accounting records as the auditor considers necessary in order to express an unqualified audited opinion on the financial condition of the intermediary.

(B) It is not intended that audits required by this program be separate and apart from audits performed in accordance with State and local laws or for other purposes. To the extent feasible, the audit work for this program should be done in connection with these other audits. Intermediaries covered by OMB Circular A–133 should submit audits made in accordance with that circular.

(ii) Quarterly or semiannual Performance Reports (due 30 days after the end of the quarter or half);

(A) Performance Reports will be required quarterly during the first year after loan closing. Thereafter, reports will be required semiannually. Also, the Agency may resume requiring quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or Loan Agreement, or the Agency determines that the intermediary's PRLF is not adequately protected by the current financial status and paying capacity of the ultimate recipients.

(B) These reports shall contain information only on the PRLF, or if other funds are included, the PRLF portion shall be segregated from the others; and in the case where the intermediary has more than one PRLF from the Agency, a separate report shall be made for each PRLF.

(C) The reports will include, on Standard Form 269, Financial Status Report and Standard Form 272, Federal Cash Transaction Report. These reports will provide information on the intermediary's lending activity, income and expenses, financial condition and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(iii) Annual proposed budget for the following year; and

(iv) Other reports as the Agency may require from time to time regarding the conditions of the loan.

(b) RHS may consider, on a case by case basis, subordinating its security interest on the ultimate recipient's property to the lien of the intermediary so that RHS has a junior lien interest when an independent appraisal verifies the RHS subordinated lien will continue to be fully secured.

(c) The term of the loan to an ultimate recipient may not exceed the remaining term of the RHS loan.

(d) When loans are made to ultimate recipients for equity purposes, Restrictive Use Provisions must be incorporated into the loan documents, as outlined in 7 CFR part 3560.662.

(e) The policies and regulations contained in 7 CFR part 1901, subpart F regarding historical and archaeological properties apply to all loans funded under this NOFA.

(f) The policies and regulations contained in 7 CFR part 1940, subpart G regarding environmental assessments apply to all loans to ultimate recipents funded under this NOFA. Loans to intermediaries under this program will be considered a Categorical Exclusion under the National Environmental Policy Act, requiring the completion of Form RD 1940–22, ''Environmental Checklist for Categorical Exclusions,'' by the Agency.

(g) An ''Intergovernmental Review,'' will be conducted in accordance with the procedures contained in 7 CFR part 3015, subpart V, if the applicant is a cooperative.

(2) The intermediary agrees to the following:

(a) To obtain the written Agency approval, before the first lending of PRLF funds to an ultimate recipient, of:

(i) All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments; and

(ii) Intermediary's policy with regard to the amount and form of security to be required.

(b) To obtain written approval from the Agency before making any significant changes in forms, security policy, or the work plan. The Agency may approve changes in forms, security policy, or work plans at any time upon a written request from the intermediary and determination by the Agency that the change will not jeopardize repayment of the loan or violate any requirement of this NOFA or other Agency regulations. The intermediary must comply with the work plan approved by the Agency so long as any portion of the intermediary's PRLF loan is outstandig;

(c) To allow the Agency to take a security interest in the PRLF, including its portfolio of investments derived from the proceeds of the loan award, and other rights and interests as the Agency may require;

(d) To return, as an extra payment on the loan any funds that have not been used in accordance with the intermediary's work plan by a date 2 years from the date of the loan agreement. The intermediary acknowledges that the Agency may cancel the approval of any funds not yet

delivered to the intermediary if funds have not been used in accordance with the intermediary's work plan within the 2 year period. The Agency, at its sole discretion, may allow the intermediary additional time to use the loan funds by delaying cancellation of the funds by not more than 3 additional years. If any loan funds have not been used by 5 years from the date of the loan agreement, the approval will be canceled for any funds that have not been delivered to the intermediary and the intermediary will return, as an extra payment on the loan, any funds it has received and not used in accordance with the work plan. In accordance with the Agency approved promissory note, regular loan payments will be based on the amount of funds actually drawn by the intermediary.

(3) The intermediary will be required to enter into an Agency approved loan agreement and promissory note.

(4) Loans made to the PRLF ultimate recipient must meet the intent of providing decent, safe, and sanitary rural housing and be consistent with the requirements of title V of the Housing Act of 1949.

(5) When an intermediary proposes to make a loan from the PRLF to an ultimate recipient, Agency concurrence is required prior to final approval of the loan. The intermediary must submit a request for Agency concurrence of a proposed loan to an ultimate recipient. Such request must include:

(a) Certification by the intermediary that:

(i) The proposed ultimate recipient is eligible for the loan;

(ii) The proposed loan is for eligible purposes;

(iii) The proposed loan complies with all applicable statutes and regulations; and

(iv) Prior to closing the loan to the ultimate recipient, the intermediary and its principal officers (including immediate family) hold no legal or financial interest or influence in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) hold no legal or financial interest or influence in the intermediary.

(b) Copies of sufficient material from the ultimate recipient's application and the intermediary's related files, to allow the Agency to determine the:

(i) Name and address of the ultimate recipient;

(ii) Loan purposes;

(iii) Interest rate and term;

(iv) Location, nature, and scope of the project being financed;

(v) Other funding included in the project; and

(vi) Nature and lien priority of the collateral.

(vii) Environmental impacts of this action. This will include an original Form RD 1940–20, ''Request for Environmental Information,'' completed and signed by the intermediary. Attached to this form will be a statement stipulating the age of the building to be rehabilitated and a completed and signed FEMA Form 81–93, ''Standrd Flood Hazard Determination.'' If the age of the building is over 50 years old or if the building is either on or eligible for inclusion in the National Register of Historic Places, then the intermediary will immediately contact the Agency to begin section 106 consultation with the State Historic Preservation Officer. If the building is located within a 100-year flood plain, then the intermediary will immediately contact the Agency to analyze any effects as outlined in 7 CFR part 1940, subpart G, Exhibit C. The intermediary will assist the Agency in any additional requirements necessary to complete the environmental review.

(c) Such other information as the Agency may request on specific cases.

(6) Upon receipt of a request for concurrence in a loan to an ultimate recipient the Agency will:

(a) Review the material submitted by the intermediary for consistency with the Agency's preservation and revitalization principles which include the following:

(i) There is a continuing need for the property in the community as affordable housing;

(ii) When the transaction is complete, the property will be owned and controlled by eligible section 515 borrowers;

(iii) The transaction will address the physical needs of the property;

(iv) Existing tenants will not be displaced because of increased post transaction rents;

(v) Post transaction basic rents will not exceed comparable market rents; and

(vi) Any equity loan amount will be supported by a market value appraisal.

(b) Issue a letter concurring with the loan when all requirements have been met or notify the intermediary in writing the reasons for denial when the Agency determines it is unable to concur in the loan.

IV. Application and Submission Information

The application process will be two fold: First, all applicants will submit proposals to the National Office for Loan Committee review. The loan committee will determine borrower eligibility and rank applicants according to the criteria established in this NOFA. Only eligible borrowers will be scored. The loan committee will select proposals for further processing. In the event that a proposal is selected for further processing and the applicant declines, the next highest ranked unfunded applicant may be selected.

Second, prior to relending PRLF funds, the State Office in the applicant's residence or state where the applicant will be doing its intermediary work will provide written approval of all forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments. Additionally, the State Office will provide written approval of the applicant's binding policy with regard to the amount and form of security to be required.

If an application is accepted for further processing and the loan closed, the applicant will be required to comply with the terms of its work plan, the loan agreement and the promissory note and any other loan closing docs. At the time of loan closing, the Agency and loan recipient shall enter into a loan agreement and a promissory note acceptable to the Agency.

Application Requirements

The application must contain the following:

(1) A summary page, that is double-spaced and not in narrative form, that lists the following items.

(a) Applicant's name.

(b) Applicant's Taxpayer Identification Number.

(c) Applicant's address.

(d) Applicant's telephone number.

(e) Name of applicant's contact person, telephone number, and address.

(f) Amount of loan requested.

(2) Form RD 4274–1, ''Application for Loan (Intermediary Relending Program).''

(3) A written work plan and other evidence the Agency requires to demonstrate the feasibility of the intermediary's program to meet the objectives of this demonstration program. The plan must, at a minimum:

(a) Document the intermediary's ability to administer this demonstration program in accordance with the provisions of this NOFA. In order to adequately demonstrate the ability to administer the program, the intermediary must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the intermediary's organization or contract

personnel hired for this purpose. If the personnel are to be contracted for, the contract between the intermediary and the entity providing such service will be submitted for Agency review, and the terms of the contract and its duration must be sufficient to adequately service the Agency loan through to its ultimate conclusion. If the Agency determines the personnel lack the necessary expertise to administer the program, the loan request will be denied;

(b) Document the intermediary's ability to commit financial resources under the control of the intermediary to the establishment of the demonstration program. This should include a statement of the sources of non-Agency funds for administration of the intermediary's operations and financial assistance for projects;

(c) Demonstrate a need for loan funds. As a minimum, the intermediary should identify a sufficient number of proposed and known ultimate recipients to justify Agency funding of its loan request, or include well developed targeting criteria for ultimate recipients consistent with the intermediary's mission and strategy for this demonstration program, along with supporting statistical or narrative evidence that such prospective recipients exist in sufficient numbers to justify Agency funding of the loan request;

(d) Include a list of proposed fees and other charges it will assess the ultimate recipients;

(e) Demonstrate to Agency satisfaction that the intermediary has secured commitments of significant financial support from public agencies and private organizations;

(f) Include the intermediary's plan (specific loan purposes) for relending the loan funds. The plan must be of sufficient detail to provide the Agency with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will flow from the intermediary to the ultimate recipient. The service area, eligibility criteria, loan purposes, fees, rates, terms, collateral requirements, limits, priorities, application process, method of disposition of the funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, and reporting requirements by the ultimate recipient's management must at least be addressed by the intermediary's relending plan;

(g) Provide a set of goals, strategies, and anticipated outcomes for the intermediary's program. Outcomes should be expressed in quantitative or observable terms such as low-income housing complexes rehabilitated or low-income housing units preserved, and should relate to the purpose of this demonstration program; and

(h) Provide specific information as to whether and how the intermediary will ensure that technical assistance is made available to ultimate recipients and potential ultimate recipients. Describe the qualifications of the technical assistance providers, the nature of technical assistance that will be available, and expected and committed sources of funding for technical assistance. If other than the intermediary itself, describe the organizations providing such assistance and the arrangements between such organizations and the intermediary.

(4) A pro forma balance sheet at start-up and projected balance sheets for at least 3 additional years; and projected cash flow and earnings statements for at least 3 years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections that shows the PRLF must extend to include a year with a full annual installment on the PRLF loan.

(5) A written agreement of the intermediary to the Agency audit requirements.

(6) Form RD 400–4, ''Assurance Agreement.''

(7) Complete organizational documents, including evidence of authority to conduct the proposed activities.

(8) Latest unqualified audit report.

(9) Form RD 1910–11, ''Applicant Certification Federal Collection Policies for Consumer or Commercial Debts.''

(10) Form AD–1047, ''Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered Transactions.''

(11) Exhibit A–1 of RD Instruction 1940–Q, ''Certification for Contracts, Grants, and Loans.''

(12) Copy of the applicant's tax returns three years prior to application, and most recent financial statements.

(13) A separate one-page information sheet listing each of the ''Application Scoring Criteria'' contained in this Notice, followed by the page numbers of all relevant material and documentation that is contained in the proposal that supports these criteria. Applicants are also encouraged, but not required, to include a checklist of all of the application requirements and to have their application indexed and tabbed to facilitate the review process.

(14) Consolidated Financial Statements for the year prior to this NOFA.

Funding Restrictions

Loans made to the PRLF intermediary under this demonstration program may not exceed $2,125,000 and may be limited by geographic area so that multiple loan recipients are not providing similar services to the same service areas.

Loans made to the PRLF ultimate recipient must meet the intent of providing decent, safe, and sanitary rural housing and be consistent with the requirements of title V of the Housing Act of 1949.

Submission address. Applications should be submitted to USDA Rural Housing Service; Attention: Henry Searcy, Jr., Senior Loan Specialist, Multi-Family Housing Processing Division STOP 0781 (Room 1263–S), or Bonnie Edwards-Jackson, Senior Loan Specialist, Multi-Family Housing Processing Division, STOP 0781 (Room 1239–S), U.S. Department of Agriculture, Rural Housing Service, 1400 Independence Ave., SW., Washington, DC 20250–0781 or by telephone at (202) 720–1753 or (202) 690–0759 or via e-mail, *Henry.Searcy@wdc.usda.gov* or *Bonnie.Edwards@wdc.usda.gov.* (Please note the phone numbers are not toll free numbers.)

V. Application Review Information

All applications will be evaluated by a loan committee. The loan committee will make recommendations to the Agency Administrator concerning preliminary eligibility determinations and for the selection of applications for further processing based on the selection criteria contained in this NOFA and the availability of funds. The Administrator will inform applicants of the status of their application within 30 days of the loan application closing date of the NOFA.

Selection Criteria

Selection criteria points will be allowed only for factors evidenced by well documented, reasonable plans which, in the opinion of the Agency, provide assurance that the items have a high probability of being accomplished. The points awarded will be as specified in paragraphs (1) through (4) of this section. In each case, the intermediary's work plan must provide documentation that the selection criteria have been met in order to qualify for selection criteria points. If an application does not fit one of the categories listed, it receives no points for that paragraph.

(1) *Other funds.* Points allowed under this paragraph are to be based on documented successful history or

written evidence that the funds are available.

(a) The intermediary will obtain non-Agency loan or grant funds or provide housing tax credits (measured in dollars) to pay part of the cost of the ultimate recipients' project cost. The Intermediary shall pledge as collateral its PRLF Revolving Fund, including its portfolio of investments derived from the proceeds of other funds and this loan award.

Points for the amount of funds from other sources are as follows:

(i) At least 10% but less than 25% of the total project cost—5 points;

(ii) At least 25% but less than 50% of the total project cost—10 points; or

(iii) 50% or more of the total project cost—15 points.

(b) The intermediary will provide loans to the ultimate recipient from its own funds (not loan or grant) to pay part of the ultimate recipients' project cost. The amount of the intermediary's own funds will average:

(i) At least 10% but less than 25% of the total project costs—5 points;

(ii) At least 25% but less than 50% of total project costs—10 points; or

(iii) 50% or more of total project costs—15 points.

(2) *Intermediary contribution.* The Intermediary will contribute its own funds not derived from the Agency. The non-Agency contributed funds will be placed in a separate account from the PRLF loan account. The Intermediary shall contribute funds not derived from the Agency into a separate bank account or accounts according to their ''work plan''. These funds are to be placed into an interest bearing counter-signature-account until the PRLF revolves. No other funds shall be commingled with such money.

The amount of non-Agency derived funds contributed to the PRLF will equal the following percentage of the Agency PRLF loan:

(a) At least 5% but less than 15%—15 points;

(b) At least 15% but less than 25%—30 points; or

(c) 25% or more—50 points.

(3) *Experience.* The intermediary has actual experience in the administration of revolving loan funds and the preservation of multi-family housing, with a successful record, for the following number of full years. Applicants must have actual experience in both the administration of revolving loan funds and the preservation of multi-family housing in order to qualify for points under this selection criteria. If the number of years of experience differs between the two types of above listed experience, the type of experience with the lesser number of years will be used for this selection criteria.

(a) At least 1 but less than 3 years—5 points;

(b) At least 3 but less than 5 years—10 points;

(c) At least 5 but less than 10 years—20 points; or

(d) 10 or more years—30 points.

(4) *Administrative.* The Administrator may assign up to 25 additional points to an application to account for the following items not adequately covered by the other priority criteria set out in this section. The items that will be considered are the amount of funds requested in relation to the amount of need; a particularly successful affordable housing development record; a service area with no other PRLF coverage; a service area with severe affordable housing problems; a service area with emergency conditions caused by a natural disaster; an innovative proposal; the quality of the proposed program; a work plan that is in accord with a strategic plan, particularly a plan prepared as part of a request for an Empowerment Zone/Enterprise Community designation; or excellent utilization of an existing revolving loan fund program.

VI. Appeal Process

All adverse determinations regarding applicant eligibility and the awarding of points as part of the selection process are appealable. Instructions on the appeal process will be provided at the time an applicant is notified of the adverse action.

Dated: July 30, 2007.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. 07–3841 Filed 8–6–07; 8:45 am]

BILLING CODE 3410–XV–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Alabama Advisory Committee to the Commission will convene on Tuesday, August 7, 2007 at 6 p.m. and adjourn at 8 p.m. at the Sheraton Birmingham Hotel, 2101 Richard Arrington Jr., Blvd., North, Birmingham, Alabama 35203. The purpose of the meeting is to conduct program planning for future activities.

Members of the public are entitled to submit written comments; the comments must be received in the Central Regional Office by July 13, 2007. The address is 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Farella E. Robinson, Civil Rights Analyst, Central Regional Office, at (913) 551–1400 or by e-mail *frobinson@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of the advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Central Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA. It was not possible to publish this notice 15 days in advance of the meeting date because of internal processing delays.

Dated at Washington, DC, August 2, 2007.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E7–15353 Filed 8–6–07; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting with briefing of the Indiana Advisory Committee will convene at 9 a.m. and adjourn at 1 p.m. on Tuesday, August 7, 2007, at the Hyatt Regency Hotel, One South Capitol Avenue, Indianapolis, IN 46204. The purpose of the meeting is to conduct an orientation and ethics training for new members, plan future activities, and have a briefing on religious discrimination in prisons.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by August 14, 2007. The

address is 55 West Monroe Street, Suite 410, Chicago, IL 60603. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Carolyn Allen, Administrative Assistant, (312) 353–8311, TDD/TTY (312) 353–8362, or by e-mail: *callen@usccr.gov.*

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Midwestern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

It was not possible to publish this notice 15 days in advance of the meeting date because of internal processing delays.

Dated at Washington, DC, August 2, 2007.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E7–15354 Filed 8–6–07; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Mississippi Advisory Committee to the Commission will convene on Monday, August 13, 2007 at 1 p.m. and adjourn at 3 p.m. at the Baker, Donelson, Bearman Caldwell & Berkowitz Law Office, 4268 1–55 North, Jackson, Mississippi 39211. The purpose of the meeting is to conduct program planning for future activities.

Members of the public are entitled to submit written comments; the comments must be received in the Central Regional Office by July 13, 2007. The address is 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Farella E. Robinson, Civil Rights Analyst, Central Regional Office, at (913) 551–1400 or by e-mail *frobinson@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of the advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Central Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA. It was not possible to publish this notice 15 days in advance of the meeting date because of internal processing delays.

Dated at Washington, DC, August 2, 2007.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E7–15355 Filed 8–6–07; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–475–818)

Certain Pasta from Italy; Notice of Preliminary Results and Partial Rescission of Tenth Antidumping Duty Administrative Review:

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests by interested parties, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain pasta (''pasta'') from Italy for the period of review (''POR'') July 1, 2005, through June 30, 2006.

We preliminarily determine that during the POR, Rummo S.p.A. Molino e Pastificio (''Rummo'') sold subject merchandise at less than normal value (''NV''). We also preliminarily determine that Atar, S.r.L. (''Atar'') is not the producer of subject merchandise and are preliminarily rescinding the review of Atar. If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties equal to the difference between the export price (''EP'') and NV for entries of subject merchandise produced by Rummo and to the All Others rate for entries of subject merchandise claimed to be produced by Atar.

Interested parties are invited to comment on these preliminary results and partial rescission.

EFFECTIVE DATE: August 7, 2007.

FOR FURTHER INFORMATION CONTACT: Maura Jeffords or Christopher Hargett, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3146 or (202) 482–4161, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Italy. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 38547 (July 24, 1996).

On July 3, 2006, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain pasta from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 71 FR 37890 (July 3, 2006). We received requests for review from petitioners[1] and from individual Italian exporters/producers of pasta, in accordance with 19 CFR 351.213(b)(1) and (2). On August 30, 2006, the Department published the notice of initiation of this antidumping duty administrative review covering the period July 1, 2005, through June 30, 2006, listing these four companies as respondents: Atar, Rummo, Industria Alimentare Colavita S.p.A. (''Indalco'') and Corticella Molini e Pastifici S.p.A. and its affiliate Pasta Combattenti S.p.A. (collectively, ''Corticella/Combattenti''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (August 30, 2006) (''*Initiation Notice*'').

On August 31, 2006, Indalco timely withdrew its request for an administrative review of certain pasta from Italy. On November 28, 2006,

[1] New World Pasta Company; Dakota Growers Pasta Company; and American Italian Pasta Company.

Corticella/Combattenti also timely withdrew its request. The Department rescinded the review of these respondents on July 12, 2007.[2]

Between August 2006 and May 2007, the Department issued its initial questionnaire and supplemental questionnaires to each respondent, as applicable. We received responses to the Department's initial and supplemental questionnaires on November 13, 2006, April 4, 2007, April 12, 2007, May 1, 2007, and May 11, 2007, from Atar. Rummo provided responses to the Department's initial and supplemental questionnaires on October 10, 2006, October 24, 2006, February 16, 2007, February 27, 2007, May 10, 2007, and July 13, 2007. On February 16, 2007, May 18, 2007, and July 9, 2007, the petitioners filed comments on Atar's responses. On December 15, 2006, March 23, 2007, and June 21, 2007, petitioners filed comments on Rummo's responses. On March 23, 2007, the Department fully extended the due date for the preliminary results of review from April 2, 2007, to July 31, 2007. *See Certain Pasta from Italy: Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 13745 (March 23, 2007).

Preliminary Intent to Rescind the Review of Atar

In *Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 72 FR 7011, February 14, 2007 (''*Final Results 9th Review*''), and accompanying Issues and Decisions Memorandum (''ID Memo 9th Review''), the Department expressed its ''serious concerns'' regarding Atar's status as a producer by way of tolling arrangements. *See* ID Memo 9th Review at Comment 1. In the supplemental questionnaires sent to Atar in this current review, the Department asked follow–up questions pertinent to the issue of whether Atar was a producer of subject merchandise during the POR consistent with 19 CFR 351.401(h). However, Atar provided no additional information to address the Department's concerns and to demonstrate that it was the producer of subject merchandise. As discussed in the memorandum from Melissa G. Skinner to Stephen J. Claeys, RE: Status of Atar, S.r.L.(≥Atar'') as Manufacturer of Subject Merchandise, dated July 31, 2007, the totality of the circumstances surrounding Atar's relationships with its suppliers of tolling services and customers lead to the preliminary determination that under 19 CFR 351.401(h) Atar is not the producer. Since Atar requested the review as ''a producer'' and Atar does not qualify for producer status, it does not qualify for this administrative review. Accordingly, the Department preliminarily rescinds the review. Because Atar incorrectly claimed to be the manufacturer, and no other manufacturer has been identified, under these circumstances, we will instruct customs to liquidate entries that are claimed to be produced by Atar at the All Others rate.

Scope of the Order

Imports covered by this order are shipments of certain non–egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, or by Instituto per la Certificazione Etica e Ambientale (''ICEA'') are also excluded from this order. *See* Memorandum from Audrey Twyman to Susan Kuhbach, dated February 28, 2006, entitled ''Recognition of Instituto per la Certificazione Etica e Ambientale (''ICEA'').

The merchandise subject to this order is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, we first attempted to match contemporaneous sales of products sold in the United States and comparison markets that were identical with respect to the following characteristics: (1) pasta shape; (2) type of wheat; (3) additives; and (4) enrichment. When there were no sales of identical merchandise in the comparison market to compare with U.S. sales, we compared U.S. sales with the most similar product based on the characteristics listed above, in descending order of priority. When there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (''CV''), in accordance with section 773(a)(4) of the Act.

For purposes of the preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing (''VCOM'') between each U.S. model and the most similar home market model selected for comparison.

Comparisons to Normal Value

To determine whether sales of certain pasta from Italy were made in the United States at less than NV, we compared the EP or constructed export price (''CEP'') to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted–average prices for NV and compared these to individual U.S. transactions. *See* the Department's ''Calculation Memorandum for Rummo S.p.A.'' (''Rummo's calculation memo'') (August 30, 2007), available in the CRU.

Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. We based EP and CEP on the packed cost–insurance-freight (''CIF''), ex–factory, free–on-board (''FOB''), or delivered prices to the first unaffiliated customer in, or for exportation to, the United States. When appropriate, we reduced these prices to reflect discounts and rebates.

[2] *See Notice of Partial Rescission of Antidumping Duty Administrative Review: Tenth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 72 FR 38060, July 12, 2007.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, foreign brokerage, handling and loading charges, export duties, international freight, marine insurance, U.S. inland freight expenses, warehousing, and U.S. duties. In addition, when appropriate, we increased EP or CEP as applicable, by an amount equal to the countervailing duty rate attributed to export subsidies in the most recently completed administrative review, in accordance with section 772(c)(1)(C) of the Act.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (advertising, cost of credit, warranties, banking, slotting fees, and commissions paid to unaffiliated sales agents). In addition, we deducted indirect selling expenses that related to economic activity in the United States. These expenses include certain indirect selling expenses incurred by its affiliated U.S. distributors. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act. *See* Rummo's calculation memo.

Normal Value

A. Selection of Comparison Markets

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) of the Act, because Rummo had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for Rummo.

B. Cost of Production (''COP'')Analysis

1. Calculation of COP

Before making any comparisons to NV, we conducted a COP analysis of Rummo pursuant to section 773(b) of the Act, to determine whether Rummo's comparison market sales were made at prices below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (''SG&A'') and packing, in accordance with section 773(b)(3) of the Act. We relied on the Rummo's' information as submitted.

2. Test of Comparison Market Prices

As required under section 773(b)(2) of the Act, we compared the weighted–average COP to the per–unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below–cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses (also subtracted from the COP), and packing expenses. *See* Rummo's calculation memo.

3. Results of COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of 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 during the POR were at prices less than the COP, we determined such sales to have been made in ''substantial quantities.'' *See* section 773(b)(2)(C) of the Act. The sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because they were made over the course of the POR. In such cases, because we compared prices to POR–average costs, 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 Rummo, we disregarded below–cost sales of a given product of 20 percent or more and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. *See* Rummo's calculation memo.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex–works, FOB or delivered prices to comparison market customers. We made deductions from the starting price, when appropriate, for handling, loading, inland freight, warehousing, inland insurance, discounts, and rebates. We added interest revenue. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing, respectively. In addition, we made circumstance–of-sale adjustments for direct expenses, including imputed credit expenses, advertising, warranty expenses, commissions, bank charges, and billing adjustments, in accordance with section 773(a)(6)(C)(iii) of the Act.

We also made adjustments for Rummo, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, the ''commission offset.'' Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the VCOM for the foreign like product and subject merchandise, using POR–average costs.

Sales of pasta purchased by the respondent from unaffiliated producers and resold in the comparison market were disregarded, and sales of comingled and tolled pasta were re–coded as ''Rummo.''

E. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP and CEP sales, to the extent practicable. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at a different LOT. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.

Pursuant to 19 CFR 351.412, to determine whether comparison market sales were at a different LOT, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's–length) customers. If the comparison–market sales were at a different LOT and the differences affect 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 will make an LOT adjustment under section 773(a)(7)(A) of the Act.

Finally, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the differences in LOT between NV and CEP affected price comparability, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997).

In the home market, Rummo reported that it sold through two channels of distribution. Rummo reported that the two channels of distribution in the home market constitute one LOT. In the U.S. market, Rummo reported that its sales were made through three channels of distribution, to two LOTs. In the U.S. market, we find that the selling activity differed between the two LOTs such that they can not be considered the same level of trade. The Department has determined that Rummo's home market sales are made at a different, and more advanced, stage of marketing than the LOTs of the U.S. sales. Nonetheless, we are unable to make an LOT adjustment because there is no other data on the record that would allow the Department to establish whether there is a pattern of consistent price differences between sales at different LOTs in the home market. Therefore, We are preliminarily granting a CEP offset for Rummo. For a detailed description of our LOT methodology and a summary of company–specific LOT findings for these preliminary results, *see* Rummo's calculation memo.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank. *See* Rummo's calculation memo.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted–average percentage margin exists for the period July 1, 2005, through June 30, 2006:

Manufacturer/exporter	Margin (percent)
Rummo	1.54

The Department will disclose the calculations performed for these preliminary results within five days of the date of publication of this notice to the parties of this proceeding, in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing the case briefs, unless the Department alters this time limit. *See* 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Further, parties submitting written comments are requested to provide the Department with an additional copy of the public version of any such comments on diskette. Pursuant to 19 CFR 351.213(h), the Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer–specific assessment rates calculated in the final results are above *de minimis (i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer–specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, to calculate the entered value, we subtracted international movement expenses (*e.g.*, international freight) from the gross sales value.

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

To calculate the cash deposit rate for Rummo, we divided its total dumping margin by the total net value of its sales during the review period. The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Rummo will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, no cash deposit will be required; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, 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 final results 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 be 15.45 percent, the All Others rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996). These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice 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 increase the subsequent assessment of

the antidumping duties by the amount of antidumping duties reimbursed. These preliminary results of this administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: July 31, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E7–15340 Filed 8–6–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–533–824)

Certain Polyethylene Terephthalate Film, Sheet and Strip From India: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to timely requests for review, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain polyethylene terephthalate film, sheet and strip (PET Film) from India for the period of review (POR) July 1, 2005 through June 30, 2006. The review covers one respondent, MTZ Polyfilms, Ltd. (MTZ).

The Department preliminarily determines that MTZ did not sell subject merchandise to the United States at less than normal value during the POR. If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to liquidate entries during the POR without regard to antidumping duties. The preliminary results are listed below in the section titled ''Preliminary Results of Review.''

EFFECTIVE DATE: August 7, 2007.

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao or Jacqueline Arrowsmith, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue., NW, Washington, DC 20230; telephone: (202) 482–1396 or (202) 482–5255, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on PET Film from India on July 1, 2002. *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 FR 44175 (July 1, 2002) (*Antidumping Duty Order*). On July 3, 2006 the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on PET Film from India. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 37890 (July 3, 2006).

The Department received timely requests for an administrative review of the antidumping duty order on PET Film from India from Jindal Poly Films Limited of India (Jindal) and MTZ, manufacturers and exporters of MTZ film in India, by the July 31, 2006 deadline. On August 30, 2006, the Department published in the **Federal Register** the notice of initiation of the administrative review of the antidumping duty order on PET Film from India for these two companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (August 30, 2006) (*Initiation Notice*).

On August 25, 2006, Jindal withdrew its request for an administrative review. Pursuant to 19 CFR 351.213(d)(1), because we received the withdrawal of Jindal's request for review within the requisite 90 days of publication of the *Initiation Notice*, we rescinded the administrative review of Jindal. *See Polyethylene Terephthalate Film, Sheet and Strip from India: Notice of Rescission, in Part, of Antidumping Duty Administrative Review*,72 FR 1216 (January 10, 2007).

On August 2, 2006, the Department issued its questionnaire to MTZ.[1] MTZ submitted its section A response on August 23, 2006, and submitted its sections B and C response on October 13, 2006. The Department issued a Section A supplemental questionnaire on September 6, 2006 and MTZ responded on October 11, 2006. On January 19, 2007 and January 26, 2007, the Department issued supplemental questionnaires to which MTZ responded on February 20, 2007. The Department issued an additional supplemental questionnaire on May 16, 2007 with two deadlines; MTZ submitted its response to Section I of this questionnaire on June 4, 2007, and to Section II of this questionnaire on June 6, 2007.

On March 23, 2007, the Department, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), extended the deadline for the preliminary results of this antidumping duty administrative review by 120 days from April 2, 2007 to July 31, 2007. *See Polyethylene Terephthalate (PET) Film, Sheet and Strip from India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 13745 (March 23, 2007).

Verification

The Department conducted a sales verification of MTZ at the sales office in Mumbai from June 25, 2007 through June 29, 2007. Minor corrections were presented at verification on June 25, 2007 and filed with the Department in accordance with our filing requirements on June 26, 2007. On July 13, 2007, these corrections were filed in electronic format. *See Verification of the Sales Response of MTZ Polyfilms, Ltd. in the Antidumping Administrative Review of Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India (MTZ Verification Report*), dated July 26, 2007, on file in the Department's Central Records Unit, Room B–099 of the main Department building.

Period of Review

This review covers the period July 1, 2005 through June 30, 2006.

Scope of the Order

For purposes of this order, the products covered are all gauges of raw, pretreated or primed PET Film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance–enhancing resinous or inorganic layer of more than 0.00001 inches thick. Since the order was published, there has been one scope determination, dated August 25, 2003. In this determination, requested by International Packaging Films, Inc., the Department determined that tracing and drafting film is outside of the scope of the order. Imports of PET Film are classifiable under the Harmonized Tariff

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales or if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of merchandise under investigation.

Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for the convenience and customs purposes. The written scope of this proceeding is dispositive.

Price–to-Price Comparisons

To determine whether sales of subject merchandise to the U.S. were made at less than normal value (NV), we compared the export price (EP) to NV, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice in accordance with section 777A(d)(2) of the Act.

Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products produced by respondents that are covered by the description in the ''Scope of the Order'' section, above, and that were sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. All of MTZ's U.S. sales were matched to identical merchandise sold in the home market.

Date of Sale

It is the Department's practice to use invoice date as the date of sale in the absence of information established that a different date is appropriate. However, 19 CFR 351.401(i) states that the Secretary may use a date other than the invoice date if the Secretary is satisfied that the material terms of the sale were established on some other date. *See Allied Tube and Conduit Corp. v. United States*, 127 F. Supp. 2d 207, 217–219 (CIT 2000). MTZ reported invoice date as the date of sale for all sales in both the home and U.S. markets. After analyzing MTZ's responses including the sample sales documents provided in its responses and after reviewing documentation at verification, we preliminarily determine that invoice date is the appropriate date of sale for all sales under review.

U.S. Price

In accordance with section 772(a) of the Act, we use EP when the subject merchandise was sold before the date of importation by the producer/exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States, and constructed export price (CEP) was not otherwise warranted by the facts on the record. As discussed below, we conclude that all of MTZ's sales are EP sales.

MTZ identified all of its U.S. sales as EP sales in its questionnaire responses. The Department based the price of each of MTZ's U.S. sales of subject merchandise on EP, as defined in section 772(a) of the Act, because the merchandise was sold, prior to importation, to unaffiliated purchasers in the United States, or to unaffiliated purchasers for exportation to the United States. In accordance with sections 772(a) and 772(c) of the Act, we calculated EP using the prices MTZ charged for subject merchandise from which we made deductions for movement expenses, including, where applicable, charges for domestic inland freight, international freight, insurance, terminal handling charges, document fees, bond fees, storage fees, handling fees, U.S. brokerage and handling, which include both harbor maintenance and merchandise processing fees, and U.S. duties.

We did not make an adjustment for duty drawback as claimed by MTZ in its questionnaire responses. Specifically, we did not make an upward adjustment for duty drawback pursuant to section 772(c)(1)(B) of the Act because the information MTZ provided does not meet the ''two–prong test'' for duty drawback. The first prong is that the import duty and the duty rebate or exemption be directly linked to, and dependent on, one another; and the second prong is that the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback paid on the export of the manufactured product. *See Wheatland Tube Company v. United States*, Slip Op. 06–8 at 29 (CIT January 17, 2006); *see also Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of Antidumping Duty Administrative Review* 71 FR 47485 (August 17, 2006), *Allied Tube & Conduit Corp. v. United States*, 374 F. Supp. 2d 1257, 1261 (CIT 2005); *Rajinder Pipes Ltd. v. United States*, 70 F. Supp. 2d 1350, 1358 (CIT 1999). At the verification, MTZ officials stated that the company was no longer claiming duty drawback for its U.S. sales because the imported raw materials cannot be tied to MTZ's exports. See *MTZ Verification Report* at page 13

Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (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 MTZ's home market sales of the foreign like product during the POR to the volume of U.S. sales of subject merchandise during the POR. *See* section 773(a)(1) of the Act. Based on this comparison, we determined that MTZ's quantity of sales in the home market exceeded five percent of its sales of PET Film to the United States. *See* 19 CFR 351.404(b). Therefore, MTZ's volume of sales in the home market during the POR was sufficient to serve as a viable basis for calculating NV.

Normal Value

In accordance with section 773(a)(1)(B)(i) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities, in the ordinary course of trade, and, to the extent practicable, at the same level of trade (LOT) as the EP sale. *See* ''Level of Trade'' section below.

Pursuant to section 773(a)(6)(B)(ii) of the Act, we made deductions from normal value for movement expenses, including domestic inland freight and domestic brokerage, as appropriate. In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c) and 19 CFR 351.410 (d), we deducted home market credit and added U.S. credit. MTZ reported that it paid commissions on some U.S. sales and some home market sales. We made the appropriate adjustment for commissions paid in the home market pursuant to 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c). We made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other, the ''commission offset.'' Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less. In accordance with sections 773(a)(6)(A) and (B)(i) of the Act, we deducted home market packing and added U.S. packing costs. We did not make an adjustment for other direct selling expenses, because MTZ's original and supplemental responses do not demonstrate that these expenses consist of additional direct selling expenses that have not already been accounted for elsewhere. *See Analysis Memorandum for the Preliminary Results of the Antidumping Administrative Review of Antidumping Duty Order on PET Film from India: MTZ Polyfilms, Ltd. (MTZ Preliminary Analysis Memorandum*), dated July 31, 2007.

Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the EP or CEP sale. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*South African Plate Final*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution),[2] including selling functions,[3] class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third–country prices), we consider the starting prices before any adjustments.

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP sale, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. MTZ reported a single level of trade and a single channel of distribution for both markets. At verification, we reviewed the information provided by MTZ with respect to the distribution system and selling functions in the home and U.S. markets. *See MTZ Verification Report* at 4 and 5. Based on our analysis, the Department preliminarily determines that only one LOT existed in each market for MTZ. As such, no LOT adjustment is warranted for MTZ. *See MTZ Preliminary Analysis Memorandum.*

Currency Conversion

In accordance with section 773A of the Act, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Preliminary Results of Review

As a result of this review, we preliminarily find that the following weighted–average dumping margin exists for the period July 1, 2005 through June 30, 2006:

Manufacturer/Exporter	Margin
MTZ Polyfilms Ltd. (MTZ).	0.24%; (*de minimis*)

Duty Assessment

Upon publication of the final results of this review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.106(c)(s), if the preliminary results remain unchanged in the final results, we will instruct CBP to liquidate without regard to antidumping duties all entries of subject merchandise during the POR by the importers or customers reported by MTZ in its databases. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review.

Cash Deposit

If these preliminary results are adopted in the final results of review, the following deposit requirements will be effective upon completion 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 of the final results of this administrative review, as provided in section 751(a)(1) of the Act: 1) the cash deposit rate for MTZ will be that established in the final results of this review (currently *de minimis*); 2) for previously reviewed or investigated companies not covered in this review, 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 less–than-fair–value (LTFV) investigation, but the manufacturer is a firm covered in this review, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and 4) if neither the exporter nor the manufacturer is a firm covered in this or any previous proceeding conducted by the Department, the cash deposit rate will continue to be 5.71 percent, which is the ''all others'' rate established in the less than fair value investigation (24.14 percent), adjusted for the export subsidy rate found in the companion countervailing duty investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to any party to the proceeding the calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309(c)(ii), interested parties may submit written comments in response to these preliminary results. Unless extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice. *Id.* Rebuttal briefs, limited to arguments raised in case briefs, may be submitted no later than five days after the time limit for filing case briefs. *See* 19 CFR 351.309(d). Parties who submit arguments in this proceeding are requested to submit with the argument: 1) a statement of the issues; 2) a brief summary of the argument; and 3) a table of authorities. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Also, pursuant to 19 CFR 351.310(c), within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case brief, rebuttal brief, or hearing no later than 120 days after publication of these preliminary results, unless extended. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

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

[2] In performing this evaluation, we considered all of MTZ's narrative responses to properly determine where in the chain of distribution the sale occurs.

[3] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, technical service, freight and delivery, and inventory maintenance. See Exhibit A–7 of August 23, 2006 Section A questionnaire response.

occurred and the subsequent assessment of double antidumping duties.

The preliminary results of this administrative review and this notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E7–15322 Filed 8–6–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–401–808

Purified Carboxymethylcellulose From Sweden: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from petitioner Aqualon Company, a division of Hercules Incorporated (Aqualon), a U.S. manufacturer of purified carboxymethylcellulose (CMC), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on CMC from Sweden. This administrative review covers imports of subject merchandise produced and exported by Noviant AB and CP Kelco AB (collectively, CP Kelco). The period of review is December 27, 2004, through June 30, 2006.

We preliminarily determine that sales of CMC by CP Kelco have not been made at less than normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to liquidate appropriate entries without regard to antidumping duties. We invite interested parties to comment on these preliminary results. Parties who submit comments in this review are requested to submit with each argument a statement of the issue and a brief summary of the argument.

EFFECTIVE DATE: August 7, 2007.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Angelica Mendoza, 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) 482–8029 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 2005, the Department published in the **Federal Register** the antidumping duty order on CMC from Sweden. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden*, 70 FR 39734 (July 11, 2005). On July 3, 2006, we published in the **Federal Register** a notice of opportunity to request an administrative review of, *inter alia*, the antidumping duty order on CMC from Sweden. *See Antidumping or Countervailing Duty Order, Findings, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 37890 (July 3, 2006). Pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), Aqualon timely requested an administrative review of the antidumping duty order on CMC from Sweden on July 27, 2006. On August 30, 2006, in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), the Department published a notice of initiation of the administrative review of this order. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (August 30, 2006). We are conducting an administrative review of the order on CMC from Sweden for CP Kelco for the period December 27, 2004, through June 30, 2006.

CP Kelco entered its appearance in this proceeding on August 31, 2006, and the Department issued its Antidumping Duty Questionnaire to CP Kelco on September 11, 2006. On October 17, 2006, we received the Section A Response from CP Kelco (Section A Response). On November 9, 2006, CP Kelco filed its Section B and C questionnaire responses (Section B and C Responses). On December 8, 2006, Aqualon alleged that CP Kelco made home market sales of CMC at prices below the cost of production (COP) during the POR. On January 24, 2007, we initiated a sales–below-cost investigation of home market sales made by CP Kelco. See the Department's January 24, 2007, Memorandum to the File from Patrick Edwards, Case Analyst and Gina Lee, Case Accountant, (Cost Initiation Memorandum) for CP Kelco. As a result, on January 24, 2007, the Department requested that CP Kelco respond to section D of the Department's questionnaire. CP Kelco submitted its section D response on February 5, 2007, (Section D Response), including its cost reconciliation.

On January 26, 2007, the Department issued its first sections A–C supplemental questionnaire to CP Kelco and on February 15, 2007, CP Kelco submitted its response (Supplemental Response). On April 2, 2007, the Department issued to CP Kelco a second section A through C supplemental questionnaire, and on April 13, 2007, CP Kelco submitted its response (Second Supplemental Response).

On April 5, 2007, due to the complexity of the case and pursuant to section 751(a)(3)(A) of the Act, the Department extended the deadline for the preliminary results by 120 days from April 2, 2007, until July 31, 2007. *See Purified Carboxymethylcellulose from Finland, Sweden, the Netherlands, and Mexico: Extension of Time Limits for Preliminary Determinations of Antidumping Duty Administrative Reviews*, 72 FR 16767 (April 5, 2007).

From April 23, 2007, through April 25, 2007, and from April 30, 2007, through May 4, 2007, respectively, the Department conducted on–site verifications of CP Kelco's U.S. constructed export price (CEP) and home market sales responses. *See* ''Verification'' section below. On June 19, 2007, the Department sent a letter to CP Kelco requesting specific changes to its home market and U.S. sales databases, based on the verification findings and minor corrections. *See* Letter to CP Kelco AB and CP Kelco U.S. Inc. from Angelica L. Mendoza, Program Manager, regarding Request for Revised Home Market and U.S. Sales Databases, dated June 19, 2007. On June 29, 2007, the Department received CP Kelco's revised sales files as requested by the Department.

Period of Review

The period of review (POR) is December 27, 2004, through June 30, 2006.

Scope of the Order

The merchandise covered by this order is all purified CMC, sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off–white, non–toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross–linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations, which, at a minimum, reduce the remaining salt and other by–product portion of the product to less than ten percent. The

merchandise subject to this order is currently classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

Verification

As provided in section 782(i) of the Act, and 19 CFR 351.307, we conducted a sales verification of the questionnaire responses of CP Kelco and CP Kelco's U.S. sales affiliate, CP Kelco U.S. Inc. We used standard verification procedures, including on–site inspection of CP Kelco's production facility in Sweden. Our verification results are outlined in the following two memoranda: 1) Memorandum to the File, through Angelica L. Mendoza, Program Manager, ''Verification of Home Market and U.S. Sales Information Submitted by CP Kelco A.B. and Noviant A.B.,'' dated June 11, 2007 (Home Market Verification Report); and 2) Memorandum to the File, through Angelica L. Mendoza, Program Manager, ''Sales Verification of Sections A–C Questionnaire Responses Submitted by CP Kelco AB, Noviant AB, CP Kelco U.S. Inc. and Noviant Inc. (collectively, CP Kelco) in the Antidumping Duty Administrative Review of Purified Carboxymethylcellulose from Sweden-Verification of United States Affiliates CP Kelco U.S. Inc. and Noviant U.S. Inc. (collectively, CP Kelco U.S.),'' dated June 12, 2007 (CEP Verification Report). *See also* Memorandum to the File from Joseph Welton, Senior Accountant, through Neal M. Halper, Director, and Theresa C. Deeley, Lead Accountant, regarding ''Verification of the Cost Response of CP Kelco AB in the Antidumping Duty Administrative Review of Carboxymethylcellulose from Sweden,'' dated July 3, 2007 (Cost Verification Report). Public versions of these reports are on file in the Central Records Unit (CRU) located in room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW, Washington, DC.

Use of Facts Available

Section 776(a)(1) of the Act provides that the Department will, subject to section 782(d) of the Act, use the facts otherwise available in reaching a determination if ''necessary information is not available on the record.'' In accordance with section 776(a)(1) of the Act, for these preliminary results, we find it necessary to use partial facts available in those instances where the respondent did not provide certain information necessary to conduct our analysis.

CP Kelco reported in its questionnaire responses that it ''factors'' its account receivables through an affiliated financial institution (*i.e.*, sells the rights to the outstanding payments of its unpaid invoices to that financial institution). *See*, *e.g.*, Section B Response and Section C Response at pages B–13 and C–13, respectively, and Supplemental Response at pages 33, and 35–37, and at exhibits B–11, B–12, B–13, B–14, and B–15. As a result of our review of the factoring process during the verifications in Sweden and Atlanta, Georgia, we found that CP Kelco incurred transaction expenses on its factored sales in both the U.S. and home markets. These expenses are fees charged by the affiliated financial institution to CP Kelco for purchasing its account receivables and remitting payment to CP Kelco at an earlier date than payment would have been received from the invoiced customer. For a further description and analysis of CP Kelco's factoring methodology, *see* Analysis of Data Submitted by Noviant AB and CP Kelco AB (collectively, CP Kelco) in the Preliminary Results of the Antidumping Duty Administrative Review of Purified Carboxymethylcellulose (CMC) from Sweden from Patrick Edwards, Analyst, to the File, dated July 31, 2007 (Sales Analysis Memorandum) on file in the CRU. We preliminarily determine that normal value and net U.S. price should be adjusted for these expenses. However, because we did not ask CP Kelco to provide this information on a transaction–specific basis, there is not sufficient information on the record to make a transaction–specific adjustment for these factoring charges.

Pursuant to section 776(a)(1) of the Act, it is appropriate to use the facts otherwise available to make this adjustment. The methodology used to make these adjustments is discussed in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. We find that CP Kelco did report all information requested to the best of its ability. Therefore, we have not made an adverse inference in our use of partial facts available. We intend to ask CP Kelco to report its actual factoring expense on a transaction–specific basis in a later submission, and we intend to consider that information in our final results.

Successor–In-Interest

In February 2005, the Noviant group of companies (including Noviant's Sweden–based operation of Noviant AB) were merged with the CP Kelco group of companies, with both corporate groups previously operating as subsidiaries of the J.M. Huber Corporation. Following the merger, the operating title of the two entities became unified under the CP Kelco corporate title. Throughout 2005 and 2006, each of the European Noviant production and export companies' names were changed from ''Noviant'' to ''CP Kelco'' (*i.e.*, Noviant AB became CP Kelco AB in Sweden). Because entries have been made under the name of the new company during the POR, the Department must make a successorship determination in order to determine the appropriate and necessary company–specific cash deposit and assessment rates to be applied to entries subsequent to the final results of this review.

In December 2005, the shares of Noviant AB's U.S. sales affiliate, Noviant Inc., were sold in an agreement with CP Kelco's holding company, merging the U.S.-based operations of Noviant and CP Kelco under the CP Kelco corporate title. The completed merger of Noviant's U.S.-based operations with those of CP Kelco became effective January 1, 2006, and the company has since operated as CP Kelco U.S., Inc. (CP Kelco U.S.). For a further discussion of this issue, *see* Sales Analysis Memorandum; *see also*, Home Market Verification Report at 3–6 and CEP Verification Report at 4–8. CP Kelco U.S. is a subsidiary of CP Kelco, respondent in the current administrative review and subsidiary of J.M. Huber Corporation.

In determining whether CP Kelco is the successor to Noviant AB for purposes of the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in: (1) management, (2) production facilities, (3) suppliers, and (4) customer base. *See*, *e.g.*, *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) (*Brass from Canada*); *Steel Wire Strand for Prestressed Concrete from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 55 FR 28796 (July 13, 1990); and *Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944 (February 14, 1994). While examining these factors alone will not necessarily provide a dispositive indication of succession, the Department will generally consider one company to have succeeded another if that company's operations are essentially inclusive of the predecessor's operations. *See Brass from Canada*. Thus, if the evidence

demonstrates, with respect to the production and sale of the subject merchandise, that the new company is essentially the same business operation as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

The evidence on the record, particularly CP Kelco's response to our supplemental questionnaire specifically addressing its claimed successorship (Questions 2–11 of the Supplemental Response) and the Home Market and CEP Verification Reports, demonstrate that, with respect to the production and sale of the subject merchandise, CP Kelco is the successor to Noviant AB. Specifically, we reviewed CP Kelco's organizational structure before and after the merger, as set forth in the company's questionnaire responses, and confirmed that there were only minimal changes to management and corporate structure. For instance, with respect to direct U.S. sales, sales are still made through the Unified Dental Team within Huber Engineered Materials (HEM). With respect to sales through Noviant Inc.'s successor, CP Kelco U.S., while customer care and logistics functions were transferred from Atlanta to Chicago, Illinois, and San Diego, California, those former Noviant employees did not relocate; a single new customer care representative was hired in Chicago and the existing CP Kelco U.S. logistics staff in San Diego took over logistics functions relating to CMC.

From a management perspective, consistent with CP Kelco's responses and information obtained during the Department's verifications, the merger of Noviant AB with CP Kelco AB is, effectively, a name change, the primary purpose of which was to broaden the companies' marketing scope under the unified ''CP Kelco'' name. Consequently, our analysis of corporate management changes as a result of the merger indicates that neither the former Noviant AB nor CP Kelco AB (as well as the U.S. affiliates, Noviant Inc. and CP Kelco U.S.) experienced significant shifts in senior executive management. *See* Home Market Verification Report at 4–6 and Exhibit 4. *See also*, CEP Verification Report at 5 to 8, and Exhibits 2–4. While new management positions were created, we found that senior management in place at Noviant AB prior to the merger with CP Kelco AB still exist following the merger. The same holds true for senior management of the U.S.-based entities, Noviant Inc. and CP Kelco U.S., where we found that one senior manager left the company following the merger.

These changes, standing alone, are not sufficiently significant to support a determination that CP Kelco's management and organizational structure, as well as its production and sales of the subject merchandise, are not essentially the same as those of Noviant AB. Record evidence also shows that CP Kelco uses the same CMC production facilities and suppliers as used by Noviant AB (*id.* at 10–12). CP Kelco also provides CMC to the same customers as Noviant AB (*id.* at 11–12); *see also*, Section A Response at 10–12. Therefore, we preliminarily find that CP Kelco is the successor to Noviant AB for purposes of this proceeding, and for the application of the antidumping law.

Fair Value Comparisons

To determine whether sales of CMC from Sweden to the United States were made at less than fair value, we compared the export price (EP) or CEP to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we compared the EPs and CEPs of individual U.S. transactions to monthly weighted–average NVs.

Product Comparisons

We compared U.S. sales with sales of the foreign like product in the home market. Specifically, in making our comparisons, we used the following methodology. If an identical comparison–market model was reported, we made comparisons to weighted–average comparison–market prices that were based on all sales which passed the COP test of the identical product during the relevant or contemporary month. If there were no contemporaneous sales of an identical model, we identified the most similar comparison–market model. To determine the most similar model, we matched the foreign like product based on the physical characteristics reported by the respondent in the following order of importance: (1) grade, (2) viscosity, (3) degree of substitution, (4) particle size, and (5) solution characteristics.

Export Price and Constructed Export Price

In accordance with section 772 of the Act, we calculate either an EP or a CEP, depending on the nature of each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold by the foreign exporter or producer before the date of importation to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. CP Kelco classified two types of sales to the United States: 1) direct sales to end–user customers (EP); and 2) sales via its U.S. affiliates, CP Kelco U.S. and HEM, to end–users and distributors (CEP). For purposes of these preliminary results, we have accepted CP Kelco's classifications.

We calculated EP based on prices charged to the first unaffiliated U.S. customer. We used the sale invoice date as the date of sale.[1] We based EP on the packed free on board (FOB) or delivered duty paid prices (DDP) to the first unaffiliated purchasers outside Sweden. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included foreign inland freight, international freight, marine insurance, foreign brokerage and handling, and U.S. customs duty, while adding freight revenue, in accordance with section 772(c)(1) of the Act and section 351.401(e) of the Department's regulations. We made further adjustments for direct expenses (credit expenses) in accordance with section 772(c)(2)(A) of the Act.

Based upon our findings at verification, we made a deduction from EP for the factoring charges incurred by CP Kelco on its U.S. account receivables. For the EP sales examined at verification, we used CP Kelco's verified factoring charges to represent this expense. For the remaining EP sales (*i.e.*, the sales not examined at verification) upon which CP Kelco incurred factoring charges, we based the deduction upon the average ratio of factoring charges to the invoice value incurred by CP Kelco on the U.S. sales examined at verification.

We calculated CEP based on prices charged to the first unaffiliated U.S. customer after importation. We used the sale invoice date as the date of sale. We based CEP on the gross unit price from CP Kelco to its unaffiliated U.S. customers, making adjustments where necessary for billing adjustments, rebates, and other discounts. Where applicable and pursuant to sections 772(c)(2)(A) and (d)(1) of the Act, the Department made deductions for movement expenses (foreign inland freight, international freight, U.S.

[1] *See* the Department's Sales Analysis Memorandum for a further discussion of this issue.

movement, U.S. customs duty, brokerage and handling, marine insurance, and post–sale warehousing), while adding freight revenue, in accordance with section 772(c)(1) of the Act and section 351.401(e) of the Department's regulations. In accordance with section 772(d)(1) of the Act, we also deducted, where applicable, U.S. direct selling expenses, including credit expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs incurred in the United States and Sweden associated with economic activities in the United States. We also deducted CEP profit in accordance with section 772(d)(3) of the Act.

We also made a deduction from CEP for the factoring charges incurred by CP Kelco on its U.S. account receivables. For the CEP sales examined at verification, we used CP Kelco's verified factoring charges to represent this expense. For the remaining CEP sales (*i.e.*, the sales not examined at verification) upon which CP Kelco incurred factoring charges, we based the deduction upon the average ratio of factoring charges to the invoice value incurred by CP Kelco on the U.S. sales examined at verification.

Normal Value

A. Home Market Viability and Comparison Market Selection

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.*, whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Pursuant to section 351.404(b)(2) of the Department's regulations, because CP Kelco's aggregate volume of home market sales of the foreign–like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for comparison. Therefore, pursuant to section 773(a)(1)(B) of the Act, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

B. Cost of Production Analysis

On January 24, 2007, based on an allegation from Aqualon, the Department initiated a sales–below-cost investigation of CP Kelco because Aqualon provided a reasonable basis to believe or suspect that CP Kelco is selling CMC in the home market at prices below its COP. *See* Cost Initiation Memorandum. Based on the Department's findings, there is a reasonable basis to believe or suspect that CP Kelco is selling CMC in Sweden at prices below COP. Therefore, pursuant to section 773(b)(1) of the Act, we examined whether CP Kelco's sales in Sweden were made at prices below the COP. *See* Cost Initiation Memorandum.

C. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted–average COP for each model based on the sum of CP Kelco's materials and fabrication costs for the foreign like product, plus an amount for home market selling expenses, general and administrative (G&A) expenses, financial expenses, and packing costs. We relied on the COP data submitted by CP Kelco, except for the changes noted below.

1. CP Kelco revised the standard cost of a limited number of products during December 2005, and allocated the 2005 variances (*i.e.*, the amount by which actual costs differed from standard costs) to the revised standard costs. We reallocated variances to the standard costs which were in effect from January 2005 through November 2005.
2. We revised the cost of goods sold denominator of the reported financial expense ratio of parent company J.M. Huber Corporation to include J.M. Huber Corporation's depreciation expenses, and to deduct packing and freight costs. *See* Memorandum to Neal Halper from Joseph Welton, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - CP Kelco AB, dated July 31, 2007.

D. Test of Home Market Prices

We compared the weighted–average COP of CP Kelco's home market sales to home market sales prices (net of billing adjustments, discounts, any applicable movement expenses, direct and indirect selling expenses, and packing) of the foreign like product as required under section 773(b) of the Act in order to determine whether these sales had been made at prices below COP. In determining whether to disregard home market sales made at prices below COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made in substantial quantities within an extended period of time, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time.

E. Results of the Cost Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of CP Kelco's sales of a given model were at prices less than the COP, we did not disregard any below–cost sales of that model because these below–cost sales were not made in substantial quantities. Where 20 percent or more of CP Kelco's home market sales of a given model were at prices less than the COP, we disregarded the below–cost sales because such sales were made: (1) in substantial quantities within the POR (*i.e.*, within an extended period of time) in accordance with section 773(b)(2)(B) of the Act, and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act (*i.e.*, the sales were made at prices below the weighted–average per–unit COP for the POR). We used the remaining sales as the basis for determining NV, if such sales existed, in accordance with section 773(b)(1) of the Act. In this review, we have found sales below the COP and have, as described above, disregarded such sales from our margin calculations.

F. Price–to-Price Comparisons

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. We used the sale invoice date as the date of sale. We made adjustments for billing adjustments, discounts, and rebates, where appropriate. We made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Act. We offset inland freight for any freight revenue (revenue received from customers for invoice items covering transportation expenses). In addition, when comparing sales of similar merchandise, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise (*i.e.*, DIFMER) pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses. We also made an adjustment, where appropriate, for the CEP offset in accordance with section 773(a)(7)(B) of the Act. *See* ''Level of Trade'' section below. Additionally, we deducted home market

packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

We also made a deduction from NV for the factoring charges incurred by CP Kelco on its home market account receivables. For the home market sales examined at verification, we used CP Kelco's verified factoring charges to represent this expense. For the remaining home market sales (*i.e.*, the sales not examined at verification) upon which CP Kelco incurred factoring charges, we based the deduction upon the average ratio of factoring charges to the invoice value incurred by CP Kelco on the home market sales examined at verification.

G. Price–to-Constructed Value–Comparison

In accordance with section 773(a)(4) of the Act, we base NV on constructed value (CV) if we are unable to find a contemporaneous comparison market match of identical or similar merchandise for the U.S. sale. Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication employed in making the subject merchandise, selling, general and administrative (SG&A) expenses, financial expenses, profit, and U.S. packing costs. We calculated the cost of materials and fabrication for CP Kelco based on the methodology described in the COP section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses, financial expense, and profit on the amounts CP Kelco incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. However, for these preliminary results, we did not base NV on CV in any instances. Accordingly, for sales of CMC for which we could not determine the NV based on comparison–market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the sales–below-cost test, we based NV on CV.

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 level of trade (LOT) as the EP or CEP transaction. The LOT in the comparison market is the LOT of the starting–price sales in the comparison market or, when NV is based on CV, the LOT of the sales from which we derive SG&A expenses and profit. With respect to U.S. price for EP transactions, the LOT is also that of the starting–price sale, which is usually from the exporter to the importer. For CEP, the LOT is that of the constructed sale from the exporter to the affiliated importer.

To determine whether comparison market sales are at a different LOT from U.S. sales, we examined 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 different LOTs, 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, the Department makes an LOT adjustment in accordance with section 773(a)(7)(A) of the Act. For CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. We analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in LOT between the CEP and NV. Under section 773(a)(7)(A) of the Act, we make an upward or downward adjustment to NV for LOT if the difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined. Finally, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP, but the data available do not provide an appropriate basis to determine an LOT adjustment, we reduce NV by the amount of indirect selling expenses incurred in the foreign comparison market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for CEP sales. *See* section 773(a)(7)(B) of the Act (the CEP offset provision).

In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain–on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Issues and Decision Memorandum at Comment 6. In the present review, CP Kelco claimed an LOT adjustment. See Section B Response at page B–20. In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[2] including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

CP Kelco reported two LOTs in the comparison market, Sweden, with two channels of distribution to two classes of customers: (1) direct sales to end user customers (LOT 1 and Channel 1) and (2) direct sales to distributors (LOT 2 and Channel 2). Based on our review of record evidence, we find that comparison market sales to both customer categories and through both channels of distribution were substantially similar with respect to selling functions and stages of marketing. CP Kelco performed the same selling functions at a similar level of performance for sales in both comparison market channels of distribution, including sales forecasting, order input/processing, advertising, warranty service, freight, delivery, and logistics services, *etc. See* Section A Response at Exhibit A–5; Supplemental Response at exhibit A–25. Accordingly, we preliminarily find that CP Kelco had only one LOT for its comparison market sales.

CP Kelco reported one EP LOT and one CEP LOT each with its own separate channel of distribution in the United States, and with two classes of customers for CEP sales: (1) direct sales to end user customers (EP sales of LOT 1 and Channel 5) and (2) sales through U.S. affiliates (CEP sales) to end users and distributors of merchandise (LOTs 3 and 4 with Channel 1 to end users and Channel 2 to distributors). In reviewing CP Kelco's questionnaire responses, we preliminarily find that CP Kelco has a total of three channels of distribution for its U.S. sales: (1) direct sales to end users of merchandise produced to order and from existing inventory, (2) sales through U.S. affiliate CP Kelco U.S. to end users and distributors of

[2] The marketing process in the United States and comparison market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered CP Kelco's narrative response to properly determine where in the chain of distribution the sale occurs.

merchandise produced to order and from existing inventory, and (3) sales through U.S. affiliate HEM to end users and distributors of merchandise produced to order and from existing inventory. Therefore, we preliminarily find that there is one channel of distribution for EP sales, and two channels of distribution for CEP sales. *See* Section A Response at A–17–A–23.

For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. *See Micron Technology Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We reviewed the selling functions and services performed by CP Kelco on CEP sales for both channels of distribution relating to the CEP LOT, as described by CP Kelco in its questionnaire responses, after these deductions. We have determined that the selling functions performed by CP Kelco on all CEP sales are similar because CP Kelco provides almost no selling functions to either U.S. affiliate in support of either channel of distribution. CP Kelco reported that the only services it provided for the CEP sales were packaging, order input/processing services, and very limited sales/marketing support services. See Supplemental Response at exhibit A–25. Accordingly, because the selling functions provided by CP Kelco on sales to affiliates in the United States are substantially similar, we preliminarily determine that there is one CEP LOT in the U.S. market.

We then examined the selling functions performed by CP Kelco on its EP sales in comparison with the selling functions performed on CEP sales (after deductions). We found that CP Kelco performs an additional layer of selling functions on its direct sales to unaffiliated U.S. customers which are not performed on its sales to affiliates (*e.g.*, sales forecasting, strategic/economic planning, engineering services, procurement and sourcing services, packing, inventory maintenance, direct sales support, after–sales support services, *etc.*). *Id.* Because these additional selling functions are significant, we find that CP Kelco's direct sales to unaffiliated U.S. customers (EP sales) are at a different LOT than its CEP sales.

Next, we examined the comparison market and EP sales. CP Kelco's comparison (home) market and EP sales were both made to end users, while only CP Kelco's comparison market sales were made to distributors. In the case of end user sales, the selling functions performed by CP Kelco were almost identical for both markets. Other than re–packing services, which were mainly provided on U.S. sales, in both markets CP Kelco provided the following services: sales forecasting, strategic and economic planning, sales promotion, engineering services, advertising, procurement/sourcing services, packing, inventory maintenance, direct sales personnel, order/input processing, market research, technical assistance, providing guarantees, after–sales services, freight and delivery services, *etc. Id.* Because the selling functions and channels of distribution are substantially similar, we preliminarily determine that the comparison market LOT is the same as the EP LOT. It was therefore unnecessary to make an LOT adjustment for comparison of home market and EP prices.

According to section 773(a)(7)(B) of the Act, a CEP offset is appropriate when the LOT in the home market is at a more advanced stage than the LOT of the CEP sales and there are no data available to determine the existence of a pattern of price difference. CP Kelco reported that it provided minimal selling functions and services for the CEP LOT and that, therefore, the comparison market LOT is more advanced than the CEP LOT. Based on our analysis of the channels of distribution and selling functions performed by CP Kelco for sales in the comparison market and CEP sales in the U.S. market (*i.e.*, sales support and activities provided by CP Kelco on sales to its U.S. affiliates), we preliminarily find that the comparison market LOT is at a more advanced stage of distribution when compared to CEP sales because CP Kelco provides many selling functions in the comparison market at a higher level of service (*i.e.*, sales forecasting, strategic/economic planning, advertising, personnel training, procurement services, sales promotion, inventory maintenance, direct sales personnel, market research, technical assistance, after–sales service, *etc.*) as compared to selling functions performed for its CEP sales (*i.e.*, CP Kelco reported that the only services it provided for the CEP sales were packaging, order input/processing services, and very limited freight and delivery and sales/marketing support services). *See* Supplemental Response at exhibit A–25. Thus, we find that CP Kelco's comparison market sales are at a more advanced LOT than its CEP sales. There was only one LOT in the comparison market, and there are no data available to determine the existence of a pattern of price difference, and we do not have any other information that provides an appropriate basis for determining a LOT adjustment; therefore, we applied a CEP offset to NV for CEP comparisons.

To calculate the CEP offset, we deducted the comparison market indirect selling expenses from NV for comparison market sales that were compared to U.S. CEP sales. As such, we limited the comparison market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

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

As a result of our review, we preliminarily determine that the weighted–average dumping margin for the period December 27, 2004, through June 30, 2006, for CP Kelco to be as follows:

Manufacturer/Exporter	Weighted–Average Margin
Noviant AB and CP Kelco AB	0.00 percent

We will disclose the calculations used in our analysis to parties to this review within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the date of publication of this notice. *See* 19 CFR 351.310. Interested parties who wish to request a hearing or to participate in a hearing, if a hearing is requested, must submit a written request to the Department within 30 days of the date of publication of this notice. Requests should contain the following: (1) the party's name, address, and telephone number; (2) the number of participants; (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 case and rebuttal briefs. *See* 19 CFR 351.310(c). Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice of preliminary results of review. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal briefs from interested parties, limited to the issues raised in the case briefs, may be submitted not later than five days after the time limit for filing the case briefs or comments. *See* 19 CFR 351.309(d)(1) and 19 CFR 351.310(c). Any hearing, if requested, will be held two days after

the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a summary of the arguments not exceeding five pages, and a table of statutes, regulations, and cases cited. *See* 19 CFR 351.309(c)(2). The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice. *See* section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of this review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise covered by the review.[3] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by CP Kelco and/or Noviant AB and for which CP Kelco and/or Noviant AB did not know another company would export its merchandise to 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.

Cash Deposit Requirements

The following cash–deposit rates will be effective upon publication of the final results of this review for all shipments of purified carboxymethylcellulose from Sweden entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise produced by CP Kelco and/or Noviant AB, the cash–deposit rate will be the rate established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) if the exporter is not a firm covered in this review or the 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 3) 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 be the ''all others'' rate of 25.29 percent from the LTFV investigation. *See Notice of Anitdumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, and the Netherlands and Sweden*, 70 FR 39734 (July 11, 2005).

These deposit 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 section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

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BILLING CODE 3510–DS–S

[3] If for the final results we determine CP Kelco AB to be the successor to Noviant AB, we will instruct CBP to liquidate entries subject to this review using CP Kelco's final rate, accordingly.

DEPARTMENT OF COMMERCE

International Trade Administration

(A–201–834)

Purified Carboxymethylcellulose From Mexico: Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Quimica Amtex S.A. de C.V. (Amtex), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from Mexico. The review covers exports of the subject merchandise to the United States produced and exported by Amtex.

We preliminarily find that Amtex made sales at less than fair value during the POR. 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 based on differences between the export price (EP) or constructed export price (CEP) and normal value (NV).

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the arguments: (1) a statement of the issues, (2) a brief summary of the arguments (no longer than five pages, including footnotes) and (3) a table of authorities.

EFFECTIVE DATE: August 7, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, 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) 482–6312 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on CMC from Mexico on July 11, 2005. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands, and Sweden*, 70 FR 39734 (July 11, 2005). On July 3, 2006, the Department published the notice of opportunity to request administrative review of CMC from Mexico for the period December 27, 2004, through June 30, 2006. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 37890 (July 3, 2006).

On July 17, 2006, Amtex requested a review of its sales of CMC for the period December 27, 2004, through June 30, 2006 (the POR). On August 30, 2006, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (August 30, 2006).

On September 11, 2006, the Department issued its standard

antidumping duty questionnaire to Amtex. Amtex submitted its response to section A of the Department's antidumping duty questionnaire on October 10, 2006 (Amtex Section A Response). Amtex submitted its response to sections B and C of the Department's questionnaire on November 13, 2006 (Amtex Sections B and C Response).

On March 16, 2007, the Department issued a supplemental questionnaire for sections A, B, and C, to which Amtex responded on April 13, 2007 (Amtex Supplemental Response).

Because it was not practicable to complete this review within the normal time frame, on April 5, 2007, the Department published in the **Federal Register** a notice of the extension for the preliminary results of this review. *See Purified Carboxymethylcellulose from Finland, Sweden, the Netherlands, and Mexico: Extension of Time Limits for Preliminary Determinations of Antidumping Duty Administrative Reviews*, 72 FR 16767 (April 5, 2007). This extension established the deadline for these preliminary results as July 31, 2007.

Because the Department requires additional information from Amtex, a letter was sent out specifying the required data. See Letter from Robert M. James to Jeffrey S. Neeley entitled, ''Purified Carboxymethylcellulose (CMC) from Mexico: Section A and B Data Reporting,'' dated July 30, 2007.

Period of Review

The period of review (POR) is December 27, 2004, through June 30, 2006.

Scope of the Order

The merchandise covered by this order is all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off–white, non–toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross–linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by–product portion of the product to less than ten percent. The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Date of Sale

The Department's regulations state that it will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. *See* 19 CFR 351.401(i). If the Department can establish ''a different date that better reflects the date on which the exporter or producer establishes the material terms of sale,'' the Department may choose a different date. *Id.* As further discussed below, the Department preliminarily determines that the invoice date is the date of sale provided the invoice is issued on or before the shipment date; and that the shipment date is the date of sale where the invoice is issued after the shipment date.

In both the home and U.S. markets, Amtex bills some of its sales via ''delayed invoices.'' See Amtex Supplemental Response at 16. Delivery is made to the customer and a *pro forma* invoice is issued, but the subject merchandise remains in storage and continues to be the property of Amtex until withdrawn for consumption by the customer (usually at the end of a regular, monthly billing cycle), at which time a final and definitive invoice is issued. In Amtex's normal books and records this final invoice date, not the *pro forma* invoice date, is recorded as the date of sale. *Id.*, at 24–26.

Therefore, for these preliminary results, the Department will use the earlier of either (a) the invoice date or (b) shipment date as the date of sale for Amtex's NV, EP, and CEP sales. *See* Analysis Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Carboxymethylcellulose from Mexico dated July 31, 2007 (Analysis Memorandum), for further discussion of date of sale. A public version of this memorandum is on file in the Department's Central Records Unit (CRU) located in Room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Fair Value Comparisons

To determine whether sales of CMC in the United States were made at less than fair value, we compared U.S. price to normal value (NV), as described in the ''Export price,'' ''Constructed Export Price,'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Tariff Act of 1930, as amended (the Act), we calculated monthly weighted–average NVs and compared these to individual U.S. transactions. Because we determined Amtex made both EP and CEP sales during the POR, we used both EP and CEP as the basis for U.S. price in our comparisons.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Amtex covered by the description in the ''Scope of the Order'' section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We relied on five characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of priority): 1) grade; 2) viscosity; 3) degree of substitution; 4) particle size; and 5) solution gel characteristics. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of these product characteristics and the reporting instructions listed in the Department's September 11, 2005 questionnaire. Because there were contemporaneous sales of identical or similar merchandise in the home market suitable for comparison to all U.S. sales, we did not compare any U.S. sales to constructed value (CV). *See* the CV section below.

Export Price (EP)

Section 772(a) of the Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. . .,'' as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for a number of Amtex's U.S. sales. We preliminarily find that these sales are properly classified as EP sales because these sales were made before the date of importation and were sales directly to unaffiliated customers in the United States, and because CEP methodology was not otherwise indicated.

We based EP on the packed, delivered duty paid, cost and freight (C&F) or free on board (FOB) prices to unaffiliated customers in the United States. Amtex reported no price or billing adjustments, and no discounts. We made deductions for movement expenses in accordance

with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight from the mill to the U.S. border, inland freight from the border to the customer or warehouse, and U.S. brokerage and handling. We made adjustment for direct expenses (credit expenses) in accordance with section 772(c)(2)(A) of the Act.

Constructed Export Price (CEP)

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for a number of Amtex's U.S. sales because Amtex sold merchandise to its affiliate in the United States, Amtex Chemicals LLC (Amtex Chemicals or ACUS), which, in turn, sold subject merchandise to unaffiliated U.S. customers. *See, e.g.*, Amtex Section A Response at 10–11. We preliminarily find these U.S. sales are properly classified as CEP sales because they occurred in the United States and were made through Amtex's U.S. affiliate, Amtex Chemicals, to unaffiliated U.S. customers.

We based CEP on the packed, delivered duty paid or FOB warehouse prices to unaffiliated purchasers in the United States. Amtex reported no price or billing adjustments, and no discounts or rebates. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight to the border, foreign brokerage and handling, customs duties, U.S. brokerage, U.S. inland freight, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs), inventory carrying costs, and indirect selling expenses.

However, no adjustment for CEP profit was made for the reasons set forth in the Analysis Memorandum. *See* Analysis Memorandum at 14.

Normal Value

A. Selection of Comparison Market

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. Because Amtex's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

B. Price–to-Price Comparisons

We calculated NV based on prices to unaffiliated customers. Amtex reported no billing adjustments, discounts or rebates in the home market. We made deductions for movement expenses including, where appropriate, foreign inland freight and insurance, pursuant to section 773(a)(6)(B) of the Act. In addition, when comparing sales of similar merchandise, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise (*i.e.*, DIFMER) pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

C. Constructed Value (CV)

In accordance with section 773(a)(4) of the Act, we base NV on CV if we are unable to find a contemporaneous comparison market match of such or similar merchandise for the U.S. sale. Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication employed in making the subject merchandise, SG&A expenses, profit, and U.S. packing costs. Since there was no cost allegation in this administrative review, no section D questionnaire was issued to Amtex. Therefore, we relied upon the costs of materials and fabrication as reported by Amtex in its sections A, B, and C responses and supplemental response to calculate CV. However, Amtex's responses did not provide all the data necessary for us to compute a CV profit. Therefore we calculated a CV profit using Amtex's 2001–2002 audited financial statements, as submitted in the most recent segment of these proceedings. *See Frozen Concentrated Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 51008 (October 5, 2001) and the accompanying Issues and Decision Memorandum at Comment 3. For details of this calculation, *see* Analysis Memorandum. For these preliminary results, we did not base NV on CV.

Level of Trade and CEP

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we base NV on sales made in the comparison market at the same level of trade (LOT) as the export transaction. The NV LOT is based on the starting price of sales in the home market or, when NV is based on constructed value (CV), that of the sales from which selling, general, and administrative (SG&A) expenses and profit are derived. With respect to CEP transactions in the U.S. market, the CEP LOT is defined as the level of the constructed sale from the exporter to the importer. *See* section 773(a)(7)(A) of the Act.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. *See* 19 CFR 351.412(c)(2). 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 a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See, e.g., Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 17406, 17410 (April 6, 2005), results unchanged in *Notice of Final Results of Antidumping Duty Administrative Review of Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil*, 70 FR 58683 (October 7, 2005); *see also Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002) and accompanying Issues and Decisions

Memorandum at Comment 8. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We expect that if the claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that the LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain–on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Issues and Decisions Memorandum at Comment 6.

Amtex reported that it had sold CMC to end–users and distributors in the home market and to end–users and distributors in the United States. For the home market, Amtex identified two channels of distribution: end users (channel 1) and distributors (channel 2). *See* Amtex's Section A Response at 8 and 9 and Exhibit A–6; *see also* Amtex Sections B and C Response at B–20. Amtex claimed a single level of trade in the home market, stating that it performs essentially the same selling functions to either category of customer.

We obtained information from Amtex regarding the marketing stages involved in making its reported home market and U.S. sales. Amtex provided a table listing all selling activities it performs, and comparing the levels of trade among each channel of distribution in each market. See Amtex Supplemental Response at Exhibit A–6. We reviewed Amtex's claims concerning the intensity to which all selling functions were performed for each home market channel of distribution and customer category. For virtually all selling functions, the selling activities of Amtex were identical in both channels, including sales forecasting, personnel training, sales promotion, direct sales personnel, technical assistance, warranty service, after–sales service and arranging delivery. *Id.* In fact, Amtex described the level of performance as identical across its home market end–user and distributor channels of distribution. *See* Amtex Sections B and C Response at B–20; *see also* Amtex Supplemental Response at 19 and at Exhibit 6.

While we find some differences in the selling functions performed between the home market end–user and distributor channels of distribution, such differences are minor in that they are not the principal selling functions but rather particularized toward a few customers and rarely performed. *See* Amtex Supplemental Response at Exhibit 6. Based on our analysis of all Amtex's home market selling functions, we agree with Amtex's characterization of all its home market sales as being made at the same level of trade, the NV LOT.

In the U.S. market, Amtex reported two levels of trade (*i.e.*, EP and CEP sales) through two channels of distribution (*i.e.*, end–users and distributors). We examined the record with respect to Amtex's EP sales and find that for all EP sales, Amtex performed such selling functions as sales forecasting, sales promotion, direct sales personnel, technical assistance, warranties, after–sales services and arranging delivery. *Id.* In terms of the number and intensity of selling functions performed on EP sales, these were indistinguishable between sales from Amtex to end users and to distributors. *Id.* Accordingly, we preliminarily determine that all EP sales were made at the same LOT.

We compared Amtex's EP level of trade to the single NV level of trade found in the home market. While we find differences in the levels of intensity performed for some of these functions between the home market NV level of trade and the EP level of trade, such differences are minor (particularized toward a few customers and rarely performed) and do not establish distinct levels of trade within the home market. Based on our analysis of all of Amtex's home market and EP selling functions, we find these sales were made at the same level of trade.

For CEP sales, however, we find that, consistent with Amtex's section B response, the CEP LOT is more advanced than the NV LOT. *Id.* The information conveyed in the Selling Functions Chart indicates that the number and intensity of selling functions performed by Amtex in making its sales to Amtex Chemicals are lower than the number and intensity of selling functions Amtex performed for its EP sales. However, Amtex's responses with regard to the home market in section B indicate that Amtex's CEP sales are at a more advanced marketing stage than are its home market sales. Amtex states directly that CEP sales are at a more advanced stage than home market sales. *See* Amtex Supplemental response at 49. Further, Amtex reports that for its CEP sales most of the principal selling functions in both markets are carried out by a single employee in the Mexico office who devotes a vastly disproportional amount of time to these CEP principal selling functions. *See* Amtex Supplemental Response at 38; *see also* Amtex Supplemental Exhibit 12. Contrary to what the section A response indicates, the record evidence submitted by Amtex itself establishes that the CEP LOT (that is, sales from Amtex to its U.S. affiliate) involves a much more intense level of activity and therefore constitutes a more advanced stage of distribution than its NV LOT.

Because we found the home market and U.S. CEP sales were made at different LOTs, as Amtex claimed, we examined whether a LOT adjustment or a CEP offset may be appropriate in this review. As we found only one LOT in the home market, it was not possible to make a LOT adjustment to home market sales prices, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the CEP LOT. *See* 19 CFR 351.412(d)(1)(ii). Furthermore, because the CEP LOT is at a more advanced stage of distribution than the NV LOT, it is not possible to make a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act.

Currency Conversions

Amtex reported certain home market and U.S. sales prices and adjustments in both U.S. dollars and Mexican pesos. Therefore, we made peso–U.S. dollar currency conversions, where appropriate, based on the exchange rates in effect on the date of the sale, as certified by the Federal Reserve Board, in accordance with section 773A(a) of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily find the following weighted–average dumping margin exists for the period December 27, 2004 through June 30, 2005:

Producer	POR	Weighted–Average Margin (percent)
Quimica Amtex, S.A. de C.V.	12/27/04 - 06/30/06	2.26

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication of this notice. See 19 CFR 351.309(d)(1). Parties who submit arguments in these proceedings are requested to submit with the argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities. Further, parties submitting written comments must provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. Amtex has reported entered values for all of its sales of subject merchandise to the U.S. during the POR. Therefore, in accordance with 19 CFR 351.212(b)(1), we will calculate importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales of that importer. These rates will be assessed uniformly on all entries the respective importers made during the POR if these preliminary results are adopted in the final results of review. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. In accordance with 19 CFR 356.8(a), the Department intends to issue appropriate appraisement instructions directly to CBP on or after 41 days following the publication of the final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the company included in these preliminary results that the company did not know were 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 or companies involved in the transaction.

Cash Deposit Requirements

Furthermore, the following cash deposit requirements will be effective for all shipments of CMC from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: 1) the cash deposit rate for Amtex will be the rate established in the final results of review, unless that rate is less than or equal to 0.50 percent (*de minimis* within the meaning of 19 CFR 351.106(c)(1)), in which case the cash deposit rate will be zero; 2) if the exporter is not a firm covered in this review or the 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 3) 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 be the ''all others'' rate of 12.61 percent from the LTFV investigation. *See Notice of Anitdumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, and the Netherlands and Sweden*, 70 FR 39734 (July 11, 2005).

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.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E7–15324 Filed 8–6–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–421–811

Purified Carboxymethylcellulose from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from petitioner Aqualon Company, a division of Hercules Incorporated (Aqualon), a U.S. manufacturer of purified carboxymethylcellulose (CMC), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on CMC from the Netherlands. This administrative review covers imports of subject merchandise produced and exported by Noviant B.V. and CP Kelco B.V. (collectively, CP Kelco). The period of review (POR) is December 27, 2004, through June 30, 2006.

We preliminarily determine that sales of subject merchandise by CP Kelco have been made at less than normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries based on the difference between the export price (EP) or constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 7, 2007.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Angelica Mendoza, 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) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 2005, the Department published the antidumping duty order on CMC from the Netherlands. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and*

Sweden, 70 FR 39734 (July 11, 2005) (CMC Order). On July 3, 2006, the Department published the opportunity to request an administrative review of, inter alia, CMC from the Netherlands for the period December 27, 2004, through June 30, 2006. *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), Aqualon requested that the Department conduct an administrative review of the antidumping duty order on CMC from the Netherlands on July 27, 2006. On August 30, 2006, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering sales, entries and/or shipments of CMC for the period December 27, 2004, through June 30, 2006, for CP Kelco and Akzo Nobel Surface Chemistry (Akzo). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (August 30, 2006).

On September 11, 2006, the Department issued its antidumping duty questionnaire to CP Kelco and Akzo.[1] CP Kelco submitted its section A questionnaire response (AQR) on October 16, 2006, and its sections B and C questionnaire responses on November 21, 2006 (BCQR). On December 4 and 8, 2006, respectively, Aqualon alleged that Akzo and CP Kelco made home market sales of CMC at prices below the cost of production during the POR.

On December 12, 2006, Aqualon submitted comments regarding Akzo's sections A–C questionnaire responses. On January 8, 2007, the Department issued its first sections A–C supplemental questionnaire to Akzo and on January 29, 2007, Akzo submitted its response.

On January 22, 2007, we initiated sales–below-cost investigations of home market sales made by Akzo and CP Kelco. *See* the Department's Memorandum to the File, from Judy Lao, Case Analyst and Nancy Decker, Senior Accountant, titled Petitioner's Allegation of Sales Below the Cost of Production for Noviant BV/CP Kelco BV, dated January 22, 2007 (Cost Initiation Memorandum), applicable to both Akzo and CP Kelco. As a result, on January 22, 2007, the Department requested that both Akzo and CP Kelco respond to section D of the Department's questionnaire. CP Kelco submitted its section D response on February 5, 2007, including its cost reconciliation.

On February 9, 2007, the Department issued its first sections A–C supplemental questionnaire to CP Kelco and on March 12, 2007, CP Kelco submitted its response (SQR). On February 12, 2007, the Department issued a second sections A–C supplemental questionnaire to CP Kelco and on February 26, 2007, CP Kelco submitted its response.

On February 15, 2007, Aqualon submitted a letter to the Department requesting a rescission of the administrative review with respect to Akzo. On March 13, 2007, the Department rescinded the administrative review with respect to Akzo.[2] *See Purified Carboxymethylcellulose from the Netherlands: Rescission of Antidumping Duty Administrative Review in Part*, 72 FR 11325 (March 13, 2007).

On February 27, 2007, the Department issued its third–country selection memorandum in which Taiwan was chosen as the appropriate third country for CP Kelco. *See* the Department's Memorandum to Office 7 Director Richard O. Weible, from Judy Lao and Stephen Bailey, Case Analysts, titled Selection of Third Country Market for Noviant B.V. and CP Kelco B.V. (collectively, CP Kelco B.V.), dated February 27, 2007 (Third Country Memorandum). Also on February 27, 2007, Aqualon submitted comments on CP Kelco's section questionnaire response. On March 27, 2007, Aqualon submitted comments on CP Kelco's SQR.

On April 5, 2007, the Department extended the deadline for the preliminary results by 120 days from April 2, 2007, until July 31, 2007. *See Purified Carboxymethylcellulose from Finland, Sweden, the Netherlands, and Mexico: Extension of Time Limits for Preliminary Determinations of Antidumping Duty Administrative Reviews*, 72 FR 16767 (April 5, 2007).

On April 6, 2007, CP Kelco submitted certain documents that were inadvertently omitted from its March 12, 2007, SQR. Additionally on April 6, 2007, the Department issued to CP Kelco a third sections A C supplemental questionnaire, and on April 27, 2007, CP Kelco submitted its response. On April 19, 2007, the Department issued to CP Kelco its first section D supplemental questionnaire, and on May 8, 2007, CP Kelco submitted its response. On June 8, 2007, the Department issued to CP Kelco a fourth sections A C supplemental questionnaire, and on June 18, 2007, CP Kelco submitted its response.

On July 10, 2007, CP Kelco submitted its sales reconciliation. On July 12, 2007, the Department requested that CP Kelco provide a revised calculation for parent company J.M. Huber's financial expense ratio that deducts packing and freight–out expenses from J.M. Huber's cost of goods sold denominator. CP Kelco submitted this information on July 13, 2007. *See* Memorandum to the File, from Joe Welton, Accountant, titled Phone Call with Respondent, dated July 13, 2007; *see also* Memorandum to Neal Halper, Director Office of Accounting, from Gina Lee, Analyst, titled Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - CP Kelco BV, dated July 31, 2007 (Cost Memorandum) for a discussion of this issue.

On July 26, 2007, the Department issued a supplemental questionnaire to CP Kelco requesting the actual transaction–specific bank fees charged by CP Kelco's factoring agent, both for U.S. and comparison market sales. We intend to consider this information in our final results.

Period of Review

The POR is December 27, 2004, through June 30, 2006.

Scope of the Order

The merchandise covered by this order is all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off–white, non–toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross–linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations, which, at a minimum, reduce the remaining salt and other by–product portion of the product to less than ten percent. The merchandise subject to this order is currently classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

[1] As noted below, the antidumping duty review for Akzo was rescinded on March 13, 2007.

[2] The Department notes that while the rescission notice lists both Akzo Nobel Surface Chemistry B.V. and Akzo Nobel Functional Chemicals B.V., the Department has not made a determination on the successor to Akzo Nobel Surface Chemistry B.V.

Successor–In-Interest

In February 2005, the Noviant group of companies (including Noviant's Netherlands–based operation of Noviant B.V.) were merged with the CP Kelco group of companies, with both corporate groups previously operating as subsidiaries of the J.M. Huber Corporation (J.M. Huber). Following the merger, the operating title of the two entities became unified under the CP Kelco corporate title. Throughout 2005 and 2006, each of the European Noviant production and export companies' names were changed from ''Noviant'' to ''CP Kelco'' (*i.e.*, Noviant B.V. became CP Kelco B.V. in the Netherlands). Because entries have been made under the name of the new company during the POR, the Department must make a successorship determination in order to apply the appropriate and necessary company–specific cash deposit and assessment rates.

In December 2005, the shares of Noviant B.V.'s U.S. sales affiliate, Noviant Inc., were sold in an agreement with the CP Kelco entity's holding company, merging the U.S.-based operations of Noviant and CP Kelco under the CP Kelco corporate title. The completed merger of Noviant's U.S.-based operations with those of CP Kelco became effective January 1, 2006, and the company has since operated as CP Kelco U.S., Inc. (CP Kelco U.S.). For a further discussion of this merger, *see* Memorandum to the File, from Stephen Bailey, Analyst, titled Analysis of Data Submitted by Noviant B.V. and CP Kelco B.V. (collectively, CP Kelco) in the Preliminary Results of the Antidumping Duty Administrative Review of Purified Carboxymethylcellulose (CMC) from the Netherlands, dated July 31, 2007, (Sales Analysis Memorandum), on file in the Department's Central Records Unit (CRU) located in Room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW, Washington, DC. CP Kelco U.S. is a subsidiary of CP Kelco, respondent in the current administrative review and subsidiary of J.M. Huber.

In determining whether CP Kelco B.V. (and, therefore, CP Kelco U.S.) is the successor to Noviant B.V. and its U.S. affiliate Noviant Inc. for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in: (1) management, (2) production facilities, (3) suppliers, and (4) customer base. S*ee, e.g., Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review, 57 FR 20460 (May 13, 1992) (Brass from Canada); Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 55 FR 28796 (July 13, 1990); and *Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944 (February 14, 1994). While examining these factors alone will not necessarily provide a dispositive indication of succession, the Department will generally consider one company to have succeeded another if that company's operations are essentially inclusive of the predecessor's operations. *See Brass from Canada* at 20461. Thus, if the evidence demonstrates, with respect to the production and sale of the subject merchandise, that the new company is essentially the same business operation as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

Specifically, the evidence on the record, particularly CP Kelco's response to questions 3–9 of its SQR specifically addressing its claimed successorship, demonstrates that, with respect to the production and sale of the subject merchandise, CP Kelco B.V. is the successor to Noviant B.V. We reviewed CP Kelco's organizational structure before and after the merger and confirmed that there were only minimal changes to management and corporate structure. For instance, with respect to direct U.S. sales, sales are still made through the Unified Dental Team within Huber Engineered Materials (HEM). With respect to sales through Noviant Inc.'s successor, PC Kelco U.S., while customer care and logistics functions were transferred from Atlanta to Chicago, Illinois, and San Diego, California, those former Noviant employees did not relocate; a single new customer care representative was hired in Chicago and the existing CP Kelco U.S. logistics staff in San Diego took over logistics functions relating to CMC.

From a management perspective, consistent with CP Kelco's responses, the merger of Noviant BV with CP Kelco BV is, effectively, a name change, the primary purpose of which was to broaden the companies' marketing scope under the unified ''CP Kelco'' name. Consequently, our analysis of corporate management changes as a result of the merger indicates that neither the former Noviant BV nor CP Kelco BV (as well as the U.S. affiliates, Noviant Inc. and CP Kelco U.S.) experienced significant shifts in senior executive management. While new management positions were created, we found that Noviant BV's senior management still existed within CP Kelco BV following the merger. The same holds true for senior management of the U.S.-based entities, Noviant Inc. and CP Kelco U.S., where we found that one senior manager left the company following the merger. These changes, standing alone, are not sufficiently significant to support a determination that CP Kelco's management and organizational structure, as well as its production and sales of the subject merchandise, are not essentially the same as those of Noviant B.V.

Record evidence shows that CP Kelco B.V. uses the same CMC production facilities, and maintains the same customer and supplier relationships as Noviant B.V. *See* pages 8 and 12 of the SQR. For CP Kelco's sales to Taiwan, there were no changes in selling activities before and after the merger, as CP Kelco Singapore Pte. (CP Kelco's Asian sales office) performs the same selling functions as its predecessor Noviant Pte. *See* SQR at pages 12 and 15. Therefore, we preliminarily find that CP Kelco B.V. is the successor to Noviant B.V. for purposes of this proceeding, and for the application of the antidumping law.

Fair Value Comparisons

To determine whether sales of CMC from the Netherlands to the United States were made at less than fair value, we compared the EP or CEP to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(2) of the Tariff Act of 1930, as amended (the Act), we compared the EPs and CEPs of individual U.S. transactions to monthly weighted–average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered sales of CMC covered by the description in the ''Scope of the Review'' section of this notice, *supra*, which were sold in the appropriate third–country market, Taiwan, during the POR to be the foreign like product for the purpose of determining appropriate product comparisons to CMC sold in the United States. For our discussion of market viability and selection of comparison market, *see* the ''Normal Value'' section of this notice, *infra*. We have relied on the following five criteria to match U.S. sales of the subject merchandise to sales in Taiwan of the foreign like product: grade, viscosity, degree of substitution, particle size, and solution characteristic.

Where there were no sales of identical merchandise in the third–country market to compare to U.S. sales, we

compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's September 11, 2006, antidumping duty questionnaire.

Export Price

In accordance with section 772 of the Act, we calculate either an EP or a CEP, depending on the nature of each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold by the foreign exporter or producer before the date of importation to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. CP Kelco classified two types of sales to the United States: 1) sales to direct end user customers (EP sales); and 2) sales via its U.S. affiliates, CP Kelco U.S. and HEM, to end–users and distributors (CEP sales). For purposes of these preliminary results, we have accepted CP Kelco's classifications and identified two additional classifications.

We calculated EP based on prices charged to the first unaffiliated U.S. customer. We used the sale invoice date as the date of sale.[3] We based EP on the packed freight on board (FOB) prices to the first unaffiliated purchasers outside the Netherlands. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, including foreign inland freight, and foreign brokerage and handling.

We calculated CEP based on prices charged to the first unaffiliated U.S. customer after importation. We used the sale invoice date as the date of sale. We based CEP on the gross unit price from CP Kelco U.S. and HEM to their unaffiliated U.S. customers, making adjustments where necessary for billing adjustments, pursuant to section 772(c)(1) of the Act. Where applicable, the Department made deductions for movement expenses (foreign inland freight, international freight, U.S. movement, U.S. customs duty and brokerage, marine insurance and post–sale warehousing), while adding freight revenue, in accordance with section 772(c)(2) of the Act and section 351.401(e) of the Department's regulations. In accordance with sections 772(d)(1) and (2) of the Act, we also deducted, where applicable, U.S. direct selling expenses, including credit expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs incurred in the United States and the Netherlands associated with economic activities in the United States. We also deducted CEP profit in accordance with section 772(d)(3) of the Act.

Normal Value

A. Home Market Viability and Comparison Market Selection

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.*, whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

Section 773(a)(1)(C)(ii) of the Act provides that the Department may determine that home market sales are inappropriate as a basis for determining NV if the administering authority determines that the aggregate quantity of the foreign like product sold in the exporting country is insufficient to permit a proper comparison with the sales of the subject merchandise to the United States. When sales in the home market are not viable, section 773(a)(1)(B)(ii) of the Act provides that sales to a particular third country market may be utilized if (I) the prices in such market are representative; (II) the aggregate quantity of the foreign like product sold by the producer or exporter in that third country market is five percent or more of the aggregate quantity of the subject merchandise sold in or to the United States; and (III) the Department does not determine that a particular market situation in the third country market prevents a proper comparison with the U.S. price.

CP Kelco reported, and we determined, that CP Kelco's aggregate volume of home market sales of the foreign like product was not greater than five percent of the aggregate volume of U.S. sales of subject merchandise. *See* AQR at exhibit A–1. Therefore, because CP Kelco's sales in the home market did not provide a viable basis for calculating NV, we relied on sales to a third country as the basis for NV in accordance with section 773(a)(1)(B)(ii) of the Act. The following is a description of the Department's procedure in selecting the third country sales used to calculate NV for sales of the foreign like product made by CP Kelco.

In its section A response, CP Kelco provided information regarding its sales to Taiwan, Germany, and Denmark. Upon review of the information provided by CP Kelco, in accordance with section 773(a)(1)(c) of the Act, the Department selected Taiwan as the appropriate comparison market. The Department found that exports of the foreign like product to Taiwan were similar to those exported to the United States, and that exports to Taiwan were substantially larger than exports either to Germany or to Denmark. In addition, the Department did not find any evidence on the record suggesting that Taiwan would be an inappropriate third country market to select as a comparison market. Accordingly, on February 27, 2007, the Department selected Taiwan as the appropriate third country for comparison market purposes. *See* Third Country Memorandum.[4]

We also used constructed value (CV) as the basis for calculating NV, in accordance with section 773(a)(4) of the Act, for those sales that did not have identical or similar product matches.

B. Cost of Production Analysis

On January 22, 2007, after a request from Aqualon, the Department initiated a sales–below-cost investigation of CP Kelco because Aqualon provided a reasonable basis to believe or suspect that CP Kelco is selling CMC in Taiwan at prices below its cost of production (COP). Based on the Department's findings, there is a reasonable basis to believe or suspect that CP Kelco is selling CMC in Taiwan at prices below COP. Therefore, pursuant to section 773(b)(1) of the Act, we examined whether CP Kelco's sales in Taiwan were made at prices below the COP. *See* Cost Initiation Memorandum.

C. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted–average COP for each model based on the sum of CP Kelco's material and fabrication costs for the foreign like product, plus amounts for selling expenses, general and administrative (G&A) expenses, financial expenses and packing costs.

We relied on the COP information provided by CP Kelco except for the following adjustment. We added depreciation expense, and deducted packing and freight costs incurred by CP

[3] *See* the Department's Sales Analysis Memorandum for a further discussion of this issue.

[4] CP Kelco reported sales to Taiwan in its BCQR.

Kelco's parent company J.M. Huber, from the cost of goods sold denominator to generate a revised cost of goods sold used in CP Kelco's financial expense ratio calculation. *See* Cost Memorandum.

D. Test of Comparison Market Prices

We compared CP Kelco's weighted–average COP figures to that company's Taiwan sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether sales to Taiwan had been made at prices below COP. On a product–specific basis, we compared COP to Taiwan prices, less any applicable movement charges, billing adjustments, taxes, and discounts and rebates.

In determining whether to disregard Taiwan sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made in substantial quantities within an extended period of time, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of CP Kelco's Taiwan sales of a given model were made at prices below the COP, we did not disregard any below–cost sales of that model because we determined that the below–cost sales were not made within an extended period of time in ''substantial quantities.'' Where 20 percent or more of CP Kelco's Taiwan sales of a given model were at prices less than COP, we disregarded the below–cost sales because: (1) they were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted–average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, as described in section 773(b)(2)(D) of the Act.

E. Results of Cost Test

Our sales below cost test for CP Kelco revealed that for Taiwan sales of certain models, less than 20 percent of the sales of those models were made at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for certain models, more than 20 percent of Taiwan sales of those models were sold at prices below COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below–cost sales from our analysis and used the remaining above–cost sales as the basis for determining NV.

F. Price–to-Price Comparisons

We used the sale invoice date as the date of sale.[5] We calculated NV based on prices to unaffiliated customers and matched U.S. sales to NV. We made deductions, where appropriate, for foreign inland freight and international freight pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, as well as for differences in circumstances of sale (COS) as appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. Finally, we deducted third country packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

G. Price–to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a contemporaneous comparison market match for the U.S. sale. We calculated CV based on the cost of materials and fabrication employed in producing the subject merchandise, selling, general and administrative (SG&A) expenses, financial expense, and profit including the adjustment as described in the COP section above. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses, interest, and profit on the amounts CP Kelco incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Taiwan. For selling expenses, we used weighted–average Taiwan selling expenses. Where appropriate, we made COS adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 351.410.

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 level of trade (LOT) as the EP or CEP transaction. The LOT in the comparison market is the LOT of the starting–price sales in the comparison market or, when NV is based on CV, the LOT of the sales from which we derive SG&A expenses and profit. With respect to U.S. price for EP transactions, the LOT is also that of the starting–price sale, which is usually from the exporter to the importer. For CEP, the LOT is that of the constructed sale from the exporter to the importer.

To determine whether comparison market sales are at a different LOT from U.S. sales, we examined 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 different LOTs, 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, the Department makes an LOT adjustment in accordance with section 773(a)(7)(A) of the Act. For CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. We analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in LOT between the CEP and NV. Under section 773(a)(7)(A) of the Act, we make an upward or downward adjustment to NV for LOT if the difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined. Finally, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP, but the data available do not provide an appropriate basis to determine an LOT adjustment, we reduce NV by the amount of indirect selling expenses incurred in the foreign comparison market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for CEP sales. *See* section 773(a)(7)(B) of the Act (the CEP offset provision).

In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain–on-*

[5] *See* the Department's Sales Analysis Memorandum for a further discussion of this issue.

Steel Cookware from Mexico: Final Results of Administrative Review, 65 FR 30068 (May 10, 2000) and Accompanying Issues and Decision Memorandum at Comment 6. In the present review, CP Kelco claimed an LOT adjustment. *See* CP Kelco's BCQR at page B–25. In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[6] including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

CP Kelco reported two LOTs in the third country market, Taiwan, with two channels of distribution to two classes of customers: (1) direct sales from the plant to end users (LOT 1 and Channel 1), and (2) direct sales from the plant to distributors (LOT 4 and Channel 2). Based on our review of evidence on the record, we find that third country market sales to both customer categories and through both channels of distribution were substantially similar with respect to selling functions and stages of marketing. CP Kelco performed the same selling functions for sales in both third country market channels of distribution, including sales forecasting, order input/processing, advertising, warranty service, freight and delivery services, *etc. See* CP Kelco's AQR at exhibit A–5; CP Kelco's SQR at exhibit A–34. Additionally, as explained on pages A–18 and A–19 of CP Kelco's AQR, for sales to end users and through distributors, CP Kelco Singapore Pte takes orders directly from the customer, and enters the order in the Oracle 11i ERP (Oracle) system for production (or from stock for sales through distributors). Accordingly, we preliminarily find that CP Kelco had only one LOT for its third country market sales.

CP Kelco reported one EP LOT and one CEP LOT each with its own separate channel of distribution in the United States, and with two classes of customers for CEP sales: (1) direct sales to end users of merchandise (EP sales of LOT 1 and Channel 5), and (2) sales through U.S. affiliates (CEP sales) to end users and distributors of merchandise (LOT 4 with Channel 1 to end users and Channel 2 to distributors). In reviewing CP Kelco's questionnaire responses, we preliminarily find that CP Kelco has a total of four channels of distribution for its U.S. sales: (1) direct sales to end users of merchandise produced to order, (2) direct sales to end users of merchandise sold from inventory, (3) sales through U.S. affiliates (CP Kelco U.S. and HEM) to end users and distributors of merchandise produced to order, and (4) sales through U.S. affiliates (CP Kelco U.S. and HEM) from warehouse stock maintained by each company to end users and distributors of merchandise. Therefore, we preliminarily find that there are two channels of distribution for EP sales, and two channels of distribution for CEP sales. *See* CP Kelco's AQR at pages A–19–A–24.

We reviewed the selling functions and services performed by CP Kelco in the U.S. market for EP sales, as described by CP Kelco in its questionnaire responses. We find that the selling functions and services performed by CP Kelco on direct sales for both U.S. channels of distribution relating to the EP LOT (*i.e.*, sales of merchandise produced to order to unaffiliated end users and sales of merchandise from stock to unaffiliated end users) are similar. In particular, for sales produced to order and pulled from stock, CP Kelco's customer care personnel process all orders, which are entered into the Oracle system. Additionally, sales invoices are issued by CP Kelco's plant directly to the customer, and CP Kelco's logistics department arranges for freight and delivery to CP Kelco's unaffiliated U.S. customers. Other services provided within both channels of CP Kelco' EP sales include: sales forecasting, procurement/sourcing services, order/input processing, etc. *See* CP Kelco's AQR at pages A–23–A–24. Accordingly, because these selling functions are substantially similar for these two channels of distribution, we preliminarily determine that there is one EP LOT in the U.S. market.

For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. *See Micron Technology Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We reviewed the selling functions and services performed by CP Kelco on CEP sales for both channels of distribution relating to the CEP LOT, as described by CP Kelco in its questionnaire responses, after these deductions. We have determined that the selling functions performed by CP Kelco on all CEP sales are similar because CP Kelco provides almost no selling functions to either U.S. affiliate in support of either channel of distribution. CP Kelco reported that the only services it provided for the CEP sales were packaging, order input/processing services, and very limited freight and delivery and sales/marketing support services. *See* CP Kelco's SQR at exhibit A–34. Accordingly, because the selling functions provided by CP Kelco on sales to affiliates in the United States are substantially similar, we preliminarily determine that there is one CEP LOT in the U.S. market.

We then examined the selling functions performed by CP Kelco on its EP sales in comparison with the selling functions performed on CEP sales (after deductions). We found that CP Kelco performs an additional layer of selling functions on its direct sales to unaffiliated U.S. customers which are not performed on its sales to affiliates (*e.g.*, sales forecasting, strategic/economic planning, engineering services, advertising, sales promotion, inventory maintenance, market research, after–sales support services, technical assistance, *etc.*). *See* CP Kelco's SQR at exhibit A–34. Because these additional selling functions are significant, we find that CP Kelco's direct sales to unaffiliated U.S. customers (EP sales) are at a different LOT than its CEP sales.

Next, we examined the third country market and EP sales. CP Kelco's third country market and EP sales were both made to end users and distributors. In both cases, the selling functions performed by CP Kelco were almost identical for both markets. Other than distributor training, which was only performed for third country sales made through distributors, and re–packing services, which were mainly provided on U.S. sales, in both markets CP Kelco provided the following services: sales forecasting, strategic and economic planning, sales promotion, market research, procurement/sourcing services, order/input processing, technical assistance, after–sales services, *etc. See* CP Kelco's SQR at exhibit A–34. Because the selling functions and channels of distribution are substantially similar, we preliminarily determine that the third country market LOT is the same as the EP LOT. It was, therefore, unnecessary to make an LOT adjustment for comparison of third country market and EP prices.

According to section 773(a)(7)(B) of the Act, a CEP offset is appropriate when the LOT in the home market or third country market is at a more advanced stage than the LOT of the CEP sales and there is no basis for

[6] The marketing process in the United States and third country market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered CP Kelco's narrative response to properly determine where in the chain of distribution the sale occurs.

determining whether the difference in LOTs between NV and CEP effects price comparability. CP Kelco reported that it provided minimal selling functions and services for the CEP LOT and that, therefore, the third country market LOT is more advanced than the CEP LOT. Based on our analysis of the channels of distribution and selling functions performed by CP Kelco for sales in the third country market and CEP sales in the U.S. market (*i.e.*, sales support and activities provided by CP Kelco on sales to its U.S. affiliates), we preliminarily find that the third country market LOT is at a more advanced stage of distribution when compared to CEP sales because CP Kelco provides many selling functions in the third country market at a higher level of service (*i.e.*, sales forecasting, strategic/economic planning, sales promotion, inventory maintenance, direct sales personnel, market research, technical assistance, after–sales service, *etc.*) as compared to selling functions performed for its CEP sales (*i.e.*, CP Kelco reported that the only services it provided for the CEP sales were packaging, order input/processing services, and very limited freight and delivery and sales/marketing support services). *See* CP Kelco's SQR at exhibit A–34. Thus, we find that CP Kelco's third country market sales are at a more advanced LOT than its CEP sales. There was only one LOT in the third country market, no data available to determine the existence of a pattern of price differences, and we do not have any other information that provides an appropriate basis for determining a LOT adjustment; therefore, we applied a CEP offset to NV for CEP comparisons.

To calculate the CEP offset, we deducted the third country market indirect selling expenses from NV for third country market sales that were compared to U.S. CEP sales. As such, we limited the third country market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

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

As a result of our review, we preliminarily determine the weighted–average dumping margin for the period December 27, 2004, through June 30, 2006, to be as follows:

Manufacturer / Exporter	Margin (percent)
Noviant B.V. and CP Kelco B.V.	24.50

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than five days after the time limit for filing case briefs. *See* 19 CFR 351.309(d). Parties who submit argument in these proceedings are requested to submit with the argument: 1) a statement of the issue, 2) a brief summary of the argument, and 3) a table of authorities. *See* 19 CFR 351.309(c)(2). An interested party may request a hearing within 30 days after the publication of the preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d). The Department will issue the final results of these preliminary results, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of this review the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise covered by the review. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by CP Kelco and for which CP Kelco did not know another company would export its merchandise to 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.

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 of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate listed in the final results of review; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review 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 the ''all others'' rate of 14.57 percent, which is the ''all others'' rate established in the LTFV investigation. *See CMC Order*. 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)(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 this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E7–15337 Filed 8–6–07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

(A–405–803)

Purified Carboxymethylcellulose from Finland; Notice of Preliminary Determination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from Aqualon Company, a division of Hercules Inc., (Petitioner) and respondents Noviant OY, CP Kelco OY; Noviant Inc., and CP Kelco U.S. Inc. (collectively, CP Kelco), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from Finland. The review covers exports of the subject merchandise to the United States produced by CP Kelco. The period of review (POR) is December 27, 2004, through June 30, 2006.

We preliminarily find that CP Kelco made sales at less than normal value during the POR. 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 based on differences between the export price (EP) or constructed export price (CEP) and normal value (NV).

EFFECTIVE DATE: August 7, 2007.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold or Robert James, 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) 482–1121 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on CMC from Finland on

July 11, 2005. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands, and Sweden*, 70 FR 39734 (July 11, 2005). On July 3, 2006, the Department published the notice of opportunity to request an administrative review of CMC from Finland for the period December 27, 2004, through June 30, 2006. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 37890 (July 3, 2006).

On July 26, 2006, petitioners requested a review of all producers of CMC, including Noviant OY for the period December 27, 2004 through June 30, 2006 (the POR). CP Kelco requested an administrative review of sales by CP Kelco and various affiliates for the same period. On July 27, 2006, Petitioner modified its request to include producer CP Kelco OY as well as producer Noviant OY. On August 30, 2006, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (August 30, 2006).

On September 11, 2006, the Department issued its standard antidumping duty questionnaire to CP Kelco. CP Kelco submitted its response to section A of the Department's antidumping duty questionnaire on October 17, 2006 (CP Kelco's October 17, 2006 section A questionnaire response). CP Kelco submitted its response to sections B and C of the Department's questionnaire on November 21, 2006 (CP Kelco's November 21, 2006 sections B and C response).

On December 8, 2006, Petitioner alleged that during the POR, CP Kelco made sales of foreign like product at prices below the cost of production in the home market. On February 5, 2007, the Department initiated an investigation to determine whether CP Kelco's sales of CMC were made at prices below CP Kelco's cost of production. *See* Memorandum from Tyler Weinhold to Richard Weible, Director, Office 7, AD/CVD Enforcement, Regarding Petitioner's Allegation of Sales Below the Cost of Production for Noviant CMC OY and CP Kelco OY, dated February 5, 2007. The preliminary results of this investigation are discussed in the ''Normal Value'' section of this notice, below. On February 6, 2007, the Department sent a letter to CP Kelco requesting that the company respond to section D of the Department's antidumping questionnaire (cost of production). CP Kelco submitted its section D response on February 27, 2007.

On February 23, 2007, the Department issued a supplemental questionnaire for sections A, B, and C, to which CP Kelco responded on April 5, 2007 (CP Kelco's April 5, 2007 supplemental questionnaire response). On April 3, 2007, the Department issued a supplemental questionnaire for sections A, B, and C, to which CP Kelco responded on May 15, 2007 (CP Kelco's May 15, 2007 supplemental questionnaire response). On April 6, 2007, the Department issued a supplemental questionnaire for section D, to which CP Kelco responded on April 30, 2007.

Because it was not practicable to complete this review within the normal time frame, on April 5, 2007, the Department published in the **Federal Register** a notice of the extension for the preliminary results of this review. *See Purified Carboxymethylcellulose from Finland, Sweden, the Netherlands, and Mexico: Extension of Time Limits for Preliminary Determinations of Antidumping Duty Administrative Reviews*, 72 FR 16767 (April 5, 2007). This extension established the deadline for these preliminary results as July 31, 2007.

From April 23 through 25, 2007, the Department conducted verification of U.S. sales made through CP Kelco U.S. Inc. and Noviant U.S., Inc. (collectively CP Kelco U.S.). *See* the Verification section, below. From May 14 through May 18, 2007, the Department conducted a verification of CP Kelco's EP and home market (HM) sales. From May 21 through May 25, 2007, the Department conducted verification of CP Kelco's costs of production.

On June 7, 2007, the Department issued a fourth supplemental questionnaire for sections A, B, and C, to which CP Kelco responded on June 18, 2007 (CP Kelco's June 18, 2007, supplemental questionnaire response). At the request of the Department, on June 29, 2007 CP Kelco submitted new home market and U.S. sales databases to address revisions to the reporting methodology for viscosity and degree of substitution for certain products. CP Kelco also submitted a new cost of production database on June 29, 2007 to address these revisions and to correct a minor error involving the calculation of packing costs disclosed at the May 21 through May 25, 2007, cost of production verification. *See* Memorandum to the File, from Joseph Welton and Theresa Deeley, regarding ''Verification of the Cost Response of CP Kelco OY in the Antidumping Duty Administrative Review of Carboxymethylcellulose from Finland,'' dated July 3, 2007.

Scope of the Order

The merchandise covered by this order is all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off–white, non–toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and

purified to a minimum assay of 90 percent. CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross–linked through heat treatment. CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by–product portion of the product to less than ten percent. The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Verification

As mentioned above in the ''Background'' section of this notice, from April 23 through 25, 2007, the Department conducted verification of U.S. sales made through CP Kelco U.S. From May 14 through 18, 2007, the Department conducted verification of CP Kelco's EP and HM sales. From May 21 through May 25, 2007 the Department conducted verification of CP Kelco's costs of production. As provided in section 782(i) of the Tariff Act of 1930, as amended (the Tariff Act), we verified sales and costs of production information provided by CP Kelco, using standard verification procedures such as the examination of relevant sales and financial records. Our verification results are outlined in the public and proprietary versions of our CEP, HM/EP, and costs of production verification reports, which are on file in the Central Records Unit (CRU) in room B–099 of the main Department building. *See* Memorandum to the File, from the Tyler Weinhold and Patrick Edwards, regarding ''Sales Verification of Sections A–C Questionnaire Responses submitted by CP Kelco OY, Noviant OY, CP Kelco U.S. Inc. And Noviant Inc. (collectively, CP Kelco) in the Antidumping Duty Administrative Review of Purified Carboxymethylcellulose from Finland - Verification of United States Affiliates CP Kelco U.S. Inc. and Noviant U.S. Inc. (Collectively, CP Kelco U.S.)'' dated July 31, 2007 (the CEP Verification Report); Memorandum to the File, from Tyler Weinhold and Mark Flessner, regarding ''Sales Verification of Sections A–C Questionnaire Responses submitted by CP Kelco OY, Noviant OY, CP Kelco U.S. Inc. and Noviant Inc. in the Antidumping Duty Administrative Review of Purified Carboxymethylcellulose (CMC) from Finland'' (the Home Market and EP Verification Report); and Memorandum to the File, from Joseph Welton and Theresa Deeley, regarding ''Verification of the Cost Response of CP Kelco OY in the Antidumping Duty Administrative Review of Carboxymethylcellulose from Finland'' dated July 31, 2007.

Successor–In-Interest

On February 9, 2006, Noviant OY, the respondent in this review, was purchased by a holding company within the CP Kelco group. Prior to the purchase, Noviant OY changed its name to CP Kelco OY and began to operate under that trade name. On January 1, 2006, Noviant Inc., Noviant OY's affiliated U.S. importer/reseller merged with CP Kelco U.S. Inc. The resulting corporation is named CP Kelco U.S. Inc., and has operated and done business under that trade name since the merger. Because entries have been made under the names of both Noviant OY and CP Kelco OY during the POR, the Department must make a successorship determination in order to apply the appropriate and necessary company–specific cash deposit rates.

In determining whether CP Kelco OY is the successor to Noviant OY for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in: (1) management, (2) production facilities, (3) suppliers, and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review, 57 FR 20460 (May 13, 1992) (Brass from Canada); Steel Wire Strand for Prestressed Concrete from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 55 FR 7759 (March 5, 1990) (unchanged in final results of review, 55 FR 28796 (July 13, 1990)); and *Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944 (February 14, 1994). While examining these factors alone will not necessarily provide a dispositive indication of succession, the Department will generally consider one company to have succeeded another if that company's operations are essentially inclusive of the predecessor's operations. *See Brass from Canada.* Thus, if the evidence demonstrates, with respect to the production and sale of the subject merchandise, that the new company is essentially the same business operation as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

The evidence on the record indicates that CP Kelco OY is the successor to Noviant OY. *See, e.g.*, CP Kelco's October 17, 2006, section A questionnaire response at pages 7, 8, 10, and 11; CP Kelco's April 5, 2007, supplemental questionnaire response at pages 3, 4, 6 to 10, 16 and 43 through 54 and Exhibits A–20, A–21, A–22, A–23, A–33 and A–35; and the Home Market and EP Verification Report at Verification Exhibit 6. Specifically, the evidence shows CP Kelco OY has the same customers and suppliers, uses the same production facilities, and sells material under the same product names and commercial brands as did Noviant OY. *See, e.g.*, CP Kelco's October 17, 2006, Section A questionnaire response at Exhibits A–8, A–14, and A–16, CP Kelco's April 5, 2007, supplemental questionnaire response at Exhibits A–24, A–28, and A–29, and the Home Market and EP Verification Report at pages 8 and 9 and Verification Exhibit 6. We also reviewed CP Kelco OY's and Noviant OY's organizational structures and officers before and after the merger and confirmed there were only minimal changes. *See* the Home Market and EP Verification Report at Verification Exhibit 6. *See also*, the CEP Verification Report at page 8, Verification Exhibit 2, and pages 229 of Verification Exhibit 3.

CP Kelco's responses and information obtained during the Department's verifications confirmed that the purchase of Noviant OY had little effect on the company's operations in Finland, other than the resulting name change from Noviant OY to CP Kelco OY. The primary purpose of the acquisition was to unify CP Kelco's and Noviant's international marketing and sales forces and to broaden Noviant OY's marketing scope worldwide under the unified ''CP Kelco'' name.

We found CP Kelco continued to market the same products under the same product names and commercial brands as a result of the merger. *See, e.g.*, CP Kelco's October 17, 2006, section A questionnaire response at Exhibits A–9, A–14, and A–16, and the Home Market and EP Verification Report at pages 18 through 20.

CP Kelco operates entirely out of the same production facility as Noviant OY. *See, e.g.*, CP Kelco's October 17, 2006, section A questionnaire response at page A–7, CP Kelco's April 5, 2007, supplemental questionnaire response at page 52 and Exhibits A–24, and the Home Market and EP Verification Report at pages 6 and Verification Exhibit 3. We found no pattern of significant changes in CP Kelco's suppliers as a result of the merger. *See, e.g.*, CP Kelco's April 5, 2007, supplemental questionnaire response at pages 52 through 54, and the Home Market and EP Verification Report at

pages 6 and 9 through 12 and Verification Exhibit 3.

We found that there were no significant changes in CP Kelco's Home Market or U.S. sales processes. *See, e.g.*, CP Kelco's November 21, 2006, sections B and C questionnaire response at Exhibits B–2, and C–2, CP Kelco's April 5, 2007, supplemental questionnaire response at pages 45 through 51 and the HM and EP Verification Report at pages 14 through 18. We found no pattern of significant changes in CP Kelco's U.S. or HM customers. *See, e.g.*, CP Kelco's October 17, 2006, section A questionnaire response at Exhibits A–8, CP Kelco's November 21, 2006, sections B and C questionnaire response at Exhibits B–2, and C–2, CP Kelco's April 5, 2007, supplemental questionnaire response at page 54 and Exhibits A–28, and A–29.

We found no significant changes in CP Kelco's home market sales personnel. *See, e.g.* the HM and EP Verification Report at pages 14 through 18. With respect to sales through Noviant Inc.'s successor, CP Kelco U.S., while customer care and logistics functions were transferred from Atlanta, Georgia, to Chicago, Illinois, and San Diego, California, those former Noviant employees did not relocate; a single new customer care representative was hired in Chicago and the existing CP Kelco U.S. logistics staff in San Diego took over logistics functions relating to CMC. *See, e.g.,* the CEP Verification Report at pages 6 through 8.

Our analysis of corporate management changes as a result of the merger indicates that neither the Noviant OY/CP Kelco OY nor the U.S. affiliates, Noviant Inc. and CP Kelco U.S. experienced significant shifts in senior executive management. *See* CP Kelco's April 5, 2007, supplemental questionnaire response at pages 43 through 45 and 52, the Home Market Verification Report at pages 4 through 6 and Exhibit 4 and the CEP Verification Report at pages 5 to 8, and Exhibits 2 through 4. We found that, with one exception, senior managers in place at Noviant OY prior to the merger with CP Kelco OY are still in place following the acquisition of Noviant OY. The same holds true for senior management of the U.S.-based entities, Noviant Inc. and CP Kelco U.S., where we found that only one senior manager left the company following the merger.

Despite these changes, CP Kelco OY's management staff is substantially the same as Noviant Oy's. In addition, evidence on the record shows that CP Kelco OY uses the same CMC production facilities and suppliers as used by Noviant OY. Evidence on the record also shows that CP Kelco OY also provides CMC to the same customers and has the same sales processes as Noviant OY. Therefore, we preliminarily find CP Kelco OY is the successor to Noviant OY for purposes of this proceeding, and for the application of the antidumping law.

Use of Facts Available

Section 776(a)(1) of the Tariff Act of 1930, as Amended (The Tariff Act) provides that the Department will, subject to section 782(d) of the Tariff Act, use the facts otherwise available in reaching a determination if ''necessary information is not available on the record.'' In accordance with section 776(a)(1) of the Tariff Act, for these preliminary results we find it necessary to use partial facts available in those instances where the respondent did not provide certain information necessary to conduct our analysis.

CP Kelco reported in its questionnaire responses that it ''factors'' its accounts receivables through an affiliated financial institution (*i.e.*, sells the rights to the outstanding payments of its unpaid invoices to that financial institution). **SEE, E.G.**, November 21, 2006, sections B and C questionnaire response at pages B–13 and C–13 and CP Kelco's April 5, 2007 supplemental questionnaire response at pages 78, 79, and 80, and at exhibits B–20, B–21, B–22, B–23, and B–24. As a result of our review of the factoring process during the verifications in Finland, and Atlanta, Georgia, we found that CP Kelco incurred transaction expenses on its factored sales in both the U.S. and home markets. These expenses are fees charged by the affiliated financial institution to CP Kelco for purchasing its accounts receivable and remitting payment to CP Kelco at an earlier date than payment would have been received from the invoiced customer. For a further description and analysis of CP Kelco's factoring methodology, *see* Memorandum from Tyler Weinhold to the File Regarding Analysis of Data Submitted by Noviant Inc., CP Kelco U.S. Inc., Noviant OY Inc., and CP Kelco OY Inc., (collectively, CP Kelco) in the Preliminary Results of the 2004–2006 Administrative Review of the Antidumping Duty Order on Purified Carboxymethylcellulose (CMC) from Finland (A–405–803), dated July 31, 2007 (the Preliminary Analysis Memorandum). We preliminarily determine that normal value and net U.S. price should be adjusted for these expenses. However, because we did not ask CP Kelco to provide this information on a transaction–specific basis, there is not sufficient information on the record to make a transaction–specific adjustment for these factoring charges.

Pursuant to section 776(a)(1) of the Tariff Act, it is appropriate to use the facts otherwise available to make this adjustment. The methodology used to make these adjustments is discussed in the EP, CEP, and NV sections of this notice, below. We find that CP Kelco reported all information requested to the best of its ability. Therefore, we have not made an adverse inference in our use of partial facts available. We intend to ask CP Kelco to report its actual factoring expenses on a transaction–specific basis in a later submission, and we intend to consider this information in our final results.

Fair Value Comparisons

To determine whether sales of CMC in the United States were made at less than fair value, we compared U.S. price to NV, as described in the ''Export Price,'' ''Constructed Export Price,'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Tariff Act, we calculated monthly weighted–average NVs and compared these to individual U.S. transactions. Because we determined CP Kelco made both EP and CEP sales during the POR, we used both EP and CEP as the basis for U.S. price in our comparisons. These calculations are described in further detail in the Preliminary Analysis Memorandum.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all products produced by CP Kelco covered by the description in the ''Scope of the Order'' section, above, and sold in the HM during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We relied on five characteristics to match U.S. sales of subject merchandise to comparison sales of foreign like product (listed in order of priority): 1) grade; 2) viscosity; 3) degree of substitution; 4) particle size; and 5) solution gel characteristics. *See* The Department's September 27, 2006, antidumping duty questionnaire at Appendix 5. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of these product characteristics and the reporting instructions listed in the Department's September 11, 2005, questionnaire. Because there were sales of identical or similar merchandise in the home market suitable for comparison to each U.S. sale, we did

not compare any U.S. sales to constructed value (CV).

Export Price

Section 772(a) of the Tariff Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. . .,'' as adjusted under section 772(c). In accordance with section 772(a) of the Tariff Act, we used EP for a number of CP Kelco's U.S. sales. We have preliminarily found that these sales are properly classified as EP sales because these sales were made before the date of importation and were sales directly to unaffiliated U.S. customers.

We based EP on the packed, delivered duty paid or free–on-board (FOB)-warehouse prices to unaffiliated customers in the United States. We made adjustments for price or billing adjustments and discounts, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act, which included, where appropriate, foreign inland freight, international freight, marine insurance, and U.S. brokerage and handling. We also reduced movement expenses, where appropriate, by the amount of certain freight revenue paid by the customer. We made adjustments for direct expenses (credit expenses) in accordance with section 772(c)(2)(A) of the Tariff Act.

Based upon our findings at verification, we also made a deduction from EP for the factoring charges incurred by CP Kelco on its U.S. accounts receivable. *See* the ''Facts Available'' section, above. For the EP sales examined at verification, we used CP Kelco's verified factoring charges to represent this expense. There was not enough information on the record to calculate a transaction–specific adjustment for CP Kelco's other EP sales upon which CP Kelco incurred factoring charges (*i.e.*, the sales not examined at verification). Therefore, for the remaining EP sales upon which CP Kelco incurred factoring charges, we based the deduction upon the average ratio of factoring charges to the invoice value incurred by CP Kelco on both the EP and CEP sales examined at verification. However, we only made this adjustment for those EP sales for which CP Kelco reported a factoring date (those sales which were factored).

Constructed Export Price

In accordance with section 772(b) of the Tariff Act, CEP is ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter,'' as adjusted under sections 772(c) and (d) of the Tariff Act. In accordance with section 772(b) of the Tariff Act, we used CEP for a number of CP Kelco's U.S. sales because CP Kelco sold merchandise to affiliate CP Kelco U.S. in the United States which, in turn, sold subject merchandise to unaffiliated U.S. customers. *See* the ''Successor–In-Interest'' section, above. We have preliminarily found that these U.S. sales are properly classified as CEP sales because they occurred in the United States and were made through CP Kelco's U.S. affiliate, CP Kelco U.S., to unaffiliated U.S. customers.

We based CEP on the packed, delivered duty paid or FOB warehouse prices to unaffiliated purchasers in the United States. We made adjustments for price or billing errors and early payment discounts, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act, which included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, customs duties, U.S. brokerage, U.S. inland freight, and U.S. warehousing expenses. We also reduced movement expenses, where appropriate, by the amount of certain freight revenue paid by the customer. In accordance with section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs), inventory carrying costs, and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act.

Based upon our findings at verification, we made a deduction from CEP for the factoring charges incurred by CP Kelco on its U.S. accounts receivable. *See* the ''Facts Available'' section, above. For the CEP sales examined at verification, we used CP Kelco's verified factoring charges to represent this expense. There was not enough information of the record to calculate a transaction–specific adjustment for CP Keloc's other CEP sales upon which CP Kelco incurred factoring charges (*i.e.*, the sales not examined at verification). Therefore, for the remaining home market sales upon which CP Kelco incurred factoring charges, we based the deduction upon the average ratio of factoring charges to the invoice value incurred by Kelco on both the EP and CEP sales examined at verification. However, we only made this adjustment for those sales for which CP Kelco reported a factoring date (those sales which were factored).

Normal Value

A. Selection of Comparison Market

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Tariff Act. As CP Kelco's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

B. Cost of Production Analysis

As explained above in the Background section of this notice, on December 8, 2006, Petitioner alleged that CP Kelco made sales of the foreign like product at prices below the cost of production in the home market during the POR. The Department found there were reasonable grounds to believe or suspect that sales in the home market were made at prices below the cost of production. Therefore, pursuant to section 773(b)(1) of the Tariff Act, we initiated a cost investigation on February 5, 2007, to determine whether CP Kelco's sales made during the POR were at prices below its COP. *See* Memorandum from Tyler Weinhold to Richard Weible, Director, Office 7, AD/CVD Enforcement, Regarding Petitioner's Allegation of Sales Below the Cost of Production for Noviant CMC OY and CP Kelco OY, dated February 5, 2007.

C. Calculation of Cost of Production (COP)

In accordance with section 773(b)(3) of the Tariff Act, we calculated the weighted–average COP for each model

based on the sum of CP Kelco's materials and fabrication costs for the foreign like product, plus an amount for home market selling expenses, general and administrative (G&A) expenses, financial expenses, and packing costs. We relied on the COP data submitted by CP Kelco, except for the changes noted below.

1. Under section 773 (f)(3) of the Tariff Act (*i.e.*, the ''Major Input Rule''), we increased CP Kelco's reported cost of manufacturing based on the difference between its affiliated supplier's cost of steam and the net transfer price charged to CP Kelco after deducting revenues received from selling excess steam.
2. We revised CP Kelco's reported G&A expense ratio to include goodwill amortization costs as recognized in CP Kelco's normal books and records. We also revised the cost of goods sold denominator of the G&A expense ratio based on the verified packing costs.
3. We revised the cost of goods sold denominator of the reported financial expense ratio of parent company JM Huber to include JM Huber's depreciation expenses, and to deduct packing and freight costs.

See Memorandum to Neal Halper from Joe Welton, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - CP Kelco OY, dated July 31, 2007.

D. Test of Home Market Prices

We compared the weighted–average COP of CP Kelco's home market sales to home market sales prices of the foreign like product (net of billing adjustments, discounts, any applicable movement expenses, direct and indirect selling expenses, and packing), as required under section 773(b) of the Tariff Act in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Tariff Act, whether such sales were made in substantial quantities within an extended period of time, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time.

E. Results of the Cost Test

Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than 20 percent of CP Kelco's sales of a given model were at prices less than the COP, we did not disregard any below–cost sales of that model because these below–cost sales were not made in substantial quantities. Where 20 percent or more of CP Kelco's home market sales of a given model were at prices less than the COP, we disregarded the below–cost sales because such sales were made: (1) within an extended period of time and in ''substantial quantities'' within the POR, in accordance with section 773(b)(2)(B) and (C) of the Tariff Act, and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act (*i.e.*, the sales were made at prices below the weighted–average per–unit COP for the POR). In this review, we have disregarded such sales from our margin calculation. We used the remaining sales as the basis for determining NV, if such sales existed, in accordance with section 773(b)(1) of the Tariff Act.

F. Price–to-Price Comparisons

We calculated NV based on prices to unaffiliated customers. We made adjustments for billing adjustments, early payment discounts, and rebates, where appropriate. We made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Tariff Act. We offset inland freight for any freight revenue (revenue received from customers for invoice items covering transportation expenses). In addition, when comparing sales of similar merchandise, we made adjustments for differences in cost (*i.e.*, DIFMER), where those differences were attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses. We also made an adjustment, where appropriate, for the CEP offset in accordance with section 773(a)(7)(B) of the Tariff Act. *See* ''Level of Trade and CEP Offset'' section below. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act.

Based upon our findings at verification, we also made a deduction from NV for the factoring charges incurred by CP Kelco on its home market accounts receivable in accordance with. *See* the ''Facts Available'' section, above. For those home market sales transactions examined at verification, we used the actual factoring charges incurred by CP Kelco to represent this expense. There was not enough information of the record to calculate a transaction–specific adjustment for CP Keloc's other home market sales upon which CP Kelco incurred factoring charges (i.e., the sales not examined at verification). Therefore, for the remaining home market sales upon which CP Kelco incurred factoring charges, we based the deduction upon the average ratio of factoring charges to the invoice value incurred by Kelco on the home market sales examined at verification. However, we only made this adjustment for those sales for which CP Kelco reported a factoring date (those sales which were factored).

G. Constructed Value (CV)

In accordance with section 773(a)(4) of the Tariff Act, we base NV on CV if we are unable to find a contemporaneous comparison market match of such or similar merchandise for the U.S. sale. Section 773(e) of the Tariff Act provides that CV shall be based on the sum of the cost of materials and fabrication employed in making the subject merchandise, selling, general, and administrative (SG&A) expenses, profit, and U.S. packing costs. We calculated the cost of materials and fabrication for CP Kelco based on the methodology described in the COP section of this notice. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. However, for these preliminary results, we did not base NV on CV in any instances.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B) of the Tariff Act, to the extent practicable, we base NV on sales made in the comparison market at the same level of trade (LOT) as the export transaction. The NV LOT is based on the starting price of sales in the home market or, when NV is based on CV, on the LOT of the sales from which SG&A expenses and profit are derived. With respect to CEP transactions in the U.S. market, the CEP LOT is defined as the level of the constructed sale from the exporter to the importer. *See* section 773(a)(7)(A) of the Tariff Act.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. *See* 19 CFR 351.412(c)(2). 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 a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (the CEP offset provision). *See, e.g., Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002) and accompanying Issues and Decisions Memorandum at Comment 8; *see also Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 17406, 17410 (April 6, 2005) (unchanged in final results of review, 70 FR 58683 (October 7, 2005)). For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Tariff Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We expect that if the claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that the LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain–on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Issues and Decisions Memorandum at Comment 6.

CP Kelco reported that it had sold CMC to end–users and distributors in the home market and to end–users and distributors in the United States. For the home market, CP Kelco identified two channels of distribution in the home market and the U.S. market: end users (channel 1) and distributors (channel 2). *See* CP Kelco's November 21, 2006, sections B and C questionnaire response at page B–10. These channels of distribution correspond to CP Kelco's two end user and distributor customer categories reported in each market. In the home market, CP Kelco claimed two levels of trade, level 1 (end users) and level 4 (distributors), corresponding to its end user and distributor channels of distribution and customer categories. *See, e.g.*, CP Kelco's November 21, 2006, sections B and C questionnaire response at page B–20. As described above, CP Kelco made both direct (EP) sales of subject merchandise to U.S. customers and sales of subject merchandise through its affiliate, CP Kelco U.S. (CEP sales). CP Kelco reported that its EP U.S. sales to both end users and distributors were made at the same level of trade as home market end–user sales, level of trade 1. *See id.* However, CP Kelco reported that its CEP sales were made at a separate level of trade, level of trade 2.

We obtained information from CP Kelco regarding the marketing stages involved in making its reported foreign market and U.S. sales. CP Kelco provided a table listing all selling activities performed, and comparing the levels of trade among each channel of distribution, customer categories and levels of trade for both markets. *See* CP Kelco's April 5, 2007, supplemental questionnaire at Exhibit A–27. We reviewed the intensity to which all selling functions were performed for each home market channel of distribution and customer category and between CP Kelco's EP and home market channels of distribution and customer categories. For certain activities, such as sales forecasting, advertizing, procurement/sourcing services, order input/processing, paying commissions, and providing warranty services, CP Kelco described the level of performance as identical across CP Kelco's home market end–user and distributor channels of distribution. *See id.* For several other functions, the level of performance was identical between the home market end–user sales and EP sales. These were strategic/economic planning, engineering services, distributor/dealer training, packing, inventory maintenance, and maintaining direct sales personnel. *See id.* For several other selling functions, the level of performance was identical between the home market distributor sales and EP sales. These were sales promotion, sales/marketing support, and providing guarantees. *See id.* Also, for the ''provide freight and delivery'' selling function CP Kelco reported that the level of performance was identical for home market end–user and distributor sales. For several other functions, CP Kelco reported only small differences between the home market end–user and distributor channels of distribution. These were personnel training/exchange, sales promotion, packing, sales/marketing support, and market research. *See id.* For certain other functions, CP Kelco reported that only small differences existed between the home market end–user channel of distribution and U.S. EP sales. These were sales promotion, sales/marketing support and providing after sales service. *See id.* Finally, CP Kelco reported that only small differences existed between the home market distributor channel of distribution and U.S. EP sales for personnel training and exchange and market research. *See id.* While we find differences in the levels of intensity performed for some of these functions among the home market end–user and distributor channels of distribution and EP sales, such differences are minor and do not establish distinct, multiple levels of trade in Finland. Based on our analysis of all of CP Kelco's home market selling functions, we find all home market sales were made at the same LOT, and that U.S. EP sales were made at this same level of trade, the NV and EP LOT.

We then compared the NV LOT, based on the selling activities associated with the transactions between CP Kelco OY and its customers in the home market, to the CEP LOT, which is based on the selling activities associated with the transaction between CP Kelco OY and its affiliated importer, CP Kelco U.S. Our analysis indicates the selling functions performed for home market customers are either performed at a higher degree of intensity or are greater in number than the selling functions performed for CP Kelco U.S. For example, in comparing CP Kelco's selling activities, we find most of the reported selling functions performed in the home market are not a part of CEP transactions (*e.g.*, personnel training and exchange, engineering services, advertising, sales promotion, market research, technical assistance, providing rebates, providing cash discounts, paying commissions, providing warranty service, providing guarantees, providing after–sales services, and performing repacking). For those selling activities performed for both home market sales and CEP sales (*e.g.*, sales processing, strategic/economic planning, distributor/dealer training, procurement/sourcing services, inventory maintenance, order input/processing, maintaining direct sales personnel, sales/marketing support, and providing freight and delivery services), CP Kelco reported that it performed each activity at a higher level of intensity in the home market. We note that CEP sales from CP Kelco OY to CP Kelco U.S. generally occur at the beginning of the distribution chain, representing essentially a logistical transfer of inventory. In contrast, all sales in the home market occur closer to the end of the distribution chain and

involve smaller volumes and more customer interaction which, in turn, require the performance of more selling functions. Based on the foregoing, we conclude that the NV and EP LOT is at a more advanced stage than the CEP LOT.

Because we found the home market and U.S. CEP sales were made at different LOTs, we examined whether a LOT adjustment or a CEP offset may be appropriate in this review. As we found only one LOT in the home market, it was not possible to make a LOT adjustment to home market sales, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the LOT of the export transaction. *See* 19 CFR 351.412(d)(1)(ii). Furthermore, we have no other information that provides an appropriate basis for determining a LOT adjustment. Because the data available do not form an appropriate basis for making a LOT adjustment, and because the NV and EP LOT is at a more advanced stage of distribution than the CEP LOT, we have made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Tariff Act.

Currency Conversions

CP Kelco reported certain U.S. sales prices and certain U.S. and HM expenses and adjustments in both U.S. dollars and euros. Therefore, we made euro–U.S. dollar currency conversions, where appropriate, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Board, in accordance with section 773A(a) of the Tariff Act.

Preliminary Results of Review

As a result of our review, we preliminarily find the following weighted–average dumping margin exists for the period December 27, 2004, through June 30, 2006:

Manufacturer / Exporter	Weighted Average Margin (percentage)
CP Kelco	5.70%

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d).

Comments

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication of this notice. Parties who submit arguments in these proceedings are requested to submit with the argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. CP Kelco has reported entered values for all of its sales of subject merchandise to the U.S. during the POR. Therefore, in accordance with 19 CFR 351.212(b)(1), we will calculate importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales of that importer. These rates will be assessed uniformly on all entries the respective importers made during the POR if these preliminary results are adopted in the final results of review. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department will issue appropriate appraisement instructions directly to CBP within fifteen days of publication of the final results of review.

Cash Deposit Requirements

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of CMC from Finland entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act:

1) The cash deposit rate for CP Kelco OY and Noviant OY will be the rate established in the final results of review; 2) if the exporter is not a firm covered in this review or the 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 3) 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 be the ''all others'' rate of 6.65 percent from the LTFV investigation. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden*, 70 FR 39734 (July 11, 2005). 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.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: July 27, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–15343 Filed 8–6–07; 8:45 am]

BLLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–337–806

Notice of Preliminary Results of Antidumping Duty Administrative Review, Notice of Partial Rescission of Antidumping Duty Administrative Review, Notice of Intent to Revoke in Part: Certain Individually Quick Frozen Red Raspberries from Chile

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review

of the antidumping duty order on certain individually quick frozen (IQF) red raspberries from Chile. The period of review (POR) is July 1, 2005, through June 30, 2006. This review covers sales of IQF red raspberries by six producers/exporters. We preliminarily find that, during the POR, sales of IQF red raspberries were made below normal value. Also, we intend to revoke the antidumping duty order with respect to Fruticola Olmue S.A. (Olmue) and Vital Berry Marketing S.A. (VBM). Interested parties are invited to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: August 7, 2007.

FOR FURTHER INFORMATION CONTACT: Salim Bhabhrawala (VBM), David Layton (Valles Andinos), Yasmin Nair (Arlavan, Vitafoods), David Neubacher (Valle Frio), Shane Subler (Olmue), or Nancy Decker, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–1784, (202) 482–0371, (202) 482–3813, (202) 482–5823, (202) 482–0189, or (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 2002, the Department of Commerce (Department) published an antidumping duty order on certain IQF red raspberries from Chile. *See Notice of Antidumping Duty Order: IQF Red Raspberries From Chile*, 67 FR 45460 (July 9, 2002). On July 3, 2006, the Department published a notice of opportunity to request 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).

On July 31, 2006, we received a request for review of 60 companies from the Pacific Northwest Berry Association, Lynden, Washington, and each of its individual members, Curt Maberry Farm; Enfield Farms, Inc.; Maberry Packing; and Rader Farms, Inc. (collectively, the petitioners). We also received requests for review from Arlavan S.A. (Arlavan), Alimentos Naturales Vitafoods S.A. (Vitafoods), Olmue, Sociedad Agroindustrial Valle Frio Ltda. (Valle Frio)[1], Valles Andinos S.A. (Valles Andinos), and VBM,[2] on July 31, 2006. Santiago Comercio Exterior S.A. (''SANCO'') requested a deferral of administrative review on July 31, 2006.

On August 30, 2006, we initiated an administrative review of all 60 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (Aug. 30, 2006). On December 4, 2006, we published a correction to the initiation notice to reflect SANCO S.A.'s request for deferral of administrative review. *See Certain Individually Quick Frozen Red Raspberries from Chile: Correction to Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 70363 (Dec. 4, 2006).

On November 28, 2006, the petitioners withdrew their review request for 53 of the 60 companies for which they had originally requested an administrative review. In accordance with 19 CFR 351.213(d)(1), on December 12, 2006, we partially rescinded this administrative review with respect to these 53 companies. *See Individually Quick Frozen Red Raspberries from Chile: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 74487 (Dec. 12, 2006). Thus, the six companies in this review are: Arlavan, Vitafoods, Olmue, Valle Frio, Valles Andinos, and VBM (collectively, the respondents).

On November 29, 2006, the Department issued antidumping questionnaires to the respondents. The respondents submitted their initial responses to the antidumping questionnaire from December 2006 through February 2007. After analyzing these responses, we issued supplemental questionnaires to the respondents to clarify or correct the initial questionnaire responses. We received timely responses to these questionnaires.

On March 21, 2007, we requested that Valle Frio and Vitafoods respond to the constructed value (CV) portion of the Department's questionnaire. On April 12, 2007, and April 16, 2007, we requested that Arlavan and certain suppliers of Arlavan and Valles Andinos respond to the CV portion of the Department's questionnaire. We received timely responses to these requests for CV information from all but one supplier, Sociedad Comercial Antillal Ltda. (Antillal). For further discussion, *see* ''Calculation of Normal Value Based on Constructed Value'' section of this notice.

On March 9, 2007, the Department published in the **Federal Register** an extension of the time limit for the completion of the preliminary results of this review until no later than July 31, 2007, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2). *See Certain Individually Quick Frozen Red Raspberries From Chile: Notice of Extension of Time Limit for 2005–2006 Administration Review*, 72 FR 10707 (Mar. 9, 2007).

Partial Rescission of Antidumping Duty Administrative Review

On February 12, 2007, we published the final results of the third administrative review, in which we revoked the antidumping duty order with respect to SANCO. *See Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile*, 72 FR 6524, 6525 (Feb. 12, 2007). Therefore, we are rescinding the deferred fourth administrative review with respect to SANCO.

Scope of the Order

The products covered by this order are imports of IQF whole or broken red raspberries from Chile, with or without the addition of sugar or syrup, regardless of variety, grade, size or horticulture method (*e.g.*, organic or not), the size of the container in which packed, or the method of packing. The scope of the order excludes fresh red raspberries and block frozen red raspberries (*i.e.*, puree, straight pack, juice stock, and juice concentrate).

The merchandise subject to this order is currently classifiable under subheading 0811.20.2020 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Verification

As provided in section 782(i) of the Act, during June 2007, we verified the information provided by VBM and Olmue in Chile using standard

[1] In the third administrative review, the Department collapsed Valle Frio with its affiliated producer, Agricola Framparque (Framparque). *See* Memorandum to Susan Kuhbach, Director, ''*Collapsing of Sociedad Agroindustrial Valle Frio Ltda.*,'' dated July 31, 2006. *See Notice of Preliminary Results of Antidumping Duty Administrative Review, Notice of Intent to Revoke in Part: Certain Individually Quick Frozen Red Raspberries from Chile* (unchanged in final) (*Third Administrative Review of Raspberries from Chile*), 71 FR 45000, 45001 (Aug. 8, 2006). There have been no change in the facts since then, so for the instant administrative review, we are treating Valle Frio and Framparque as a single entity.

[2] These six companies were also included in the petitioners' July 31, 2006 request for review of 60 companies.

verification procedures, including examination of relevant sales and financial records, and selection of original documentation containing relevant information. The Department reported its findings on July 31, 2007. *See* Memorandum to the File, ''*Verification of the Sales and Raw Materials Purchases Responses of Vital Berry Marketing S.A. in the 2005–2006 Antidumping Duty Administrative Review of Individually Quick Frozen Red Raspberries from Chile*,'' dated July 31, 2007 (*Verification Report - VBM*); and Memorandum to the File, ''*Verification of the Sales and Raw Materials Purchases Responses of Fruticola Olmué S.A. in the 2005–2006 Antidumping Duty Administrative Review of Individually Quick Frozen Red Raspberries from Chile*,'' dated July 31, 2007 (*Verification Report - Olmue*). These reports are on file in the Central Records Unit (CRU) in room B–099 of the main Department building.

Intent To Revoke In Part

The Department ''may revoke, in whole or part'' an antidumping order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation based on an absence of dumping that is described in 19 CFR 351.222(b)(2). In determining whether to revoke an antidumping duty order in part, the Secretary will consider: (A) whether one or more exporters or producers covered by the order have sold the merchandise at not less than normal value (''NV'') for a period of at least three consecutive years; (B) whether, for any exporter or producer that the Secretary previously has determined to have sold the subject merchandise at less than NV, the exporter or producer agrees in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV; and (C) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping. *See* 19 CFR 351.222(b)(2)(i).

The Department's regulations require, *inter alia*, that a company requesting revocation submit the following: (1) a certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the receipt of such a request; and (3) an agreement that the order will be reinstated if the company is subsequently found to be selling the subject merchandise at less than fair value. *See* 19 CFR 351.222(e)(1)(i)-(iii).

On July 31, 2006, Olmue and VBM submitted certifications that for a consecutive three-year period, including the current review period, they sold the subject merchandise in commercial quantities at not less than NV. Olmue and VBM also certified that they would not sell the subject merchandise at less than fair value in the future, and agreed to immediate reinstatement in the antidumping duty order if they are subsequently found to be selling the subject merchandise at less than fair value. Therefore, because we have determined that these respondents satisfy the requirements of 19 CFR 351.222(b), we preliminarily determine to revoke the antidumping order with respect to Olmue and VBM. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary, ''*Preliminary Determination to Revoke in Part the Antidumping Duty Order on Individually Quick Frozen Red Raspberries from Chile for Fruticola Olmué S.A. and Vital Berry Marketing S.A.,*'' dated July 31, 2007. This memorandum is on file in room B–099 of the CRU.

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title. In applying facts otherwise available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, (1994) (SAA) at 870. Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference. *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003); *Antidumping Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

In this case, we have found that facts otherwise available with an adverse inference is appropriate for Antillal, a supplier of Arlavan. Antillal is an interested party because it is a producer of the subject merchandise. *See* section 771(9)(A) and section 771(28) of the Act. Antillal did not respond to the Department's questionnaire. Thus, Antillal withheld information necessary to the calculation of a dumping margin and failed to act to the best of its ability. *See Notice of Preliminary Results of Antidumping Duty Administrative Review; Notice of Intent to Revoke in Part: Individually Quick Frozen Red Raspberries from Chile*, 71 FR 45000, 45007 (Aug. 8, 2006) (unchanged in final); *cf. Shandong Huarong Mach. Co., Ltd. v. United States*, 435 F. Supp. 2d 1261, 1282 (CIT June 9, 2006) (''court agrees . . . that Company C, as a foreign manufacturer of subject merchandise, is an interested party under § 1677(9)(A)''). Consequently, we preliminarily determine that an adverse inference is appropriate for Antillal.

The Department did not receive constructed value information for Valles Andinos's organic raspberry products. Because this information is necessary to the calculation of Valles Andinos's constructed value, the Department must rely on facts otherwise available under section 776 of the Act. The Department preliminarily finds that this information is unavailable because the suppliers we requested constructed value information from did not supply Valles Andinos with organic raspberry products during the POR. Thus, the unavailability of this information is not the result of Valles Andinos's lack of cooperation and adverse inferences under section 776(b) of the Act are inapplicable.

Fair Value Comparisons

To determine whether sales of IQF red raspberries from Chile to the United States were made at less than NV, we compared export price (EP) to NV, as

described in the ''Export Price'' and ''Normal Value'' sections of this notice.

In accordance with section 771(16) of the Act, we considered all products sold by the respondents in the comparison market covered by the description in the ''Scope of the Order'' section, above, to be foreign–like products for purposes of determining appropriate product comparisons to U.S. sales. In accordance with section 773(a)(1)(C)(ii) of the Act, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign–like product to the volume of its U.S. sales of the subject merchandise. *See* the ''Normal Value'' section, below, for further details.

We compared U.S. sales to monthly weighted–average prices of contemporaneous sales made in the comparison market. Where there were no sales of identical merchandise in the comparison 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. Where there were no sales of identical or similar merchandise made in the ordinary course of trade in the comparison market, we compared U.S. sales to CV. In making product comparisons, consistent with our determination in the original investigation, we matched foreign like products based on the physical characteristics reported by the respondent in the following order: grade, variety, form, cultivation method, and additives. *See Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: IQF Red Raspberries from Chile*, 66 FR 67510, 67511 (Dec. 31, 2001).

Normally, the Department employs invoice date as the date of sale. *See* 19 CFR 351.401(i). However, if the Department determines that another date reflects the date on which the exporter or producer establishes the material terms of sale, the Department may use this date. *Id*. The respondents, excluding Vitafoods and Valles Andinos, ship the subject merchandise on or before the date of invoice. We are using the date of shipment (*i.e.*, *guia de despacho*/dispatch note date) as the date of sale for these respondents because this is the date on which the material terms of sale were established. *See*, *e.g.*, *Certain Cold–Rolled and Corrosion–Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13170, 13172–73 (March 18, 1998). Vitafoods sells its merchandise in the home market using only an invoice, not a *guia de despacho*. This invoice replaces, and is used for the same purpose as, the *guia de despacho*. Therefore, for Vitafoods, we are relying on invoice date as shipment date for home market sales. For U.S. sales, Vitafoods issues a guia de despacho, which we are relying upon for date of sale. *See* 19 CFR 351.401(i). Valles Andinos reported contract date as the date of sale for its comparison market and U.S. sales because it stated that this is the date the final terms of sale are set. There is no evidence that the terms of sale change after the contract date. Therefore, for Valles Andinos, we are using contract date as the date of sale.

(A) Vitafoods

We calculated EP because the merchandise was sold prior to importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, and because the constructed export price methodology was not otherwise warranted. We based EP on the free–on-board (FOB), cost and freight (CFR), or cost, insurance, and freight (CIF) price to unaffiliated purchasers in the United States.

In accordance with Vitafoods's response, we adjusted the reported gross unit price, where applicable, for billing adjustments. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These deductions included, where appropriate, freight incurred in transporting merchandise to the Chilean port, domestic brokerage and handling, international freight, and marine insurance. *See* Memorandum to the File, ''*Preliminary Results Calculation Memorandum for Alimentos Naturales Vitafoods S.A.,*'' dated July 31, 2007 (*Vitafoods Preliminary Calculation Memorandum*).

For its U.S. market sales, Vitafoods reported the bill of lading date as the shipment date. We have revised the shipment date to match the issuance date of the *guia de despacho*, because that is when the merchandise under review was shipped from the plant or warehouse to the Chilean port. We also recalculated U.S. imputed credit expenses using the revised date of shipment. For further discussion, *see Vitafoods Preliminary Calculation Memorandum*.

In accordance with Vitafoods's supplemental questionnaire response, we adjusted the product control number for certain whole and broken and crumble products to reflect their Grade D product classifications. For further discussion, *see Vitafoods Preliminary Calculation Memorandum*.

(B) Arlavan

We calculated EP because the merchandise was sold prior to importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, and because constructed export price methodology was not otherwise warranted. We based EP on the packed, free on truck (FOT), FOB, or CFR price to unaffiliated purchasers in the United States.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These deductions included, where appropriate, freight incurred in transporting merchandise to the warehouse and/or to the port, domestic warehousing, domestic brokerage and handling, international freight, and port charges.

For its U.S. market sales, Arlavan reported the bill of lading date as the shipment date. We have revised the shipment date to match the issuance date of the *guia de despacho*, because that is when the merchandise under review was shipped from the plant or warehouse to the Chilean port. We also recalculated U.S. imputed credit expenses using the revised date of shipment. For further discussion, *see* Memorandum to the File, ''*Preliminary Results Calculation Memorandum for Arlavan S.A.,*'' dated July 31, 2007 (*Arlavan Preliminary Calculation Memorandum*), which is on file in the CRU.

(C) Olmue

We calculated EP because the merchandise was sold prior to importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, and because constructed export price methodology was not otherwise warranted. We based EP on the packed, CFR price to unaffiliated purchasers in the United States.

In accordance with Olmue's response, we adjusted the reported gross unit price, where applicable, for billing adjustments. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included, where appropriate, inland freight to the warehouse in Chile, warehousing in Chile, inland freight to the Chilean port, domestic brokerage and handling, and international freight.

We made minor adjustments to the following fields in Olmue's U.S. sales listing: movement expenses, date of

shipment, indirect selling expenses, variable cost of manufacturing, and total cost of manufacturing; based on our findings at verification that the amounts for certain sales were misreported. Because of our findings with respect to the variable cost of manufacturing and total cost of manufacturing fields in Olmue's sales data, we also made minor adjustments to the variable overhead cost, fixed overhead cost, direct labor cost, and general and administrative (G&A) expense fields of Olmue's reported cost of production data. *See Olmue Preliminary Calculation Memorandum*; *see also Verification Report - Olmue*.

(D) Valle Frio

We calculated EP because the merchandise was sold prior to importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, and because constructed export price methodology was not otherwise warranted. We based EP on the packed, FOB price to unaffiliated purchasers in the United States.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included, where appropriate, inland freight incurred in transporting merchandise to the Chilean port and domestic brokerage and handling expenses.

(E) Valles Andinos

We calculated EP because the merchandise was sold prior to importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, and because constructed export price methodology was not otherwise warranted. We based EP on the packed, FOB or CFR price to unaffiliated purchasers in the United States.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included freight incurred in transporting merchandise from the plant to the Chilean port and domestic brokerage and handling.

We calculated imputed credit expenses for all sales based on Valles Andinos's actual borrowing experience, the date the customer paid, the shipment date based on the *guia de despacho*, and the reported gross unit price. For further discussion, *see* Memorandum to the File, ''*Preliminary Results Calculation Memorandum for Valles Andinos, S.A.,*'' dated July 31, 2007, (''*Valles Andinos Preliminary Calculation Memorandum*''), which is on file in the CRU. We revised Valles Andinos's indirect selling expenses to exclude income taxes paid, in accordance with the Department's normal practice. *See Valles Andinos Preliminary Calculation Memorandum*.

(F) VBM

We calculated EP because the merchandise was sold prior to importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, and because constructed export price methodology was not otherwise warranted. We based EP on the duty delivered paid (DDP) prices to unaffiliated purchasers in the United States.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These deductions included, where appropriate, domestic inland freight, domestic brokerage and handling, certain pre–sale warehousing expenses, international freight, and U.S. customs duties. We adjusted the reported gross unit price, where applicable, for certain billing adjustments.

We also made minor adjustments to the following fields in VBM's U.S. sales listing: movement expenses, inventory carrying cost, variable cost of manufacturing, and total cost of manufacturing; based on our findings at verification that the amounts for certain sales were misreported. *See VBM Preliminary Calculation Memorandum*; *see also Verification Report - VBM*.

Normal Value

A. Home Market Viability

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP. Quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. *See* 19 CFR 351.404(b)(2).

Arlavan, Olmue, Valle Frio, and Valles Andinos reported that their home market sales of IQF red raspberries during the POR were less than five percent of their sales of IQF red raspberries to the United States. Therefore, these four respondents did not have viable home markets for purposes of calculating NV. As their largest third country markets, Arlavan and Valles Andinos reported Canada, and Olmue and Valle Frio reported France. In all instances, sales to the third countries exceed five percent of sales to the United States. We reviewed these largest third country markets that were reported by the respondents, and found that the merchandise sold in these markets was more comparable to that sold in the United States than merchandise sold by the respondents in smaller third country markets. Accordingly, for purposes of calculating NV, Arlavan and Valles Andinos reported their sales to Canada; Olmue and Valle Frio reported their sales to France.

VBM and Vitafoods reported that their home market sales of IQF red raspberries during the POR were more than five percent of their sales of IQF red raspberries to the United States. Therefore, VBM's and Vitafoods's home markets were viable for purposes of calculating NV. Accordingly, VBM and Vitafoods reported their home market sales.

To derive NV for all respondents, we made the adjustments detailed in the ''Calculation of Normal Value Based on Comparison Market Prices'' and ''Calculation of Normal Value Based on Constructed Value'' sections, below.

B. Cost of Production Analysis

In the most recently completed segment of the proceeding at the time of initiation (*i.e.*, the second administrative review), the Department found that Olmue made sales in the comparison market at prices below the cost of producing the merchandise and excluded such sales from the calculation of NV. Therefore, the Department has determined that there are reasonable grounds to believe or suspect that Olmue made IQF red raspberry sales in the comparison market (*i.e.*, France) at prices below the cost of production (COP) during the period of review and has initiated a COP inquiry for this respondent. *See* section 773(b)(2)(A)(ii) of the Act.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for G&A expenses, financial expenses (INTEX), and comparison market packing costs, where appropriate.

2. Individual Adjustments for Olmue

We relied on the COP data submitted by Olmue in its cost questionnaire responses except in specific instances where, based on our review of the

submissions, we believe that an adjustment is required, as discussed below.

We adjusted the cost of the raw materials purchased by Olmue from an affiliated supplier to reflect the higher of transfer price, the affiliated supplier's COP, or market price in accordance with section 773(f)(3) of the Act. *See* 19 CFR 351.407(b). We also disallowed the reported financial revenue offsets to Olmue's financial expenses because, despite repeated requests to Olmue for clarification, we were not able to distinguish the company's financial revenues related to short–term interest bearing assets from the financial revenues earned on long–term interest assets. For further discussion, *see* Memorandum to the File, ''*Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Fruticola Olmue S.A.,*'' dated July 31, 2007, which is on file in the CRU.

Also, as discussed in the ''Calculation of Normal Value Based on Comparison Market Prices'' and ''Export Price'' sections, we made minor adjustments to the variable overhead cost, fixed overhead cost, direct labor cost, and G&A expense fields in Olmue's COP listing based on our findings at verification that the amounts were misreported. *See Olmue Preliminary Calculation Memorandum*; *see also Verification Report - Olmue*.

3. Test of Comparison Market Sales Prices

We compared the adjusted weighted–average COP for Olmue to its comparison market sales of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales were made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. *See also* sections 773(b)(1)(A) and 773(b)(1)(B) of the Act. On a model–specific basis, we compared the revised COP to the comparison market prices. The prices were exclusive of any applicable billing adjustments, movement expenses, direct selling expenses, commissions, indirect selling expenses, and packing expenses.

4. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product are at prices less than the COP, we do not disregard any below–cost sales of that product because we determine that the below–cost sales were not made in substantial quantities.

Where 20 percent or more of a respondent's sales of a given product during the POR are at prices less than the COP, we determine such sales to have been made in substantial quantities within an extended period of time in accordance with section 773(b)(2)(B) of the Act. Because we compare prices to the POR average COP, we also determine that such sales are 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, we disregard these below–cost sales.

For Olmue, we found that more than 20 percent of the comparison market sales of IQF red raspberries within an extended period of time were made at prices less than the COP. Further, the prices at which the merchandise under review was sold did not provide for the recovery of costs within a reasonable period of time. Therefore, we disregarded these below–cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of IQF red raspberries for which there were no useable comparison market sales in the ordinary course of trade, we compared EPs to the CV in accordance with section 773(a)(4) of the Act. *See* ''Calculation of Normal Value Based on Constructed Value'' section, below.

C. Calculation of Normal Value Based on Comparison Market Prices

We determined price–based NVs for each company as follows:

For all respondents, we made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and we deducted movement expenses consistent with section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset). Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: (1) the amount of the commission paid in the U.S. market; or (2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology. Company–specific adjustments are described below.

(A) Vitafoods

We based comparison market prices on the packed prices to unaffiliated purchasers in Chile. We adjusted the starting price by deducting quantity discounts and movement expenses, including inland freight expenses from the plant to the distribution warehouse, warehousing, and inland freight expenses from distribution warehouse to the customer. We made COS adjustments by deducting direct selling expenses incurred for home market sales (*i.e.*, credit expenses, direct selling expenses, commission expenses, and advertising expenses) and adding U.S. direct selling expenses (*i.e.*, credit expenses). We recalculated imputed credit expenses because the amounts reported for certain sales did not conform with the credit expense calculation methodology described by Vitafoods at page B–21 of its January 19, 2007, Sections B and C Questionnaire Response. *See Vitafoods Preliminary Calculation Memorandum*.

(B) Arlavan

We based comparison market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price, where applicable, by deducting movement expenses, including inland freight to the warehouse, domestic warehousing, Chilean brokerage and customs fees, agriculture certificates, temperature control recorders during transit, port charges, and international freight. We made COS adjustments by deducting direct selling expenses incurred for comparison market sales (*e.g.*, external quality control/ biological testing, courier charges, and credit expenses) and adding U.S. direct selling expenses (*e.g.*, external quality control/ microbiological testing, courier charges, and credit expenses).

For its comparison market sales, Arlavan reported the bill of lading date as the shipment date. We have revised the shipment date to match the issuance date of the *guia de despacho*, because that is when the merchandise under review was shipped from the plant or warehouse to the Chilean port. Consequently, we recalculated comparison market imputed credit

expenses using the revised date of shipment. For further discussion, *see Arlavan Preliminary Calculation Memorandum*.

(C) Olmue

We based comparison market prices on the packed, CFR price to unaffiliated purchasers in France. In accordance with Olmue's response, we adjusted the reported gross unit price, where applicable, for billing adjustments. We adjusted the starting price by deducting movement expenses, including inland freight to the Chilean port, international freight, and brokerage and handling. We made COS adjustments by deducting direct selling expenses incurred for comparison market sales (*i.e.*, microbiological/pesticide testing, international storage expenses, bank expenses, commissions, credit expenses) and adding U.S. direct selling expenses (*i.e.*, microbiological/pesticide testing, international storage expenses, bank expenses, commissions, credit expenses). *See Olmue Preliminary Calculation Memorandum*.

We made minor adjustments to the following fields in Olmue's comparison market sales listing: date of shipment, date of sale, price adjustments, movement expenses, direct selling expenses, indirect selling expenses, variable cost of manufacturing, and total cost of manufacturing; based on our findings at verification that the amounts for certain sales were misreported. Because of our findings with respect to the variable cost of manufacturing and total cost of manufacturing fields in Olmue's sales data, we also made minor adjustments to the variable overhead cost, fixed overhead cost, direct labor cost, and G&A expense fields of Olmue's reported cost of production data. *See Olmue Preliminary Calculation Memorandum*; *see also Verification Report - Olmue*.

(D) Valle Frio

We based comparison market prices on the packed prices to unaffiliated purchasers in France or sold to an unaffiliated purchaser for exportation to France. We adjusted the starting price by deducting movement expenses, including, where appropriate, inland freight from the plant to the port, international freight, and container handling/brokerage charges. We made COS adjustments by deducting direct selling expenses incurred for comparison market sales (*e.g.*, credit expenses, commissions, microbiological/pesticide testing, label expenses) and adding U.S. direct selling expenses (*e.g.*, credit expenses, microbiological/pesticide testing, label expenses). *See* Memorandum to the File, ''*Preliminary Results Calculation Memorandum for Sociedad Agroindustrial Valle Frio Ltda.*,'' dated July 31, 2006 (*Valle Frio Preliminary Calculation Memorandum*), which is on file in the CRU.

(E) Valles Andinos

We based comparison market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price by deducting movement expenses, including inland freight from the plant to the Chilean port, domestic brokerage and handling, and international freight. We made COS adjustments by deducting direct selling expenses incurred for comparison market sales (*e.g.*, credit expenses, bank fees, and courier fees) and adding U.S. direct selling expenses (*e.g.*, credit expenses, bank fees, and courier fees). See *Valles Andinos Preliminary Calculation Memorandum*.

In accordance with the Department's normal practice, we revised Valles Andinos's indirect selling expenses reported to exclude income taxes paid. We calculated imputed credit expenses for all sales based on Valles Andinos's actual borrowing experience, the date the customer paid, the shipment date based on the *guia de despacho*, and the reported gross unit price. *See Valles Andinos Preliminary Calculation Memorandum*.

(F) VBM

We based comparison market prices on the packed prices to unaffiliated purchasers in VBM's home market. We adjusted the starting price by deducting movement expenses, including inland freight to the warehouse and warehousing/storage expenses. We made COS adjustments by deducting direct selling expenses incurred for comparison market sales (*e.g.*, credit expenses) and adding U.S. direct selling expenses (*e.g.*, credit expenses, bank fees, postage and handling charges, and microbiological testing expenses). *See VBM Preliminary Calculation Memorandum*.

We also made minor adjustments to the following fields in VBM's home market sales listings: movement expenses, credit expenses, variable cost of manufacturing, and total cost of manufacturing; based on our findings at verification that the amounts for certain sales were misreported. *See VBM Preliminary Calculation Memorandum*; *see also Verification Report - VBM*.

D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison–market sales, NV may be based on CV. Accordingly, for IQF red raspberries for which we could not determine the NV based on comparison market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on the CV.

Section 773(e) of the Act provides that the CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for selling, general and administrative (SG&A) expenses, profit, and U.S. packing costs. For Olmue, we calculated the cost of materials and fabrication based on the methodology described in the ''Cost of Production Analysis'' section, above.

The Department determined that for certain merchandise sold in the United States, Valle Frio, Vitafoods, Arlavan, and Valles Andinos did not have comparison market sales. *See* Memorandum to the File, ''*Difference–in-merchandise Calculation for Sociedad Agroindustrial Valle Frio Ltda.*'' dated March 21, 2007; Memorandum to the File, ''*Difference–in-merchandise Calculation for Alimentos Naturales Vitafoods S.A.*'' dated March 21, 2007; and Memorandum from Yasmin Nair and Saliha Loucif, International Trade Compliance Analysts, to Susan Kuhbach, Director, Office 1, ''*Requests for Constructed Value*'' dated March 28, 2007.

Valles Andinos is a trading company. Therefore, in accordance with section 773(e) of the Act, we sent questionnaires to Valles Andinos's suppliers. Specifically, we sent questionnaires to Valles Andinos's two largest suppliers.

Arlavan produces and sells IQF red raspberries, and also acts as a trading company for other producers' IQF red raspberries. Because Arlavan's sales of its own product during the POR were not substantial, we also sent questionnaires to Arlavan's two largest suppliers. We received a complete questionnaire response from one supplier (Agricola San Antonio Limitada (San Antonio)); however, as explained below, we have not received complete, useable information from the other supplier, Antillal.

The Department sent the questionnaire to Antillal on April 16, 2007. On May 22, 2007, Antillal requested an extension of two weeks to respond to the questionnaire. The

Department granted this extension request in full. However, on June 6, 2007, the new deadline for submission of Antillal's information, the Department was notified by Arlavan that Antillal was not providing a response.

Because Antillal failed to provide the information required by the Department for these preliminary results, the Department has applied adverse facts available to calculate a CV for Antillal. *See* ''Individual Company Adjustments'' and ''Use of Facts Otherwise Available'' sections, below.

1. Individual Company Adjustments

With the exception of Antillal, as discussed above, we relied on the CV data submitted by the respondents except in specific instances where, based on our review of the submissions, we believe that an adjustment is required. These adjustments are discussed below.

Arlavan

As discussed *supra*, one of Arlavan's suppliers, Antillal, failed to respond to the Department's questionnaire, and for this supplier, the Department has applied adverse facts available. *See* section 776 of the Act. We calculated a weighted–average CV for Arlavan using: 1) the CV of Arlavan's one responding supplier (San Antonio) for purchases from San Antonio; 2) Arlavan's own reported CV, as adjusted; and 3) the weighted average of the two highest COPs or CVs of all respondents' reported COP/CV information as AFA for Antillal's CV. These three CV values were weighted by quantities that were purchased or produced by Arlavan during the POR. For further discussion, *see Arlavan Preliminary Calculation Memorandum*.

We revised Arlavan's reported per unit cost of manufacturing to take into consideration yield, dividing by output quantity rather than input quantity. We also adjusted Arlavan's reported G&A and INTEX expense calculations to exclude internal freight from the cost of goods sold denominator. For further discussion, *see Arlavan Preliminary Calculation Memorandum*.

Consistent with the Department's normal practice, we revised San Antonio's fixed overhead and INTEX ratio to include items that were improperly excluded by San Antonio. For further discussion, *see Arlavan Preliminary Calculation Memorandum*. We note that we continue to have outstanding cost reconciliation and valuation issues with San Antonio's and Arlavan's responses. For purposes of calculating these preliminary results, we are accepting the data provided by San Antonio and Arlavan. However, we intend to ask for further information following publication of these preliminary results to determine whether the aforementioned responses accurately reflect San Antonio's and Arlavan's constructed values.

Valles Andinos

We calculated an average CV using the information provided by Valles Andinos's two suppliers, Pehuenche and Punsin. The average CV was weighted by quantities that were purchased by Valles Andinos from these two suppliers during the POR. For further discussion, *see Valles Andinos Preliminary Calculation Memorandum*.

Although we received responses to our requests for supplemental information concerning constructed value reported by Valles Andinos suppliers, Pehuenche and Punsin, we have outstanding cost reconciliation and valuation issues with both responses. For purposes of calculating these preliminary results, we are accepting the data provided by Pehuenche and Punsin. However, we intend to ask for further information following publication of these preliminary results to determine whether these aforementioned responses accurately reflect these suppliers' constructed values.

We revised Pehuenche's cost of manufacturing to include a raw material price adjustment. We also revised Pehuenche's G&A and INTEX expenses to include certain omitted expenses. *See Valles Andinos Preliminary Calculation Memorandum*.

As mentioned previously, we did not receive constructed value information for Valles Andinos's organic raspberry products. *See* discussion *supra*. Therefore, we are using as neutral facts available the average difference between organic and non–organic raspberry products, all other product characteristics being equal, reported by other respondents to this administrative review, and we are applying this difference to the reported costs of Valles Andinos's non–organic raspberry products to derive constructed value for the organic products. *See Valles Andinos Preliminary Calculation Memorandum*.

Vitafoods

In accordance with the Department's normal practice, we have made adjustments to G&A expenses and INTEX expenses reported by Vitafoods. We revised Vitafoods's reported G&A expense ratio to include profit on sale of fixed assets, expenses associated with waste disposal, and fines paid. We revised Vitafoods's reported INTEX ratio to include net profit/loss in forward exchange operations. For further discussion, *see Vitafoods Preliminary Calculation Memorandum*.

We based SG&A expenses and profit for the above–mentioned respondents on the actual amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act. We used U.S. packing costs as described in the ''Export Price'' section, above.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on comparison market sales from, and adding U.S. direct selling expenses to, CV.

E. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP sale. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997).

In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[3] including selling functions,[4] class of customer (customer

[3] The marketing process in the United States and comparison market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered each respondent's narrative response to properly determine where in the chain of distribution the sale occurs.

[4] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either comparison market or third country prices)[5], we consider the starting prices before any adjustments. When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

In this review, we determined the following, with respect to the LOT, for each respondent.

(A) Vitafoods

Vitafoods reported a single LOT in each market, and claimed that the LOT in each of these markets was the same. Therefore, Vitafoods did not request an LOT adjustment.

We examined the information reported by Vitafoods regarding its marketing processes for its U.S. and home market sales, including customer categories and the type and level of selling activities performed. Vitafoods reported one channel of distribution for sales to the United States. In this channel of distribution, Vitafoods arranges to get the subject merchandise to the port for export. For these sales, Vitafoods's customer is the importer of record. Because Vitafoods has reported no significant variation in the selling activities for these sales, we preliminarily find that there is a single LOT for Vitafoods's U.S. sales.

Vitafoods has reported two channels of distribution for its home market sales. In the first channel of distribution (channel 1), merchandise is transported from the processing plant to the cold storage warehouse, and then delivered to the customer's facility. In the second channel of distribution (channel 2), merchandise is transported from the processing plant to the cold storage warehouse, and then transported to the distribution center where it is delivered to the customer. Because Vitafoods has not reported substantial differences in the selling activities for these two channels, we preliminarily find that there is a single LOT for Vitafoods's home market sales.

Comparing sales in Vitafoods's two markets, there is no indication that there were significantly different selling activities or sales process activities. Vitafoods did make billing adjustments (*i.e.*, discounts) on home market sales, however, these discounts are granted to each category of customers and do not significantly increase the level of selling activities performed by Vitafoods. Although Vitafoods performed some limited advertising for its home market sales, it did not provide technical services or post–sale warehousing for either U.S. or home market sales.

Therefore, we preliminarily find that a single LOT exists in both the U.S. and home markets, and that Vitafoods's U.S. and home market sales were made at the same LOT.

(B) Arlavan

Arlavan reported a single LOT in each market, and claimed that the LOT in each of these markets was the same. Therefore, Arlavan did not request an LOT adjustment.

We examined the information reported by Arlavan regarding its marketing processes for its comparison market and U.S. sales, including customer categories and the type and level of selling activities performed. Arlavan has reported five channels of distribution for sales to the United States. In the first channel of distribution (channel 2), merchandise is shipped directly from the processing plant to the customer on a CFR (Chilean port) basis. In the second channel of distribution (channel 3), merchandise is shipped directly to the customer on an FOB (Chilean port) basis. In the third channel of distribution (channel 4), merchandise is shipped from the warehouse to the customer on an CFR (Chilean port) basis. In the fourth channel of distribution (channel 5), merchandise is picked up at the processing plant by a home market customer (FOT) and re–sold to the United States by that customer. In the fifth channel of distribution (channel 6), merchandise is picked up at the warehouse by a home market customer (FOT) and re–sold to the United States by that customer. For all sales to the United States, Arlavan's customer is the importer of record. For third–country sales, Arlavan sells in one channel of distribution (channel 4), where merchandise is shipped from the warehouse to the customer on a CFR (Chilean port) basis. For both markets, Arlavan sold to brokers.

Comparing sales in Arlavan's two markets, there is no indication that there were significantly different selling activities or sales process activities. We examined the information reported by Arlavan regarding its marketing processes for its third country and U.S. sales, including customer categories and the type and level of selling activities performed. For sales to the third country and United States, Arlavan's selling activities were limited to receiving and processing orders, and, depending on the terms of sale, arranging for delivery to the third country. Arlavan offered no technical assistance, inventory maintenance services, or advertising in either market for IQF red raspberries, regardless of channel of distribution. Arlavan indicated that all export sales require that a microbiological analysis be conducted in order to ensure compliance with phytosanitary requirements. According to Arlavan, all selling activities were performed in Chile. Therefore, we preliminarily find that a single LOT exists in both the U.S. and third country markets, and that Arlavan's U.S. and third country sales were made at the same LOT.

(C) Olmue

Olmue reported a single channel of distribution and a single LOT in the third country and U.S. markets. Olmue claimed that its sales in both markets were at the same LOT. Therefore, Olmue did not request a LOT adjustment.

We examined the information reported by Olmue regarding its sales processes for its third country and U.S. sales, including customer categories and the type and level of selling activities performed. Olmue reported that it sold to similar categories of customers in France and the United States. In both markets, Olmue reported similar selling activities regardless of the customer category. Sales in both markets were direct shipments from the plant to the customer. Therefore, there were no differences in the channels of distribution between the two markets. Also, Olmue did not grant rebates or discounts, provide technical services or post–sale warehousing, or advertise on sales to the U.S. or third country markets. Therefore, we preliminarily find that a single LOT exists in both the U.S. and third country markets, and that Olmue's sales to the U.S. and third country markets were made at the same LOT.

(D) Valle Frio

Valle Frio reported two channels of distribution in the third country market and a single channel of distribution in the United States. Valle Frio indicated that its sales to the United States and third country markets were made at the same LOT and it did not request a LOT adjustment.

[5] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

In the single channel of distribution for U.S. sales, merchandise is shipped directly to the customer on an FOB (Chilean port) basis. For third country sales in the first channel of distribution (channel 1), Valle Frio shipped the merchandise directly to the third country market. In the second channel of distribution (channel 2), merchandise is sold to a Chilean customer who re–sold the product to the third country. For both markets, Valle Frio sold to wholesalers and distributers.

Comparing sales in Valle Frio's two markets, there is no indication that there were significantly different selling activities or sales process activities. We examined the information reported by Valle Frio regarding its marketing processes for its third country and U.S. sales, including customer categories and the type and level of selling activities performed. For sales to the third country and United States, Valle Frio's selling activities were limited to receiving and processing orders, and, depending on the terms of sale, arranging for delivery to the third country. Valle Frio offered no technical assistance, inventory maintenance services, or advertising in either market for IQF red raspberries, regardless of channel of distribution. Valle Frio indicated that all export sales require that a microbiological analysis be conducted in order to ensure compliance with phytosanitary requirements. According to Valle Frio, all selling activities were performed in Chile. Therefore, we preliminarily find that a single LOT exists in both the U.S. and third country markets, and that Valle Frio's U.S. and third country sales were made at the same LOT.

(E) Valles Andinos

Valles Andinos indicated that its sales to the United States and third country markets were made at the same LOT and it did not request a LOT adjustment. Valles Andinos reported one channel of distribution in the comparison market. In this channel, sales are made directly to the customer. All sales are shipped from Valles Andinos's supplier's cold storage facilities in Chile to the port, and are delivered by sea freight to the comparison market customer. Accordingly, we preliminarily determine that comparison market sales are made at a single LOT.

In the U.S. market, Valles Andinos reported one channel of distribution. In this channel, sales are made directly to the customer. All sales are shipped from Valles Andinos's supplier's cold storage facilities in Chile to the port, and are delivered by sea freight to the U.S. customer. Accordingly, we preliminarily determine that the sales are made at a single LOT in the United States.

Comparing sales in Valles Andinos's two markets, there is no indication that there were significantly different selling activities or sales process activities. Valles Andinos did not grant rebates or discounts, provide technical services or post–sale warehousing, or advertise on either U.S. or third country sales. Therefore, we preliminarily find that a single LOT exists in both the U.S. and comparison markets, and that Valles Andinos's sales in the U.S. and comparison market were made at the same LOT.

(F) VBM

VBM reported four distinct channels of distribution to the United States, and two channels of distribution in the home market. VBM claimed that the LOT in each of these markets was the same, and therefore, it did not request an LOT adjustment.

We examined the information reported by VBM regarding its marketing processes for its home market and U.S. sales, including customer categories and the types and levels of selling activities performed. For U.S. sales in the first channel of distribution (channel 1), merchandise is transported from the processing plant to the cold storage warehouse before being transported to the port of shipment. For U.S. sales in the second channel of distribution (channel 2), merchandise is transported directly from the processing plant to the port for shipment. For U.S. sales in the third channel of distribution (channel 3), merchandise is transported directly to the customer. For U.S. sales in the fourth channel of distribution (channel 4), merchandise is transported to the port, and picked up by the customer.

VBM reports that there are no pricing differences between these four channels of distribution. In all channels of distribution, VBM is responsible for arranging inland freight to the port in Chile. VBM is also the importer of record. VBM sells to the same types of customer in all four channels of distribution. Except for small differences regarding transportation of the product from the processing plant to the cold storage warehouse, and to the ultimate customer in the United States, there are no differences in the selling activities for these four channels of distribution. Therefore, we preliminarily find that there is a single LOT in the U.S. market.

VBM has also reported two channels of distribution for its home market sales. For home market sales in the first channel of distribution (channel 1), merchandise is transported from the processing plant to the cold storage warehouse, and is picked up directly from the warehouse by the customer. For home market sales in the second channel of distribution (channel 2), merchandise is picked up by the customer at the processing plant. Because VBM has not reported substantial differences in the selling activities for these two channels, we preliminarily find that there is a single LOT in VBM's home market.

Comparing sales in VBM's two markets, there is no indication that there were significantly different selling activities or sales process activities. Therefore, we preliminarily find that a single LOT exists in both the U.S. and home markets, and that VBM's sales in the U.S. and home markets were made at the same LOT.

Currency Conversion

We made currency conversions in accordance with section 773A(a) of the Act based on the exchange rates in effect on the date of the U.S. sale as reported by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily find the following weighted–average dumping margins:

Exporter/manufacturer	Weighted–average margin percentage
Alimentos Naturales Vitafoods S.A.	3.19
Arlavan S.A.	0.19 (*de minimis*)
Fruticola Olmue S.A.	0.05 (*de minimis*)
Sociedad Agroindustrial Valle Frio Ltda./ Agricola Framparque	0.00
Valles Andinos S.A.	1.14
Vital Berry Marketing, S.A.	0.12 (*de minimis*)

Public Comment and Disclosure

Within 10 days of publicly announcing the preliminary results of this review, we will disclose to interested parties any calculations performed in connection with the preliminary results. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 5 days after the date for filing case briefs. 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 with an electronic version included; and (3) a table of statutes, regulations, and cases cited. *See* 19 CFR 351.309(c)(2).

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), for all sales made by respondents for which they have reported the importer of record and the 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. Where the respondents did not report the entered value for U.S. sales, 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* rates based on the estimated entered value. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. 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). The Department will issue appraisement instructions directly to CBP.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its 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

On July 20, 2007, the Department published a **Federal Register** notice that, *inter alia*, revoked this order, effective July 9, 2007. *See IQF Red Raspberries from Chile: Final Results of Sunset Review and Revocation of Order*, 72 FR 39793 (July 20, 2007). Therefore, there will be no need to issue new cash deposit instructions pursuant to the final results of this administrative review.

Notification to Importers

This notice also 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 in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E7–15327 Filed 8–6–07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–913]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATES: August 7, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Toni Page, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3148 and (202) 482–1398, respectively.

Initiation of Investigation

The Petition

On June 18, 2007, the Department of Commerce (the Department) received a petition filed in proper form by Titan Tire Corporation and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union, ALF–CIO–CLC (petitioners). On June 22, 2007 and July 3, 2007, the Department issued requests for additional information and clarification of certain areas of the petition involving general issues concerning the countervailing duty (CVD) allegations. Based on the Department's requests, the petitioners filed additional information concerning the petition on June 27, 2007 and July 5, 2007.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), petitioners allege that manufacturers, producers, or exporters of certain new pneumatic off-the-road tires (OTR tires) in the People's Republic of China (the PRC) received countervailable subsidies within the meaning of section 701 of the Act and that such imports are materially injuring an industry in the United States.

The Department finds that petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act and petitioners have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department to initiate (*see, infra,* ''Determination of Industry Support for the Petition'').

Scope of Investigation

The merchandise covered by this investigation is certain new pneumatic off-the-road tires from the PRC. *See* Attachment to this notice for a complete description of the merchandise covered by this investigation.

Comments on Scope of Investigation

During our review of the petition, we discussed the scope with petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties: Countervailing Duties: Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to

Import Administration's Central Records Unit (CRU), Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of the People's Republic of China (hereinafter, the GOC) for consultations with respect to the countervailing duty petition. The Department held these consultations in Beijing, China with representatives of the GOC on July 16, 2007. *See* the Memorandum to The File, entitled, ''Consultations with Officials from the Government of the People's Republic of China'' (July 16, 2007) (public document on file in the CRU of the Department of Commerce, Room B–099).

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC., Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd.* v. *United States,* 688 F. Supp. 639, 644 (1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that certain OTR tires constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* the *Countervailing Duty Investigation Initiation Checklist: Certain New Pneumatic Off-The-Road Tires from the People's Republic of China (PRC) (OTR Tires CVD Initiation Checklist),* Industry Support at Attachment II, on file in the Central Records Unit (CRU), Room B–099 of the main Department of Commerce building.

On July 6, 2007, the Department extended the initiation deadline by 20 days to poll the domestic industry in accordance with section 702(c)(4)D) of the Act, because it was ''not clear from the petitions whether the industry support criteria have been met * * *'' *See Extension of the Deadline for Determining the Adequacy of the Antidumping Duty and Countervailing Duty Petitions: New Pneumatic Off-the-Road Tires from the People's Republic of China,* 72 FR 38816 (July 16, 2007). On July 16, 2007, we issued polling questionnaires to all known domestic producers of certain OTR tires identified in the petition and by the Department's research. The questionnaires are on file in the CRU. For a detailed discussion of the responses received, *see OTR Tires CVD Initiation Checklist* at Attachment II.

Based on an analysis of the data collected, we determine that the petitioners have demonstrated industry support representing over 50 percent of the total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 702(c)(4)(A)(i) of the Act are met. Furthermore, given that the petitioners represent more than 50 percent of the total production of the domestic like product, the requirements of section 702(c)(4)(A)(ii) of the Act are also met. Accordingly, we determine that this petition is filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. See *OTR Tires CVD Initiation Checklist* at Attachment II.

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department initiate. *See OTR Tires CVD Initiation Checklist* at Attachment II.

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Iniury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured by reason of the imports of the subject merchandise sold at less than NV. Petitioners contend that the industry's injured condition is illustrated by the reduced market share, lost sales, reduced production and capacity utilization rate, reduced shipments, underselling and price depressing and suppressing effects, lost revenue and sales, reduced employment, decline in financial performance, decrease in capital expenditure, and increase in import penetration. We have assessed

the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See OTR Tires CVD Initiation Checklist* at Attachment III.

Subsidy Allegations

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act and (2) is accompanied by information reasonably available to petitioners supporting the allegations. The Department has examined the countervailing duty petition on OTR tires from the PRC and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of OTR tires in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see OTR Tires CVD Initiation Checklist*.

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise:

GOC Loan Programs

1. Discounted Loans for Export-Oriented Enterprises
2. Loan Forgiveness for State Owned Enterprises (SOEs)
3. Preferential Lending to SOEs

GOC Currency Program

4. Foreign Currency Retention Scheme

GOC Grant Programs

5. Grants to the Tire Industry for Electricity
6. The State Key Technologies Renovation Project Fund

GOC Provision of Goods or Services for Less Than Adequate Remuneration

7. Provision of Land and Utilities to SOEs for Less than Adequate Remuneration
8. Provision of Land and Utilities to Foreign Invested Enterprises (FIEs) for Less than Adequate Remuneration

GOC Income Tax Programs

9. Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Income Program)
10. Preferential Tax Policies for Export-Oriented FIEs
11. Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises
12. Tax Benefits for FIEs in Encouraged Industries that Purchase Domestic Origin Machinery
13. Tax Subsidies to FIEs Based in Specially Designated Geographic Areas

GOC Indirect Tax Programs and Import Tariff Programs

14. Value Added Tax (VAT) Rebate for FIE Purchases of Domestically Produced Equipment
15. VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
16. VAT Export Rebates
17. Exemption from Payment of Staff and Worker Benefit Taxes for Export-Oriented Enterprises

Provincial Grant Programs

18. Funds for Outward Expansion of Industries in Guangdong Province
19. Export Interest Subsidy Funds for Enterprises Located in Guangdong and Zhejiang Provinces

Provincial Provision of Goods and Services for Less Than Adequate Remuneration

20. Provision of Land and Utilities at Less Than Adequate Remuneration to Export-Oriented Enterprises and FIEs by Provincial Governments

Provincial and Local Tax Programs for FIEs

21. Local Income Tax Exemption and Reduction Programs for ''Productive'' FIEs

For further information explaining why the Department is investigating these programs, *see* the *OTR Tires CVD Initiation Checklist*.

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in the PRC:

1. Managed Exchange Rate Export Subsidy (Currency Manipulation)

Petitioners allege that the GOC's manipulates its currency to maintain an undervalued RMB. According to petitioners, the undervalued RMB benefits PRC exporters. Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Therefore, we do not plan to investigate the currency manipulation program.

2. Preferential Lending to the Tire Industry

Petitioners allege that state-owned commercial banks must be under directives from the GOC to give preferential loans to the tire industry. Petitioners failed to demonstrate that such loans could be specific to the tire industry.

3. Grants to the Tire Industry for Land-Usage Fees

Petitioners allege that the GOC offers grants to Chinese tire manufacturers to cover land-usage fees. Petitioners did not provide any evidence of grants to cover land usage fees specific to the tire industry.

4. VAT Export Rebate of Prior-Stage, Cumulative Taxes

Petitioners allege that the VAT levied on capital goods in the PRC actually constitutes a prior stage cumulative tax. Paragraph (h) of the Illustrative List of Export Subsidies in Annex I to the WTO Subsidies and Countervailing Measures Agreement applies to prior stage indirect taxes and VAT systems are expressly excluded from consideration under paragraph (h).

5. Lower VAT Rebates for Downstream Products

Petitioners allege that the GOC provides lower rebates for exports of major inputs to tire production than it provides to exports of tires; thus, benefitting tire production by suppressing the market for inputs. Petitioners were unable to demonstrate that the price of inputs (*e.g.*, rubber) had been affected by the alleged lower export rebate.

Application of the Countervailing Duty Law to the PRC

The Department has treated the PRC as an NME country in all past antidumping duty investigations and administrative reviews. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See e.g., Tapered Roller Bearings and Parts Thereof, Finished and 10 Unfinished, (TRBs) From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500, 7500–1 (February 14, 2003), unchanged in *TRBs from the People's Republic of China: Final Results of 2001–2002 Administrative Review*, 68

FR 70488, 70488–89 (December 18, 2003).

In the amended preliminary determination in the investigation of coated free sheet paper from the PRC, the Department preliminarily determined that the current nature of the PRC economy does not create obstacles to applying the necessary criteria in the CVD law. *See Coated Free Sheet Paper from the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17484, 17486 (April 9, 2007) (*CFS Preliminary Determination*), and Memorandum for David M. Spooner, Assistant Secretary for Import Administration, ''Countervailing Duty Investigation of Coated Free Sheet Paper from The People's Republic of China—Whether the Analytic Elements of the *Georgetown Steel* Opinion are Applicable to China's Present-Day Economy,'' (March 29,2007), on file in the CRU. Therefore, because the petitioners have provided sufficient allegations and support of their allegations to meet the statutory criteria for initiating a countervailing duty investigation of OTR tires from the PRC, initiation of a CVD investigation is warranted in this case.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the GOC. To the extent practicable, we will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of this initiation, whether there is a reasonable indication that imports of subsidized OTR tires from the PRC are materially injuring, or threatening material injury to, a u.s. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: July 30, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

Attachment—Scope of the Investigation for the Petitions Covering Certain New Pneumatic Off-the-Road Tires From the People's Republic of China

The products covered by the scope are new pneumatic tires designed for off-the-road (OTR) and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) Agricultural and forestry vehicles and equipment, including agricultural tractors,[1] combine harvesters,[2] agricultural high clearance sprayers,[3] industrial tractors,[4] log-skidders,[5] agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders; [6] (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,[7] front end loaders,[8] dozers,[9] lift trucks, straddle carriers,[10] graders,[11] mobile cranes, compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks.[12] The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. The foregoing descriptions are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.*, tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the petitions range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed,

[1] Agricultural tractors are four-wheeled vehicles usually with large rear tires and small front tires that are used to tow farming equipment.

[2] Combine harvesters are used to harvest crops such as corn or wheat.

[3] Agricultural sprayers are used to irrigate agricultural fields.

[4] Industrial tractors are four-wheeled vehicles usually with large rear tires and small front tires that are used to tow industrial equipment.

[5] A log skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

[6] Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels irIdependent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

[7] Haul trucks, which may be either rigid frame or articulated (i.e., able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

[8] Front loaders have lift arms in front of the vehicle. It can scrape material from one location to another, carry material in its bucket or load material into a truck or trailer.

[9] A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, etc., typically around construction sites. They can also be used to perform ''rough grading'' in road construction.

[10] A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

[11] A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform ''finish grading.'' Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course onto which asphalt or other paving material will be laid.

[12] A counterbalanced lift truck is a rigid frame, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, etc.

manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol ''DOT'' must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix letter designations:

• P—Identifies a tire intended primarily for service on passenger cars;

• LT—Identifies a tire intended primarily for service on light trucks; and,

• ST—Identifies a special tire for trailers in highway service.

Suffix letter designations:

• TR—Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156″ or plus 0.250″;

• MH—Identifies tires for Mobile Homes;

• HC—Identifies a heavy duty tire designated for use on ''HC'' 15″ tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation. *Example:* 8R17.5 LT, 8R17.5 HC;

• LT—Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and

• MC—Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: Pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; tires of a kind used on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications; and, tires of a kind used for mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

[FR Doc. 07–3833 Filed 8–6–07; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

August 2, 2007.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, U.S. Customs and Border Protection adjusting limits.

EFFECTIVE DATE: August 8, 2007.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Bureau of Customs and Border Protection website (http://www.cbp.gov), or call (202) 344-2650. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Pursuant to the Memorandum of Understanding between the Governments of the United States and the People's Republic of China concerning Trade in Texile and Apparel Products, signed and dated on November 8, 2005, the current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 71 FR 62999, published on October 27, 2006). Also see 71 FR 65090 published on November 7, 2006.

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 2, 2007.

Commissioner,
U.S. Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 23, 2006, as amended on November 2, 2006, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 2007 and extends through December 31, 2007.

Effective on August 8, 2007, you are directed to adjust the current limits for the following categories, as provided for under the terms of the Memorandum of Understanding between the Governments of the United States and the People's Republic of China concerning Trade in Texile and Apparel Products, signed and dated on November 8, 2005:

Category	Adjusted twelve-month limit [1]
200/301	8,832,199 kilograms.
222	18,728,689 kilograms.
229	39,237,301 kilograms.
332/432/632-T (plus baby socks) [2]	75,443,136 dozen pairs, of which not more than 71,724,800 dozen pairs shall be in categories 332/432/632-B (plus baby socks) [3].
338/339pt. [4]	23,893,373 dozen.
340/640	7,738,332 dozen.
345/645/646	9,385,644 dozen.
347/348	22,566,791 dozen.
349/649	26,146,827 dozen.
352/652	21,743,905 dozen.
359-S/659-S [5]	5,267,743 kilograms.
363	118,556,112 numbers.
443	1,544,629 numbers.
447	246,718 dozen.
619	63,466,510 square meters.
620	92,026,342 square meters.
622	37,846,860 square meters.
638/639pt. [6]	9,248,922 dozen.
647/648pt. [7]	9,134,507 dozen.
666pt. [8]	1,106,206 kilograms.
847	20,250,225 dozen.

[1] The limit has not been adjusted to account for any imports exported after December 31, 2006.

[2] Categories 332/432/632-T: baby socks: only HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050; within Category 632: only HTS numbers 6115.10.4000, 6115.10.5500, 6115.30.9010, 6115.96.6020, 6115.99.1420, 6115.96.9020, 6115.99.1920.

[2] Categories 332/432/632-T: baby socks: only HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050; within Category 632: only HTS numbers 6115.10.4000, 6115.10.5500, 6115.30.9010, 6115.96.6020, 6115.99.1420, 6115.96.9020, 6115.99.1920.

[3] Categories 332/432/632-B: baby socks: only HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050; within Category 632: only HTS numbers 6115.10.4000, 6115.10.5500, 6115.96.6020, 6115.96.9020, 6115.99.1420, 6115.99.1920.

[4] Categories 338/339pt: all HTS numbers except: 6110.20.1026, 6110.20.1031, 6110.20.2067, 6110.20.2077, 6110.90.9067, and 6110.90.9071.

[5] Category 359-S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[6] Categories 638/639pt.: all HTS numbers except: 6110.30.2051, 6110.30.2061, 6110.30.3051, 6110.30.3057, 6110.90.9079, and 6110.90.9081.

[7] Categories 647/648pt.: all HTS numbers except 6203.43.3510, 6204.63.3010, 6210.40.5031, 6210.50.5031, 6211.20.1525 and 6211.20.1555.

[8] Category 666pt.: only HTS numbers 6303.12.0010 and 6303.92.2030.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E7–15325 Filed 8–6–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On July 26, 2007, the Department of Education published a comment period notice in the **Federal Register** (Page 41065, Column 3) for the information collection, ''LINCS Professional Development Mapping Survey''. The link number has been changed from 3344 to 3420.

The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: July 31, 2007.

James Hyler,

Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management.

[FR Doc. E7–15260 Filed 8–6–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 9, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 1, 2007.

James Hyler,

Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management.

Office of the Chief Financial Officer

Type of Review: Extension

Title: Streamlined Process for Education Department General Administrative Regulations (EDGAR) Approved Grant Applications

Frequency: Other: As necessary

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs

Reporting and Recordkeeping Hour Burden:

Responses: 1.

Burden Hours: 1.

Abstract: Although this is rarely used, this process allows grant programs, in a subsequent year of the approved collection, to change their program specific criteria to EDGAR criteria. This process generally relates to programs who have used the 1890–0001 process in a previous year but wish to move one or more criterion to EDGAR in a subsequent year of their approved application. If the program still has program specific requirements, they cannot use the 1890–0009 process and therefore, must use this process ONLY if some or all program specific criteria will be changing to EDGAR criteria, there are no other substantive changes to the approved application, and the application still contains a program specific requirement. No public comment period notices are required since the Master Plan covers this process, and the individual applications account for their burden under their individual OMB control numbers.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3370. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–15316 Filed 8–6–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 9, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 1, 2007.

James Hyler,

Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: The Efficacy of Standardized Formative Assessments and Differentiated Instruction on Student Achievement.

Frequency: Semi-Annually.

Affected Public: Individuals or household; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1944.

Burden Hours: 1440.

Abstract: The Department of Education's Institute for Education Sciences has commissioned this evaluation as a response to the current need for experimental research about the impacts of formative assessment on student achievement and teacher practice. This project will assess the efficacy of the Northwest Evaluation Association's program entitled ''Measuring Academic Progress'' or MAP by looking at the impact on teacher practice and student achievement. The MAP intervention combines theory and research in two areas that have gained considerable attention in recent years: (1) Formative assessment: (2) and differentiated instruction. MAP tests and training are currently in place in more than 10% of K–12 school districts nationwide (just over 2,000 districts participate among the approximately 17,500 districts). Despite its popularity, the effectiveness of the MAP and its training have not been established to date. Furthermore, the relative ubiquity of its current use, along with a projected growth in the number of schools investing in MAP and its associated training, makes it a prime candidate for this type of study.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3419. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–15317 Filed 8–6–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 6, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or

reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 1, 2007.

James Hyler,

Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Talent Search and EOC Programs Annual Performance Report Form.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 645.

Burden Hours: 3,870.

Abstract: Talent Search and Equal Opportunity Centers (EOC) grantees must submit this report annually. The Department uses the reports to evaluate the performance of grantees prior to awarding continuation funding and to assess grantees' prior experience at the end of the budget period. The Department will also aggregate the data across grantees to provide descriptive information on the programs and to analyze its outcomes in response to the Government Performance and Results Act.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3312. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–15319 Filed 8–6–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–139–002]

Algonquin Gas Transmission, LLC.; Notice of Compliance Filing

July 31, 2007.

Take notice that on July 27, 2007, Algonquin Gas Transmission, LLC. (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to become effective on July 19, 2007:

Substitute Second Revised Sheet No. 512
Substitute Second Revised Sheet No. 513
Substitute Second Revised Sheet No. 514

Algonquin states that it is making this filing in compliance with an order issued by the Commission in the captioned docket on July 19, 2007.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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. E7–15286 Filed 8–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 12658–001]

E.ON U.S. Hydro 1 LLC; Notice of Withdrawal of Application for Original Major License

July 31, 2007.

On July 11, 2007, E.ON U.S. Hydro 1 LLC filed a notice of withdrawal of its October 10, 2006 application for an original major license for its proposed Meldahl Hydroelectric Project. No one filed a motion in opposition to the withdrawal, and the Commission took no action to disallow it. Accordingly, pursuant to Rule 216 of the Commission's Rules of Practice and Procedure, 18 CFR 385.216 (2006), the withdrawal of the pleading became effective fifteen days after it was filed.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15282 Filed 8–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC07–1–000]

Mosaic Fertilizer, LLC.; Notice of Filing

July 31, 2007.

Take notice that on July 26, 2007, Mosaic Fertilizer, LLC. (Mosaic) filed an appeal from the July 5, 2007 decision of the North American Electric Reliability Corporation (NERC) to include Mosaic on the NERC compliance registry within the Florida Reliability Coordinating Council for the function of generator owner. Mosaic states that it owns or operates seven electric generating facilities at fertilizer manufacturing locations each of which is a qualifying facility (QF). Mosaic asks the Commission to reverse the NERC's inclusion of its QFs on the compliance registry and to stay the effectiveness of the NERC decision pending resolution of the appeal by the Commission.

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 August 21, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15284 Filed 8–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–537–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 31, 2007.

Take notice that on July 27, 2007, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets, to be effective August 27, 2007:

44 Revised Sheet No. 66A
First Revised Sheet No. 66B.03
Tenth Revised Sheet No. 66D

Northern states that it is filing the above-referenced tariff sheets to submit a Rate Schedule PDD service agreement for Commission acceptance as a non-conforming and negotiated rate agreement.

Northern further states that copies of the filing have been mailed to each of 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15278 Filed 8–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–84–000]

PacifiCorp; Notice of Institution of Proceeding and Refund Effective Date

July 31, 2007.

On July 30, 2007, the Commission issued an order that instituted an investigation in the above-referenced docket, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, concerning PacifiCorp's system-wide rates for all transmission services. *PacifiCorp,* 120 FERC ¶ 61,113 (2007).

The refund effective date in the above-docketed proceeding, pursuant to section 206(b) of the FPA, will be January 1, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15279 Filed 8–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–30–002]

Petal Gas Storage, LLC.; Notice of Application

July 31, 2007.

Take notice that on July 23, 2007, Petal Gas Storage, LLC. (Petal), 1100 Louisiana Street, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission (Commission), an abbreviated application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and part 157 of the Commission's regulations for authorization to abandon in place certain facilities previously authorized under this docket by the Commission on March 28, 2007. Specifically, Petal proposes to abandon the conversion of Cavern No. 9 to natural gas storage (formerly used to store natural gas liquids) as well as abandon in place approximately 2,055 feet of six inch diameter associated pipeline that has already been constructed. Petal states that Cavern No. 9 was found to be unsuitable for natural gas storage because it will leak under the pressures required for natural gas storage all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number 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.

Any questions regarding the application should be directed to Richard Porter, Petal Gas Storage, LLC., 1100 Louisiana Street, Houston, Texas

77002, (telephone) (713) 381–2526, (fax) (713) 803–2534, *rporter@eprod.com*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: 5 p.m. Eastern Time on August 21, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15287 Filed 8–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES07–40–001]

Southwest Power Pool, Inc.; Notice of Filing

July 31, 2007.

Take notice that on July 26, 2007, Southwest Power Pool, Inc. (SPP) submitted an amended application to its June 20, 2007 filing requested by Commission Staff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 6, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15280 Filed 8–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC07–2–000]

City of Tampa, FL; Notice of Filing

July 31, 2007.

Take notice that on July 26, 2007, the City of Tampa, Florida (Tampa) filed an appeal from the July 5, 2007 decision of the North American Electric Reliability Corporation (NERC) to include Tampa's McKay Bay Resource Recovery facility (McKay Bay) on the NERC compliance registry within the Florida Reliability Coordinating Council for the function of generator owner. Tampa asks the Commission to reverse the NERC's inclusion of McKay Bay on the compliance registry to stay the effectiveness of the NERC decision pending resolution of the appeal by the Commission.

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 August 21, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15285 Filed 8–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ01–9–001]

Umatilla Electric Cooperative Association; Notice of Filing

July 31, 2007.

Take notice that on July 13, 2007, the Umatilla Electric Cooperative Association filed a notice of withdrawal of its Safe Harbor Reciprocity Tariff, pursuant to Order No. 890, and accepted by Commission Order issued November 23, 2001. *Umatilla Electric Cooperative Association*, 97 FERC ¶ 61,235.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 13, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15281 Filed 8–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2206–030]

Carolina Power & Light Company (d/b/a Progress Energy Carolinas, Inc.); Notice of Settlement Agreement and Soliciting Comments

July 31, 2007.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* P–2206–030.

c. *Date filed:* July 30, 2007.

d. *Applicant:* Carolina Power & Light Company (d/b/a Progress Energy Carolinas, Inc.).

e. *Name of Project:* Yadkin-Pee Dee Hydroelectric Project.

f. *Location:* On the Yadkin and Pee Dee Rivers in Montgomery, Stanly, Anson, and Richmond Counties, North Carolina. The project does not occupy federal lands.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* E. Michael Williams, Senior Vice President for Power Operations, Progress Energy, 410 S. Wilmington Street PEB 13, Raleigh, North Carolina 27602, Phone: (919) 546–6640.

i. *FERC Contact:* Stephen Bowler, 888 First St., NE., Washington, DC 20426, (202) 502–6861.

j. *Deadline for filing comments:* Twenty days from the filing date. Reply comments due 30 days from the filing date.

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.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. Progress Energy filed a settlement on behalf of itself and 12 other entities that signed the settlement. Other parties signing the settlement included state agencies, homeowners associations, environmental organizations, and various other stakeholders involved in the relicensing proceeding. The purpose of the settlement agreement is to resolve issues that have been raised by the settling parties in connection with the Progress Energy's application for a new license for the project and to establish Progress Energy's obligations for the protection, mitigation, and enhancement of resources affected by the project. Major issues covered in the settlement include: (1) Providing minimum instream flows, (2) developing and implementing a Low Inflow Protocol, (3) modifying reservoir water levels, (4) developing and implementing a dissolved oxygen plan, (5) improving recreational facilities and relocating and existing access site, (6) providing additional stream and riparian habitat protection measures, and (7) developing and implementing a Shoreline Management Policy and Historic Properties Management Plan for the Blewett Falls Development.

l. A copy of the settlement agreement 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15283 Filed 8–6–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket # EPA–RO4–SFUND–2007–0650; FRL–8451–2]

Georgia-Pacific Hardwood Site; Plymouth, Washington County, NC

AGENCY: Environmental Protection Agency.

ACTION: Notice of withdrawal of settlement.

SUMMARY: In the **Federal Register** published on July 13, 2007, 72 FR 38580, EPA posted a Notice of Settlement for past cost under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), concerning the Georgia-Pacific Hardwood Site located in Plymouth, Washington County, North Carolina. The settlement is not finalized and was prematurely posted in the **Federal Register**.

DATES: EPA is withdrawing the Notice of Settlement and closing the comment period at this time. The Agency will re-submit a finalized Settlement for comments in the future.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404–562–8887 or by e-mail *Batchelor.Paula@EPA.Gov.*

Dated: July 23, 2007.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch Superfund Division.

[FR Doc. E7–15330 Filed 8–6–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8451–1]

Clean Water Act Section 303(d): Availability of List Decisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability of EPA's Responsiveness Summary Concerning EPA's October 31, 2006 Public Notice of Final Decisions To Add Waters and Pollutants to Arkansas' 2004 Section 303(d) List.

On October 31, 2006, EPA published a notice in the **Federal Register** at Volume 71, Number 210, pages 63759–63760 providing the public the opportunity to review its final decisions to add waters and pollutants to Arkansas' 2004 Section 303(d) List as required by EPA's Public Participation regulations (40 CFR part 25). Based on the Responsiveness Summary, no further action is warranted regarding EPA's Final Action on Arkansas' 2004 Section 303(d) List.

ADDRESSES: Copies of EPA's Responsiveness Summary Concerning EPA's October 31, 2006 Public Notice of Final Decisions to Add Waters and Pollutants to Arkansas; 2004 Section 303(d) Lists can be obtained at EPA Region 6's Web site at *http://www.epa.gov/earth1r6/6wq/tmdl.htm*, or by writing or calling Ms. Diane Smith at Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, telephone (214) 665–2145, facsimile (214) 665–6490, or e-mail: *smith.diane@epa.gov.* Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish Total Maximum Daily Loads (TMDLs) according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The list of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7). On March 31, 2000, EPA promulgated a revision to this regulation that waived the requirement for states to submit Section 303(d) Lists in 2000 except in cases where a court order, consent decree, or settlement agreement required EPA to take action on a list in 2000 (65 FR 17170).

Consistent with EPA's regulations, Arkansas submitted to EPA its listing decisions under Section 303(d) on May 20, 2004 with subsequent revisions submitted on August 17, 2004, November 12, 2004, July 20, 2005, and October 11, 2005. On October 16, 2006, EPA approved Arkansas' listing of 271 water body-pollutant combinations and associated priority rankings and deferred action on 129 water body-pollutant combinations. EPA disapproved Arkansas' decision not to list 5 water body-pollutant combinations and associated priority rankings. EPA identified these additional water body-pollutant combinations along with priority rankings for inclusion on the 2004 Section 303(d) List.

Dated: July 30, 2007.

William K. Honker,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. E7–15329 Filed 8–6–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2007–0697; FRL–8450–2]

Office of Water; Notice of Availability and Comment Period for Draft Federal Geographic Data Committee (FGDC) Wetland Mapping Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comment.

SUMMARY: Notice of Availability for a 90 Day Review and Comment Period is Hereby Given for the Draft Federal Geographic Data Committee's Wetland Mapping Standard.

This document provides Federal, State, Tribal and local wetland managers and others with information on what data to collect when mapping wetlands that will be uploaded to the National Wetland Inventory (NWI) and incorporated as part of the wetlands layer of the National Spatial Data Infrastructure (NSDI) in the USGS National Map. The intent of this standard is to support a consistent/seamless transition from traditional paper-based map products to technology-based mapping products and serve as the national standard for mapping wetland inventories for building the wetlands layer of the NSDI.

Although, this standard will not change the National Wetlands Inventory

Data produced prior to its implementation, this standard specifies a core set of data quality components necessary to add to the National Wetlands Inventory in a way that is consistent and supports multiple uses of the data, while meeting the requirements of the National Spatial Data Infrastructure. This standard is based largely on the existing draft standard used by U.S. Fish and Wildlife Service in support of the NWI. The intent of the standard is to support current and future digital wetland mapping activities. The standard will provide specification of minimum data quality components for wetland mapping activities for inclusion into the NSDI that are funded or conducted by the Federal government. The National Wetlands Inventory digital wetland data serve as the foundation for the wetlands data layer of the NSDI. The standard balances the burden on the end-user community with the need for consistency and documented quality of digital mapping products. Additionally, this standard is created to coordinate wetland mapping with the National Hydrography Dataset, a national geospatial framework recognized by the Federal Geographic Data Committee (FGDC). Although this standard is structured to be extensible over time, the standard is deliberately developed with a forward-looking perspective to accommodate technology and map scale enhancements, assure its long-term usability, and minimize the need for revisions and updates over time.

This standard is intended for use by all Federal or federally-funded wetlands mapping projects including those activities conducted by Federal agencies, states, and federally recognized tribal entities, non-governmental organizations, universities, and others. Specifically, if Federal funding is used in support of wetlands inventory mapping activities, then use of this standard is mandatory. The adoption of the standard for all other wetlands inventory mapping efforts (non-federally funded) is strongly encouraged to maintain and expand the wetlands layer of the NSDI.

The FGDC Wetlands Subcommittee is soliciting information, data, and views on issues of science pertaining to the information contained in this draft FGDC data standard.

DATES: Scientific views, data, and information should be submitted by November 9, 2007.

ADDRESSES: You may submit comments, data, or views, identified by Docket ID No. EPA–HQ–OW–2007–0697, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting information.
- *E-mail: oei-docket@epa.gov.*
- *Mail:* Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of four copies.
- *Hand Delivery:* EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Please include a total of four copies. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your scientific information, data, or views, to Docket ID No. EPA–HQ–OW–2007–0697. EPA's policy is that all information 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 it includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or *ow-docket@epa.gov*. 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 information. If you send an e-mail directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the information that is placed in the public docket and made available on the Internet. If you submit information electronically, EPA recommends that you include your name and other contact information in the body of your information and with any disk or CD–ROM you submit. If EPA cannot read your information due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your information. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., information claimed to be CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Margarete Ann Heber, Wetland Division, Office of Wetlands, Oceans and Watersheds, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; phone (202) 566–1189; fax (202) 566–1349; e-mail *Heber.Maragaret@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities potentially interested in today's notice are those that map wetlands and share that data with others.

Category	Examples of potentially affected entities
State/Local/Tribal Government.	Federal Government, States, municipalities, tribes.
Industry	Builders, any entity sitting on a wetland.
Agriculture	Farmers.

This table is not intended to be exhaustive. Other types of entities not listed in the table may also be interested.

B. What Should I Consider as I Prepare my Scientific Information, Data or Views for EPA?

1. Submitting CBI. Do not submit CBI information to EPA through *http://www.regulations.gov* or e-mail. Clearly identify the specific information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked

will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Information, Data, or Views. When submitting scientific information, data or views, please remember to:

- Identify the docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your information comments by the deadline identified.

C. How Can I Get Copies of the Draft Document and Related Information?

On the FGDC Website at: *http://www.fws.gov/nwi/Final%20Draft%20Wetlands%20Mapping%20Standard%2003_26_07.pdf*.

II. Today's Notice

A. Why Do We Need To Map Wetlands?

Currently, the wetland maps coverage of the United States is not complete. NWI is incomplete for about half the country. A mapping standard will allow any entity mapping wetlands to upload data to NWI using the same format. Wetlands are a critical ecological resource and in order to adequately manage them it is important to know what type of wetlands exist and where they are located. On a ten year cycle, the Fish and Wildlife Service produces reports to Congress on the status and trends of wetlands in the conterminous United States. These reports contain estimates of wetland losses and gains. A complete digital wetlands database will allow accurate calculation of wetland loss and gain to be made for specific areas. These digitial maps are also critical for looking at wetland loss and possible migration of wetlands in global climate change estimations.

B. How Was the Draft Standard Developed?

The Wetland Subcommittee of the FGDC convened a workgroup to develop this draft standard. Stakeholder representation from the Federal, State, non-profit, and private sectors was included in the development of this standard to ensure that the end-user information requirements are reflected in the final product. Development of the content of this standard began in June 2006 with a 3-day meeting of the workgroup comprised of members representing multiple Federal agencies and stakeholder groups. It was emphasized again that the standard would benefit from a wide vetting process targeting diverse members of the end-user community. Workgroup members and vetting participants, as well as workgroup activities are listed in Appendix H of the draft Standard.

C. What Is Included in the Draft Standard

1 Introduction
1.1 Background.
1.2 Objective.
1.3 Scope.
1.4 Applicability.
1.5 FGDC Standards and Other Related Practices.
1.6 Standard Development Procedures and Representation.
1.7 Maintenance Authority.
2 FGDC Requirements and Quality Components
2.1 Source Imagery.
2.2 Classification.
2.3 Accuracy.
2.3.1 TMU and Producers Accuracy.
2.3.2 Horizontal Accuracy.
2.4 Data Verification.
2.4.1 Logical Consistency.
2.4.2 Edge Matching.
2.4.3 Attribute Validity.
2.5 Datum and Projection.
2.6 Metadata.
References
Appendix A: Workgroup Recommendations to the FGDC.
Appendix B: Attributes for Wetland Classification.
Appendix C: Implementation Recommendations in Support of Section 2.0.
Appendix D: Known Issues with Existing Wetlands Mapping Data.
Appendix E: Polygon Lineage and Unique Identifiers.
Appendix F: Questions and Answers.
Appendix G: Definitions (Informative).
Appendix H: Workgroup Members, Vetting Participants, and Workgroup.

Activities

Table 1. Spatial Resolution Requirements of Source Imagery.
Table 2. Classification Levels Required Based on Habitat.
Table 3. TMU and Producer Accuracy Requirements.
Table 4. Horizontal Accuracy (RMSE) Requirements.

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Dated: August 1, 2007.

David Evans,

Director, Wetlands Division.

[FR Doc. E7–15351 Filed 8–6–07; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 9, 2007, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- July 12, 2007 (Open and Closed).

B. New Business

- FCA Bookletter BL–040 Revised—Providing Sound and Constructive Credit to Young, Beginning, and Small Farmers and Ranchers.
- Proposed Rule—12 CFR part 652—Farmer Mac Risk-Based Capital Stress Test Version 3.0.

C. Reports

- OMS Quarterly Report.

Dated: August 3, 2007.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 07–3863 Filed 8–3–07; 1:27 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2822]

Petition for Reconsideration of Action in Rulemaking Proceeding

July 25, 2007.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by August 22, 2007. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Maritel, Inc., and Mobex Network Services, LLC (WT Docket No. 04–257)

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–15320 Filed 8–6–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2821]

Petition for Reconsideration of Action in Rulemaking Proceeding

July 20, 2007.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by August 22, 2007. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and other Customer Information (CC Docket No. 96–115).

IP-Enabled Services (WC Docket No. 04–36).

Number of Petitions Filed: 3.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–15344 Filed 8–6–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved

collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before October 9, 2007.

ADDRESSES: You may submit comments, identified by FR 1373a,b: 7100–0301; or Regulation CC: 7100–0235, by any of the following methods:

• Agency Web Site: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.

• Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

• E–mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

• FAX: 202/452–3819 or 202/452–3102.

• Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission, supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. Report title: Studies of Board Publications

Agency form number: FR 1373a,b

OMB control number: 7100–0301

Frequency: FR 1373a, one or two times per year; FR 1373b, small–panel survey: five times per year; large–panel survey, three times per year

Reporters: FR 1373a: community–based educators, key stakeholders, and other educators who have previously requested consumer education materials from the Federal Reserve; FR 1373b: current subscribers of the publications being surveyed.

Annual reporting hours: FR 1373a: survey, 300 hours; panel discussion, 68 hours. FR 1373b: small–panel, 80 hours; large–panel 300 hours.

Estimated average hours per response: FR 1373a: survey, 30 minutes; panel discussion, 90 minutes. FR 1373b: small–panel, 15 minutes; large–panel 15 minutes.

Number of respondents: FR 1373a: survey, 400; panel discussion, 45. FR 1373b: small–panel, 64; large–panel, 400.

General description of report: This information collection is voluntary. The FR 1373a study is authorized pursuant to the Federal Trade Commission Improvement Act (15 U.S.C. § 57a(f)); the FR 1373b study is authorized pursuant to the Federal Reserve Act (12 U.S.C. § 248(i)). The specific information collected is not considered confidential.

Abstract: The Federal Reserve uses the FR 1373a to: 1) conduct periodic reviews and evaluations of the consumer education materials and 2) develop and evaluate consumer education materials under consideration for distribution. The FR 1373b data help the Federal Reserve determine if it should continue to issue certain publications and, if so, whether the public would like to see changes in the method of information delivery, frequency, content, format, or appearance.

2. Report title: Disclosure Requirements in Connection with Regulation CC (Expedited Funds Availability Act (EFAA))

Agency form number: Reg CC

OMB control number: 7100–0235

Frequency: Event–generated

Reporters: State member banks and uninsured state branches and agencies of foreign banks

Annual reporting hours: 210,882 hours

Estimated average hours per response: Banks: Specific availability policy disclosure and initial disclosures, 1 minute; notice in specific policy disclosure, 3 minutes; notice of exceptions, 3 minutes; locations where employees accept consumer deposits, 15 minutes; annual notice of new automated teller machines (ATMs), 5 hours; ATM changes in policy, 20 hours; notice of nonpayment, 1 minute; expedited recredit for consumers, 15 minutes; expedited recredit for banks, 15 minutes; consumer awareness, 1 minute. Consumers: expedited recredit claim notice, 15 minutes.

Number of respondents: 1,105

General description of report: This information collection is mandatory. Reg CC is authorized pursuant the EFAA, as amended, and the Check 21 Act (12 U.S.C. § 4008 and 12 U.S.C. 5014, respectively). Because the Federal Reserve does not collect any information, no issue of confidentiality arises. However, if, during a compliance examination of a financial institution, a

violation or possible violation of the EFAA or the Check 21 Act is noted then information regarding such violation may be kept confidential pursuant to Section (b)(8) of the Freedom of Information Act. 5U.S.C. § 552(b)(8).

Abstract: Regulation CC requires banks to make funds deposited in transaction accounts available within specified time periods, disclose their availability policies to customers, and begin accruing interest on such deposits promptly. The disclosures are intended to alert customers that their ability to use deposited funds may be delayed, prevent unintentional (and potentially costly) overdrafts, and allow customers to compare the policies of different banks before deciding at which bank to deposit funds. The regulation also requires notice to the depositary bank and to a customer of nonpayment of a check. Model disclosure forms, clauses, and notices are appended to the regulation to ease compliance.

Board of Governors of the Federal Reserve System, August 2, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–15298 Filed 8–6–07; 8:45 am]

BILLING CODE 6210–01–S

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 August 22, 2007.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Bennie F. Ryburn, Jr., and Bennie F. Ryburn III, as trustees of the Bennie F. Ryburn Family Trust, all of Monticello, Arkansas; as a group acting in concert to retain control of Bradley Bancshares, Inc., and thereby indirectly retain voting shares of First State Bank of Warren, both of Warren, Arkansas.

Board of Governors of the Federal Reserve System, August 2, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–15296 Filed 8–6–07; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 31, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. The Colonial BancGroup, Inc., Montgomery, Alabama; to merge with Citrus & Chemical Bancorporation, Inc., and thereby acquire its subsidiary, Citrus & Chemical Bank, both of Bartow, Florida.

Board of Governors of the Federal Reserve System, August 2, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–15297 Filed 8–6–07; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The Federal Trade Commission (''FTC or Commission'') is seeking public comments on its proposal to extend through September 30, 2010, the current PRA clearance for information collection requirements contained in its regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986 (''Smokeless Tobacco Act'' or the ''Act''). That clearance expires on September 30, 2007.

DATES: Comments must be submitted on or before September 6, 2007 date of publication].

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Smokeless Tobacco Regulations: FTC File No. R011009'' 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, N.W., Washington, D.C. 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 described 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 clearing labeled ''Confidential.''[1]

[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

Comments filed in electronic form should be submitted by following the instructions on the web-based form at *https://secure.commentworks.com/ftc-SmokelessTobaccoRegs*. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the *https://secure.commentworks.com/ftc-SmokelessTobaccoRegs* 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 also should be submitted to: Office of Management and Budget, ATTN: Desk Officer for the Federal Trade Commission. Comments should be submitted by 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, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC web site, to the extent practicable, at *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 Rosemary Rosso, Senior Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326-2174.

SUPPLEMENTARY INFORMATION: On May 16, 2007, the FTC sought comment on the information collection requirements associated with the regulations under the Act, 16 CFR Part 307 (Control Number: 3084-0082). See 72 FR 27311. No comments were received. Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501-3520, the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before September 6, 2007.

Description of the collection of information and proposed use: The Smokeless Tobacco Act requires that manufacturers, packagers, and importers of smokeless tobacco products include one of three specified health warnings on packages and in advertisements. The Act also requires that each manufacturer, packager, and importer of smokeless tobacco products submit a plan to the Commission specifying the method to rotate, display, and distribute the warning statements required to appear in advertising and labeling. The Act requires the Commission to determine whether these plans provide for rotation, display, and distribution of warnings in compliance with the Act and implementing regulations. To the best of the Commission's knowledge, all of the affected companies have previously filed plans. However, the plan submission requirement also applies to a company that amends its plan, or to a new company that enters the market.

Burden statement:

Commission staff estimates of paperwork burden are based on its knowledge of the smokeless tobacco industry and the time companies require to prepare rotational warning plans for submission to and review by the Commission. Staff's estimates are further informed by discussions it has had with companies filing rotational plans or their representatives during the Commission's review of submitted plans. In estimating total annual burden hours and associated labor costs, staff considered its experience gained from the plans submitted over the past five years. Based on these factors, staff estimates that the average annual paperwork burden for the three-year clearance period sought is no more than 1,000 hours, with associated annual labor cost of no more than $203,000.

The five smokeless tobacco manufacturers that comprise the dominant share of the domestic smokeless tobacco market filed their plans with the Commission long ago. Additional annual reporting burden would occur only if a company introduces a new brand or otherwise opts to display the health warnings in a manner not previously approved. Under those circumstances, a company would need to file an amendment to its plan. Although it is not possible to predict whether any of these companies will seek to amend an existing approved plan (and possibly none will), staff conservatively assumes that each of these five smokeless tobacco companies will file one amendment per year, for a total burden of not more than 200 hours. This estimate is conservative because over the past five years, none of these companies filed amendments to their existing plans, and the Commission has not changed the relevant regulations. Commission staff believes it reasonable to assume that each of these five smokeless tobacco companies would spend no more than 40 hours to prepare an amended plan, and possibly considerably less time if the amendment was minor or applied only to one brand or brand variety.

Commission staff also estimates that over the requested three-year clearance period up to four smokeless tobacco manufacturers, packagers, or importers will file an initial plan that includes rotational schemes for both packaging and advertising, for an additional burden of no more than 240 hours. This estimate is conservative because over the past five years, only four initial plans with both packaging and advertising schemes have been filed with the FTC. When the regulations were first proposed in 1986, representatives of the Smokeless Tobacco Council, Inc. indicated that the six companies it represented would require approximately 700 to 800 hours in total (133 hours each) to complete the initial required plans, involving multiple brands, multiple brand varieties, and multiple forms of both packaging and advertising. The four initial plans submitted over the past five years are considerably less complex. Each of these plans involves only one or two brands or brand varieties, with more limited types of advertising and packaging. In addition, three of the four companies submitting plans had prior familiarity with the preparation of rotational warning plans. Further, increased computerization and improvements in electronic communication over the past 20 years have decreased the time needed for the preparation and drafting of rotational warning plans. Staff estimates that it would require no more than 60 hours to prepare such an initial plan, and that four initial plans will be submitted.

Staff anticipates that over the next three years, up to four smokeless tobacco manufacturers, packagers, or importers may submit initial plans covering packaging alone, for an additional burden of no more than 160 hours. Over the past five years, the Commission has received four such plans. Because each of the plans

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).

involved only a single brand, a single form of packaging, and no advertising, the estimated time to prepare the plans is very modest. Staff anticipates that the companies that submit initial plans covering packaging alone will spend no more than 40 hours each to prepare the plans, and possibly considerably less. This estimate is conservative. Like other estimates stated herein, this is based on the total number of plans submitted to the FTC over the past five years, rather than annually.

Finally, staff estimates that over the next three years, up to four amendments will be filed by companies other than the five largest smokeless tobacco manufacturers. Over the past five years, the Commission has received four such plans. Each of the amendments involved very modest changes to the existing plans. Staff estimates that four companies submitting similar amended plans will spend no more than 20 to 40 hours each to prepare the amendments, for an additional burden estimate of no more than 160 hours. As above, this is conservatively based on the total number of plans submitted to the FTC over the past five years, rather than annually.

Estimated total annual hours burden: 1,000 hours

Based on these assumptions, the total annual hours should not exceed 1,000 hours. [(5 companies x 40 hours each) + (4 companies x 60 hours each) + (4 companies x 40 hours each) + (4 companies x 40 hours each) = 760 total hours, rounded to one thousand hours]

Estimated labor costs: $203,000

The total annualized labor cost to these companies should not exceed $203,000. This is based on the assumption that management or attorneys will account for 80% of the estimated 1,000 hours required to draft initial or amended plans, at an hourly rate of $250 per hour, and that clerical support will account for the remaining time (20%) at an hourly rate of $15. [Management and attorneys' time (1,000 hours x 0.80 x $250 = $200,000) + clerical time (1,000 hours x 0.20 x $15 = $3,000) = $203,000]

Estimated annual non-labor cost burden: $0 or minimal

The applicable requirements impose minimal start-up costs. The companies may keep copies of their plans to ensure that labeling and advertising complies with the requirements of the Smokeless Tobacco Act. Such recordkeeping would require the use of office supplies, e.g., file folders and paper, all of which the companies should have on hand in the ordinary course of their business.

While companies submitting initial plans may incur one-time capital expenditures for equipment used to print package labels in order to include the statutory health warnings or to prepare acetates for advertising, the warnings themselves disclose information completely supplied by the federal government. As such, the disclosure does not constitute a ''collection of information'' as it is defined in the regulations implementing the PRA, nor, by extension, do the financial resources expended in relation to it constitute paperwork ''burden.'' *See* 5 CFR 1320.3(c)(2). Moreover, any expenditures relating to the statutory health warning requirements would likely be minimal in any event. For companies that have already submitted approved plans, there are no capital expenditures. After the Commission approves a plan for the rotation and display of the warnings required by the Smokeless Tobacco Act, the companies are required to make additional submissions to the Commission only if they choose to change the way they display the warnings. Once companies have prepared the artwork for printing the required warnings on package labels, there are no additional start-up costs associated with the display of the warnings on packaging. Similarly, once companies have prepared artwork and possibly acetates for the display of the warnings in advertising, there are no additional start-up costs associated with printing the warnings in those materials.

William Blumenthal

General Counsel

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FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act. The FTC is seeking public comments on its proposal to extend through November 30, 2010 the current OMB clearance for the information collection requirements contained in the Commission's Rule Concerning Disclosure of Written Consumer Product Warranty Terms and Conditions. The clearance is scheduled to expire on November 30, 2007. The FTC is also seeking public comments on its proposal to extend through December 31, 2010 the current OMB clearances for the information collection requirements contained in the Commission's Rule Governing Pre-Sale Availability of Written Warranty Terms and the Informal Dispute Settlement Procedures Rule. Those clearances are scheduled to expire on December 31, 2007.

DATES: Comments must be filed by October 9, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Warranty Rules: Paperwork Comment, FTC File No. P044403'' 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, Room H-135, 600 Pennsylvania Avenue, N.W., Washington, D.C. 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 using the following weblink: *https://secure.commentworks.com/ftc-warranrtypra* (and following the instructions on the Web-based form). To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the weblink: *https://secure.commentworks.com/ftc-warranrtypra.* 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.

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

[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).

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 or copies of the proposed information requirements should be addressed to Allyson Himelfarb, Investigator, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H-292, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, (202) 326-2505.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501-3520, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearances for the FTC's (1) Rule Concerning Disclosure of Written Consumer Product Warranty Terms and Conditions (OMB Control Number 3084-0111); (2) Rule Governing Pre-Sale Availability of Written Warranty Terms (OMB Control Number 3084-0112); and (3) Informal Dispute Settlement Procedures Rule (OMB Control Number 3084-0113) (collectively, ''Warranty Rules'').

The FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before October 9, 2007.

The Warranty Rules implement the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.* (''Warranty Act'' or ''Act''), which required the FTC to issue three rules relating to warranties on consumer products: the disclosure of written warranty terms and conditions; pre-sale availability of warranty terms; and rules establishing minimum standards for informal dispute settlement mechanisms that are incorporated into a written warranty.[2]

Consumer Product Warranty Rule (''Warranty Rule''): The Warranty Rule, 16 CFR 701, specifies the information that must appear in a written warranty on a consumer product costing more than $15. The Rule tracks Section 102(a) of the Warranty Act,[3] specifying information that must appear in the written warranty and, for certain disclosures, mandates the exact language that must be used.[4] Neither the Warranty Rule nor the Act requires that a manufacturer or retailer warrant a consumer product in writing, but if they choose to do so, the warranty must comply with the Rule.

The Rule Governing Pre-Sale Availability of Written Warranty Terms (''Pre-Sale Availability Rule''): The Pre-Sale Availability Rule, 16 CFR 702, requires sellers and warrantors to make the text of any written warranty on a consumer product costing more than $15 available to the consumer before sale. Among other things, the Rule requires sellers to make the text of the warranty readily available either by (1) displaying it in close proximity to the product or (2) furnishing it on request and posting signs in prominent locations advising consumers that the warranty is available. The Rule requires warrantors to provide materials to enable sellers to comply with the Rule's requirements and also sets out the methods by which warranty information can be made available before the sale if the product is sold through catalogs, mail order, or door-to-door sales.

Informal Dispute Settlement Rule: The Informal Dispute Settlement Rule, 16 CFR 703, specifies the minimum standards which must be met by any informal dispute settlement mechanism that is incorporated into a written consumer product warranty and which the consumer must use before pursuing legal remedies in court. In enacting the Warranty Act, Congress recognized the potential benefits of consumer dispute mechanisms as an alternative to the judicial process. Section 110(a) of the Act sets out the Congressional policy to ''encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms'' (''IDSMs'') and erected a framework for their establishment.[5] As an incentive to warrantors to establish IDSMs, Congress provided in Section 110(a)(3) that warrantors may incorporate into their written consumer product warranties a requirement that a consumer must resort to an IDSM before pursuing a legal remedy under the Act for breach of warranty.[6] To ensure fairness to consumers, however, Congress also directed that, if a warrantor were to incorporate such a ''prior resort requirement'' into its written warranty, the warrantor must comply with the minimum standards set by the Commission for such IDSMs.[7] Section 110(a)(2) of the Act directed the Commission to establish those minimum standards.[8]

The Informal Dispute Settlement Rule contains standards for IDSMs, including requirements concerning the mechanism's structure (e.g., funding, staffing, and neutrality), the qualifications of staff or decision makers, the mechanism's procedures for resolving disputes (e.g., notification, investigation, time limits for decisions, and follow-up), recordkeeping, and annual audits. The Rule requires that warrantors establish written operating procedures and provide copies of those procedures upon request.

The Informal Dispute Settlement Rule applies only to those firms that choose to be bound by it by requiring consumers to use an IDSM. Neither the Rule nor the Act requires warrantors to set up IDSMs. A warrantor is free to set up an IDSM that does not comply with the Informal Dispute Settlement Rule as long as the warranty does not contain a prior resort requirement.

Warranty Rule Burden Statement:

Total annual hours burden: 107,000 hours, rounded to the nearest thousand.

In its 2004 submission to OMB,[9] the FTC estimated that the information collection burden of including the disclosures required by the Warranty Rule was approximately 34,000 hours

[2] 40 FR 60168 (December 31, 1975).

[3] 15 U.S.C. 2302(a).

[4] 40 FR 60168, 60169-60170.

[5] 15 U.S.C. 2310(a).

[6] 15 U.S.C. 2310(a)(3).

[7] *Id.*

[8] 15 U.S.C. 2310(a)(2).

[9] 69 FR 60877 (Oct. 13, 2004).

per year. Although the Rule's information collection requirements have not changed, this estimate increases the number of manufacturers subject to the Rule based on recent Census data. Nevertheless, because most warrantors would now disclose this information even if there were no statute or rule requiring them to do so, staff's estimates likely overstate the PRA-related burden attributable to the Rule. Moreover, the Warranty Rule has been in effect since 1976, and warrantors have long since modified their warranties to include the information the Rule requires.

Based on conversations with various warrantors' representatives over the years, staff has concluded that eight hours per year is a reasonable estimate of warrantors' PRA-related burden attributable to the Warranty Rule. This estimate takes into account ensuring that new warranties and changes to existing warranties comply with the Rule. Based on recent Census data, staff now estimates that there are 134 large manufacturers and 13,235 small manufacturers covered by the Rule.[10] This results in an annual burden estimate of approximately 106,952 hours (13,369 total manufacturers x 8 hours of burden per year).

Total annual labor costs: $14,118,000, rounded to the nearest thousand

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The work required to comply with the Warranty Rule—ensuring that new warranties and changes to existing warranties comply with the Rule—requires a mix of legal analysis and clerical support. Staff estimates that half of the total burden hours (53,476 hours) requires legal analysis at an average hourly wage of $250 for legal professionals,[11] resulting in a labor cost of $13,369,000. Assuming that the remaining half of the total burden hours requires clerical work at an average hourly wage of $14, the resulting labor cost is approximately $748,664. Thus, the total annual labor cost is approximately $14,117,664 ($13,369,000 for legal professionals + $748,664 for clerical workers).

Total annual capital or other non-labor costs: $0

The Rule imposes no appreciable current capital or start-up costs. As stated above, warrantors have already modified their warranties to include the information the Rule requires. Rule compliance does not require the use of any capital goods, other than ordinary office equipment, which providers would already have available for general business use.

Pre-Sale Availability Rule Burden Statement:

Total annual hours burden: 2,328,000 hours, rounded to the nearest thousand.

In its 2004 submission to OMB, FTC staff estimated that the information collection burden of making the disclosures required by the Pre-Sale Availability Rule was approximately 2,760,000 hours per year. Although there has been no change in the Rule's information collection requirements since 2004, staff has adjusted its previous estimate of the number of manufacturers subject to the Rule based on recent Census data. As discussed above, staff now estimates that there are approximately 134 large manufacturers and 13,235 small manufacturers subject to the Rule. Census data suggests that the number of retailers subject to the Rule has remained largely unchanged since 2004. Therefore, staff continues to estimate that there are 6,552 large retailers and 422,100 small retailers impacted by the Rule.

Since 2001, online retailers have been posting warranty information on their web sites, reducing their burden of providing the required information.[12] While some online retailers make warranty information directly available on their web sites, the majority of them instead provide consumers with instructions on how to obtain that information. Moreover, some online retailers provide warranty information electronically in response to a consumer's request for such information. After reviewing the 20 top online retailers' websites for availability of warranty information, staff determined that a significant percentage of retailers (40% of the sample size) have begun to incorporate online methods of complying with the Rule—either by posting warranty information online or sending that information to consumers electronically. Accordingly, staff estimates that retailers' annual hourly burden has decreased by twenty percent.[13]

In 2004, staff estimated that large retailers spend an average of 26 hours per year and small retailers spend an average of 6 hours per year to comply with the Rule. Applying a 20% reduction to the FTC's previous estimates, staff assumes that large retailers spend an average of 20.8 hours per year and small retailers spend an average 4.8 hours per year to comply with the Rule. Accordingly, the total annual burden for retailers is approximately 2,162,362 hours ((6,552 large retailers x 20.8 burden hours) + (422,100 small retailers x 4.8 burden hours)).

Staff retains its previous estimate that large manufacturers spend an average of 52 hours per year and small manufacturers spend an average of 12 hours per year to comply with the Rule. Accordingly, the total annual burden incurred by manufacturers is approximately 165,788 hours ((134 large manufacturers x 52 hours) + (13,235 small manufacturers x 12 hours)).

Thus, the total annual burden for all covered entities is approximately 2,328,150 hours (2,162,362 hours for retailers + 165,788 hours for manufacturers).

Total annual labor cost: $32,594,000, rounded to the nearest thousand.

The work required to comply with the Pre-Sale Availability Rule is predominantly clerical, e.g., providing copies of manufacturer warranties to retailers and retailer maintenance of them. Applying a clerical wage rate of $14/hour, the total annual labor cost burden is approximately $32,594,100 (2,328,150 hours x $14 per hour).

Total annual capital or other non-labor costs: De minimis.

The vast majority of retailers and warrantors already have developed systems to provide the information the Rule requires. Compliance by retailers typically entails keeping warranties on file, in binders or otherwise, and posting an inexpensive sign indicating warranty availability.[14] Manufacturer compliance entails providing retailers with a copy of the warranties included with their products.

Informal Dispute Settlement Rule Burden Statement:

Total annual hours burden: 17,000 hours, rounded to the nearest thousand.

The primary burden from the Informal Dispute Settlement Rule comes from the

[10] Because some manufacturer likely make products that are not priced above $15 or not intended for household use—and thus would not be subject to the Rules—this figure is likely an overstatement.

[11] Staff has derived an hourly wage rate for legal professionals based upon industry knowledge. The remaining wage rates used throughout this Notice reflect recent data from the Bureau of Labor Statistics National Compensation Survey.

[12] Staff took note of this change in 2004 but, due to the small number of retailers engaging in the practice at that time, declined to make an adjustment to its burden estimate.

[13] This conservative estimate takes into account that staff reviewed a limited number of websites. Moreover, some online retailers also operate ''brick-and-mortar'' operations and still provide paper copies of warranties for review by customers who do not do business online.

[14] Although some retailers may choose to display a more elaborate or expensive sign, that is not required by the Rule.

recordkeeping requirements that apply to IDSMs, the use of which is incorporated into a consumer product warranty. In its 2004 submission to OMB, staff estimated that the recordkeeping and reporting burden was 24,625 hours per year and 9,235 hours per year for disclosure requirements or, cumulatively, approximately 30,000 hours. Although the Rule's information collection requirements have not changed since 2004, the audits filed by the IDSMs indicate that on average fewer disputes were handled over the previous three years. In addition, representatives of the IDSMs indicate that relatively few consumers request a copy of their complete case file, and even fewer request a copy of the annual audit. These factors result in a decreased annual hours burden estimate for the IDSMs. The calculations underlying staff's new estimates follow.

Recordkeeping: The Rule requires IDSMs to maintain individual case files. Because maintaining individual case records is a necessary function for any IDSM, much of the burden would be incurred in the ordinary course of the IDSM's business. Nonetheless, staff retains its previous estimate that maintaining individual case files imposes an additional burden of 30 minutes per case.

The amount of work required will depend on the number of dispute resolution proceedings undertaken in each IDSM. The 2005 audit report for the BBB AUTO LINE states that, during calendar year 2005, it handled 23,672 warranty disputes on behalf of 12 manufacturers (including General Motors, Honda, Ford, Saturn, Volkswagen, Isuzu, and Nissan).[15] The BBB AUTO LINE audits from calendar years 2004 and 2003 indicate warranty disputes totaling 19,793 and 21,859, respectively. Thus, the average number of disputes filed annually through BBB AUTO LINE over this three-year period is 21,775 disputes.[16] According to the 2005 audit report for the BBB AUTO LINE, ten out of the twelve manufacturers reviewed include a ''prior resort'' requirement in their warranties, and thus are covered by the Informal Dispute Settlement Rule. Therefore, staff assumes that virtually all of the average 21,775 disputes handled by the BBB fall within the Rule.

Apart from the BBB audit report, audit reports were submitted on behalf of the National Center for Dispute Settlement (NCDS), the mechanism that handles dispute resolutions for Toyota, Lexus, DaimlerChrysler, Mitsubishi, and Porsche, all of which are covered by the Rule. The 2005 audit of the NCDS operations show that 2,154 disputes were filed in 2005. In addition, the NCDS audit shows that in 2004 and 2003, it handled 2,246 and 3,722 disputes, respectively. Thus, the NCDS handled an average of 2,707 disputes each year from 2003 through 2005.

Based on the above figures, staff estimates that the average number of disputes handled annually by IDSMs covered by the Rule is approximately 24,482 (21,775 disputes handled by BBB AUTO LINE + 2,707 disputes handled by NCDS). Accordingly, staff estimates the total annual recordkeeping burden attributable to the Rule to be approximately 12,241 hours (24,482 disputes x 30 minutes of burden ÷ 60 minutes).

Reporting: The Rule requires IDSMs to update indexes, complete semi-annual statistical summaries, and submit an annual audit report to the FTC. Staff retains its previous estimate that covered entities spend approximately 10 minutes per case for these activities, resulting in a total annual burden of approximately 4,080 hours (24,482 disputes x 10 minutes of burden ÷ 60 minutes).

Disclosure: The Rule requires that information about the IDSM be disclosed in the written warranty. Any incremental costs to the warrantor of including this additional information in the warranty are negligible. The majority of disclosure burden would be borne by the IDSM, which is required to provide to interested consumers upon request copies of the various types of information the IDSM possesses, including annual audits. Consumers who have dealt with the IDSM also have a right to copies of their records. (IDSMs are permitted to charge for providing both types of information.)

Based on discussions with representatives of the IDSMs, staff estimates that the burden imposed by the disclosure requirements is approximately 408 hours per year for the existing IDSMs to provide copies of this information. This estimate draws from the average number of consumers who file claims each year with the IDSMs (24,482) and the assumption that twenty percent of consumers individually request copies of the records pertaining to their disputes, or approximately 4,896 consumers. Staff estimates that copying such records would require approximately 5 minutes per consumer, including a negligible number of requests for copies of the annual audit.[17] Thus, the IDSMs currently operating under the Rule have an estimated total disclosure burden of 408 hours (4,896 consumers x 5 minutes of burden ÷ 60 minutes).

Accordingly, the total PRA-related annual hours burden attributed to the Rule is approximately 16,729 hours (12,241 hours for recordkeeping + 4,080 hours for reporting + 408 hours for disclosures).

Total annual labor cost: $266,000, rounded to the nearest thousand.

Recordkeeping: Staff assumes that IDSMs use skilled clerical or technical support staff to comply with the recordkeeping requirements contained in the Rule at an hourly rate of $16. Thus, the labor cost associated with the 12,241 annual burden hours for recordkeeping is approximately $195,856 (12,241 burden hours x $16 per hour).

Reporting: Staff assumes that IDSMs also use skilled clerical support staff at an hourly rate of $16 to comply with the reporting requirements. Thus, the labor cost associated with the 4,080 annual burden hours for reporting is approximately $65,280 (4,080 burden hours x $16 per hour).

Disclosure: Staff assumes that IDSMs use clerical support at an hourly rate of $12 to reproduce records and, therefore, the labor cost associated with the 408 annual burden hours for disclosures is approximately $4,896 (408 burden hours x $12 per hour).

Accordingly, the combined total annual labor cost for PRA-related burden under the Rule is approximately $266,032 ($195,856 for recordkeeping + $65,280 for reporting + $4,896 for disclosures).

Total annual capital or other non-labor costs: $329,000

Total capital and start-up costs: The Rule imposes no appreciable current capital or start-up costs. The vast majority of warrantors have already developed systems to retain the records and provide the disclosures required by the Rule. Rule compliance does not require the use of any capital goods, other than ordinary office equipment, to

[15] So far as staff is aware, all or virtually all of the IDSMs subject to the Rule are within the auto industry.

[16] Because the number of annual disputes filed has fluctuated, staff believes that taking the average number of disputes filed between 2003 and 2005 (the most recent available data) is the best way to project what will happen over the next three years of the OMB clearance for the Rule.

[17] This estimate includes the additional amount of time required to copy the annual audit upon a consumer's request. However, because staff has determined that a very small minority of consumers request a copy of the annual audit, this estimate is likely an overstatement. In addition, at least a portion of case files are provided to consumers electronically, which further would reduce the paperwork burden borne by the IDSMs.

which providers would already have access. In addition, according to a representative of one IDSM, it has already developed systems to collect and retain information needed to produce the indexes and statistical summaries required by the Rule, and thus, estimated very low capital or start-up costs.

The only additional cost imposed on IDSMs operating under the Rule that would not be incurred for other IDSMs is the annual audit requirement. According to representatives of each of the IDSMs currently operating under the Rule, the vast majority of costs associated with this requirement are the fees paid to the auditors and their staffs to perform the annual audit. Representatives of the IDSMs estimated a combined cost of $300,000 for both IDSMs currently operating under the Rule

Other non-labor costs: $29,000 in copying costs. This total is based on estimated copying costs of 7 cents per page and several conservative assumptions. Staff estimates that the average dispute-related file is 35 pages long and that a typical annual audit file is approximately 200 pages in length. As discussed above, staff assumes that twenty percent of consumers using an IDSM currently operating under the Rule (approximately 4,896 consumers) request copies of the records relating to their disputes.

Staff also estimates that a very small minority of consumers request a copy of the annual audit. This assumption is based on (1) the number of consumer requests actually received by the IDSMs in the past; and (2) the fact that the IDSMs' annual audits are available online. For example, annual audits are available on the FTC's web site, where consumers may view and or print pages as needed, at no cost to the IDSM. In addition, the Better Business Bureau makes available on its web site the annual audit of the BBB AUTO LINE. Therefore, staff conservatively estimates that only five percent of consumers using an IDSM covered by the Rule (approximately 1,224 consumers) will request a copy of the IDSM's audit report.

Thus, the total annual copying cost for dispute-related files is approximately $11,995 (35 pages per file x $.07 per page x 4,896 consumer requests) and the total annual copying cost for annual audit reports is approximately $17,136 (200 pages per audit report x $.07 per page x 1,224 consumer requests). Accordingly, the total cost attributed to copying under the Rule is approximately $29,131 and the total non-labor cost under the Rule is approximately $329,131 ($300,000 for auditor fees + $29,131 for copying costs).

William Blumenthal

General Counsel

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FEDERAL TRADE COMMISSION

[File No. 051 0044]

Colegio de Optometras de Puerto Rico and Edgar Dávila García, O.D., and Carlos Rivera Alonso, O.D.; Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 28, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Colegio de Optometras, File No. 051 0044,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, 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 website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Susan E. Raitt, FTC Northeast Region, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (212) 607-2829.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 30, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/07/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

consent order with the Colegio de Optometras de Puerto Rico (''the Colegio'') and two of its officers, Edgar Dávila García, O.D., and Carlos Rivera Alonso, O.D. The agreement settles charges that the Colegio, acting as a combination of otherwise competing optometrists, and in combination with individual optometrists, including Drs. Dávila and Rivera, violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by facilitating, negotiating, entering into, and implementing express or implied agreements on price and other competitively significant terms; negotiating fees and other competitively significant terms in vision and health plan contracts on behalf of the Colegio's members; and refusing or threatening to refuse to deal with such entities except on collectively agreed-upon terms. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify its terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the Colegio or Drs. Dávila and Rivera that any of them violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint

The allegations of the complaint are summarized below.

The Colegio is a not-for-profit, incorporated professional association of optometrists that is organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico (''Puerto Rico''), with its office and principal place of business in San Juan, Puerto Rico.

The Colegio has approximately 500 member optometrists, constituting all of the optometrists licensed to practice in Puerto Rico. Except to the extent that competition has been restrained, the member optometrists of Colegio have been, and are now, in competition with each other for the provision of optometry services in Puerto Rico.

Dr. Dávila is a licensed optometrist who provides vision care services to patients for a fee. Dr. Dávila served as the Treasurer of the Colegio from 2002 through 2004; he also served as the President of the Colegio's Health Plans Commission from 2001 through 2004.

Dr. Rivera is a licensed optometrist who provides vision care services to patients for a fee. Dr. Rivera served as President-Elect of the Colegio in 2004, and then as President from October 2004 through September 2006.

Since 1997, Ivision International Inc. (''Ivision'') has offered vision care services and products in Puerto Rico. Ivision contracts with Puerto Rico health plans to administer vision plans and provide vision care services and products to covered patients. The health plans pay Ivision on a capitated basis, per individual member. Ivision then contracts with Puerto Rico optometrists to provide these services. By August of 2004, Ivision had almost 130 optometrists—located all over Puerto Rico—in its network, making it very attractive to health plans.

In June and July 2004, Ivision sent out announcements to optometrists regarding contracts with several new health plans (many of which previously had contracted only directly with optometrists). Ivision scheduled meetings with optometrists to be held that August to discuss the mechanics of implementing these new contracts. Under these new contracts, Ivision paid optometrists the same fees as in its contracts with other health plans. As a result of these new contracts, the optometrists would lose much if not all of their more lucrative direct business with these plans.

In early August, Ivision began receiving calls from optometrists, some of whom were Colegio representatives, complaining about the reimbursement structure and rates for the new health plan contracts, and threatening that if Ivision did not pay more, it would lose optometrists. In addition, as part of a collective effort to force Ivision to raise its rates, Colegio representatives and other optometrists contacted additional optometrists and urged them to stop participating in Ivision's network.

On August 22, Ivision met with its providers. Just prior to that meeting, the optometrists held their own meeting at which a chart comparing Ivision's rates with those of other health plans had been distributed. During their meeting with Ivision, the optometrists demanded that Ivision pay them higher reimbursement rates, in the form of one fee for an examination and another fee for refraction, instead of paying a flat fee for both services. Dr. Rivera, who was an Ivision provider, stated that he was the President-Elect of the Colegio and that he knew or was familiar with all the optometrists in Puerto Rico. He indicated that as President-Elect of the Colegio he had the authority to meet with Ivision and discuss rates on behalf of the Colegio's members. Dr. Rivera also indicated that if Ivision did not raise reimbursement rates, the Colegio would make sure that Ivision had no providers left in Puerto Rico. In response to Ivision's assertion that it could enlist other providers, Dr. Rivera maintained that he could get to those providers who had not yet joined Ivision and that Ivision would not have any optometrists in its network.

The next day, Dr. Dávila circulated a letter on Colegio letterhead addressed to all of the members of the Colegio concerning Ivision's new health plan contracts. Dr. Dávila, who was not an Ivision provider, wrote this letter in his capacity as President of the Colegio's Health Plans Commission. In the letter, he urged optometrists not to participate in the Ivision network, and informed the Colegio members that the Colegio was going to develop a policy to be followed with respect to the Ivision plan. He concluded the letter by stating that to continue onward, all of the providers were needed, and that this was not a battle the Colegio could confront alone.

Two days later, a Colegio advisor and a former Colegio officer met with Ivision representatives and told them that Ivision was going to lose all of its providers and that if it did not pay the providers what they deserved, they would quit. At a later meeting, the same former Colegio officer told Ivision's President that the providers were really angry and wanted to destroy Ivision. The President also was told that if Ivision agreed to pay a certain amount (matching another plan's fee), the providers would forget Ivision's other problems and ''everything would go away.''

In September 2004, there were a number of meetings held by the Colegio Board of Directors and by Colegio members discussing how to deal with Ivision. At one meeting, the Colegio members present were advised to resign immediately from Ivision network to force Ivision to increase its reimbursement rates. At another meeting, attended by several Colegio members, Dr. Rivera asked for a show of hands as to who was going to remain in the Ivision network. No optometrist raised a hand. Several optometrists voiced complaints about Ivision's reimbursement rates and discussed leaving Ivision; an offer was made to circulate a sample letter terminating the Ivision contract. A former Colegio officer who announced his resignation from Ivision at that meeting followed this up a few days later by sending letters to certain health plans, stating that because of Ivision's reimbursement structure and rates, the optometrists had

decided to resign en masse from Ivision, which would cause a great uproar among the plans' subscribers.

In early October 2004, some Colegio representatives, including Dr. Dávila and Dr. Rivera, met with officials from some of the health plans with which Ivision contracted. The Colegio representatives requested that the health plans pay optometrists higher fees. They also asked the health plan officials to put pressure on Ivision, and informed them that providers were not going to remain in the Ivision network if the reimbursement rates did not increase.

The Colegio's and Drs. Dávila's and Rivera's efforts to obtain higher reimbursement rates from Ivision succeeded. By mid-October, almost 40 Colegio members had left the Ivision network. These optometrists either quit outright by notifying Ivision that they were cancelling their optometrist agreements (some in similarly-worded letters), or by simply refusing service to those patients enrolled in Ivision plans, so that Ivision was forced to terminate these doctors as optometrists. In order to maintain an effective network, retain its remaining optometrists and recruit new optometrists in the face of the Colegio's efforts and success in organizing a boycott, Ivision was forced to substantially raise its reimbursement rates. In November 2004, Ivision significantly increased its reimbursement rate for an eye examination and the dispensing of eye glasses; it made a similar increase for an examination and the dispensing of contact lenses. Ivision was also forced to waive monetary amounts that some optometrists owed it.

In addition to the conduct outlined above, the Colegio and Drs. Dávila and Rivera orchestrated collective negotiations with at least two other plans. Their efforts included several meetings with and letters to a certain health plan, all directed at having that plan amend its contracts with optometrists so that the optometrists could provide additional higher paying services for the plan. Indeed, to increase its negotiating leverage with this plan, Dr. Dávila sent a letter to all Colegio members urging them not to join the plan until these issues were resolved to the Colegio's satisfaction. Further, officers of the Colegio on several occasions approached another health plan and attempted to negotiate higher reimbursement levels for its members who service that plan. Thus far, these two health plans have been able to resist the collective action exerted by the Colegio.

Respondents' price fixing and concerted refusal to deal, and the agreements, acts, and practices described above, have not been, and are not, reasonably related to any efficiency-enhancing integration among the optometrist members of the Colegio. By the acts set forth in the Complaint, the Colegio and Drs. Dávila and Rivera violated Section 5 of the FTC Act.

The Proposed Consent Order

The proposed consent order is designed to prevent a recurrence of the illegal concerted actions alleged in the complaint, while allowing the Colegio and its members, including Drs. Dávila and Rivera, to engage in legitimate joint conduct. The proposed order is similar to recent consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements refusing to deal with health plans.[2]

The proposed order's specific provisions are as follows:

Paragraph II.A prohibits the Colegio, Dr. Dávila, and Dr. Rivera, from entering into or facilitating agreements among any optometrists with respect to their provision of optometry services, including: (1) Negotiating on behalf of any optometrist with any payor; (2) dealing, refusing to deal, or threatening to refuse to deal with any payor; (3) regarding any term upon which any optometrist deals, or is willing to deal, with any payor, including, but not limited to, price terms; or (4) not to deal individually with any payor, or not to deal with any payor other than through the Colegio.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the Colegio, Dr. Dávila, and Dr. Rivera from exchanging or facilitating the transfer of information among optometrists concerning any optometrist's willingness to deal with a payor, or the terms or conditions, including any price terms, on which the optometrist is willing to deal. Paragraph II.C prohibits the Colegio, Dr. Dávila, and Dr. Rivera from attempting to engage in any action prohibited by Paragraphs II.A or II.B. Paragraph II.D prohibits the Colegio from encouraging, pressuring, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A through II.C.

Paragraph III requires that the Colegio, Dr. Dávila, and Dr. Rivera for three years from the date the Order becomes final, notify the Secretary of the Commission in writing at least sixty days prior to: (1) participating in, organizing, or facilitating any discussion or understanding with or among any optometrists in any qualified joint arrangement relating to price or other terms or conditions of dealing with any payor; or (2) contacting a payor to negotiate or enter into any agreement concerning price or other terms or conditions of dealing with any payor, on behalf of any optometrists or any optometrist group practice in such arrangement. The remaining provisions of Paragraph III contain other standard notification and compliance-related provisions.

Paragraph IV requires the Colegio to translate the Order and the Complaint into Spanish, distribute the translated Order and Complaint to Colegio members, as well as payors, and annually publish these documents in official annual reports or newsletters.

The proposed order will expire in 20 years.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E7–15356 Filed 8–6–07: 8:45 am]

BILLING CODE 6750–01–S

[2] New Century Health Quality Alliance, Inc., File No. 051-0137 (Oct. 6, 2006); Puerto Rico Association of Endodontists, Corp., File No 051-0170 (Aug. 29, 2006).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Final Notice; Implementation of Section 6053(b) of the Deficit Reduction Act for Fiscal Year 2008 FMAP

AGENCY: Office of the Secretary, DHHS.

ACTION: Final notice.

SUMMARY: This notice describes the procedure utilized for implementing Section 6053(b) of the Deficit Reduction Act of 2005, Public Law 109–171 for fiscal year 2008. Section 6053(b) of the Deficit Reduction Act provides for a modification of the Federal Medical Assistance Percentages for any state which has a significant number of evacuees from Hurricane Katrina. This notice also includes an interpretation of evacuee. HHS issued a notice on January 25, 2007, announcing for public comment, a proposed methodology to implement the requirements of Section 6053(b). The notice allowed 30 days for public comment. We received one timely comment from the Texas Health and Human Services Commission. The comment letter contained several suggestions which are summarized and responded to below.

DATES: The figures described in this notice apply to FY 2008.

FOR FURTHER INFORMATION CONTACT: Thomas Musco or Robert Stewart, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 447D—Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–6870.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Medical Assistance Percentages (FMAP) are used to determine the amount of Federal matching for state expenditures for assistance payments for certain social services such as Temporary Assistance for Needy Families (TANF) Contingency Funds, matching funds for the Child Care and Development Fund, Title IV–E Foster Care Maintenance payments, Adoption Assistance payments, and state medical and medical insurance expenditures for Medicaid and the State Children's Health Insurance Program (SCHIP).

Sections 1905(b) and 1101(a)(8)(B) of the Social Security Act require the Secretary of Health and Human Services to publish the Federal Medical Assistance Percentages each year. The Secretary is to calculate the percentages, using formulas in sections 1905(b) and 1101(a)(8)(B), from the Department of Commerce's statistics of average income per person in each state and for the Nation as a whole. The percentages are within the upper and lower limits given in section 1905(b) of the Act. The percentages to be applied to the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands are specified in statute, and thus are not based on the statutory formula that determines the percentages for the 50 states. The ''Federal Medical Assistance Percentages'' are for Medicaid.

The ''enhanced FMAP'' (EFMAP), for a state for a fiscal year, is equal to the Federal Medical Assistance Percentage (as defined in the first sentence of section 1905(b)) for the state increased by a number of percentage points equal to 30 percent of the number of percentage points by which (1) such Federal medical assistance percentage for the state, is less than 100 percent; (2) but in no case shall the enhanced FMAP for a state exceed 85 percent.

The ''Enhanced Federal Medical Assistance Percentages'' are for use in the State Children's Health Insurance Program under Title XXI, and in the Medicaid program for certain children for expenditures for medical assistance described in sections 1905(u)(2) and 1905(u)(3) of the Social Security Act. On November 30, 2006, at 71 FR 69209, we published the FMAP and Enhanced FMAP rates for each state for October 1, 2007 through September 30, 2008 (fiscal year 2008).

B. Section 6053(b) of the DRA

Section 6053(b) of the Deficit Reduction Act (DRA) of 2005 requires that calculations used in computing the FMAPs disregard evacuees and any income attributable to them who were evacuated to and live in a state, other than their state of residence, as of October 1, 2005 as a result of Hurricane Katrina. The DRA defines ''evacuee'' as ''an affected individual who has been displaced to another state'' (Sec. 6201(b)(3)). This provision applies to any state that the Secretary of HHS determines has a significant number of Katrina evacuees.

The modification of the Federal Medical Assistance Percentages and the Enhanced Federal Medical Assistance Percentages under the DRA affect only medical expenditure payments under Title XIX and expenditure payments for the State Children's Health Insurance Program under Title XXI. The Department believes that the percentages in this rule do not apply to payments under Title IV of the Social Security Act. In addition, the Title XIX statute provides separately for Federal matching of administrative costs, which is not affected by the subject Deficit Reduction Act provision.

Section 6053(b) applies to calculations for FMAPs for any year after 2006. The underlying data that serve as the basis for the FMAP calculations are produced by the Department of Commerce's Bureau of Economic Analysis (BEA). Section 1101(a)(8)(B) requires FMAP calculations to be determined using data from the Department of Commerce. Therefore, the standard practice in the calculation of the FMAPs is to utilize the most up-to-date BEA state per capita income data. The Fiscal Year 2008 FMAPs, which were published on November 30, 2006 use the state per capita income estimates for 2003–2005. The first year that the relevant data—state per capita personal income estimates—would show any impact related to Hurricane Katrina is 2005, since Hurricane Katrina occurred in August 2005. Therefore, this notice proposes to implement Section 6053 (b) of the DRA starting with the Fiscal Year 2008 FMAPs, since the 2008 FMAP calculation will be the first year to include 2005 data.

On January 25, 2007 at 72 FR 3391, we proposed a methodology to implement Section 6053(b) of the Deficit Reduction Act that would take advantage of the way in which state population is usually calculated. HHS believes this methodology would comply with our understanding of Congressional intent in the first year, and raise the FMAP slightly for any affected state.

C. Proposed Methodology

Section 6053(b) of the Deficit Reduction Act (DRA) of 2005 requires that calculations used in computing the FMAPs disregard evacuees and any income attributable to them who were evacuated to and live in a state, other than their state of residence, as of October 1, 2005 as a result of Hurricane Katrina. The DRA defines ''evacuee'' as ''an affected individual who has been displaced to another state'' (Sec. 6201(b)(3)). This provision applies to any state that the Secretary of HHS determines has a significant number of Katrina evacuees.

The first adjustment that must take place under Section 6053(b) of the DRA is to the state population estimate by removing all Katrina evacuees in each state that were evacuated across state lines.

Because the state population estimates used in the 2005 Per Capita Personal Income estimates are from July 1, 2005, which is prior to Hurricane Katrina, these Katrina evacuees do not appear in the data that is the basis for the state population estimates for any state covered by this provision. Thus, while Section 6053(b) of the DRA requires it, no adjustment to this data is necessary to disregard Katrina evacuees.

The second adjustment that must take place under Section 6053(b) of the DRA is to state personal income by removing all income that is attributed to Katrina evacuees. Implementing Section 6053(b) is complex because the data related to personal income are not detailed enough to fully conform to all of the provision's requirements (see the detailed explanation of considerations mentioned in the **Federal Register** notice of January 25, 2007 at 72 FR 3391).

The methodology to adjust for income proposes (see 72 FR 3391) to include the available data on FEMA disaster assistance adjustments and interstate population dispersal adjustments (BEA's estimate of governmental transfer receipts that were paid to Hurricane Katrina evacuees while they were living in the states to which they had been evacuated). Transfer receipts include payments such as Medicaid or TANF.

BEA estimates these interstate population dispersal adjustments based on the evacuee population that moved

across state lines after the hurricane, and the average transfer payment per evacuee. The evacuee population is based on the FEMA Current Location Report.

The methodology described above (and in more detail at 72 FR 3391) was used to make FMAP adjustments to accommodate the requirements of Section 6053(b) with the available data. The calculations this year result in a positive impact on any affected state (i.e., increasing FMAPs). It is unclear what effect Section 6053(b) will have on future years should this provision carry forward beyond fiscal year 2008.

According to Section 6053(b), the Secretary of HHS must apply this provision to any state that the Secretary determines has a significant number of Katrina evacuees. However, the statute provides HHS no guidance on how to determine what number of evacuees constitutes a ''significant number.'' As a result, HHS attempted to provide an objective means to determine a ''significant number'' of evacuees.

HHS had chosen to determine significance by calculating the numbers of evacuees beyond two standard deviations from the mean of all states' number of evacuees. Measures of significance generally involve how observations vary in their distance from the average of all observations in their particular group. In this case, the observations are the number of evacuees relocated to each of the respective states. A measure used frequently to determine significance is the standard deviation from the mean or average. We proposed to use as the measure of a significantly affected state those that incurred an influx of evacuees greater than twice the standard deviation from the mean of all states.

Using the BEA estimates for the number of evacuees relocated to each state (except as noted below for Louisiana) we calculated an average influx of evacuees for all states of 7,159. The distribution of evacuees into all states around this average produces a standard deviation of 22,375. Therefore, we propose to apply the provisions of Section 6053(b) to any state with an influx of evacuees greater than 51,909 (the mean plus two standard deviations). This methodology specified only Texas, with 154,018 evacuees, had such a significant influx of evacuees.

Therefore, we proposed to apply Section 6053(b) to Texas. Because the DRA defines ''evacuee'' as ''an affected individual who has been displaced to another state'' (Sec. 6201(b)(3)), we proposed that Louisiana not be considered an affected state. Although there were intra-state evacuations within Louisiana, the provision is intended to apply only to any state that took in a significant number of evacuees from another state.

Using the methodology described above, we calculated revised FMAPs and EFMAPs for 2008. The table below presents the 2008 FMAPs and the revised 2008 FMAPs with the proposed adjustment, and the 2008 EFMAPs and the revised 2008 EFMAPs.

Texas	Calculated 2008	2008 with proposed adjustment
FMAP	60.53	60.56
EFMAP	72.37	72.39

As seen in the tables above, applying the proposed adjustment increased the FMAP and EFMAP for Texas.

D. Analysis of and Response to Public Comments on the Proposed Methodology

In reviewing and responding to comments, HHS consulted with individuals internal to HHS and individuals at the Commerce Department.

Comment: Mitigate the ''mismatch'' between population and income estimates by adjusting downward total income for Texas to eliminate income associated with Katrina evacuees. Personal income for Texas should be adjusted by removing approximately $4.7 billion in personal income attributable to Katrina evacuees. The rationale provided states that income and wages of Katrina evacuees are not included in the proposed adjustment, nor are the use of savings and contributions from charitable sources. Additionally, Texas states that per capita income increased in FY 2005 by more than historical averages.

Response: As described in the proposed methodology, both income and population must be taken into account to implement Section 6053(b) of the DRA.

No methodology is provided by Texas for the arrival at the estimate of income attributable to Katrina evacuees in Texas. BEA could not provide separable income estimates for segments of state populations as a verifiable source to replicate the findings. Further, several of the funding sources cited by Texas are not sources that would affect per capita income (use of savings accounts and charitable contributions). The amount of income Texas suggests be eliminated as attributable to Katrina evacuees would indicate a per capita income for these evacuees of in excess of $30,000 per year, when in fact these individuals were relocated to other states for only about one-third of the 2005 year.

Additionally, an increase in per capita income in a particular year may have multiple factors contributing to the increase. A review of BEA data on state per capita income levels for Texas over the past two decades shows the 2005 increase is not unusual. Texas experienced peaks in year to year per capita percent changes in 1990, 1997, and 2000 at rates of change greater than that experienced in 2005.

Comment: An alternate to adjusting Texas total income is to adjust upward Texas' population to reflect the number of Katrina evacuees residing in Texas after July 1, 2005. Adjust the population estimate for Texas by adding 154,018 Katrina evacuees to the 2005 state population estimate.

Response: As required by Section 6053(b) of the DRA, and reiterated above, the methodology for implementing this provision specifically indicates that calculations used in computing the FMAPs disregard evacuees and any income attributable to them. The addition to a state's population of any number attributable to Katrina evacuees is not consistent with the statute.

E. Time Frame for the DRA Adjustment

In the January 25, 2007 **Federal Register** notice, we noted that Section 6053(b) does not provide an express sunset for the FMAP adjustments even though it did not seem reasonable to make such adjustments in perpetuity. We indicated that it was not reasonable to consider individuals to be evacuees long after they may have established residency and employment in their host state. We expressed concern that data to accurately identify the number of evacuees and their income, already difficult to obtain, would be unavailable and/or unreliable. And we observed that compliance with Section 6053(b) of the DRA could have a negative impact on qualifying states in years beyond FY 2008, which could not have been intended by Congress.

Because of the above, HHS proposed several approaches to interpret the term ''evacuee'' narrowly to ensure that an adjustment is made only to the extent warranted to address the sudden influx directly resulting from Hurricane Katrina. We suggested three alternative approaches which were offered for public comment: (1) Consider individuals to be Hurricane Katrina evacuees for up to 18 months following displacement to another state, (2) consider an individual to be an evacuee while receiving FEMA Hurricane Katrina assistance, and (3) consider

individuals to be evacuees while reliable data remains available and sufficient to identify evacuees and their income in order to carry out the provisions of the DRA.

While no comments were received on any of the proposed HHS definitions of an evacuee or offers of alternative definitions, HHS examined each of the approaches identified above in reaching a decision on the interpretation of an evacuee and its potential impact on future FMAP calculations.

While approach 1 uses a specific time frame (18 months following evacuation), the time frame itself is arbitrary and we believe it is unreasonable to consider a person to be considered an evacuee once they have established residency and become integrated into the economy of their host state. Former Katrina evacuees will now be reported by their place of residence for 2006 and beyond, no longer separately identified as Katrina evacuees, and will be included in the population and income estimates collected by BEA for their states of residence.

HHS has learned that approach 2 (FEMA assistance) will not be viable because Katrina FEMA assistance will not be separately identified from all other FEMA assistance to identify evacuees beyond that which was provided for 2005.

Because of the practical difficulty in calculating an adjustment, we are adopting the third approach, limiting the definition of evacuee to the time period for which reliable data remains available, because the existence of reliable data is essential to identifying individuals as evacuees. It is clear from the current effort to comply with the DRA provisions that data to support the calculations is limited at best. While information on the number of Katrina evacuees has been available, data on income attributed to evacuees has been extremely limited. BEA, which collects the data upon which FMAP calculations are made, was limited in its ability to isolate income data for Katrina evacuees. Only some of the interstate income data, such as governmental transfer receipts (TANF, Medicaid, etc.), attributable to Katrina evacuees was available, while none of a state(s)' wages and salaries paid to Katrina evacuees who moved to the host state could be isolated to determine personal income data for these evacuees. It was therefore technically difficult to perform the calculations for the current year.

We do not believe that reliable data will be available to track either the number or the income of evacuees to make calculations for the FMAP beyond FY 2008. It is our understanding that BEA will not undertake any continuing state estimates of the number of Katrina evacuees or income attributed to them beyond what already has been done for 2005.

Moreover, we believe the adjustment time frame is sufficiently long for individuals to become an integral part of, with economic and social ties to, the State in which they have been present. We continue to believe that the intent of the statutory adjustment was to relieve the temporary burden on host states of a sudden influx of evacuees who were not integrated into the host state economy. Thus we believe it is unreasonable to consider a person to be an evacuee once they have established residency and become integrated into the economy in their host state.

For the above reasons, HHS has determined to interpret the term ''evacuee'' to be limited to the time period for which reliable data is available on the number and income of evacuees. Based on our current understanding of the available data sources, this interpretation means that there would be no basis for performing the calculations specified in Section 6053(b) of the DRA beyond the current year calculations for the FY 2008 FMAP.

F. Final FMAP and EFMAP Percentages for State(s) Affected by Hurricane Katrina

Based on the findings of our review of the comments received, we believe the methodology as described herein, and in more detail at 72 FR 3391, is the most appropriate method, given the available information, for implementing Section 6053(b) of the DRA. As such, only the FMAP and EFMAP percentages for the state of Texas are affected.

The percentages for Texas are as follows:

Texas	Calculated 2008	2008 with adjustment for Section 6053(b)
FMAP	60.53	60.56
EFMAP	72.37	72.39

G. Effective Dates

The percentages listed will be effective for each of the four (4) quarter-year periods in the period beginning October 1, 2007 and ending September 30, 2008 (fiscal year 2008).

(Catalog of Federal Domestic Assistance Program Nos. 93.778: Medical Assistance Program; 93.767: State Children's Health Insurance Program)

Dated: May 21, 2007.

Michael O. Leavitt,

Secretary of Health and Human Services.

[FR Doc. E7–15321 Filed 8–6–07; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice concerning the final effect of the HHS decision to designate a class of employees at the Dow Chemical Company, Madison, Illinios, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On June 22, 2007, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

Atomic Weapons Employer (AWE) employees who were monitored or should have been monitored for exposure to thorium radionuclides while working at the Dow Chemical Company site in Madison, Illinois for a number of work days aggregating at least 250 work days from January 1, 1957 through December 31, 1960, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation became effective on July 22, 2007, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on July 22, 2007, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: August 2, 2007.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 07–3845 Filed 8–6–07; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice concerning the final effect of the HHS decision to designate a class of employees at Los Alamos National Laboratory, Los Alamos, New Mexico, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On June 22, 2007, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

Employees of the Department of Energy (DOE), its predecessor agencies, or DOE contractors or subcontractors who were monitored or should have been monitored for radiological exposure while working in operational Technical Areas with a history of radioactive material use at the Los Alamos National Laboratory (LANL) for a number of work days aggregating at least 250 work days from March 15, 1943 through December 31, 1975, or in combination with work day as within parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation became effective on July 22, 2007, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on July 22, 2007, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: August 2, 2007.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 07–3843 Filed 8–6–07; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice concerning the final effect of the HHS decision to designate a class of employees at W.R. Grace, Erwin, Tennessee, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On June 22, 2007, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

Atomic Weapons Employer (AWE) employees who were monitored or should have been monitored for potential exposure to thorium while working in any of the 100 series buildings or Buildings 220, 230, 233, 234, 301, or 310 at the W.R. Grace site at Erwin, Tennessee for a number of work days aggregating at least 250 work days from January 1, 1958, through December 31, 1970, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation became effective on July 22, 2007, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on July 22, 2007, members of this class of employees, define as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: August 2, 2007.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 07–3844 Filed 8–6–07; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3188–NC]

Medicare Program; Evaluation Criteria and Standards for Quality Improvement Program Organization Contracts

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

ACTION: Notice with comment period.

SUMMARY: This notice with comment period describes the criteria we intend to use to evaluate the efficiency and effectiveness of Quality Improvement Organizations (QIOs) currently under contract with CMS in accordance with the Social Security Act. These evaluation criteria are based on the tasks and related subtasks set forth in the QIO's Scope of Work (SOW). The current 8th SOW includes Tasks 1, 3, and 4 (Task 2 is reserved) with subtasks included under Tasks 1 and 3. QIOs were awarded contracts for the 8th SOW, or 8th Round, for 3 years, with staggered starting dates beginning August 2005, November 2005, and February 2006. Comments on this notice will also be considered in the development of the 9th SOW.

DATES: To be assured of consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on September 6, 2007.

ADDRESSES: In commenting, please refer to file code CMS–3188–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/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–3188–NC, P.O. Box 8010, Baltimore, MD 21244–8010.

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–3188–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–8010.

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 21244–8010.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Terry Lied (410) 786–8973.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this notice with comment period to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–3188–NC and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.cms.hhs.gov/eRulemaking*. Click on the link ''*Electronic Comments on CMS Regulations*'' on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

[If you choose to comment on issues in this section, please include the caption ''BACKGROUND'' at the beginning of your comments.]

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of Pub. L. 97–248) amended Part B of Title XI of the Social Security Act (the Act) to establish the Peer Review Organization (PRO) programs. The PRO program (now called the Quality Improvement Organization (QIO) program) was established to redirect, simplify, and enhance the cost-effectiveness and efficiency of the medical peer review process. Sections 1152, 1153(b), and 1153(c) of the Act define the types of organizations eligible to become QIOs, and establish certain limitations and priorities regarding QIO contracting.

The Secretary enters into contracts with QIOs to perform three broad functions:

- Improve quality of care for beneficiaries by ensuring that beneficiary care meets professionally recognized standards of health care;
- Protect the integrity of the Medicare Trust Fund by ensuring that Medicare pays only for services and items that are reasonable and medically necessary and that are provided in the most economical setting;
- Protect beneficiaries by expeditiously addressing individual cases such as beneficiary quality of care complaints, contested hospital issued notices of noncoverage (HINNs), alleged Emergency Medical Treatment and Labor Act (EMTALA) violations, and other statutory responsibilities.

Section 1154 of the Act requires that QIOs review those services furnished by physicians; other health care practitioners; and institutional and non-institutional providers of health care services, including health maintenance organizations and competitive medical plans. Section 109 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), Public Law 108–173, amended section 1154(a)(1) of the Act to expand the scope of review of QIOs to include Medicare Advantage Organizations, and prescription drug sponsors. Section 109 of the MMA also created a new section 1154(a)(17) of the Act, which requires QIOs to offer to providers, practitioners, Medicare Advantage Plans and prescription drug sponsors, quality improvement assistance pertaining to prescription drug therapy.

Section 1153(h)(2) of the Act requires the Secretary to publish in the **Federal Register** the general criteria and standards that would be used to evaluate the efficient and effective performance of contract obligations by QIOs and to provide the opportunity for public comment. The QIO contracts for the 8th SOW were awarded for 3 years with starting dates staggered into three approximately equal groups (rounds) starting August 2005, November 2005, and February 2006, respectively. Comments on this notice will also be considered in the development of the 9th scope of work.

II. Measuring QIO Performance & Criteria for Non-Competitive Renewal of Contracts

[If you choose to comment on issues in this section, please include the caption ''MEASURING QIO PERFORMANCE'' at the beginning of your comments.]

Under the 8th Round contracts, QIOs are responsible for completing the requirements of the following specific tasks and subtasks:

Task 1: Assisting Providers in Developing the Capacity for and Achieving Excellence.

a. Subtask 1a: Nursing Home.
b. Subtask 1b: Home Health.
c. Subtask 1c1: Hospital.
d. Subtask 1c2: Critical Access Hospital/Rural Hospital.
e. Subtask 1d1: Physician Practice.
f. Subtask 1d2: Physician Practice: Underserved Populations.
g. Subtask 1d3: Physician Practice/Pharmacy: Part D Benefit.

Task 2: Reserved.

Task 3: Protecting Beneficiaries and the Medicare Program.

a. Subtask 3a: Beneficiary Protection.
b. Subtask 3b: Hospital Payment Monitoring Program

Task 4: Special Studies and Projects (Special Studies defined as work that CMS directs a QIO to perform or work that a QIO elects to perform with CMS approval which is not currently defined

under Tasks 1–3 of the SOW but falls within the scope of the contract and section 1154 of the Act).

Under this SOW, to merit having its contract renewed non-competitively, the QIO must meet the performance criteria on the tasks and subtasks. For Tasks 1 and 3, the QIO will be scored using the following four classifications:

- Excellent Pass
- Full Pass
- Conditional Pass
- Not Pass

For all nine subtasks related to tasks 1 and 3, the QIO must achieve at least a Conditional Pass to be eligible to have its contract renewed non-competitively. A QIO that receives a ''Not Pass'' on any subtask will be invited to our evaluation panel (subject to CMS approval). In addition, the QIO must achieve at least a ''Full Pass'' or ''Excellent Pass'' on seven of the nine subtasks to be eligible to have its contract renewed non-competitively. A QIO that receives a ''Conditional Pass'' on three or more subtasks will be invited to our evaluation panel (subject to CMS approval). However, an ''Excellent Pass'' on one or more subtasks may negate a ''Conditional Pass'' on one subtask. That is, a QIO that receives an ''Excellent Pass'' on one or more subtasks and receives a ''Conditional Pass'' on no more than three subtasks and does not receive a ''Not Pass'' on any subtasks may be eligible to have its contract renewed non-competitively. A QIO working only seven or eight subtasks due to valid exemptions as specified in the SOW will be treated as though it has received a ''Full Pass'' in the subtasks from which it is exempt. The QIO must still achieve at least a ''Full Pass'' or ''Excellent Pass'' on seven of the nine subtasks in order to have its contract non-competitively renewed.

We may revise the performance criteria for a QIO before signing a contract with that QIO. The target performance levels for individual tasks and subtasks may vary across QIOs. We will provide these specific performance criteria during the Request for Proposal (RFP) process.

We will assess the QIO's task and subtask-specific performance in November 2007 based on the data available at that time. The specific evaluation criteria are described below for each task and subtask. Task 4 (special projects) will not be subject to these evaluation criteria. Projects funded to reduce hospital payment error under Task 4 will affect QIOs evaluation as specified in Task 3b. The assessment of performance on all other special projects under Task 4 will affect the QIO's eligibility to receive funding for additional special projects under the current or subsequent QIO contracts, but will not affect eligibility for non-competitive renewal of the QIO contract.

For the 9th SOW, we intend to revise the criteria required for non-competitive renewal of contracts. For the 9th SOW, we are considering a requirement that QIOs achieve a ''full pass'' or an ''excellent pass'' on all tasks and sub-tasks for the non-competitive renewal of their contracts for the 10th SOW. We are also reviewing the process by which a QIO contract can be terminated, during the course of a SOW, on performance grounds.

III. Standards for Minimum Performance

[If you choose to comment on issues in this section, please include the caption ''STANDARDS FOR MINIMUM PERFORMANCE'' at the beginning of your comments.]

Task 1: Assisting Providers in Developing the Capacity for and Achieving Excellence

Subtasks of Task 1 will include statewide and identified participant components. (The term ''statewide'' is used for activities directed toward a QIO's entire State/jurisdiction—that is, one of the 50 States, the District of Columbia, Puerto Rico, or the Virgin Islands.) Subtask evaluation will be based on the following five dimensions of performance:

- Performance measure results (changes and improvements in rates).
- Clinical performance reporting (increases in number of measures reported).
- Providers' adoption and use of systems.
- Implementation of key process changes.
- Changes in organizational culture.

Each subtask of Task 1 will include a requirement to meet Satisfaction and Knowledge/Perception performance criteria for provider identified participants (IPG) and non-identified participants (Non-IPG). Satisfaction and knowledge/perception surveys and stakeholder knowledge/perception surveys will be used to measure performance. ''Identified Participants'' are providers that received focused assistance on at least one quality measure from QIOs. ''Non-Identified Participants'' are providers that received no focused assistance from QIOs.

Task 1a: Nursing Home

Under Task 1a, the QIO will focus on the following:

- Improving clinical performance.
- Setting improvement targets.
- Measuring the nursing home experience.

The QIO will focus on decreasing the rate of pressure ulcers among high risk individuals, decreasing the use of physical restraints, improving the management of depressive symptoms, and improving the management of pain in chronic (long stay) residents among a select group of identified participant nursing homes (IPG1) as well as other nursing homes requesting assistance from the QIO. The QIO must also work with a second select group of identified participants (IPG2) that focuses on decreasing the rate of pressure ulcers among high risk individuals and decreasing the use of physical restraints.

The QIO will set statewide targets for (at a minimum) pressure ulcers among high-risk residents and physical restraints. In addition, the QIO will work with all nursing homes throughout the State/jurisdiction to set quality improvement targets for (at a minimum) pressure ulcers and physical restraints on an annual basis.

In the area of organizational culture, the QIO must work with both groups of identified participants (IPG1 and IPG2) to collect information on resident and staff experience/satisfaction with care and staff turnover by engaging in activity that is likely to improve organizational culture. (**Note:** In four States/jurisdictions (WY, AK, DC, and PR), the QIO must work with its Project Officer to develop alternative Task 1a evaluation criteria for this SOW. The QIO must receive approval from its Project Officer and the Task 1a Government Task Leader (GTL) on its alternative Task 1a evaluation criteria).

Task 1b: Home Health

QIO work in the home health setting will focus at the statewide level on meeting or exceeding the statewide targets on the Outcome and Assessment Information Set (OASIS). Information on OASIS can be found at *http://www.cms.hhs.gov/OASIS/*. In addition, the QIO must work with home health agencies (HHAs) in setting targets for acute care hospitalization and other publicly reported OASIS measures to be determined by CMS. The QIO must also work to increase the number of HHAs that incorporate an assessment of influenza and pneumococcal vaccination status into the patient comprehensive assessment, offer these vaccinations, and provide follow-up. The QIO must also work with two groups of identified participants: A Clinical Performance Identified Participant Group (IPG) and a Systems Improvement and Organizational

Culture Change (SIOC) IPG. The QIO will focus in the Clinical Performance IPG on meeting or exceeding the IPG target on the OASIS measure for acute care hospitalization and one additional HHA-selected publicly reported OASIS measure through the Outcome Based Quality Improvement (OBQI) process. Information on OBQI can be found at: *http://www.cms.hhs.gov/HomeHealthQualityInits/16_HHQIOASISOBQI.asp.* With the SIOC IPG, the QIO will work to implement and/or use emerging telehealth technologies to help reduce acute care hospitalization and work to build capacity within these HHAs to evaluate and improve organizational culture. Both at the statewide level and with a Clinical Performance IPG, the QIO must improve clinical performance measure results. The QIO will be evaluated on its ability to work with HHAs to incorporate influenza and pneumococcal immunizations into the comprehensive patient assessment. The QIO will also be evaluated on the following:

- Implementation of a CMS survey tool that measures specific dimensions of organizational culture change.
- Submission by an HHA of a Plan of Action (POA) based on the results of the organizational culture change survey and implementation of a quality improvement activity.
- The QIO will have extra credit added to its total Task 1b evaluation score for improving results on both the OASIS acute care hospitalization measure and the selected publicly reported OASIS outcome measure.

The QIO may receive extra credit for one or more of the following:

- Improving results for the identified participant OASIS measure.
- Improving results for the statewide and identified participant Acute Care Hospitalization measure.
- Improving the statewide immunization assessment rate beyond the target rate.
- Working with HHAs to set targets.

Task 1c1: Hospital

For Task 1c1, the QIO must work with hospitals to achieve system-level changes through the use of four strategies: Increasing clinical performance measurement and reporting; process improvement; systems improvement; and organizational culture change. The QIO will work to improve quality of care in hospitals through several distinct efforts aligned with each strategy. For clinical performance measure results, the QIO will assist an IPG, including both rural and urban Prospective Payment System (PPS) hospitals, in improving performance on an Appropriate Care Measure (ACM). (The ACM is defined as a composite measure of care at the patient level for three clinical topics—AMI, HF, and PNE.) The QIO will work at the statewide level to encourage hospitals to submit data on the full Hospital Quality Alliance (HQA) measure set of 22 measures (*http://www.cms.hhs.gov/HospitalQualityInits/15_HospitalQualityAlliance.asp.*). The QIO will also work to increase the validity of all data the hospitals submit to the QIO Clinical Data Warehouse.

With a major focus on process improvement in this SOW, the QIO will work through statewide and identified participant efforts to get hospitals to adopt standard processes of care in five different areas: Prevention of surgical site infections, cardiovascular complications, venous thromboembolism, ventilator-associated pneumonia, and promotion of the use of fistulas for hemodialysis.

To encourage systems improvement and organizational culture change, the QIO will work with identified participants (including both PPS and Critical Access Hospitals (CAHs)) to engage senior hospital leadership in the use of Computerized Physician Order Entry (CPOE), barcoding, and/or telehealth systems.

Task 1c2: Critical Access Hospital/Rural PPS Hospital

The QIO must promote transformational change in CAHs and rural PPS hospitals by working on clinical performance quality measures and organizational safety culture relevant to the care provided in these hospitals. For purposes of Task 1c2, a rural PPS hospital is defined as a PPS hospital located in a non-Metropolitan Statistical Area (non-MSA) county. The QIO must assist identified participant CAHs/rural PPS hospitals in assessing their organizational safety culture. The QIO must also assist these hospitals in selecting, testing, and implementing changes that will demonstrate improvement in the organization's safety culture.

Task 1d1: Physician Practice

The QIO will work with physician practice sites statewide and with an IPG. With an IPG, the QIO will focus on more reliable delivery of preventive services and effective management of patients with chronic conditions, in particular diabetes and heart disease. Working with their IPG, the QIO will seek to demonstrate improvement in clinical performance measures through the production and effective use of electronic clinical information (ECI) in conjunction with redesign of patient care processes within the physician practice sites.

In addition to executing the work described for Task 1d1, the QIO will work with other organizations and agencies that have similar goals. The QIO must be actively involved with or promote the convening of local multi-stakeholder organizations that seek to promote the production and use of electronic clinical information and healthcare information exchange necessary for improving clinical performance. The QIO may work with these organizations to:

- Provide information on products, functionality, value, and costs of ECI systems;
- Promote production and use of ECI;
- Promote ECI sharing in accordance with the Health Insurance Portability and Accountability Act standards (including the Privacy and Security Rules) and QIO confidentiality requirements, as applicable; and
- Promote improved healthcare through use of and reporting of performance on the clinical quality measures specified for this Task.

The QIO must work with physician practice sites and others to improve care for Medicare beneficiaries on a statewide basis. The QIO must support quality initiatives including the Physician Voluntary Reporting Program (PVRP) by activities that include providing information to physicians on participation in the initiative and on physician performance and improvement for those that report.

The QIO must promote statewide quality improvement by working with public health, provider groups, and other broad-based agencies to support the use of appropriate preventive and disease-based care processes.

Medicare Advantage

The Project Officer will evaluate performance based on the assistance provided to Medicare Advantage Organizations. The Medicare Advantage part of Task 1d1 will be waived for States/jurisdictions that had low MA enrollment among the eligible Medicare beneficiaries during calendar year 2004. Clinical Performance Measurement and Reporting:

The objective of this element is to encourage physician practice sites to submit data on the DOQ clinical measures to the QIO Data Warehouse for all Medicare patients. Practice sites must demonstrate an ability to submit data to the Data Warehouse.

The QIO must collaborate with the Medicare Care Management

Performance Demonstration (section 649 of MMA) contractors by providing them with physician practice information the QIO already has or will collect, acquire, or generate in performing its own QIO tasks, provided the individual practices have requested and agreed to these disclosures. The QIO will be evaluated using the criteria deemed acceptable by CMS as outlined in the QIO's proposal.

Task 1d2:

As part of QIO efforts in the physician practice setting, the QIO must, at the statewide level, work to improve clinical performance measure results for clinical quality indicators in the areas of diabetes, mammography, and adult immunizations for underserved racial/ethnic populations.

With one IPG, the QIO will work to promote systems improvement through DOQ activities with a representative underserved population under Task 1d1. With a Task 1d2-specific IPG, the QIO will work on practice site and practitioner system changes related to Culturally and Linguistically Appropriate Services (CLAS) standards and culturally competent care. For more information on CLAS standards refer to: *http://www.omhrc.gov/templates/browse.aspx?lvl=2&lvlID=15.*

Task 1d2 is composed of core and non-core tasks. The core tasks include satisfactory completion of the CLAS/Cultural Competency IPG at the practice site and practitioner level and the Satisfaction and Knowledge/Perception survey for the relevant respondents. The non-core task is statewide measure improvement. Satisfactory completion of the core tasks will achieve a Full Pass for Task 1d2.

Task 1d3: Physician Practice/Pharmacy: Part D Benefit

As part of QIO efforts in the physician practice setting in this SOW, the QIO must focus on improving safety in the delivery of prescription drugs. Widespread use of e-prescribing with comprehensive decision support tools is expected to improve the quality of prescription drug delivery. Until this broader use is in place, the QIO must implement quality improvement projects focusing on improved prescribing, using evidence-based guidelines.

Over the course of the 8th SOW contract, we will work with the QIO to develop and implement new methods to gather and disseminate better evidence for healthcare decision-making. This activity will include collection, linkage, and de-identification of Part D and other public and private administrative data; assisting in implementation of clinical registries and practical clinical trials; and other work necessary to support the development and use of better evidence for decisions.

A variety of methods are available to accomplish these activities. We support engaging physicians because improving prescribing begins with modifying physicians' behavior. This can be accomplished by providing data and information in ways that support behavior change. We also support working with dispensing pharmacists because they detect errors and problems with the medications they dispense, and they interact with beneficiaries. Pharmacy policies, procedures, and quality checks need to be implemented to be consistent with quality, safety, and cost-effectiveness goals.

By partnering with prescription drug plans (PDPs) and using the drug data available, the QIO can affect prescribing by physicians and improve delivery of services at the pharmacy level. Medicare Advantage PDPs will have similar goals as fee-for-service (FFS) Medicare PDPs and will have both more information and more direct control than FFS Medicare PDPs over the care that Medicare beneficiaries receive.

With the enactment of MMA, we are committed to providing a robust drug benefit to seniors, implementing responsible cost management provisions, as well as monitoring and improving drug therapies using current evidence-based guidelines. As authorized by section 109(b) of MMA, the QIO must offer quality improvement assistance pertaining to prescription drug therapy to the following:

- All Medicare providers and practitioners;
- Medicare Advantage organizations offering Medicare Advantage plans under Part C; and
- Organizations offering Prescription Drug Plans (PDPs) under Part D.

The Part D benefit was implemented January 1, 2006. The QIOs began to implement quality improvement projects starting August 2006. Before August 2006, we identified the set of quality measures for Task 1d3 which were derived from evidence-based guidelines and developed in collaboration with participating PDPs, physician societies, and other national leaders. The QIO will be held accountable for work with identified participants on clinical performance measure results.

Because of the relatively new nature of the work, the evaluation of this task is more process and customer satisfaction oriented than other tasks in the contract. The QIO earns a conditional pass if it designs and completes, to CMS satisfaction, a quality improvement project designed to improve care with its stakeholders. The QIO will receive a full pass if, in addition to completing the project, 80 percent of its surveyed project partners report that they are satisfied with their work with the QIO. The QIO will earn an excellent pass if, in addition to the above two criteria, the project achieves improvement in the measures targeted by its project.

Task 2: (Reserved)

Task 3a: Beneficiary Protection

This task involves all case review activities, including mediation, that are necessary to conduct statutorily mandated review of beneficiary complaints about the quality of health care services. It also involves all activities associated with other required case reviews, including Emergency Medical Treatment and Active Labor Act (EMTALA) reviews, beneficiary appeals of discharge, and fiscal intermediary referrals. All case review activities must be conducted in accordance with our instructions. Additional required activities under this Task are physician acknowledgment monitoring; inter-rater reliability (IRR) assessment; procedures based on the result of a review or analysis of review data; development of an Annual Report; and maintenance of a Medicare Helpline.

Task 3b: Hospital Payment Monitoring Program

In the 8th SOW contract, we directed the QIOs to continue the Hospital Payment Monitoring Program (HPMP). The purpose of HPMP is to measure, monitor, and reduce the incidence of improper fee-for-service inpatient payments, including errors in: DRG coding; provision of medically necessary services; and appropriateness of setting, billing, and prepayment denial.

The basis for HPMP is statutory and regulatory. Section 1154 of the Act statutorily mandates utilization review of professional activities subject to the requirements of subsection (d). In accordance with 42 CFR 412.508(a), QIO review must include long-term acute care services. For FFS inpatient hospital claims (paid and denied), HPMP fulfills our requirement to comply with the Improper Payment Information Act of 2002 (Pub. L. 107–300).

The QIO will be judged successful if, at remeasurement, the absolute (gross total of under- and overpayments) and net (difference between over- and underpayments) payment error rates are

no greater than 1.5 standard errors above the respective absolute and net baseline payment error rate.

The QIOs will also be judged in terms of timeliness of reviews. Monitoring activities must be summarized for payment error rates and hospital admission, coding, and billing patterns for short-term acute care inpatient FFS reimbursements in the QIO's State/jurisdiction including hospital profiling and trend monitoring. The QIO must submit its summary electronically to the Project Officer via a designated database as directed by CMS. Whether demonstrations of reductions in dollars or percent dollars paid in error and whether substantive knowledge are gained in the project will be determined by the Task 3b GTL and the QIO's Project Officer.

Task 4: Special Studies and Projects

A Special Project is defined as work that we direct a QIO to perform or work that a QIO elects to perform with our approval that is not defined under Tasks 1–3 of the contract. The Special Project work must fall within the scope of the contract and of section 1154 of the Act. The Special Project must be conducted in accordance with contract sections B.4, Task 4 Special Projects; G.18, Procedures for Special Projects; and H.12, CMS-Directed Subcontracts/Special Project Lead QIOs. The term ''Special Project'' is a more accurate term for the type of activities and requirements characteristically implemented under Task 4. Other terms, previously commonly used, for activities under this task include ''special study'', ''special study project'', and ''special work.''

All Special Projects awarded/approved under Task 4 will be evaluated individually. The QIO's success or failure on a Special Project will not be factored into the evaluation of the QIO's work under Tasks 1–3 of the contract, except for projects funded to meet the requirements of Task 3b: Hospital Payment Monitoring Program. The assessment of performance on all other special projects under Task 4 will affect the QIO's eligibility to receive funding for additional special projects under the current or subsequent QIO contracts, but will not affect eligibility for non-competitive renewal of the QIO contract. Although individual projects may include additional project-specific assessment criteria and performance measures, every project awarded/approved under Task 4 is subject to evaluation on at least the following dimensions of performance, which apply to any and all projects awarded/approved under Task 4:

- Completion of specific tasks (deliverables) required in the special project.
- Financials.
- Appropriateness of QIO staffing for this special project including number of staff as well as skill sets of staff.
- Performance in meeting the needs of QIOs, other Quality Improvement Organization Support Centers, GTLs, etc., and the quality of activities to improve performance.
- Participation in other improvement activities.
- Efforts to address issues/barriers identified.

Performance assessment for each project will be conducted jointly by the QIO's regularly assigned CMS Project Officer and the specific Special Project GTL (SPGTL).

Authority: Section 1153 of the Social Security Act (42 U.S.C. 1320c–2) (Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: March 8, 2007.

Leslie Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Editorial Note: The Office of the Federal Register received this document on August 2, 2007.

[FR Doc. E7–15342 Filed 8–6–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a New System of Records

AGENCY: Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a New System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system titled, ''Healthcare Common Procedure Coding System (HCPCS) Level II, System No. 09–70–0576.'' In October 2003, the Secretary of HHS delegated authority under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to CMS to maintain and distribute HCPCS Level II Codes. Level II of the HCPCS is a standardized coding system that is used primarily to identify products and services not included in the HCPCS Level I Current Procedural Terminology (CPT) codes, such as: Injectable drugs administered in a physician office; durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) when used outside a physician's office; and ambulance services. HCPCS Level II codes were established to identify these products on insurance claims. There are about 4000 HCPCS Level II codes available for assignment by insurers in accordance with their policies.

The primary purpose of this system is to facilitate the management and maintenance of the HCPCS Level II code set. Information in this system will also be used to: (1) Support regulatory and policy functions performed within the Agency or by a contractor, consultant, or grantee; (2) assist another Federal or state agency; (3) support litigation involving the Agency related to this system; and (4) combat fraud, waste, and abuse in certain health benefits programs. We have provided background information about the proposed system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that the ''routine use'' portion of the system be published for comment, CMS invites comments on all portions of this notice. See *Effective Dates* section for comment period.

DATES: *Effective Dates:* CMS filed a new SOR report with the Chair of the House Committee on Oversight and Government Reform, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on August 1, 2007. To ensure that all parties have adequate time in which to comment, the new system will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and the Congress, whichever is later. We may defer implementation of this system or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, CMS, Mail Stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Trish Brooks, Division of Home Health, Hospice, and HCPCS, Chronic Care

Policy Group, Center for Medicare Management, CMS, Mail Stop C5–09–16, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Her telephone number is 410–786–4561, or email at *Trish.Brooks@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: Each year, in the United States, health care insurers process over 5 billion claims for payment. For Medicare and other health insurance programs to ensure that these claims are processed in an orderly and consistent manner, standardized coding systems are essential. The HCPCS Level II Code Set is one of the standard code sets adopted under the HIPAA, used for this purpose.

The HCPCS Level II coding system is a comprehensive and standardized system that classifies similar products that are medical in nature into categories for the purpose of efficient claims processing. For each alphanumeric HCPCS code, there is descriptive terminology that identifies a category of like items. These codes are used primarily for billing purposes. For example, suppliers use HCPCS Level II codes to identify items on claim forms that are being billed to a private or public health insurer.

HCPCS is a system for identifying items and services. While these codes are used for billing purposes, decisions regarding the addition, deletion, or revision of HCPCS codes are made independent of the process for making determinations regarding coverage and payment. Currently, there are national HCPCS codes representing approximately 4,000 separate categories of like items or services that encompass millions of products from different manufacturers. When submitting claims, suppliers are required to use one of these codes to identify the items they are billing. The descriptor that is assigned to a code represents a category of similar items.

Anyone can submit a request for modifications to the HCPCS Level II National Code Set and/or provide comments regarding pending requests. The HCPCS coding review process is an ongoing continuous process; requests and other correspondence may be submitted at any time throughout the year. However, for a consideration of coding action with an effective date of January 1, a completed application must be received by January 3rd, or the first business day of the year prior. Applications received after January 3rd will be considered in the subsequent cycle.

I. Description of the Proposed System of Records

A. Statutory and Regulatory Basis for the System

Authority for this system is given under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104–191, its implementing regulation on ''Code Sets'' (45 Code of Federal Regulations Part 162, Subpart J) and 65 **Federal Register** 50312 (8–17–00).

B. Collection and Maintenance of Data in the System

Information is collected for this system on individuals who voluntarily submit information regarding any modification and/or applications to modify the HCPCS Level II Code Set. Information collected for this system will include, but is not limited to, applicant name, company name, product's generic or trade name, company mailing address, email address, telephone number, and fax number.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release HCPCS information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of management of HCPCS. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., to facilitate the management and maintenance of the HCPCS Level II code set.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To Agency contractors, consultants, or grantees who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS functions relating to purposes for this system.

CMS occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant, or grantee whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant, or grantee from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information at the completion of the contract.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require HCPCS information in order to ensure that claims are processed in an orderly and consistent manner.

3. To the Department of Justice (DOJ), court or adjudicatory body when

a. The Agency or any component thereof; or

b. Any employee of the Agency in his or her official capacity; or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

4. To a CMS contractor (including, but not necessarily limited to Medicare administrative contractors, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual relationship or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud, waste, and abuse.

CMS occasionally contracts out certain of its functions and makes grants when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

5. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

Other agencies may require HCPCS information for the purpose of combating fraud, waste and abuse in such Federally-funded programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, Subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164.512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the specified population is so small that an individual could, because of the small size, use this information to deduce the identity of the applicant).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, the Federal Records Act of 1950, as amended, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook, CMS Information Security Handbook, and the National Archives and Records Administration's General Record Schedules and CMS' Records Schedules.

V. Effects of the Proposed System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of applicants whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject

individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Date: July 30, 2007.

Charlene Frizzera,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO.: 09–70–0576.

SYSTEM NAME:

''Healthcare Common Procedure Coding System (HCPCS) Level II''.

SECURITY CLASSIFICATION:

Level 3 Privacy Act Sensitive.

SYSTEM LOCATION:

Centers for Medicare & Medicaid Services (CMS), 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information is collected for this system on individuals who voluntarily submit information regarding any modification and/or applications to modify the HCPCS Level II Code Set.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information collected for this system will include, but is not limited to, applicant name, company name, product's generic or trade name, company mailing address, e-mail address, telephone number, and fax number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system is given under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104–191, its implementing regulation on ''Code Sets'' (45 Code of Federal Regulations part 162, Subpart J) and 65 **Federal Register** 50312 (8–17–00).

PURPOSE (S) OF THE SYSTEM:

The primary purpose of this system is to facilitate the management and maintenance of the HCPCS Level II code set. Information in this system will also be used to: (1) Support regulatory and policy functions performed within the Agency or by a contractor, consultant, or grantee; (2) assist another Federal or state agency; (3) support litigation involving the Agency related to this system; and (4) combat fraud, waste, and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To Agency contractor, consultant, or grantee who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3. To the Department of Justice (DOJ), court or adjudicatory body when

a. The Agency or any component thereof; or

b. Any employee of the Agency in his or her official capacity; or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

4. To a CMS contractor (including, but not necessarily limited to Medicare administrative contractors, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such program.

5. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, Subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164.512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the specified population is so small that an individual could, because of the small size, use this information to deduce the identity of the applicant).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on electronic and hard copy media.

RETRIEVABILITY:

Information can be retrieved by applicant name, e-mail address, manufacturer name, product name, generic name, or code assigned.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational

and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, the Federal Records Act of 1950, as amended, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook, CMS Information Security Handbook, and the National Archives and Records Administration's General Record Schedules and CMS' Records Schedules.

RETENTION AND DISPOSAL:

CMS will retain information for a total period of 15 years. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

SYSTEM MANAGER AND ADDRESS:

Director, Chronic Care Policy Group, Centers for Medicare Management, CMS, Mail Stop C5–09–16, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, and for verification purposes, the subject individual's name (woman's maiden name, if applicable).

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system include data collected from HCPCS applications, submitted by the individuals who voluntarily apply for HCPCS Level II Code modifications.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E7–15250 Filed 8–6–07; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006P–0462]

Determination That PREVACID NAPRAPAC (Copackaged Lansoprazole Delayed-Release 15–Milligram Capsules and Naproxen 250–Milligram Tablets) Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that PREVACID NAPRAPAC 250 (copackaged lansoprazole delayed-release 15-milligram (mg) capsules and naproxen 250-mg tablets) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for copackaged lansoprazole delayed-release 15-mg capsules and naproxen 250-mg tablets.

FOR FURTHER INFORMATION CONTACT: Marguerita B. Sims, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

PREVACID NAPRAPAC 250 is the subject of NDA 21–507 held by Tap Pharmaceuticals, Inc. (TAP). PREVACID NAPRAPAC 250 is a copackaged drug product that contains Prevacid (lansoperazole) 15-mg delayed-release capsules (a proton-pump inhibitor) and Naprosyn (naproxen) 250-mg tablets (a nonsteroidal anti-inflammatory drug product (NSAID) with analgesic and antipyretic properties). PREVACID NAPRAPAC 250 is indicated for reducing the risk of NSAID-associated gastric ulcers in patients with a history of documented gastric ulcer(s) who require the use of an NSAID for treatment of the signs and symptoms of rheumatoid arthritis, osteoarthritis, and/or ankylosing spondylitis. TAP's PREVACID NAPRAPAC 250 was discontinued in October 2006.

In a citizen petition received on November 13, 2006 (Docket No. 2006P–0462/CP1), submitted under 21 CFR 10.30 and in accordance with § 314.161, Robert W. Pollock of Lachman

Consultant Services, Inc., requested that FDA determine whether PREVACID NAPRAPAC 250 was withdrawn from sale for reasons of safety or effectiveness.

For the reasons outlined previously, FDA has determined that TAP's PREVACID NAPRAPAC 250 was not withdrawn from sale for reasons of safety or effectiveness. In support of this finding, the agency notes that a higher strength of PREVACID NAPRAPAC 250 [PREVACID NAPRAPAC 500 (15 mg/500 mg)] is currently being marketed. In addition, the petitioner identified no data or information suggesting that PREVACID NAPRAPAC 250 was withdrawn from sale for reasons of safety or effectiveness. FDA's independent evaluation of relevant literature and data has not uncovered anything that would indicate that this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing agency records concerning the withdrawal, FDA found no indication that the decision not to commercially market PREVACID NAPRAPAC 250 was a result of any safety or effectiveness concerns regarding the product. Accordingly, the agency will continue to list PREVACID NAPRAPAC 250 in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to PREVACID NAPRAPAC 250 may be approved by the agency as long as they meet all relevant legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the agency will advise ANDA applicants to submit such labeling.

Dated: July 30, 2007.

Randall W. Lutter

Deputy Commissioner for Policy.

[FR Doc. E7–15233 Filed 8–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006P–0125]

Determination That DEXEDRINE (Dextroamphetamine Sulfate) Oral Solution, 5 Milligrams per 5 Milliliters, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that DEXEDRINE (dextroamphetamine sulfate) oral solution, 5 milligrams (mg) per 5 milliliters (mL), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for dextroamphetamine sulfate oral solution, 5 mg/5 mL.

FOR FURTHER INFORMATION CONTACT: Nikki Mueller, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

DEXEDRINE (dextroamphetamine sulfate) oral solution, 5 mg/5 mL, is the subject of approved ANDA 83–902 held by GlaxoSmithKline (GSK). DEXEDRINE (dextroamphetamine sulfate) oral solution is indicated for the treatment of attention deficit hyperactivity disorder (ADHD). GSK's ANDA 83–902 was originally approved in 1976 and was discontinued in 1988. Lachman Consultant Services, Inc., submitted a citizen petition dated March 17, 2006 (Docket No. 2006P–0125/CP1), under 21 CFR 10.30, requesting that the agency determine, as described in § 314.161, whether DEXEDRINE (dextroamphetamine sulfate) oral solution, 5 mg/5 mL, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing agency records, FDA has determined that GSK's DEXEDRINE (dextroamphetamine sulfate) oral solution, 5 mg/5 mL, was not withdrawn from sale for reasons of safety or effectiveness. In support of this finding, we note that DEXEDRINE (dextroamphetamine sulfate) is available in an extended release capsule form and is a widely used product that has been marketed for many decades in many dosage forms. Neither the petition nor any comment to the petition identified evidence suggesting that DEXEDRINE (dextroamphetamine sulfate) oral solution, 5 mg/5 mL, was withdrawn from sale for reasons of safety or effectiveness. FDA has independently evaluated relevant literature and data for adverse event reports and has found no information that would indicate that DEXEDRINE (dextroamphetamine sulfate) oral solution, 5 mg/5 mL, was withdrawn for reasons of safety or effectiveness.

For the reasons outlined in this document, FDA determines that GSK's DEXEDRINE (dextroamphetamine sulfate) oral solution, 5 mg/5 mL, was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list DEXEDRINE (dextroamphetamine sulfate) oral

solution, 5 mg/5 mL, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to DEXEDRINE (dextroamphetamine sulfate) oral solution, 5 mg/5 mL, may be approved by the agency as long as they meet all relevant legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the agency will advise ANDA applicants to submit such labeling.

Dated: July 30, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–15236 Filed 8–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Summaries of Medical and Clinical Pharmacology Reviews of Pediatric Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of summaries of medical and clinical pharmacology reviews of pediatric studies submitted in supplements for ACTIQ (fentanyl), ALDARA (imiquimod), AMBIEN (zolpidem), COREG (carvedilol), PROVIGIL (modafinil), and ZYPREXA (olanzapine). These summaries are being made available consistent with the Best Pharmaceuticals for Children Act (the BPCA). For all pediatric supplements submitted under the BPCA, the BPCA requires FDA to make available to the public a summary of the medical and clinical pharmacology reviews of the pediatric studies conducted for the supplement.

ADDRESSES: Submit written requests for single copies of the summaries to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Please specify by product name which summary or summaries you are requesting. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries.

FOR FURTHER INFORMATION CONTACT: Grace Carmouze, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6460, Silver Spring, MD 20993–0002, 301–796–0700, e-mail: *grace.carmouze@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of summaries of medical and clinical pharmacology reviews of pediatric studies conducted for ACTIQ (fentanyl), ALDARA (imiquimod), AMBIEN (zolpidem), COREG (carvedilol), PROVIGIL (modafinil), and ZYPREXA (olanzapine). The summaries are being made available consistent with section 9 of the BPCA (Public Law 107–109). Enacted on January 4, 2002, the BPCA reauthorizes, with certain important changes, the pediatric exclusivity program described in section 505A of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355a). Section 505A of the act permits certain applications to obtain 6 months of marketing exclusivity if, in accordance with the requirements of the statute, the sponsor submits requested information relating to the use of the drug in the pediatric population.

One of the provisions the BPCA added to the pediatric exclusivity program pertains to the dissemination of pediatric information. Specifically, for all pediatric supplements submitted under the BPCA, the BPCA requires FDA to make available to the public a summary of the medical and clinical pharmacology reviews of pediatric studies conducted for the supplement (21 U.S.C. 355a(m)(1)). The summaries are to be made available not later than 180 days after the report on the pediatric study is submitted to FDA (21 U.S.C. 355a(m)(1)). Consistent with this provision of the BPCA, FDA has posted on the Internet at *http://www.fda.gov/cder/pediatric/index.htm* summaries of medical and clinical pharmacology reviews of pediatric studies submitted in supplements for ACTIQ (fentanyl), ALDARA (imiquimod), AMBIEN (zolpidem), COREG (carvedilol), PROVIGIL (modafinil), and ZYPREXA (olanzapine). Copies are also available by mail (see **ADDRESSES**).

II. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/pediatric/index.htm*.

Dated: July 30, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–15234 Filed 8–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Poison Control Center Stabilization and Enhancement Grant Programs

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Response to solicitation of comments.

SUMMARY: A notice was published in the **Federal Register** (FR) on February 13, 2007, (Vol. 72, p. 6738–6739), describing HRSA's proposal to institute an exception to the Department of Health and Human Services' policy directive governing indirect cost recovery. The notice requested public comments on the proposed exception to Departmental policy requirements to be sent to HRSA no later than March 15, 2007.

Three comments were received, one from a Poison Control Center (PCC) host institution (grant recipient) and two from individual PCCs. Two of the three commenters supported HRSA's plan to institute an exception from the grants policy directive, which would permanently limit indirect cost recovery to 10 percent for the Poison Control Center Stabilization and Enhancement Grant Programs.

Issue: Institution of a 10 Percent Limit on the Indirect Cost

Comments: Two of the three commenters fully supported HRSA's proposal to permanently limit indirect cost recovery rates to 10 percent for this program. One commenter raised concern that the limitation would impose greater burdens on the host institution by shifting the unrecovered administrative costs to the host institution. In response, we replied that the 10 percent limitation had been in effect since the institution of the award program.

Agency Response: As noted in the referenced **Federal Register** Notice, since 2001, the HRSA Poison Control Program has limited indirect costs to 10 percent of the allowable total direct costs for grantees with negotiated rate agreements. This limitation on indirect costs was requested annually because many PCCs are housed within universities and hospitals (the official

grantees) which have established indirect cost rates in the range of 30 to 50 percent. Without a limitation on indirect cost rates, the objectives of the grant programs would not be met for the following reason:

The average amount of these grant awards has been approximately $200,000, with some amounts as low as $30,000. Depending upon the host institution's indirect cost rate, as much as 50 percent of the grant award could be consumed by the institution's indirect costs, thus significantly reducing the amount of funds available to initiate and maintain the activities of the grant.

Given the adverse impact on grant activities for this program if full indirect cost recovery were permitted, and that comments received were generally favorable to HRSA's proposal, HRSA is instituting the 10 percent limitation for the Poison Control Center Stabilization and Enhancement Grant Programs.

FOR FURTHER INFORMATION CONTACT: Maxine Jones at *mjones@hrsa.gov.,* Health Resources and Services Administration, Healthcare Systems Bureau, Poison Control Program.

Dated: July 30, 2007.

Elizabeth M. Duke,

Administrator.

[FR Doc. E7–15352 Filed 8–6–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (''the Program''), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at Section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on January 1, 2007, through March 31, 2007.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Division of Vaccine Injury Compensation Program, Healthcare Systems Bureau, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Stacey Heinzelman, Milwaukee, Wisconsin, Court of Federal Claims Number 07–0001V.

2. Wilma Fagio, Monroe, North Carolina, Court of Federal Claims Number 07–0005V.

3. Norma and Douglas Rosenberg on behalf of Kevin Rosenberg, Lake Success, New York, Court of Federal Claims Number 07–0009V.

4. Annie Bell, Greensboro, North Carolina, Court of Federal Claims Number 07–0011V.

5. Anthony Nevels, Aurora, Illinois, Court of Federal Claims Number 07–0019V.

6. Louise Schmidt, Cherry Hill, New Jersey, Court of Federal Claims Number 07–0020V.

7. Shemeka Ramsey on behalf of Demarius Jamar Ramsey, Deceased, Columbia, South Carolina, Court of Federal Claims Number 07–0021V.

8. Sybil and Brent Morgan on behalf of Spencer Morgan, Bedford, Texas, Court of Federal Claims Number 07–0022V.

9. Jennifer and Eric Claasen on behalf of Ryan Claasen, Boise, Idaho, Court of Federal Claims Number 07–0023V.

10. Beverly Chaney on behalf of Payne Chaney, Boston, Massachusetts, Court of Federal Claims Number 07–0024V.

11. Shawn and Scott Valentine on behalf of Christian Valentine, Independence, Missouri, Court of Federal Claims Number 07–0025V.

12. Andrew Laurie, Tucson, Arizona, Court of Federal Claims Number 07–0026V.

13. Jean Lydon, Waukon, Iowa, Court of Federal Claims Number 07–0030V.

14. Chelsie Kramer, Atwood, Kansas, Court of Federal Claims Number 07–0033V.

15. Kendra Solko, Atwood, Kansas, Court of Federal Claims Number 07–0034V.

16. Beverly and Keith Langland on behalf of Mackenzie Grace Langland, Ponte Vedra Beach, Florida, Court of Federal Claims Number 07–0036V.

17. William Rodriguez, Tampa, Florida, Court of Federal Claims Number 07–0038V.

18. Samantha and James Mannion on behalf of James Mannion, Great Neck, New York, Court of Federal Claims Number 07–0039V.

19. Amy and Stewart McIntyre on behalf of Craigmiles McIntyre, Hannibal, Missouri, Court of Federal Claims Number 07–0040V.

20. Laurel Austin-Lemon on behalf of Jeremy Austin, Shawnee Mission, Kansas, Court of Federal Claims Number 07–0041V.

21. Josette and Nicholas Johnson on behalf of Jordan Johnson, Great Neck, New York, Court of Federal Claims Number 07–0042V.

22. Crystal and Kevin Worley on behalf of Sasha Worley, Great Neck, New York, Court of Federal Claims Number 07–0043V.

23. Wendy Diamond on behalf of Dalton Diamond, Great Neck, New York, Court of Federal Claims Number 07–0044V.

24. Cara and Korey King on behalf of Alex King, Great Neck, New York, Court of Federal Claims Number 07–0045V.

25. Diane and Andrew Davis on behalf of Jessica Davis, Great Neck, New York, Court of Federal Claims Number 07–0046V.

26. Lourdes Reantillo and Alfred Belmont on behalf of Christopher Belmonte, Great Neck, New York, Court of Federal Claims Number 07–0048V.

27. Diane and Andrew Davis on behalf of Luke Davis, Great Neck, New York, Court of Federal Claims Number 07–0049V.

28. Pamela and Michael Szal on behalf of Andrea Szal, Great Neck, New York, Court of Federal Claims Number 07–0050V.

29. Stacie and Kevin Babula on behalf of Brielle Babula, Great Neck, New York, Court of Federal Claims Number 07–0051V.

30. Kathy Meeks Sharp and Greg Sharp on behalf of Raigan Mae Sharp, Jacksonville Beach, Florida, Court of Federal Claims Number 07–0052V.

31. Suzanne and Stephen Sykes on behalf of Brandon Sykes, Cape May Courthouse, New Jersey, Court of Federal Claims Number 07–0053V.

32. Kavitha Raghunathan and Balaji Bashyam on behalf of Hridhay Bashyam, Foster City, California, Court of Federal Claims Number 07–0057V.

33. Elizabeth and Adam Sucher on behalf of Evelyn Sucher, Boston, Massachusetts, Court of Federal Claims Number 07–0058V.

34. Lilia and Jed Snyder on behalf of Nicholas Snyder, Las Vegas, Nevada, Court of Federal Claims Number 07–0059V.

35. Frank Harris on behalf of Jordan Harris, Boston, Massachusetts, Court of Federal Claims Number 07–0060V.

36. Bonnie Dauterman on behalf of John Thomas Dauterman, Winchester, Oregon, Court of Federal Claims Number 07–0061V.

37. Danell and Robert Drew Rice on behalf of Hayden Charles Rice, New Orleans, Louisiana, Court of Federal Claims Number 07–0063V.

38. Doug Kuhl, St. Louis, Missouri, Court of Federal Claims Number 07–0064V.

39. Stacey Ronzetti and Mark St. Amour on behalf of Zachary Ethan Ronzetti St. Amour, Alpharetta, Georgia, Court of Federal Claims Number 07–0066V.

40. Kristen and Michael Jackson on behalf of Cameron Jackson, Somers Point, New Jersey, Court of Federal Claims Number 07–0068V.

41. Pamela and Gabriel Karathomas on behalf of Stephen Karathomas, Rexford, New York, Court of Federal Claims Number 07–0069V.

42. Paula and Adam Ramirez on behalf of Simone Ramirez, La Palma, California, Court of Federal Claims Number 07–0070V.

43. Julie and Christopher Neumann on behalf of Maximilian Neumann, Granada Hills, California, Court of Federal Claims Number 07–0071V.

44. Stephany Dixon, Louisville, Kentucky, Court of Federal Claims Number 07–0072V.

45. Rosiette Jules and Geffrard Charles on behalf of Kelsey Charles, Fort Lauderdale, Florida, Court of Federal Claims Number 07–0075V.

46. Latrisha Rumensky, Salem, Virginia, Court of Federal Claims Number 07–0077V.

47. Elaine and Ross Kronenthal on behalf of Steven Kronenthal, Somers Point, New Jersey, Court of Federal Claims Number 07–0079V.

48. Shannon Celeste Huffman on behalf of Austin Taylor Huffman, Harrisonburg, Virginia, Court of Federal Claims Number 07–0081V.

49. Leann Campbell on behalf of David Campbell, Indio, California, Court of Federal Claims Number 07–0083V.

50. Laura Foster on behalf of Dorrie Foster, Phoenix, Arizona, Court of Federal Claims Number 07–0086V.

51. Crystal and Nicholas Cianci on behalf of William Cianci, Griswold, Connecticut, Court of Federal Claims Number 07–0087V.

52. Allene Mikolyski on behalf of Joy Mikolyski, North Hollywood, California, Court of Federal Claims Number 07–0088V.

53. Kelly and Andrew Reed-Brozyna on behalf of Ashley Brozyna, Portland, Oregon, Court of Federal Claims Number 07–0089V.

54. Furman Edwards, San Diego, California, Court of Federal Claims Number 07–0091V.

55. Talta Kern, Des Moines, Iowa. Court of Federal Claims Number 07–0092V.

56. Alice Wachol on behalf of Nicholas Wachol, Bloomfield, Michigan, Court of Federal Claims Number 07–0093V.

57. Sonia Kazangian on behalf of Andrew Kazangian, Glendale, Arizona, Court of Federal Claims Number 07–0094V.

58. Mandy Ramos on behalf of Eddy Ramos, Naples, Florida, Court of Federal Claims Number 07–0096V.

59. Mary and Robert Goldsberry on behalf of Evelyn Goldsberry, Salt Lake City, Utah, Court of Federal Claims Number 07–0098V.

60. Anita and Kenny Davis on behalf of Ethan Davis, New Albany, Mississippi, Court of Federal Claims Number 07–0101V.

61. Dawn and Housam Moursi on behalf of Jacob Moursi, Varico, Florida, Court of Federal Claims Number 07–0102V.

62. Brenda Nosek, Prescott, Arizona, Court of Federal Claims Number 07–0103V.

63. Patricia and Alex Gatsacos on behalf of Constantine Gatsacos, Chicago, Illinois, Court of Federal Claims Number 07–0105V.

64. Tracy Cook, La Grande, Oregon, Court of Federal Claims Number 07–0106V.

65. Irene Prempeh on behalf of Duke Darkwah, Newark, New Jersey, Court of Federal Claims Number 07–0108V.

66. Kelly Butland on behalf of Lenzie Butland, Montgomery, Alabama, Court of Federal Claims Number 07–0111V.

67. Nur and John David Duncan on behalf of Baris John Duncan, Lake Success, New York, Court of Federal Claims Number 07–0117V.

68. Carrie Elsass on behalf of Jordan Elsass, Conway, Arkansas, Court of Federal Claims Number 07–0119V.

69. Kevin Orlando, Sarasota, Florida, Court of Federal Claims Number 07–0121V.

70. Louis Sampt, Riverview, Michigan, Court of Federal Claims Number 07–0122V.

71. Nadia and Ronald Jacops on behalf of Clint Carson Jacops, Youngstown, Ohio, Court of Federal Claims Number 07–0129V.

72. Jerome Anhalt, Munster, Indiana, Court of Federal Claims Number 07–0131V.

73. Cheryl Matthews on behalf of Brendan Conkey, Dearborn, Michigan, Court of Federal Claims Number 07–0132V.

74. Linda Provencher on behalf of Dylan Provencher, Van Nuys, California, Court of Federal Claims Number 07–0133V.

75. Steven Zwick, Laguna Hills, California, Court of Federal Claims Number 07–0135V.

76. Gerard Abate, Williamsburg, Virginia, Court of Federal Claims Number 07–0136V.

77. Peter Broekelschen, M.D. on behalf of Peter Broekelschen, Newport Beach, California, Court of Federal Claims Number 07–0137V.

78. Jennifer Johnson on behalf of Alexander Johnson, Deceased, Orlando, Florida, Court of Federal Claims Number 07–0138V.

79. Debra and Jeffrey Mason on behalf of Justin Mason, Waldorf, Maryland, Court of Federal Claims Number 07–0152V.

80. Barbara Turner Roderick, Redwood City, California, Court of Federal Claims Number 07–0158V.

81. Gail Katz, West Covina, California, Court of Federal Claims Number 07–0159V.

82. Patricia Boyer on behalf of Richard Carl Swonger, Los Angeles, California, Court of Federal Claims Number 07–0161V.

83. Lynne Sanchez on behalf of David Sanchez, Minneapolis, Minnesota, Court of Federal Claims Number 07–0168V.

84. Patricia Walker on behalf of Robert Walker, Temecula, California, Court of Federal Claims Number 07–0169V.

85. Scott Hammitt on behalf of Rachel Hammitt, Willoughby Hills, Ohio, Court of Federal Claims Number 07–0170V.

86. Jose Morel on behalf of Omar Morel, Washington, DC, Court of Federal Claims Number 07–0171V.

87. Kimberly Wood, Westmoreland, Pennsylvania, Court of Federal Claims Number 07–0172V.

88. George Daily, Northvale, New Jersey, Court of Federal Claims Number 07–0173V.

89. Megan Vaughan on behalf of Aurora Leigh Husk, Middlebury, Vermont, Court of Federal Claims Number 07–0175V.

90. Cheryl and Greg Berry on behalf of William Joseph Berry, Arlington, Texas, Court of Federal Claims Number 07–0177V.

91. Melissa and Cesar Rodriguez on behalf of Noah Rodriguez, Temecula, California, Court of Federal Claims Number 07–0178V.

92. Carolyn Werley on behalf of Logan Storm, Temecula, California Court of Federal Claims No: 07–0179V.

93. Debra and Jeffrey Mason on behalf of Brian Mason, Waldorf, Maryland, Court of Federal Claims Number 07–0180V.

94. Amie Timonere on behalf of Raechel Morrison, Ashtabula, Ohio, Court of Federal Claims Number 07–0182V.

95. Janice Peterson on behalf of Brian Peterson, Minneapolis, Minnesota, Court of Federal Claims Number 07–0185V.

96. Elizabeth Davis, Dothan, Alabama, Court of Federal Claims Number 07–0193V.

97. George Roland , Benton, Tennessee, Court of Federal Claims Number 07–0198V.

98. Rhonda Wood on behalf of Breckyn Wood, Zebulon, North Carolina, Court of Federal Claims Number 07–0199V.

99. Maxine A. Gleason, Gilbertville, Iowa, Court of Federal Claims Number 07–0202V.

100. Peter Anthony Reale, Mount Pleasant, Michigan, Court of Federal Claims Number 07–0203V

101. Nadia and Ronald Jacops on behalf of Wyatt Evan Jacops, Youngstown, Ohio, Court of Federal Claims Number 07–0207V.

Dated: July 30, 2007.

Elizabeth M. Duke,

Administrator.

[FR Doc. E7–15349 Filed 8–6–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request Application for the Pharmacology Research Associate Program

Summary: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of General Medical Sciences (NIGMS), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 25, 2007, pages 29338–29339, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Application for the Pharmacology Research Associate Program. *Type of Information Collection Request:* Extension of a currently approved collection. *Need and Use of Information Collection:* The Pharmacology Research Associate (PRAT) Program will use the applicant and referee information to award opportunities for training and experience in laboratory or clinical investigation to individuals with a Ph.D. degree in pharmacology or a related science, M.D., or other professional degree through appointments as PRAT Fellows at the National Institutes of Health or the Food and Drug Administration. The goal of the program is to develop leaders in pharmacological research for key positions in academic, industrial, and Federal research laboratories. *Frequency of Response:* Once a year. *Affected Public:* Individuals or households; businesses or other for-profit. *Type of Respondents:* Applicants and referees.

The annual reporting burden is as follows:

Type and number of respondents	Estimated number of responses per respondent	Estimated total responses	Average burden hours per responses	Estimated total annual burden hours requested
Applicants, 25	1	25	8.00	200
Referees, 75	1	75	1.75	131.25

Total Number of Respondents: 100.

T*otal Number of Responses:* 100.

Total Hours: 331.25.

The annualized cost to respondents is estimated at:

Applicants: $10,250.00.

Referees: $6,562.50.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Sally Lee, NIGMS, NIH, Natcher Building, Room 2AN–18H, 45 Center Drive, MSC 6200, Bethesda, MD 20892–6200, or call non-toll-free number 301–594–2755 or e-mail your request, including your address to *LeeS@nigms.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: August 1, 2007.

Sally Lee,

Acting Executive Officer, National Institute of General Medical Sciences, National Institutes of Health.

[FR Doc. E7–15348 Filed 8–6–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; A Process Evaluation of the NIH Director's Pioneer Award (NDPA) Program

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of the Director, the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: A Process Evaluation of the NIH Director's Pioneer Award (NDPA) Program. *Type of Information Collection Request:* Extension of a currently approved collection. *Need and Use of Information Collection:* This study will assess the NDPA Program operations and the outputs of the identification, evaluation and selection process. The primary objectives of the study are to: (1) Assess the NDPA award selection process; (2) determine if the program was implemented as planned; and (3) determine if the process was conducted in accordance with the overall mission of the NDPA program. The findings will provide valuable information concerning: (1) The characteristics of applicants and reviewers; (2) the criteria used to evaluate and select awardees; and (3) aspects of the process that could be revised or improved.

Frequency of Response: Once. *Affected Public:* none. *Type of Respondents:* Applicants, Reviewers and Panelists, Liaisons. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. *Frequency of Response:* Once. *Affected Public:* none. *Type of Respondents:* Applicants, Reviewers and Panelists. *Estimated Number of Respondents:* 710; *Estimated Number of Responses per Respondent:* 1: *Average Burden Hours Per Response:* .25 (15 minutes), and *Estimated Total Annual Burden Hours Requested:* 177.50 and the annualized cost to respondents is estimated at $9,662.50. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. Table l and Table 2 respectively present data concerning the burden hours and cost burdens for this data collection.

TABLE 1.—ANNUALIZED ESTIMATE OF HOUR BURDEN

Type of respondents	Number of respondents	Frequency of response	Average time for response (hr)	Total hour burden*
Applicants	600	1	.25	150
Extramural evaluators	110	1	.25	27.50
Total	710	1	.25	177.50

Total Burden = N Respondents * Response Frequency * minutes to complete/60.

TABLE 2.—ANNUALIZED COST TO RESPONDENTS

Type of respondents	Number of respondents	Response frequency	Approx. hourly wage rate	Total respondent cost**
Applicants	1200	1	$55.00	$8,250
Extramural evaluators	220	1	55.00	1,512.50
Total	710	1	55.00	9,662.50

**Total Respondent Cost = N Respondents * Response Frequency * minutes to complete/60 * hourly rate.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact G. Stephane Philogene, PhD, Assistant Director for Policy and Planning, Office of Behavioral and Social Sciences Research, National Institutes of Health, 31 Center Drive. Building 31, Room B2–B37 Bethesda, MD 20892, or call non-toll-free number 301–402–3902, or E-mail your request, including your address to: *philoges@od.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: July 31, 2007.

G. Stephane Philogene,

Assistant Director for Policy and Planning, Office of Behavioral and Social Sciences Research, National Institutes of Health.

[FR Doc. E7–15350 Filed 8–6–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, National Institutes of Health (NIH), announces the establishment of the Interagency Autism Coordinating Committee (Committee).

The Committee shall coordinate all efforts within the Department of Health and Human Services concerning autism spectrum disorder to combat autism through research, screening, intervention and education. The Committee's primary mission is to facilitate the efficient and effective exchange of information on autism activities among the member agencies, and to coordinate autism-related programs and initiatives. The Committee will serve as a forum and assist in increasing public understanding of the member agencies' activities, programs, policies, and research, and in bringing important matters of interest forward for discussion.

Duration of this committee is two years from the date the Charter is filed.

Dated: July 31, 2007.

Elias Zerhouni,

Director, National Institutes of Health.

[FR Doc. 07–3850 Filed 8–6–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood 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 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Weight Control Clinical Trial.

Date: September 14, 2007.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Youngsuk Oh, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, 301–435–0277, *yoh@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 31, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3847 Filed 8–6–07; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available.

Individuals who plan to attend and need special assistance, such as language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: September 19, 2007.

Open: 8:30 a.m. to 12 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference E1/E2, Bethesda, MD 20892.

Closed: 4:15 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference E1/E2, Bethesda, MD 20892.

Open: 4:30 p.m. to 5:30 p.m.

Agenda: Continuation of the Director's Report and other scientific presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference E1/E2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Diabetes, Endocrinology, and Metabolic Diseases Subcommittee.

Date: September 19, 2007.

Closed: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference E1/E2, Bethesda, MD 20892.

Open: 2:30 p.m. to 4 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference E1/E2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases and Nutrition Subcommittee.

Date: September 19, 2007.

Open: 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive, and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 584–8843, *stanfibr@niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic, and Hematologic Diseases Subcommittee.

Date: September 19, 2007.

Open: 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.*, where an agenda and any additional information for the meeting will be posted when available.

(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: July 31, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3848 Filed 8–6–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Host Response to Francisella Tularensis.

Date: August 27, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 4200, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Lynn Rust, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3120, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 402–3938, *lr228v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transportation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 31, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3849 Filed 8–6–07; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: September 7, 2007.

Closed: 8:30 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Open: 11 a.m. to 2:30 p.m.

Agenda: Staff reports on divisional, programmatic and special activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, PhD, Director, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, 301–496–8693, *jordanc@nidcd.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nidcd.nih.gov/about/groups/ndcdac/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: July 31, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3851 Filed 8–6–07; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: September 19–20, 2007.

Closed: September 19, 2007, 5:30 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Open: September 20, 2007, 9 a.m. to 3:30 p.m.

Agenda: Program Reports and Presentations.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Abraham P. Bautista, PhD, Executive Secretary, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 3039, Rockville, MD 20852, 301–443–9737, *bautistaa@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *silk.nih.gov/silk/niaaa1/about/roster.htm,* where an agenda and any additional information for the meeting will be posted when available.

(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: August 1, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3853 Filed 8–6–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

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 meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ALSG Syndrome.

Date: August 17, 2007.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tamizchelvi Thyagarajan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 4016K, MSC 7814, Bethesda, MD 20892, 301–451–1327, *tthyagar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the time limitations imposed by the review and funding cycle.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Psychosocial Risk and Disease Prevention Study Section.

Date: September 27–28, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Martha Faraday, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, 301–435–3575, *faradaym@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Developmental Brain Disorders Study Section.

Date: September 27–28, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20036.

Contact Person: Pat Manos, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *manospa@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: July 31, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3852 Filed 8–6–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–62]

Notice of Proposed Information; Collection: Comment Request; Grant Application Program Specific Logic Model

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* October 9, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4176, Washington, DC 20410; telephone: 202–708–2374 (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian_L._Deitzer@HUD.gov* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Rita Yorkshire, AJT, Office of Departmental Grants Management and Oversight, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone 202–708–0667 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Grant Application Program Specific Logic Model.

OMB Control Number, if applicable: 2535–0114.

Description of the need for the information and proposed use: Applicants of HUD Federal Financial Assistance are required to indicate intended results and impacts. Grant recipients report against their baseline performance standards. This process standardizes grants progress reporting requirements and promotes greater emphasis on performance and results in grant programs.

Agency form numbers, if applicable: HUD 96010 HSIAC, HUD 96010 Housing Counseling, HUD 96010 Early Doctorial Research, HUD 96010 TA, HUD 96010 Fair Housing PEI, HUD 96010 Fair Housing EOI, HUD 96010 ICDBG, HUD 96010 BEDI, HUD 96010 AN/NHIAC, HUD 96010 TCUP, HUD 96010 ROSS Family/Homeownership, HUD 96010 ROSS Elderly Disabled, HUD 96010 ALCP, HUD 96010 Service Coordinators, HUD 96010 SHOP, HUD 96010 RHED, HUD 96010 Lead TS, HUD 96010 HH TS, HUD 96010 Lead Hazard, Lead Reduction Demo and LEAP, HUD 96010 LOP, HUD 96010 HH Demo, HUD 96010 HOPE VI Main Street, HUD 96010 FHIP, HUD 96010 HBCU, HUD 96010 Section 202, HUD 96010 Section 811, HUD 96010 Youthbuild, HUD 96010 COC, HUD 96010 HOPWA, HUD 96010 Combined Lead, HUD 96010 HCVFSS

Members of Affected Public: Individuals, not-for-profit institutions, State, Local or Tribal Government, Business or other for-profit.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	11,000	2.2		4.51		109,175

Total Estimated Burden Hours: 109,175.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Date: August 1, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–15359 Filed 8–6–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Comprehensive Conservation Plan for Medicine Lake National Wildlife Refuge Complex, Sheridan, Roosevelt, Daniels, Wibaux Counties, MT

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the Medicine Lake National Wildlife Refuge Complex (Complex) is available. This draft CCP/EA describes how the Service intends to manage Medicine Lake National Wildlife Refuge (NWR), the Northeast Montana Wetland Management District (WMD), and Lamesteer NWR for the next 15 years.

DATES: We must receive written comments on the draft CCP/EA by September 6, 2007. Submit comments by one of the methods under **ADDRESSES**.

ADDRESSES: Please provide written comments to Laurie Shannon, Planning Team Leader, Division of Refuge Planning, Mountain-Prairie Region, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486, or electronically to *Laurie_Shannon@fws.gov.* A copy of the CCP can be obtained by writing to U.S. Fish and Wildlife Service, Division of Refuge Planning, at the address above; or by download from *http://mountain-prairie.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Laurie Shannon, 303–236–4317 (phone); 303–236–4792 (fax); or *Laurie_Shannon@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The Medicine Lake Complex is located within the highly productive prairie pothole region of the Northern Great Plains, along the western edge of the Missouri Coteau, in Northeastern Montana. It is composed of three individual units—the Medicine Lake NWR, the Northeast Montana WMD, and the Lamesteer NWR. These refuges are managed as one complex, and together they are dispersed across four counties and require management of more than 29,757 hectares (73,532 acres) of Service-owned lands and wetland and/or grassland easements or leases on privately-owned land. Medicine Lake NWR encompasses about 12,761 hectares (31,534 acres) including 4,597 hectares (11,360 acres) of designated wilderness and was established in 1935 as ''* * * a refuge and breeding ground for migratory birds and other wildlife'' (Executive Order 7148, dated August 29, 1935). The Northeast Montana WMD was established in 1968 and consists of Waterfowl Production Areas and wetland and grassland easements. The purpose of these acquired Waterfowl Production Areas and easements is to function as ''waterfowl production areas subject to * * * all of the provisions of the Migratory Bird Conservation Stamp Act * * * except the inviolate sanctuary provisions'' (16 U.S.C. Section 718). Lamesteer NWR, established in 1942 as an easement refuge, was described as ''800 acres in Wibaux County, Montana * * * as refuge and breeding ground for migratory birds and other wildlife'' (Executive Order 9166, dated May 19, 1942).

The refuge complex is home to more than 270 species of birds, 38 species of mammals, and 17 species of reptiles and amphibians. Each unit of the National Wildlife Refuge System (NWRS), including the Medicine Lake Complex, has specific purposes for which it was established and for which legislation was enacted. Those purposes are used to develop and prioritize management goals and objectives within the NWRS mission, and to guide which public uses will occur on these refuges. The planning process is a way for the Service and the public to evaluate management goals and objectives for the best possible conservation efforts of this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the refuges' establishing purposes and the mission of the NWRS.

This draft CCP/EA identifies and evaluates three alternatives for managing the Medicine Lake NWR and Northeast WMD and two alternatives for management of Lamesteer NWR for the next 15 years.

For Medicine Lake NWR and the Northeast Montana WMD, under Alternative A, the no action alternative, the Service would manage habitats, wildlife, programs, and facilities at current levels as time, staff, and funds allow. The Service would not develop any new management, restoration, or education programs at the refuge. Improvements of native prairie or mixed-native and nonnative grasslands and tame grasslands would be undertaken when and where feasible. Current wildlife-dependent uses (hunting, fishing, observation, photography, environmental education, and interpretation) would continue at existing levels (about 16,000 visitors annually).

Alternative B, the Service's proposed action would conserve the natural resources of Northeast Montana by restoring or protecting the native and mixed-grass prairie grasslands and maintaining high-quality nesting habitats within the refuge complex. The refuge would reduce populations of selected species of invasive plants, and control of crested wheatgrass would be the management priority. The approved refuge administrative boundary would be expanded through willing sellers or buyers by about 722 hectares (1,784 acres) based on three priority areas. This alternative would focus visitor-use resources on developing access and improving opportunities for wildlife-dependent uses while also encouraging a greater understanding and appreciation for the mixed grass prairie ecosystem.

Alternative C would maximize the conservation of natural resources by restoring or protecting native or mixed-grass prairie and maintaining high-quality nesting habitats within the refuge complex. Reducing the populations of invasive and nonnative plants would be the management priority. The approved refuge administration boundary would be expanded to allow purchase of 3,399 hectares (8,400 acres) primarily in the Big Muddy Creek floodplain corridor between the Medicine Lake and Homestead Units. Visitor services would focus on encouraging a greater understanding and appreciation for the mixed-grass prairie while maintaining access and opportunities for wildlife-dependent uses.

The proposed action was selected because it best meets the purposes and goals of the refuge and wetland management district, as well as the goals of the NWRS. The proposed action also will benefit federally listed species, waterfowl, shorebirds, wading birds, grassland birds, and songbirds.

Environmental education and partnerships will result in improved wildlife-dependent recreational opportunities. Cultural and historical resources, as well as federally listed species, will be protected.

For Lamesteer NWR, under Alternative A, the no action alternative, the Service would continue to manage the site as an easement refuge superimposed on privately owned lands to serve as a resting place for migratory birds while on migration. The Service would maintain the dam and spillway, including the funding of all maintenance costs. The landowner would continue to control access to the site, including all hunting access and other public uses.

Alternative B, the Service's proposed action, would relinquish the easement at Lamesteer NWR to the current landowners. The Service would divest its interest in the refuge.

Opportunities for public input also will be provided at a public meeting. Exact dates and times for these public meetings are yet to be determined, but will be announced via local media and a planning update. All information provided voluntarily by mail, phone, or at public meetings (e.g., names, addresses, letters of comment, input recorded during meetings) becomes part of the official public record. If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide copies of such information. The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; Executive Order 12996; the National Wildlife Refuge System Improvement Act of 1997; and Service policies and procedures for compliance with those laws and regulations.

Dated: June 28, 2007.

J. Mitch King,

Regional Director, Region 6, Denver, CO.

[FR Doc. E7–15291 Filed 8–6–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19155–16; AK–964–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are in the vicinity of Kaltag, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 13 S., R. 1 W.,
Secs. 4 and 33.
Containing 1,280.00 acres.

T. 15 S., R. 1 W.,
Sec. 1;
Secs. 5 to 8, inclusive;
Secs. 12 and 13;
Secs. 17 and 18.
Containing 5,489.33 acres.

T. 12 S., R. 2 W.,
Secs. 1 and 12.
Containing 1,280.00 acres.

T. 14 S., R. 2 W.,
Secs, 25, 26, and 36.
Containing 1,920.00 acres.
Aggregating 9,969.33 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until September 6, 2007, to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Jenny M. Anderson,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E7–15292 Filed 8–6–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–027–1020–PI–020H; HAG–07–0143]

Notice of Call for Nominations for the Steens Mountain Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice: Solicitation of applications.

SUMMARY: The Bureau of Land Management (BLM) is requesting public nominations to fill two unexpired terms on the Steens Mountain Advisory Council (SMAC). Nominations will be accepted for a person who is a recreational permit holder or is a representative of a commercial recreation operation in the Steens Mountain Cooperative Management and Protection Area (CMPA); and a person with expertise and interest in wild horse management on Steens Mountain.

DATES: Send all nominations to the address listed below no later than September 6, 2007.

ADDRESSES: Applicants can obtain nomination forms from Rhonda Karges, Environmental Protection Specialist, Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738, (541) 573–4433, or *Rhonda_Karges@blm.gov*. Send all nomination materials to this address prior to the closing date listed above.

SUPPLEMENTARY INFORMATION: The SMAC advises the BLM on the management of the Steens Mountain CMPA as described in Public Law 106–399. Each member will be a person who, as a result of training and experience, has knowledge or special expertise that qualifies him or her to provide advice from the categories of interest identified above.

The SMAC members are normally appointed to 3-year terms. The wild horse management and the recreational permit holder positions are currently vacant; therefore, newly-appointed members will complete the unexpired portion of these terms. The wild horse management position expires in October 2008, and the recreational permit holder position expires in October 2009.

The SMAC members serve without monetary compensation, but are reimbursed for travel and per diem expenses at current rates for government employees. The SMAC meets only at the call of the Designated Federal Official, but not less than once per year.

The following must accompany all nominations: A completed background information nomination form; letters of reference from the constituency to be

represented; and any other information that details the nominee's qualifications.

The letter of nomination should specify the category the nominee would like to represent. Nomination forms and letters of reference will be reviewed by the County Court of Harney County and the BLM. The BLM will then forward recommended nominations to the Secretary of the Interior, who has responsibility for making the appointments.

Dana R. Shuford,

Burns District Manager, Oregon/Washington BLM.

[FR Doc. E7–15360 Filed 8–6–07; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–06–1310–FI; COC59157]

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 of oil and gas lease COC59157 from Pioneer Natural Resources USA, Inc. for lands in Garfield County, Colorado. 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, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303–239–3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 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 section 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 COC59157 effective June 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: July 30, 2007.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E7–15277 Filed 8–6–07; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–062–07–1220–EB]

Notice of Intent To Collect Fees on Public Land in Grand County, Utah, Moab Field Office Under the Federal Lands Recreation Enhancement Act (REA)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: Pursuant to applicable provisions of the Federal Lands Recreation Enhancement Act (REA), 16 U.S.C. 6801 *et seq.,* the Moab Field Office of the Bureau of Land Management (BLM) is proposing to begin collecting fees in 2008 for five camping areas: Lower Onion Creek (T. 24 S., R. 23 E., Sec. 10, within, SLM), Rock Castle (T. 25 S., R. 24 E., Sec. 29, within, SLM), Ledge (T. 27 S., R. 21 E., Sections 3 and 10, within, SLM), Cowboy Camp (T. 26 S., R. 19 E., Sec. 11, within, SLM), and Lone Mesa (T. 25 S., R. 19 E., Sec. 10, within, SLM). These proposed sites are located in Grand County, Utah.

DATES: *Effective Date:* The public is encouraged to participate during the public comment period that will expire 30 days after publication of this notice. Effective six months after the publication of this notice, the BLM, Moab Field Office will initiate fee collection at the Lower Onion Creek, Rock Castle, Ledge, Cowboy Camp, and Lone Mesa camping areas, as construction work is completed, unless the BLM publishes a **Federal Register** notice to the contrary. The Utah Resource Advisory Council (RAC), functioning as a Recreation Resource Advisory Committee (RRAC) has reviewed the proposal to charge fees at the sites mentioned above. The RAC unanimously approved the proposal at its May 2, 2007 meeting. Future adjustments in the fee amount will be made in accordance with the Moab Field Office's recreation fee business plan covering the sites. Fee increases will be made after consultation with the RAC and other appropriate advance public notice.

ADDRESSES: Mail: Field Manager, Moab Field Office, Bureau of Land Management, 82 East Dogwood, Moab, UT 84532 or *momail@ut.blm.gov.*

FOR FURTHER INFORMATION, OR TO PROVIDE COMMENT, CONTACT: Russell von Koch, Recreation Branch Chief, Moab Field Office, Bureau of Land Management, 82 East Dogwood, Moab, UT 84532 (435) 259–2100.

SUPPLEMENTARY INFORMATION: Under Section 3(g) of the REA, the Lower Onion Creek, Rock Castle, Ledge, Cowboy Camp, and Lone Mesa camping areas the ''camping areas'' will qualify, upon completion, as sites wherein visitors can be charged an ''Expanded Amenity Recreation Fee.'' Visitors wishing to use the expanded amenities the BLM is developing at the five camping areas would purchase a recreation use permit as described at 43 CFR part 2930. Pursuant to REA and implementing regulations at 43 CFR subpart 2933, fees may be charged for overnight camping and group use reservations. Specific visitor fees will be identified and posted at the site. Fees must be paid at the self-service pay station located at the site. People holding the America The Beautiful—The National Parks and Federal Recreational Lands—Senior Pass (i.e., Interagency Senior Pass), a Golden Age Passport, the America the Beautiful—The National Parks and Federal Recreational Lands—Access Pass (i.e. Interagency Access Pass), or a Golden Access Passport will be entitled to a 50 percent fee reduction on all fees except those associated with group reservations. Fees charged for use of the group sites would include a non-refundable site reservation fee and a per person use fee.

The Lower Onion Creek and Rock Castle camping areas are within and adjacent to the Colorado Riverway Recreation Area which includes ten existing similar fee sites. The Lower Onion Creek site would include both group site facilities and individual campsites. The Rock Castle site has individual camp sites only. The Ledge area, which would have individual sites, is located in Kane Creek Canyon just upstream from the Colorado Riverway Recreation area near the junction of the Kane Creek and Hurrah Pass roads. The Lone Mesa site, located along the Dead Horse Mesa Scenic Byway, would include both group sites and individual campsites. The Cowboy Camp Camping Area is also located along the Dead Horse Mesa Scenic Byway and would have individual sites only.

The BLM is committed to provide, and receive fair value for the use of developed recreation facilities and

services in a manner that meets public use demands, provides quality experiences and protects important resources. The BLM's policy is to collect fees at all specialized recreation sites, or where the BLM provides facilities, equipment or services, at Federal expense, in connection with outdoor use as authorized by the REA. In an effort to meet increasing demands for services and maintenance of developed facilities, the BLM would implement a fee program for the camping areas. Implementing a fee program for the camping areas will help ensure that funding is available to maintain facilities and recreational opportunities, to provide for law enforcement presence, to develop additional services, and to protect resources. This entails communication with those who will be most directly affected by the camping areas, for example recreationists, other recreation providers, partners, neighbors, and those who will have a stake in solving concerns that may arise throughout the life of the camping areas, including elected officials, and other agencies.

Development of the camping areas is consistent with the 1985 Grand Resource Management Plan and was analyzed in the following environmental documents: Kokopelli's Trail Improvements, UT–068–90–55, DR/FONSI signed 2/15/1990; Colorado Riverway Recreation Area Management Plan, UT–062–151, DR/FONSI signed 7/9/2001; Big Mesa and Cowboy Camp Camping Areas, UT–060–2006–115, DR/FONSI signed 7/10/2006, and Kane Creek Camping Areas, UT–060–2007–026, DR/FONSI forthcoming in June 2007. Fees would be consistent with other established fee sites in the area including other BLM administered sites in the area and those managed by the USDA Forest Service, USDI National Park Service, and Utah State Parks and Recreation. Future adjustments in the fee amount will be made following the Moab Field Office's recreation fee business plan covering the sites, consultation with the RAC and other public notice prior to a fee increase.

In December 2004, the REA was signed into law. The REA provides authority for 10 years for the Secretaries of the Interior and Agriculture to establish, modify, charge, and collect recreation fees for use of some Federal recreation lands and waters, and contains specific provisions addressing public involvement in the establishment of recreation fees, including a requirement that Recreation Resource Advisory Committees or Councils have the opportunity to make recommendations regarding establishment of such fees. REA also directed the Secretaries of the Interior and Agriculture to publish advance notice in the **Federal Register** whenever new recreation fee areas are established under their respective jurisdictions. In accordance with the BLM recreation fee program policy, the Moab Field Office's recreation fee business plan both explains the fee collection process and how the fees will be used at the camping areas. BLM will notify and involve the public at each stage of the planning process, including the proposal to collect fees. The RAC has reviewed the fee proposal as well. Fee amounts will be posted on-site, and at the Moab Field Office, and copies of the business plan will be available at the Moab Field Office and the BLM Utah State Office.

The BLM welcomes public comments on this proposal. 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.

Authority: 16 U.S.C. 6803(b).

Maggie Wyatt,

Field Manager, Moab Field Office.

[FR Doc. E7–15363 Filed 8–6–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–07–1610–DO–097B]

Notice of Intent To Prepare a Resource Management Plan Revision and Associated Environmental Impact Statement for the South Coast Planning Area, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: The Bureau of Land Management (BLM) Palm Springs-South Coast Field Office, California, intends to revise its 1994 South Coast Resource Management Plan (RMP) and prepare an associated Environmental Impact Statement (EIS). The revised RMP will replace the current RMP. This notice initiates the scoping process, invites public participation, and announces public scoping meetings.

DATES: Written comments and resource information should be submitted within 30 calendar days of the last scheduled public scoping meeting. Public scoping meetings will be held in San Diego County, Riverside County, and Los Angeles County in order to ensure local community participation and input. All public meetings will be announced through the local news media, newsletters, and the BLM Web site (*http://www.blm.gov/ca*) at least 15 days prior to the event.

ADDRESSES: Written comments may be submitted by any of the following methods:

- *Mail:* Field Manager, South Coast Resource Management Plan and EIS, Bureau of Land Management, Palm Springs-South Coast Field Office, P.O. Box 581260, North Palm Springs, CA 92258.
- *Fax:* (760) 251–4899.
- *E-mail: gchill@ca.blm.gov.*

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Documents pertinent to this proposal, including comments with the names and addresses of respondents, will be available for public review at the BLM Palm Springs-South Coast Field Office located at 690 W. Garnet Avenue, North Palm Springs, California, or the San Diego Project Office located at 10845 Rancho Bernardo Road, Suite 200, San Diego, California, during regular business hours of 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EIS.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list contact Greg Hill at (760) 251–4840, or by e-mail to *gchill@ca.blm.gov.*

SUPPLEMENTARY INFORMATION: The South Coast Resource Management Plan (RMP) provides guidance for the management of approximately 300,000 acres of BLM administered public lands in portions of five highly urbanized Southern California counties: San Diego, Riverside, San Bernardino, Orange, and Los Angeles. These public lands include over 130,000 acres of BLM administered surface lands and 167,000 acres of Federal mineral ownership where the surface is privately owned.

The existing South Coast RMP was completed and signed in 1994. Since that time there have been significant changes in the patterns of urban growth, increased demands on the resources of the public lands, changing policies and emphasis on the management of public lands and local land use planning, and new data that has led to the listing of additional threatened or endangered species. Under BLM planning regulations (43 CFR 1610.5–6) RMP revisions are necessary if monitoring and evaluation findings, new data, new or revised policy, or changes in circumstances indicate that decisions for an entire plan or a major portion of the plan no longer serve as a useful guide for resource management. Plan revisions are prepared using the same procedures and documentation as for new plans.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis and EIS alternatives. These issues will also guide the planning process. You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed under **ADDRESSES** above. Preliminary issues identified for consideration in the RMP include: Impacts posed by rapid population and urban growth; the need to make resource decisions that are scientifically sound, in accordance with authorities applicable to management by BLM of the public lands, and sustainable; the need to maximize the use of public lands in species recovery and to support collaborative efforts with local governments in land use planning for habitat conservation; the need to provide access to significant energy and mineral resources, communication sites, and utility corridors; impacts and benefits from the continuation of grazing; Native American concerns and traditional uses; cultural resources; suitability for wild and scenic rivers; wilderness characteristics of acquired lands; visual resources; wildland fire and fuels management; and the need to provide adequate access, open space, and facilities for safe recreation and visitation on public lands. Existing Areas of Critical Environmental Concern will be evaluated for continued relevance and importance, and new ACEC designations will be considered.

In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase. An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in rangeland management, minerals and geology, wildland fire and fuels management, outdoor recreation, archaeology, paleontology, wildlife, fisheries, lands and realty, soils, water and air, wild horses, environmental justice, and sociology and economics.

The following planning criteria have been proposed to guide development of the plan, avoid unnecessary data collection and analyses, and to ensure the plan is tailored to the issues. Other criteria may be identified during the public scoping process. After gathering comments on planning criteria, the BLM will finalize the criteria and provide feedback to the public on the criteria to be used throughout the planning process. Some of the planning criteria that are under consideration include:

- The plan will be completed in compliance with the Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*) and the National Environmental Policy Act;
- The plan will recognize valid existing rights;
- Public participation will be encouraged throughout the process by collaborating and building relationships with tribes, state and local governments, Federal agencies, local stakeholders, and others with interest in the plan. Collaborators are regularly informed and offered timely and meaningful opportunities to participate in the planning process.

Authority: 43 CFR 1610.2(c).

John Kalish,

Field Manager.

[FR Doc. E7–15365 Filed 8–6–07; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–072–1430–ET; MTM–95280]

Notice of Proposed Legislative Withdrawal and Opportunity for Public Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Army, Corps of Engineers, has filed an application requesting the Secretary of the Interior to process, in accordance with the Engle Act (43 U.S.C. 155–158), a proposed legislative withdrawal from surface entry and mining of approximately 18,760 acres of public land located in Broadwater County, Montana. The withdrawal would also reserve the use of the land for military training exercises and public safety. This notice temporarily segregates the land from surface entry and mining for up to two years while the legislative withdrawal application is being processed. The land will remain open to mineral leasing.

DATES: Comments must be received on or before November 5, 2007.

ADDRESSES: Comments should be sent to the State Director, Montana State Office, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101.

FOR FURTHER INFORMATION CONTACT: Richard Hotaling, BLM Butte Field Office, 406–533–7600.

SUPPLEMENTARY INFORMATION: Acting on behalf of the Department of the Army and the Montana Army National Guard Bureau, the U.S. Army Corps of Engineers, has filed an application requesting the Secretary of the Interior to process a legislative withdrawal pursuant to the Engle Act (43 U.S.C. 155–158). The withdrawal would withdraw and reserve the following-described public land located in Broadwater County, Montana, from settlement, sale, location or entry under the general land laws, including the mining laws, subject to valid existing rights, for use as a military training range:

Principal Meridian, Montana

T. 6 N., R. 1 E.,
- Sec. 2, lots 1 to 4, inclusive, S½N½, N½SW¼, SE¼SW¼, and SE¼;
- Sec. 3, lots 1 to 4, inclusive, S½N¼, and S½;
- Sec. 4, lots 1 to 4, inclusive, S½N¼, and S½;
- Sec. 5, lots 1 and 2, S½NE¼, and SE¼;
- Sec. 8, E½ and E½SW¼;
- Secs. 9 and 10;
- Sec. 11, E½, E½W½, and SW¼SW¼;
- Sec. 12, lots 1 to 4, inclusive, W½E½ and W½;
- Sec. 13, lots 1 to 4, inclusive, W½E½ and W½;
- Secs. 14 and 15;
- Sec. 17, E½ and E½W½;
- Sec. 20, E½ and E½W½;
- Sec. 21;
- Sec. 22, lots 3 and 4, W½NW¼, and S½SW¼;
- Sec. 23;
- Sec. 24, lots 1 to 4, inclusive, W½E½ and W½;
- Sec. 25, lots 1 to 4, inclusive, W½E½ and W½;
- Sec. 26;
- Sec. 27, lots 1 to 9, inclusive, NE¼NE¼, S½NE¼, and SE¼;

Sec. 28, lots 1 to 4, inclusive, N½NE¼, W½, and W½SE¼;
Sec. 29, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SW¼SE¼;
Sec. 33, E½;
Sec. 34, lots 1 to 8, inclusive, NE¼, N½NW ¼, and N½SE¼;
Sec. 35, lots 1 to 4, inclusive, N½ and N½S½.
T. 6 N., R. 2 E.,
Sec. 17, S½SW¼;
Sec. 18, lot 4, SE¼SW¼, and S½SE¼;
Sec. 19, lots 1, 2, and 3;
Sec. 20, W½;
Sec. 30, lots 2, 3, and 4, NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, and SE¼.
T. 7 N., R. 1 E.,
Sec. 26, S½;
Sec. 27, lots 5 to 8, inclusive, and S½S½;
Sec. 28, S½SE¼;
Sec. 32, E½ except patented lands;
Secs. 33, 34 and 35.

The area described contains 18,760.63 acres in Broadwater County.

The purpose of the proposed legislative withdrawal is to withdraw and reserve the land for use as a military training range, involving live-fire exercises, necessary for national security. Public safety will be taken into account. The withdrawal would be established by an act of Congress, approved by the President. The duration of the withdrawal would be determined by Congress.

The use of a right-of-way or cooperative agreement would not provide adequate authorization for the use of this area due to the broad scope of military training exercises as well as the non-discretionary nature of the general mining laws.

There are no suitable alternative sites. The land hereinabove described is unique in having been used previously as a military training range. The use of a different site would needlessly degrade a Second site.

Potable water from two wells would be used during day-use training exercises.

The application and the records relating to the application can be examined by interested persons at the BLM Butte Field Office, 106 North Parkmont, Butte, Montana 59701, or Montana Army National Guard Fort Harrison, 900 Williams Street, Helena, Montana 59604.

On or before November 5, 2007 all persons who wish to submit comments, suggestions, or objections in connection with the proposed legislative withdrawal may present their views in writing to the BLM, Montana State Director at the address indicated above.

Comments, including names and street addresses of respondents, will be available for public review at the BLM Montana State Office at the address above during regular business hours.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The proposed legislative withdrawal was discussed at five public meetings, as part of the scoping process for the legislative withdrawal environmental impact statement. Additional public meetings will be scheduled following the release of the draft legislative withdrawal environmental impact statement.

This withdrawal proposal will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Land uses currently permitted under the existing right-of-way agreement may continue during the segregative period. If the proposed legislative withdrawal has been submitted to Congress but not enacted into law by the end of the two-year segregation period, consideration will be given to entertaining an application for a temporary withdrawal in aid of pending legislation.

(Authority: 43 CFR 2310.3–1(b)(1))

Howard A. Lemm,

Acting State Director.

[FR Doc. E7–15366 Filed 8–6–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–1430–ET; UTU–79765]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior proposes to withdraw on behalf of the Bureau of Land Management (BLM) approximately 79.43 acres of public land and approximately 30 acres of non-Federal land, if acquired, to protect the Manning Canyon Tailings Repository while the BLM completes land use planning for the area. This notice temporarily segregates the land for up to 2 years from location and entry under the United States mining laws while the withdrawal application is being processed.

DATES: Comments should be received on or before November 5, 2007.

ADDRESS: Comments and meeting requests should be sent to the BLM Salt Lake Field Office Manager, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Mike Nelson, BLM Salt Lake Field Office, 801–977–4355.

SUPPLEMENTARY INFORMATION: The applicant for the above withdrawal is the BLM at the address stated above. The petition/application requests the Secretary of the Interior to withdraw, for a period of 5 years, the following described public land from location and entry under the United States mining laws, subject to valid existing rights:

Salt Lake Meridian

T. 6 S., R. 3 W., Sec. 15, lots 12, 13, 14 and 17, W½NE¼SE¼, NE¼SW¼SE¼, and NW¼SE¼SE¼.

The areas described aggregate 79.43 acres in Utah County.

Approximately 30 acres of the following described private land will be acquired by the United States and included in the withdrawal:

Salt Lake Meridian

T. 6 S., R. 3 W., Sec. 15, that portion of Mineral Patent Nos. 27720, 28065, and 35708 located within SW¼NE¼, E½SE¼NW¼, NE¼NE¼SW¼, and NW¼SE¼.

The total areas described aggregate approximately 109.43 acres in Utah County.

The BLM petition/application has been approved by the Assistant Secretary of the Interior. Therefore, it constitutes a withdrawal proposal of the Secretary of the Interior (43 CFR 2310.1–3(e)).

The purpose of the proposed withdrawal would be to protect the Federal investment in the Manning Canyon Tailings Repository until the BLM completes land use planning for the area.

The use of a right-of-way, an interagency agreement, or a cooperative agreement would not adequately constrain non-discretionary uses and would not provide adequate protection of the Federal investment in the facilities constructed on the land.

There are no suitable alternative sites since the repository is located on the above described land.

No water rights would be needed to fulfill the purpose of the requested withdrawal.

The preliminary mineral potential evaluation found the above described land to have a low potential for locatable minerals.

Records relating to the proposed withdrawal can be examined by interested parties by contacting Mike Nelson at the above address and or phone number.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the BLM Salt Lake Field Manager at the address noted above.

Comments, including names and street addresses of respondents, will be available for public review at the BLM Salt Lake Field Office at the address noted above during regular business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Salt Lake Field Manager at the address noted above within 90 days from the date of publication of this notice. If the authorized officer determines a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

This withdrawal proposal will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period include licenses, permits, rights-of-way, and disposal of vegetative resources other than under the mining laws.

(Authority: 43 CFR part 2310.3–1)

Dated: July 16, 2007.

Kent Hoffman,

Deputy State Director, Lands and Minerals.

[FR Doc. E7–15275 Filed 8–6–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Boundary Amendment—Harpers Ferry National Historical Park

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of boundary amendment—Harpers Ferry National Historical Park.

SUMMARY: Notice is hereby given that the National Park Service (NPS) is amending the boundary of Harpers Ferry National Historical Park to include one additional tract of land containing 0.749 of an acre.

FOR FURTHER INFORMATION CONTACT: Chief, Land Resources Program Center, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

SUPPLEMENTARY INFORMATION: The Act of June 30, 1944, c. 328, 58 Stat. 645 (codified as amended and supplemented, 16 U.S.C. 450bb–450bb–6), which established Harpers Ferry National Historical Park (the Park), provides the Secretary of the Interior with authority to make minor amendments in the boundary of the Park. Such boundary amendments may be made, when necessary, after advising the appropriate Congressional committees, and following publication of a revised boundary map, drawing, or other boundary description in the **Federal Register**.

In order to properly interpret the historic events that occurred at Harpers Ferry, West Virginia, during the Civil War, and preserve the scenic character of Harpers Ferry National Historical Park, it is necessary to revise the existing boundary to include one additional tract of land comprising approximately 0.749 of an acre. The inclusion of this tract within the boundary will increase the acreage of the Park to approximately 3,646.57 acres. The existing acreage ceiling for the Park is 3,745 acres, as set forth by Public Law 108–307, approved September 24, 2004. It is the intent of the National Park Service to purchase certain conservation easement interests in the property.

Notice is hereby given that the exterior boundary of Harpers Ferry National Historical Park is amended to include the following tract of land described as follows:

Tract Number P102–35

• ''Those certain lots or parcel of real estate, situated on what is known as Bolivar Heights, and described on a plat of the subdivision made by S. Howell Brown, Surveyor of Jefferson County, with a deed from Brackett and wife and Lightner and wife to Mary G. Moore of date August 22, 1895, as follows:

Lots numbered 42, 44 and 46, in Block C and containing 0.749 acres, as shown on the plat of said lots prepared by Appalachian Surveys, Inc., dated November 14, 1988.

Being part of the same property conveyed to Scot M. Faulkner by Laurel de Aguilar, formerly known as Laurel B. Faulkner, by a deed dated June 16, 1994, and recorded among the Land Records of Jefferson County, West Virginia in Deed Book 790, Page 295.''

The above described parcel of land is subject to all restrictive covenants, conditions, easements, rights-of-way, and limitations of record.

The above described parcel of land is depicted on Harpers Ferry National Historical Park Land Status Map numbered 385/92002, Segment 102, dated January 6, 2005.

All maps and drawings referenced are on file and available for inspection in the offices of the Land Resources Program Center, National Capital Region, National Park Service, Department of the Interior, 1100 Ohio Drive, SW., Washington, DC 20242.

Dated: May 31, 2007.

Joseph M. Lawler,

Regional Director, National Capital Region.

[FR Doc. E7–15308 Filed 8–6–07; 8:45 am]

BILLING CODE 4312–JT–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore Hunting Program, Final Environmental Impact Statement, Cape Cod National Seashore, MA

AGENCY: National Park Service, Department of Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement for the Cape Cod National Seashore

Hunting Program, Cape Cod National Seashore.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Services (NPS) announces the availability of a Final Environmental Impact Statement (FEIS) for the Cape Cod National Seashore Hunting Program, Cape Cod National Seashore (CCNS), Massachusetts. The purpose of the FEIS is to finalize the documentation of the environmental consequences of alternative strategies for managing hunting at CCNS.

The FEIS evaluates three (3) alternatives for managing hunting:

Alternative A—No Action describes the effects of continuing the hunting program as it was prior to a court decision to enjoin the pheasant stocking and hunting program. Hunting would continue in accordance with the seasons and regulations established by the Massachusetts Division of Fisheries and Wildlife (MDFW), and in accordance with the existing rules established by Cape Cod National Seashore pertaining to the time of year hunting is allowed, the species that can be hunted, and no-hunting zones. Under this alternative, the pheasant hunting and stocking program would be re-established.

Alternative B—Develop a Modified Hunting Program (the preferred alternative) describes the effects of modifying the hunting program in a manner that would retain hunting as part of CCNS's cultural heritage while addressing concerns raised by non-hunting visitors. The modifications were derived from input received during public scoping, and subsequently refined based on comments on the Draft EIS.

Element 1: This element would increase traditional hunting opportunities for native upland game bird species. Specifically, the park's rules would be revised to allow the State's spring eastern turkey hunt to occur within the park. Additionally, this element would include developing and implementing cultural landscape restoration activities that are expected to improve habitat quality for upland game birds, particularly northern bobwhite quail.

Element 2: An adaptive management approach would be used to phase out the pheasant stocking and hunting program as opportunities to hunt native upland game birds increase. The success of heathland and grassland management, called for by the cultural restoration plan, will be used as an indicator of native species hunting opportunity. This element would result in the end of pheasant stocking and hunting at CCNS within 14 to 17 years. In no case will pheasant stocking continue beyond 17 years.

Element 3: This element would simplify the scope of hunting areas, and would designate hunting-permitted areas versus the current policy which allows hunting in all areas except where specifically prohibited. The hunting-permitted areas would be delineated based on the existing 500-foot no-hunting buffers around paved roads and buildings, expanding the no-hunting buffers around bicycle paths from 150 feet to 500 feet, and eliminating the small patches and thin slivers of area that cannot practicably be hunted. This element would provide an added safety precaution protective of visitors using the bike paths; should result in more predictable areas where hunting is likely to be encountered and where it will not; would provide consistent buffers for hunting set-backs from roads, buildings, and bike paths; would facilitate more efficient monitoring by law enforcement staff; and would result in little reduction in hunting opportunities.

Element 4: Hunting-related outreach to hunting and non-hunting users would be expanded. Outreach to non-hunting visitors would focus on where and when hunting occurs in the park, where visitors can go to avoid hunting, safety precautions when in or adjacent to hunting areas, how to report any unlawful behavior or safety concerns, and the importance of courteous and respectful behavior to all users. Outreach to hunters would also focus on where and when hunting is permitted in the park, hunting regulations, how to report any unlawful behavior or safety concerns, and the importance of courteous and respectful behavior to all users.

Element 5: This element provides for cooperative and expanded game species monitoring by Cape Cod National Seashore and the Massachusetts Division of Fisheries and Wildlife. The Seashore and the Division of Fisheries and Wildlife would integrate monitoring efforts, and seek additional resources as needed, to expand monitoring of the abundance and harvest of deer, eastern cottontail rabbits, eastern wild turkeys, and northern bobwhite quail. These agencies would also coordinate with the U.S. Fish and Wildlife Service to review emerging information on the status and distribution of New England cottontail rabbits on outer Cape Cod, and determine if action is necessary to protect this sensitive species within the Seashore.

Alternative C—Eliminate Hunting describes the effects of eliminating hunting at Cape Cod National Seashore. A sub-element of Alternative C would eliminate only the pheasant program while retaining the other aspects of the hunting program.

In April of 2006, the NPS issued a Draft EIS for agency and public review and comment. The comment period opened on April 21, 2006 with the Environmental Protection Agency's (EPA) publication of a Notice of Availability in the **Federal Register**, and closed on June 19, 2006, 60 days later. During that review period the NPS held two public meetings to provide agencies and the public the opportunity to provide oral comment on the draft document. Comments were received in the form of letters and e-mails, and at the two public meetings. All substantive comments have been addressed in the ''Consultation and Coordination'' chapter of the FEIS.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication in the **Federal Register** by EPA of availability of the Final Environmental Impact Statement. Availability of the ROD will be noticed in the **Federal Register** by the NPS and implementation of the selected alternative will subsequently move forward.

ADDRESSES: The FEIS may be viewed online at *http://www.nps.gov/caco/parkmgmt/planning.htm* through the ''Planning'' link under ''Management''. The FEIS will be available in hard copy at outer cape libraries, the Salt Pond and Province Lands Visitors Centers, and Cape Cod National Seashore's Marconi headquarters building for onsite review.

FOR FURTHER INFORMATION CONTACT: Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, Massachusetts 02667. Telephone: (508) 349–3785, Fax: (508) 349–9052.

Dated: July 18, 2007.

John A. Latschar,

Acting Regional Director, Northeast Region, National Park Service.

[FR Doc. E7–15295 Filed 8–6–07; 8:45 am]

BILLING CODE 4310–WV–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for an Off-Road Vehicle Management Plan (ORV Management Plan) for Cape Lookout National Seashore (Seashore), NC

SUMMARY: Notice is hereby given in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332) and Council on Environmental Quality regulations (40 CFR 1506.6), the U.S. Department of the Interior, National Park Service (NPS) will prepare an ORV Management Plan/DEIS. The ORV Management Plan/DEIS will be used to guide the management and control of ORVs at the Seashore for approximately the next 15 to 20 years. It will also form the basis for a special regulation that will regulate ORV use at the Seashore. The ORV Management Plan/DEIS will assess potential environmental impacts associated with a range of reasonable alternatives for managing ORV impacts on park resources such as threatened and endangered species, soils, wetlands, wildlife, and cultural resources. Socioeconomic impacts and effects on visitor experience and public safety will also be analyzed. In addition, the plan will focus on issues that have a direct bearing on ORV management, including management of threatened and endangered species and species of special concern, as well as predator management.

DATES: To determine the scope of issues to be addressed in the ORV Management Plan/DEIS and to identify significant issues related to the ORV management at the Seashore, NPS anticipates conducting public scoping meetings in September 2007. The NPS is tentatively planning to conduct one meeting in Charlotte, Raleigh and Morehead City or Beaufort, North Carolina, respectively. Representatives of the NPS will be available to discuss issues, resource concerns, and the planning process at each of the public meetings. Once public meetings have been scheduled, their locations, dates, and times will be published in local newspapers and posted on the NPS Planning, Environment, and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/CALO.*

ADDRESSES AND FURTHER INFORMATION: Written comments or requests for information should be addressed to Wouter Ketel, Management Assistant, Cape Lookout National Seashore, 131 Charles St., Harkers Island, North Carolina 28531. Comments may also be hand-delivered to the attention of Wouter Ketel. In addition, comments may be entered online in the NPS PEPC Web site at *http://parkplanning.nps.gov/CALO.* To comment using PEPC, select the ''Cape Lookout National Seashore ORV Management Plan/EIS project,'' select ''documents,'' select this ''Notice of Intent,'' and then select ''comment'' and enter your comments. Further information about this project may also be found on the PEPC Web site listed above, including links to information about the NEPA planning process.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, please be aware that our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: The ORV use on the Seashore predates establishment of the park in 1966. The State of North Carolina turned over the lands of Core Banks to the NPS in 1976. Shackleford Banks was acquired from 1984 to 1986. Beginning in the 1940s, vehicles were transported to the banks by shallow draft ferries, and were used to provide access to productive commercial and recreational fishing spots as well as for camping and sightseeing. Today ORVs are used to provide vehicular access onto the Seashore beaches for recreational purposes, including surf-fishing, surfing, sunbathing, swimming, bird-watching, scenic driving, camping, etc. It is estimated that up to 5500 ORVs are transported by ferry to the Seashore each year.

Executive Order 11644, issued in 1972 and amended by Executive Order 11989 in 1977, states that Federal agencies allowing ORV use must designate the specific areas and trails on public lands on which the use of ORVs may be permitted, and areas in which the use of ORVs may not be permitted. Agency regulations to authorize ORV use provide that designation of such areas and trails will be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands. Executive Order 11644 was issued in response to the widespread and rapidly increasing use of ORVs on the public lands—''often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity.'' 36 CFR 4.10(b) requires that ''routes and areas designated for off-road motor vehicle use shall be promulgated as special regulations.'' In addition, such routes and areas may only be designated in national recreation areas, national seashores, national lakeshores and national preserves. Therefore, in accordance with the Executive Order, the purpose of this Plan/DEIS is to manage ORV use in compliance with the Seashore's enabling legislation, NPS management policies, and other laws and regulations to ensure protection of the natural, cultural, and recreational values of the Seashore's dynamic coastal barrier island environment for present and future generations.

An ORV Management Plan is needed because lack of an approved plan over time has led to inconsistent management of ORV use. Related to the need to provide consistency in ORV management is the need to provide consistency in resource protection in areas of ORV use, particularly as required under the Endangered Species Act of 1973. Compounding these issues, the Seashore is also subject to dynamic weather-related events that continually change the beach, and sometimes limit the area that can be accessed safely by ORVs. Therefore, an ORV Management Plan is needed to: (1) Comply with Executive Orders 11644 and 11989 respecting ORV use, and with NPS laws, regulations (36 CFR 4.10), and policies to minimize impacts to Seashore resources and values; (2) Establish an approved plan incorporating public input that reduces the potential for inconsistent management of ORV use, user conflicts, and safety concerns; (3) Provide for sustainable recreational use; (4) Protect natural and cultural resources from potential effects of ORV use; and (5) Provide for protected species management in relation to ORV and other uses that replaces the Cape Lookout National Seashore Interim Protected Species Management Plan/EA and associated Biological Opinion.

The ORV Management Plan/DEIS will cover lands administered by the NPS on North Core Banks, South Core Banks, Middle Core Banks, Ophelia Banks, and

Shackleford Banks. Of the 56-mile long Seashore, about 47 miles spanning North and South Core Banks were identified by the Seashore General Management Plan (December 1982) as appropriate for controlled ORV use; the remaining 9 miles on Shackleford Banks is a proposed wilderness and is closed to vehicle use. However, other potential aspects of the ORV Management Plan, such as species and predator management, will also be addressed for Shackleford Banks, where ORVs are not allowed.

During initial internal scoping the NPS interdisciplinary team identified a number of draft objectives for the ORV Management Plan/DEIS, including:

Management Methodology

- Identify criteria to designate ORV use areas and routes.
- Establish ORV management practices and procedures that have the ability to adapt in response to changes in the Seashore's dynamic physical and biological environment.
- Continue an ongoing and meaningful dialogue with the multiple public groups interested in/affected by ORV management.
- Establish procedures for prompt and efficient public notification of beach access status including any temporary ORV use restrictions for such things as resource and public safety closures, storm events, etc.
- Build stewardship through public awareness and understanding of NPS resource management and visitor use policies and responsibilities as they pertain to the Seashore and ORV management.

Natural Physical Resources

- Minimize adverse impacts from ORV use to soils and topographic features, e.g., dunes, ocean beach, wetlands, tidal flats, etc.

Threatened, Endangered, and Other Protected Species

- Provide protection for threatened, endangered, and other protected species (e.g., State-listed species) and their habitats, minimize adverse impacts related to ORV and other uses as required by laws and policies, such as the Endangered Species Act, the Migratory Bird Treaty Act, and NPS laws and management policies.

Other Vegetation and Wildlife and Wildlife Habitat

- Minimize adverse impacts to native plant and animal species and their habitats related to ORV and other uses.

Cultural Resources

- Protect cultural resources such as shipwrecks, archeological sites, and cultural landscapes from adverse impacts related to ORV use.

Visitor Use and Experience

- Manage ORV use to allow for a variety of appropriate visitor use experiences.
- Minimize conflicts between ORV use and other uses.
- Ensure that ORV operators are informed about the rules and regulations regarding ORV use at the park.

Visitor Safety

- Ensure that ORV management promotes the safety of all visitors.

Park Operations

- Identify operational needs and costs to fully implement an ORV management plan.

The draft and final ORV Management Plan/DEIS will be made available to all known interested parties and appropriate agencies. Full public participation by Federal, State, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

Authority: The authority for publishing this notice is 40 CFR 1506.6.

The responsible official for this ORV Management Plan/DEIS is Patricia A. Hooks, Regional Director, Southeast Region, National Park Service, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Dated: July 13, 2007.

Patricia A. Hooks,

Regional Director, Southeast Region.

[FR Doc. 07–3837 Filed 8–6–07; 8:45 am]

BILLING CODE 4310–XR–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Environmental Impact Statement, Sand Creek Massacre National Historic Site, Colorado

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare a general management plan and environmental impact statement for the Sand Creek Massacre National Historic Site.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) is preparing an environmental impact statement (EIS) for a general management plan (GMP) for the Sand Creek Massacre National Historic Site. This effort will analyze the impacts of a broad range of design alternatives for the national historic site. This effort will result in a comprehensive general management plan that provides a framework for making management decisions regarding the preservation of natural and cultural resources, visitor use and interpretation and development of appropriate park facilities. This plan will be developed in cooperation with the Cheyenne-Arapaho Tribe of Oklahoma, the Northern Arapaho Tribe of Wyoming, the Northern Cheyenne Tribe of Montana, and the State of Colorado. Alternatives to be considered include no-action, the proposed action and other reasonable alternatives.

The park superintendent will initiate consultation with congressional delegations, tribal representatives, and state and local agencies on the development of the plan. Consultation with these agencies will continue throughout the planning process.

Public involvement in the planning process will include newsletters and open houses that inform the public of the project and provide opportunities for input; press releases in the local media; newsletters and open houses to present and solicit input on the alternatives; a public review draft of the general management plan and environmental impact statement and public meetings to provide additional opportunities to comment on the draft plan. Public involvement is essential for the development of creative and sustainable management alternatives for the national historic site.

A briefing statement has been prepared that summarizes the specific elements of the general management planning process and the EIS. Copies of that information may be obtained from: Superintendent, Alexa Roberts, Sand Creek Massacre National Historic Site, P.O. Box 249, Eads, CO 81036.

DATES: The Park Service will accept comments from the public through 30 days from date of publication in the **Federal Register**.

ADDRESSES: Information will be available for public review and comment in the office of the Superintendent, Alexa Roberts, Sand Creek Massacre National Historic Site, P.O. Box 249, Eads, CO 81036 and on the NPS Planning Environment and Public Comment site (PEPC) at *http://parkplanning.nps.gov/.*

FOR FURTHER INFORMATION: Contact Superintendent Alexa Roberts at 719–438–5916 or e-mail: *sand_superintendent@nps.gov*.

SUPPLEMENTARY INFORMATION: You may mail comments to: Superintendent's Office, Sand Creek Massacre National Historic Site, P.O. Box 249, Eads, CO 81036. You may also hand-deliver comments to the Superintendent's Office, Sand Creek Massacre National Historic Site, Eads, CO. (Attn: Sand Creek Massacre General Management Plan/Environmental Impact Statement.)

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 21, 2007.

Hal J. Grovert,

Acting Director, Intermountain Region, National Park Service.

[FR Doc. E7–15293 Filed 8–6–07; 8:45 am]

BILLING CODE 4310–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement; Reconstruction of the Furnace Creek Water Collection System; Death Valley National Park, Inyo County, CA; Notice of Approval of Record of Decision

Summary: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the implementing regulations promulgated by the Council on Environmental Quality (40 CFR part 1505.2), the Department of the Interior, National Park Service has prepared, and the Regional Director, Pacific West Region has approved the Record of Decision (and Statement of Findings for Wetlands and Floodplains) for the reconstruction of the Furnace Creek water collection system at Death Valley Natioal Park. Reconstructing the water collection system affords the park with the opportunity to provide a reliable quality and quantity of potable water to the users in the Furnace Creek area, to promote conservation of biological and cultural resources in the Texas-Travertine Springs area, and to enhance water resource protection and management in the Furnace Creek area. The no-action ''30-day wait period'' was officially initiated July 14, 2006, with the U.S. Environmental Protection Agency's **Federal Register** notification of the filing of the Final Environmental Impact Statement.

Decision: As soon as practicable the park will begin to implement the *Preferred Alternative* (with minor modifications from Alternative C as described in the Draft and Final EIS); as documented in the EIS, this alternative was deemed to be the ''*environmentally preferred*'' course of action and it was further determined that implementation of the selected actions will not constitute an impairment of park resources and values. In doing so, the park can rebuild the outdated water collection system in the Furnace Creek area to supply safe and reliable potable and nonpotable water to the park's main visitor use area, separate the potable and nonpotable water systems in the project area, and provide nonpotable water from the Inn Tunnel and a relocated Furnace Creek Wash collection gallery. The selected actions will provide potable water from two to three new groundwater wells in the Texas Springs Syncline, and will treat water collected for potable purposes using a reverse osmosis water treatment plant. The concentrate water generated from the water treatment process will be conveyed to the park's sewage treatment plant for evaporation. Non-potable water will be collected from Furnace Creek Wash and the Inn Tunnel. Water for riparian restoration purposes will be released from Texas Springs and Travertine Springs Lines 1, 2, 3, and 4. To meet maximum daily flow requirements, Alternative 3 will collect 600 gallons per minute (GPM) of potable water and 900 gpm of nonpotable water, and release approximately 770 gpm of riparian water.

SUPPLEMENTARY INFORMATION: Based upon agency comments and refinements desired by the planning team collaborative, the selected plan includes several adjustments from the Preferred Alternative as detailed in the EIS, including but not limited to the determination that reverse osmosis discharge water will be piped to wastewater treatment lagoons, thus eliminating any potential for unacceptable environmental effects through other discharge options. The selected project and three alternatives were identified and analyzed in the Final EIS, and previously in the Draft EIS (the latter was distributed in October, 2005). A broad spectrum of foreseeable environmental consequences were assessed, and appropriate mitigation measures identified, for each alternative. Beginning with early scoping, through the preparation of Draft and Final EIS, a series of public meetings and open-houses were conducted locally. Overall approximately 10 written comments were received (as noted above, some agency comments served as the source of minor adjustments to the final selected plan). Key consultations or other contacts which aided in preparing the EIS involved (but were not limited to) the California State Historic Preservation Office, the Lahotan Region Water Quality Control Board, the California Department of Transportation, the Timbisha Shoshone Tribe and its Tribal Historic Preservation Officer, Xanterra Parks and Resorts, the Bureau of Indian Affairs, and the U.S. Fish and Wildlife Service.

Copies: Interested parties desiring to review the Record of Decision may obtain a complete copy by contacting Superintendent James T. Reynolds, Death Valley National Park, P.O. Box 579, Death Valley, California 92328; telephone (760) 786–3227 or via e-mail at *deva_superintendent@nps.gov*.

Dated: May 21, 2007.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 07–3838 Filed 8–6–07; 8:45 am]

BILLING CODE 4312–FF–M

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement, Systems Conveyance and Operations Program, Lake Mead National Recreation Area, Clark County, NV; Notice of Approval of Record of Decision

Summary: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the implementing regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service has prepared, and the Regional Director, Pacific West Region has approved, the Record of Decision for the Clean Water Coalition's proposed System Conveyance and Operations Program. The formal no-action period was officially initiated February 23, 2007, with the U.S. Environmental Protection Agency's **Federal Register** notification of the filing of the Final Environmental Impact Statement (EIS).

Decision: The Final EIS analyzed a no-action alternative, a process improvement alternative, and three

pipeline alternatives that would variously redirect a portion of highly treated effluent from the Las Vegas Wash into the Boulder Basin. The selected alternative—Boulder Islands North pipeline alternative—combines use of current conventional treatment processes, plant optimization, and increased treatment. In addition, a pipeline will be constructed to convey highly treated effluent from three treatment facilities to a discharge location near the Boulder Islands in Lake Mead. There will be flexibility in discharge conveyed depending upon lake conditions and the objectives identified in the Boulder Basin Adaptive Management Plan which was developed and agreed to by all involved parties. As documented in the Final EIS, this course of action was deemed to be ''environmentally preferred''.

The Final EIS, and previously in the Draft EIS (the latter was released in September 2005), assessed the full spectrum of foreseeable environmental consequences, and appropriate mitigation measures identified, for each alternative considered. Beginning with early scoping, through the preparation of the Draft and Final EIS, numerous public meetings were hosted. Approximately 500 oral and written comments were received during the scoping phase or in response to the Draft EIS. Key coordination, consultations, or other contacts which aided in preparing the Draft and Final EIS involved (but were not limited to) the Bureau of Reclamation, cities of Las Vegas and Henderson, Clark County Water Reclamation District, Metropolitan Water District of Southern California, Southern Nevada Water Authority, Nevada State Historic Preservation Office, the Bureau of Land Management, and the U.S. Fish and Wildlife Service. Local communities, county and city officials, and interested organizations were contacted extensively during initial scoping and throughout the conservation planning and environmental impact analysis process.

Copies: Interested parties desiring to review the Record of Decision may obtain a complete copy by contacting the Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, NV 89005; or via telephone request at (702) 293–8920.

Dated: July 5, 2007.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. E7–15294 Filed 8–6–07; 8:45 am]

BILLING CODE 4310–A7–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park Service Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meetings for the National Park Service (NPS) Subsistence Resource Commission (SRC) program within the Alaska Region.

SUMMARY: The NPS announces the SRC meeting schedule for the following areas: Denali National Park, Lake Clark National Park, Aniakchak National Monument and Wrangell-St. Elias National Park. The purpose of each meeting is to develop and continue work on NPS subsistence hunting program recommendations and other related subsistence management issues. Each meeting is open to the public and will have time allocated for public testimony. The public is welcomed to present written or oral comments to the SRC. Each meeting will be recorded and a summary will be available upon request from each Superintendent for public inspection approximately six weeks after each meeting. The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act.

Dates: The Denali National Park SRC meeting will be held on Monday, August 27, 2007, from 9 a.m. to 5 p.m., Alaska Standard Time.

Location: Cantwell Community Center, Cantwell, AK.

For Further Information Contact: Amy Craver, Subsistence Manager, telephone: (907) 683–9544, or Paul Anderson, Superintendent, telephone: (907) 683–2294, at Denali National Park and Preserve, P.O. Box 9, Denali Park, AK 99755.

Dates: The Lake Clark National Park SRC meeting will be held on Thursday, September 20, 2007, from 1 p.m. to 5 p.m., Alaska Standard Time.

Location: Nondalton Community Hall, Nondalton, AK.

For Further Information Contact: Mary McBurney, Subsistence Manager, telephone: (907) 235–7891, or Joel Hard, Superintendent, and Michelle Ravenmoon, Subsistence Coordinator, telephone: (907) 781–2218, at Lake Clark National Park and Preserve, 1 Park Place, Port Alsworth, AK 99653.

Dates: The Aniakchak National Monument SRC meeting will be held on Monday, September 24, 2007, from 1 p.m. to 5 p.m., Alaska Standard Time.

Location: Port Heiden Community Hall, Port Heiden, AK.

For Further Information Contact: Mary McBurney, Subsistence Manager, telephone: (907) 235–7891, or Ralph Moore, Superintendent, telephone: (907) 246–3305, at Aniakchak National Monument and Preserve, P.O. Box 7, King Salmon, AK 99613.

Dates: The Wrangell-St. Elias National Park SRC meeting will be held on Wednesday, October, 10, 2007, from 9 a.m. to 5 p.m., Alaska Standard Time.

Location: Chitina Community Hall, Chitina, AK.

For Further Information Contact: Barbara Cellarius, Subsistence Manager, telephone: (907) 822–7236, or Meg Jensen, Superintendent, telephone: (907) 822–5234, at Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, AK 99573.

SUPPLEMENTARY INFORMATION: SRC meeting locations and dates may need to be changed based on weather or local circumstances. If meeting dates and locations are changed notice of each meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. The meetings may end early if all business is finished.

The agendas for each meeting include the following:

1. Call to order (SRC Chair).
2. SRC Roll Call and Confirmation of Quorum.
3. SRC Chair and Superintendent's Welcome and Introductions.
4. Review and Approve Agenda.
5. Status of SRC Membership.
6. SRC Member Reports.
7. Superintendent and NPS Staff Reports.
8. Federal Subsistence Board Update.
9. State of Alaska Board Actions Update.
10. New Business.
11. Agency and Public Comments.
12. SRC Work Session.
13. Set time and place of next SRC meeting.

Adjournment.

Victor Knox,

Deputy Regional Director, Alaska Region.

[FR Doc. E7–15302 Filed 8–6–07; 8:45 am]

BILLING CODE 4310–EF–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of a meeting of the Native American Graves Protection and Repatriation Review Committee (Review Committee). The Review Committee will meet on October 15–16, 2007, at the Heard Museum, 2301 North Central Ave., Phoenix, AZ 85004. Meeting sessions will begin at 8:30 a.m. and end at 5 p.m. each day.

The agenda for the meeting includes an overview of activities of the National NAGPRA Program during fiscal year 2007; consultation regarding regulations for disposition of unclaimed cultural items excavated or removed from Federal or tribal lands after November 16, 1990 (43 CFR 10.7); requests for recommendations regarding the disposition of culturally unidentifiable human remains; and presentations and statements by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public. A detailed agenda for this meeting will be posted on September 28, 2007, at http://www.nps.gov/history/nagpra/.

Requests to schedule a presentation to the Review Committee during the meeting should be submitted in writing no later that September 14, 2007. Requests should include an abstract of the presentation and contact information for the presenters. Persons also may submit written statements for consideration by the Review Committee during the meeting. Send requests and statements to the Designated Federal Officer, NAGPRA Review Committee by U.S. Mail to the National Park Service, 1849 C Street NW (2253), Washington, DC 20240; or by commercial delivery to the National Park Service, 1201 Eye Street NW, 8th floor, Washington, DC 20005. Because increased security in the Washington, DC, area may delay delivery of U.S. Mail to Government offices, copies of mailed requests and statements should also be faxed to (202) 371–5197.

Transcripts of Review Committee meetings are available approximately eight weeks after each meeting at the National NAGPRA Program office, 1201 Eye Street NW, 8th floor, Washington, DC. To request electronic copies of meeting transcripts, send an e-mail message to Tim__McKeown@nps.gov.

Information about NAGPRA, the Review Committee, and Review Committee meetings is available at the National NAGPRA website, http://www.nps.gov/history/nagpra/; for the Review Committee's meeting procedures, select ''Review Committee,'' then select ''Procedures.''

The Review Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3001 *et seq.* Review Committee members are appointed by the Secretary of the Interior. The Review Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such human remains; consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations; consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items. The Review Committee's work is completed during meetings that are open to the public.

Dated: July 11, 2007

C. Timothy McKeown,

Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee.

[FR Doc. E7–15347 Filed 8–6–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF JUSTICE

[AAG/A Order No. 022–2007]

Privacy Act of 1974; System of Records

AGENCY: Criminal Division, Department of Justice.

ACTION: Revised system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, notice is given that the Department of Justice (DOJ) proposes to revise the ''Central Criminal Division Index File and Associated Records System, JUSTICE/CRM–001,'' last published in full in the **Federal Register** on February 20, 1998 (63 FR 8659) and amended in part on March 29, 2001 (66 FR 17200).

DATES: In accordance with the requirements of 5 U.S.C. 552a(e)(4) and (11), the public is given a 30 day period in which to comment. The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, has 40 days in which to conclude its review of the system. Therefore, please submit any comments by September 17, 2007.

ADDRESSES: The public, OMB and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400 National Place Building), facsimile number 202–307–1853.

FOR FURTHER INFORMATION CONTACT: Thomas McIntyre on 202–514–4412.

SUPPLEMENTARY INFORMATION: The system notice has been revised to update various sections, as necessary, and to reflect routine uses modified for consistency with other Department of Justice notices, or added based on new requirements for routine uses. In addition, it should be noted that a final rule establishing the National Security Division in the Department of Justice, published in the **Federal Register** on March 7, 2007, at 72 FR 10064, makes changes to certain portions of 28 CFR 0.55 through 0.64–5, outlining functions assigned to the Criminal Division, since some of the functions previously assigned to the Criminal Division moved to the new National Security Division effective March 7, 2007.

In accordance with 5 U.S.C. 552a (r), the Department has provided a report to OMB and the Congress.

Dated: July 24, 2007.

Lee J. Lofthus,

Assistant Attorney General for Administration.

DEPARTMENT OF JUSTICE/CRM–001

SYSTEM NAME:

Criminal Division Index File Systems and Associated Records.

SECURITY CLASSIFICATION:

The system itself is, in whole sensitive and in part, classified to protect national security/foreign policy material. Within the unclassified part, items or records may have Limited Official Use or national security/foreign policy classifications.

SYSTEM LOCATION:

U.S. Department of Justice, Criminal Division, Washington DC 20530–0001 or a National Archives and Records Administration (NARA) Regional Records Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons referred to in potential or actual cases and matters of concern to the Criminal Division and correspondence on subjects directed or referred to the Criminal Division.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of alphabetical indices bearing individual names and the associated records to which they relate, arranged either by subject matter or individual identifying number containing the general and particular records of all Criminal Division correspondence, cases, matters and memoranda, including but not limited to, investigative reports, correspondence to and from the Division, legal papers, evidence, and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 44 U.S.C. 3101 to implement all functions assigned to the Criminal Division in 28 CFR 0.55 through 0.64–5. Additional authority is derived from Treaties, Statutes, Executive Orders, Presidential Proclamations, and Attorney General Directives.

PURPOSE(S):

Records in this system are used to provide investigative and litigation information to management in the Division and the Department, courts, and other law enforcement agencies,

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such record as follows:

(1) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

(2) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(3) Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

(4) To appropriate officials and employees of a federal agency or entity that requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

(5) A record may be disclosed to designated officers and employees of state, local, territorial, or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision.

(6) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(7) To an actual or potential party to litigation or administrative proceeding, or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings.

(8) To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(9) To federal, state, local, territorial, tribal, foreign (acting either directly or through an authorized representative of its government), or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

(10) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(11) To a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(12) To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

(13) To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

(14) To any criminal, civil, or regulatory law enforcement authority (whether federal, state, local, territorial, tribal, or foreign (acting either directly or through an authorized representative of its government)), where the information is relevant to the recipient entity's law enforcement responsibilities.

(15) To a governmental entity lawfully engaged in collecting law enforcement, law enforcement intelligence, or national security intelligence information for such purposes.

(16) To any person, organization, or governmental entity in order to notify them of a serious terrorist threat for the purpose of guarding against or responding to such a threat.

(17) To any person or entity, or their representative, if deemed by the Criminal Division to be necessary in order to elicit information or cooperation from the person or entity or their client for use by the Division in the performance of an authorized activity.

(18) A record that contains classified national security information and material may be disseminated to persons who are engaged in historical research projects, or who have previously occupied policy making positions to which they were appointed by the President, in accordance with the provisions codified in 28 CFR 17.46.

(19) A record relating to an actual or potential civil or criminal violation of title 17, United States Code, may be disseminated to a person injured by such violation to assist him in the institution or maintenance of a suit brought under such title.

(20) A record relating to a person held in custody pending or during arraignment, trial, sentence, or extradition proceedings, or after conviction or after extradition proceedings, may be disseminated to a federal, state, local, territorial, or foreign prison, probation, parole, or pardon authority, or to any other agency or

individual concerned with the maintenance, transportation, or release of such a person.

(21) A record relating to a case or matter that has been referred by an agency for investigation, prosecution or enforcement, or that involves a case or matter within the jurisdiction of an agency, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such inquiries and reports as are necessary during the processing of the case or matter.

(22) In any health care-related civil or criminal case, investigation, or matter, information indicating patient harm, neglect, or abuse, or poor or inadequate quality of care, at a health care facility or by a health care provider may be disclosed as a routine use to any federal, state, local, tribal, foreign, joint, international or private entity that is responsible for regulating, licensing, registering or accrediting any health care provider or health care facility, or enforcing any health care-related laws or regulations. Further, information indicating an ongoing quality of care problem by a health care provider or at a health care facility may be disclosed to the appropriate health plan. Additionally, unless otherwise prohibited by applicable law, information indicating patient harm, neglect, abuse, or poor or inadequate quality of care may be disclosed to the affected patient or his representative or guardian at the discretion of and in the manner determined by the agency in possession of the information.

(23) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard-copy, paper format and stored in electronic format via a Storage Area Network system architecture consisting of personal computers, client/servers, and tape libraries. Data is stored on hard disk, floppy diskettes, compact disks, magnetic tape and/or optical disk media. Records are stored in accordance with applicable executive orders, statutes, and agency implementing regulations.

The computer storage devices are located at several Justice Department buildings in Washington, DC. Paper files are stored in: Division offices with controlled access; a secure records unit with controlled access; locked file cabinets; other appropriate GSA approved security containers; or once closed, at a National Archives and Records Administration regional records center. Records that contain classified national security information are stored in accordance with applicable executive orders, statutes, and agency implementing regulations.

RETRIEVABILITY:

Records may be retrieved by reference to an individual's name or personal identifier.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules, and policies, including the Department's automated systems security and access policies. Records and technical equipment are maintained in a secured area with restricted access. The required use of password protection identification features and other system protection methods also restrict access. All physical access to the building(s) where this system of records is maintained is controlled and monitored by security personnel and accessed only by authorized Department personnel or by non-Department personnel properly authorized to assist in the conduct of an agency function related to these records.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of in accordance with records retention schedules approved by the National Archives and Records Administration (NARA) for the constituent system of records.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General, Criminal Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington DC 20530–0001.

NOTIFICATION PROCEDURE:

The major part of this system is exempted from this requirement under 5 U.S.C. 552a(j)(2), (k)(1) or (k)(2). Inquiries should be addressed to: Chief, Freedom of Information Act/Privacy Act Unit, Criminal Division, Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record in this system must be in writing and should be addressed to the Chief of the Freedom of Information Act/Privacy Act Unit noted above. The envelope and letter should be clearly marked ''Privacy Act Request''. Requests must comply with the Department's regulations and be made in accordance with 28 CFR Part 16. They must include a general description of the records sought, the requester's full name, current address, and date and place of birth, the name of the case or matter involved, if known, and the name of the judicial district involved, if known, or any other identifying number or information which may be of assistance in locating the record. Social Security numbers are not used by the Criminal Division for identification purposes and should not be provided. The request must be signed and dated and either notarized or submitted under penalty of perjury. Some information may be exempt from access provisions as described in the section entitled ''Exemptions Claimed for the System.'' An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request according to the Record Access Procedures listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information is not subject to amendment. Some information may be exempt from contesting record procedures as described in the section entitled ''Exemptions Claimed for the System.'' An individual who is the subject of a record in this system may seek amendment of those records that are not exempt. A determination whether a

record may be amended will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Department officers and employees and other federal, state, local and foreign law enforcement and non-law enforcement agencies, corporations and businesses, private persons, witnesses, informants, and publicly available information, including commercial information resellers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4) (G), (H) and (I), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to the provisions of 5 U.S.C. 552a(j)(2); in addition, the system is exempt pursuant to the provisions of 5 U.S.C. 552a(k)(1) and (k)(2) from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**. See 28 CFR 16.91.

[FR Doc. E7–15239 Filed 8–6–07; 8:45 am]

BILLING CODE 4410–14–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 4, ''Nondiscrimination in Federally Assisted Commission Programs''.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* On occasion and annually.

5. *Who will be required or asked to report:* Recipients of Federal Financial Assistance provided by the NRC.

6. *An estimate of the number of annual responses:* 800 responses (600 plus 200 recordkeepers).

7. *The estimated number of annual respondents:* 200.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 3,600 hours (3,000 hours reporting [5 hrs per response] and 600 hours recordkeeping [3 hrs per recordkeeper]).

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* N/A.

10. *Abstract:* Recipients of NRC financial assistance provide data to demonstrate assurance to NRC that they are in compliance with non-discrimination regulations and policies.

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 September 6, 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. Comments can also be e-mailed to *Nathan_Frey@omb.eop.gov* or submitted by telephone at (202) 395–4650. Nathan Frey, Office of Information and Regulatory Affairs (3150–0053), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

The NRC Clearance Officer is Margaret A. Janney, (301) 415–7245.

Dated at Rockville, Maryland, this 31st day of July, 2007.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–15299 Filed 8–6–07; 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 70—Domestic Licensing of Special Nuclear Material.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses and amendments may be submitted at any time. Generally, renewal applications are submitted every ten years and for major fuel cycle facilities updates of the safety demonstration section are submitted every two years. Nuclear material control and accounting information is submitted in accordance with specified instructions.

5. *Who will be required or asked to report:* Applicants for and holders of specific NRC licenses to receive title to, own, acquire, deliver, receive, possess, use, or initially transfer special nuclear material.

6. *An estimate of the number of annual responses:* 1,256 (655 responses plus 601 recordkeepers).

7. *An estimate of the number of annual respondents:* 372

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 89,465 (81,765 reporting hours + 7,700 recordkeeping hours) or an average of 125 hours per response (81,765 reporting burden hours/655 responses) and an average of 13 hours per recordkeeper (7,700 recordkeeping burden hours/601 recordkeepers).

9. *An indication of whether Section 3507(d), Public Law 04–13 applies:* N/A.

10. *Abstract:* Part 70 establishes requirements for licenses to own, acquire, receive, possess, use, and transfer special nuclear material. The information in the applications, reports, and records is used by NRC to make licensing and other regulatory determinations concerning the use of special nuclear material. The revised estimate of burden reflects the addition of requirements for documentation for termination or transfer of licensed activities, and modifying licenses.

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, Maryland 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 September 6, 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. Comments can also be e-mailed to *Nathan_Frey@omb.eop.gov* or submitted by telephone at (202) 395–4650. Nathan Frey, Desk Officer, Office of Information and Regulatory Affairs (3150–0009), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

The NRC Clearance Officer is Margaret A. Janney, 301–415–7245.

Dated at Rockville, Maryland, this 1st day of August, 2007.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–15300 Filed 8–6–07; 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 35 Medical Use of Byproduct Material.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* Reports of medical events, doses to an embryo/fetus or nursing child, or leaking sources are reportable on occurrence. A certifying entity desiring to be recognized by the NRC must submit a one-time request for recognition.

5. *Who will be required or asked to report:* Physicians and medical institutions holding an NRC license authorizing the administration of byproduct material or radiation therefrom to humans for medical use.

6. *An estimate of the number of annual responses:* 259,332 (53,346 responses from NRC Licenses + 1,862 recordkeepers and 197,235 responses from Agreement States + 6,889 recordkeepers) .

7. *An estimate of the number of annual respondents:* 8,751 (1,862 for NRC Licenses and 6,889 for Agreement States).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 987,764 hours (251,200 for NRC Licenses and 736,564 for Agreement States).

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* N/A.

10. *Abstract:* 10 CFR Part 35, ''Medical Use of Byproduct Material,'' contains NRC's requirements and provisions for the medical use of byproduct material and for issuance of specific licenses authorizing the medical use of this material. These requirements and provisions provide for the radiation safety of workers, the general public, patients, and human research subjects. 10 CFR Part 35 contains mandatory requirements that apply to NRC licensees authorized to administer byproduct material or radiation therefrom to humans for medical use.

The information in the required reports and records is used by the NRC to ensure that public health and safety is protected, and that the possession and use of byproduct material is in compliance with the license and regulatory requirements.

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, Maryland 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 September 6, 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. Nathan Frey, Desk Officer, Office of Information and Regulatory Affairs (3150–0010), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Nathan_Frey@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Margaret A. Janney, 301–415–7245.

Dated at Rockville, Maryland, this 1st day of August, 2007.

For the Nuclear Regulatory Commission.

Christopher Colburn,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–15301 Filed 8–6–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Entergy Nuclear Vermont Yankee, LLC., and Entergy Nuclear Operations, Inc., Vermont Yankee Nuclear Power Station; Notice of Availability of the Final Supplement 30 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding the License Renewal of Vermont Yankee Nuclear Power Station

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, Commission) has published a final plant-specific supplement to the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS)'', NUREG–1437, regarding the renewal of operating license DPR–28 for an additional 20 years of operation for the Vermont Yankee Nuclear Power Station (Vermont

Yankee). Vermont Yankee is located in the town of Vernon, Vermont, in Windham County on the west shore of the Connecticut River. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

As discussed in Section 9.3 of the final Supplement 30, the recommendation of the staff is that the Commission determine that the adverse environmental impacts of license renewal for Vermont Yankee are not so great that preserving the option of license renewal for energy-planning decision makers would be unreasonable. The recommendation is based on: (1) The analysis and findings in the GEIS; (2) the Environmental Report submitted by Entergy; (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments.

The final Supplement 30 to the GEIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://adamswebsearch.nrc.gov/dologin.htm*. The Accession Numbers for the final Supplement 30 to the GEIS are ML072050012 for Volume 1, Main Report, and ML072050013 for Volume 2, Appendices. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov*. In addition, final supplement to the GEIS will be available at the following libraries for public inspection: Vernon Free Library, 567 Governor Hunt Road, Vernon, Vermont; Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont; Hinsdale Public Library, 122 Brattleboro Road, Hinsdale, New Hampshire; and Dickinson Memorial Library, 115 Main Street, Northfield, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Emch, Jr., Environmental Branch B, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O–11F1, Washington, DC 20555–0001. Mr. Emch may be contacted by telephone at 1–800–368–5642, extension 1590 or via e-mail at *rle@nrc.gov*.

Dated at Rockville, Maryland, this 1st day of August, 2007.

For the Nuclear Regulatory Commission.

Rani L. Franovich,

Branch Chief, Environmental Branch B, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E7–15345 Filed 8–6–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of August 6, 13, 20, 27, September 3, 10, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 6, 2007

There are no meetings scheduled for the Week of August 6, 2007.

Week of August 13, 2007—Tentative

Tuesday, August 14, 2007

9:30 a.m.—Discussion of Intragovernmental Affairs (closed—Ex. 1 & 9).

Week of August 20, 2007—Tentative

Tuesday, August 21, 2007

1:30 p.m.—Meeting with OAS and CRCPD (Public Meeting) (contact: Shawn Smith, 301–415–2620).

This meeting will be webcast live at the Web address, *http:\\www.nrc.gov*.

Wednesday, August 22, 2007

9:30 a.m.—Periodic Briefing on New Reactor Issues (Morning Session) (Public Meeting) (contact: Donna Williams, 301–415–1322).

This meeting will be webcast live at the Web address, *www.nrc.gov*.

1:30 p.m.—Periodic Briefing on New Reactor Issues (Afternoon Session) (Public Meeting) (contact: Donna Williams, 301–415–1322).

This meeting will be webcast live at the Web address, *http:\\www.nrc.gov*.

Week of August 27, 2007—Tentative

There are no meetings scheduled for the Week of August 27, 2007.

Week of September 3, 2007—Tentative

There are no meetings scheduled for the Week of September 3, 2007.

Week of September 10, 2007—Tentative

There are no meetings scheduled for the Week of September 10, 2007.

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http:\\www.nrc.gov/about-nrc/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: August 2, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–3860 Filed 8–3–07; 11:30 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for a Revised Information Collection: SF–15 Application for 10-Point Veteran Preference

AGENCY: Office of Personnel Management.

ACTION: 30-Day Notice of Information Collection Under Review: Form SF–15, Application for 10-Point Veteran Preference; OMB Control Number 3206–0001.

SUMMARY: The Office of Personnel Management (OPM) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork

Reduction Act of 1995 (PRA). The information collection was previously published in the **Federal Register** Volume 72, Number 17, page 3880 on January 26, 2007, allowing for a 60 day comment period on the Standard Form 15 (SF–15) Application for 10-Point Veteran Preference.

The purpose of this Notice is to allow for an additional 30 days for public comments. This process is in accordance with 5 CFR 1320.10.

The SF–15 is used by agencies, OPM examining offices, and agency appointing officials to adjudicate individuals' claims for veterans' preference in accordance with the Veterans' Preference Act of 1944. Approximately 11,252 forms were completed last year. Each form requires approximately 10 minutes to complete. The annual estimated burden is 1,875 hours.

In the 60-Day Notice published January 26, 2007, OPM announced our request for clearance for the SF–15 and invited public comments. OPM received 14 comments by the closing date on March 27, 2007. A discussion of the comments is provided below.

One commenter asked why we were reviewing the SF–15. The purpose of reviewing the SF–15 is to seek public comment concerning whether the content and questions still serve their intended purposes. Primarily, we are reviewing the form to see whether the form should be simplified.

One commenter asked OPM to maintain the SF–15 in its current form without changes because the instructions are simple. We will consider this comment, but we will also review all other collected comments and accept proposed changes that we conclude will improve the form.

We received comments from three individuals and two veteran service organizations (VSOs) recommending that OPM continue to use the form. Another commenter asked whether this review process was intended to remove 10-point veterans' preference for disabled veterans seeking Federal employment. OPM is not removing the SF–15 form from use. The SF–15 is a useful information collection instrument that enables disabled veterans and those seeking entitlement for derived preference (e.g., spouses, widows, and mothers) to select the particular type of preference depending on their individual circumstances. Agencies use the information on the form to adjudicate claims for veterans' preference, in part by identifying the basis on which each individual is claiming entitlement to preference (e.g., ten-point (non-compensable disability); ten-point (compensable disability); ten-point (spouse); ten-point (widow or widower); ten-point (mother, deceased veteran); and ten-point (mother, disabled veteran).

One commenter noted that the SF–15 is dated December 2004 and has no expiration date and questioned why we were seeking re-clearance. Under the PRA, OMB requires continuing approval for the use of any information collection (e.g., forms, surveys). OPM submits a periodic request (every three years) for approval by OMB to continue the use of the SF–15 form. The Notice informs the public, as required by law, that we are reviewing the form and will consider any questions and comments regarding its content and use.

One commenter asked why VSO liaison members who regularly meet with OPM were not notified in advance of this Notice. Another individual suggested that the Department of Veterans Affairs (DVA) should be queried for their input in reviewing the form. The purpose of publishing revisions in advance and establishing a comment period is to provide interested parties with an opportunity to comment on proposed revisions. We welcome comments from VSOs, the DVA, and any other individual or organization that wishes to comment. Pursuant to this notice, we are now providing an additional 30 days for interested parties to comment.

One VSO submitted a consolidated listing of questions and recommendations from its constituents, addressing the content and design of the SF–15 form. Their first question was whether the full social security number (SSN) was needed on the form and if so, could it be masked to protect an individual from identity theft. We agree protection of applicants' SSNs is important and have removed those blocks on the SF–15 that specifically ask for the SSN.

Another individual asked who processes the SF–15 after an individual completes it. Once the SF–15 is completed by the applicant, the applicant sends the SF–15 to the agency to which the individual is applying.

One commenter wanted to know who signs the SF–15 at the bottom of the form in the block: Signature of Appointing Officer. This block is signed by the Federal agency's designated Appointing Officer if the applicant is selected for employment.

One commenter questioned the use of the term ''burden'' as used in the Notice. Americans spend incalculable hours each year providing information to Federal agencies by filling out forms, surveys, and or questionnaires. A major aim of the PRA is to minimize the ''burden''—a term used in the law—which the information collection imposes on the public. Under the PRA, OMB must approve all such information collections and has broad authority over annual Governmentwide paperwork reduction goals established by law. Generally, when a Federal agency seeks to collect information from ten or more people, OMB must approve the collection. Information collections that fall under OMB's purview include application forms, questionnaires, surveys, and reporting or recordkeeping requirements. The total ''annual burden hours'' and ''annual burden dollars'' for each such form are tracked by OMB and monitored by Congress.

Another commenter wanted to know whether the SF–15 is used to collect data for statistical or census purposes. The information on the SF–15 form is used for identifying the individual's claim to the type of veterans' preference entitlement on the form. OPM uses data from the SF–15 to identify the number of persons employed and entitled to the various types of veterans' preference.

One commenter asked if there is a general clearinghouse to maintain all the SF–15's so veterans do not have to keep filling out the form each time they apply for a Federal job. OPM does not maintain a clearinghouse on all SF–15's. Agencies may do this as a part of their applicant supply files, but are not required to do so. Agencies are required to keep all hiring records for two years but are not required to match an SF–15 already on file with a new application.

One group of veterans collectively submitted their recommendations to revise the content on the SF–15 form. These recommendations are as follows:

Page 1 of the Standard Form 15, Block 2: delete three (e.g., civil service exam, postal exam, and position you currently occupy) of the four areas and use the block only for the job announcement number. We have considered this recommendation and do not concur. Block 2 has multiple uses that are still valid today (e.g., identifying an exam that was recently taken or notifying an agency that a current employee is changing his or her entitlement to veterans' preference based on a call-up for military service that resulted in a service-connected disability). Removing the three areas (e.g., civil service exam, postal exam, and position you currently occupy) would limit the form to only those applying for specific job announcements.

Block 5: drop the ''Date exam was held'' and use the block only for the ''Date the application was submitted'' to the agency. We do not concur with the

recommendation. As long as we are retaining a reference to an exam in Block 2, we should retain a reference to an exam here as well. The applicant can select his or her choice in Block 5 and provide the date as applicable.

Blocks 4 (SSN), 7 (Service Number), 8 (SSN), and 9 (VA Claim Number) are asking the applicant to provide potentially the same information and the group recommended consolidating these four blocks. We have considered the recommendation and find Blocks 7 and 9 should remain on the form. We have removed Blocks 4 and 8 that asked for an SSN and have renumbered all applicable blocks on the SF–15.

The group recommended that OPM be cognizant of visually impaired disabled veterans and increase the size of text on the form. We concur and will increase the smaller size font used on the SF–15. We wish to remind readers that a fillable version of the updated form will be available on the OPM Web site (*http://www.opm.gov/forms/pdf_fill/SF15.pdf*). Anyone completing this version of the form can adjust the font size as needed.

The group recommended using one line for stating the full title of the form (Application for 10-Point Veterans Preference) instead of the title being separated into two lines. We agree. We have changed the title of the form to be on one line.

One suggestion was that OPM replace Block 10 with Block 11, because many of the veterans currently filling out this form are rated by VA as 30% or higher disabled and this being the first block would provide a more user-friendly format for efficiency and effectiveness purposes. We have considered this recommendation, but decided not to change the order in which these blocks appear. The flow of information on the form begins in Block 10 (now renumbered as Block 8), with those veterans entitled to veterans' preference based on non-compensable service-connected disabilities of less than 10% followed by Block 11 (now Block 9), used by those veterans who are in receipt of or eligible for compensation based on service-connected disabilities rated as 10% or more.

The group recommended adding ''at 30% or greater'' in Block 11 after ''compensation from the VA'' We agree that adding a percentage to this sentence assists veterans to understand that Block 11 is for those receiving compensation. As compensation is provided to those service men and women rated as 10% or more disabled as a result of service-connected injuries, we have added ''of 10% or more'' to what is now Block 9.

The group recommended adding ''dashes and arrows'' to Blocks 12, 13, and 14 to connect the narrative with the questions, similar to what was done in Blocks 10 and 11. We disagree, as adding dashes and arrows to Blocks 12, 13, and 14 would clutter this area of the document potentially making it harder for the applicant to read in completing this form.

The group recommended moving the statement ''This form must be signed by all persons claiming 10-Point preference,'' which appears at the lower right side of the form, and placing it directly under the statement ''I certify that all of the statements made in this claim * * *'' block on the lower left side of the page. We agree and revised the form accordingly.

The group also recommended moving the block containing the statement ''Preference entitlement was verified'' to the space where the block containing the statement ''This form must be signed by all persons claiming 10-Point preference'' was previously located. We agree and the SF–15 shows we have changed the form.

The group recommended moving the ''For Use by Appointing Officer only'' and placing this under the ''Preference entitlement was verified'' block. We agree and the SF–15 shows we have changed the form.

The group recommended increasing the font size of ''Signature of person claiming preference.'' We agree and have changed both signature blocks on the form.

One commenter asked why page 2 contains questions 1 and 2 when that information is already provided in the applicant's resume. The SF–15 is a summarized document that readily assists both the veteran and the agency in reviewing the correct documents for adjudicating veterans' preference. By asking these two questions on the form, the agency saves time and effort in not having to research the resume or application in finding this information.

One commenter questioned why we are requiring the information requested in Block 3 and Block 4 at the bottom of page 2. The primary reason for asking these two questions is to enable the agency to identify the employability of the disabled veteran and entitlement of the spouse to receive derived preference. If a disabled veteran is disqualified for a Federal position along the general lines of his or her usual occupation because of a service-connected disability, and if the spouse of the disabled veteran has competed for a Federal position, then the spouse is entitled to have ten points added to a passing examination score or rating. Such a disqualification may be presumed when the veteran is unemployed and is rated by the appropriate military or Department of Veterans Affairs authority to be 100 percent disabled and/or unemployable; has retired, been separated, or resigned from a civil service position on the basis of a disability that is service-connected in origin; or has attempted to obtain a civil service position or other position along the lines of his or her usual occupation and has failed to qualify because of a service-connected disability. These two questions identify these occupations and further assist the agency in adjudicating the claim to the particular veterans' preference sought.

One commenter recommended shifting the ''Privacy Act statement'' from the bottom of Page 1 to the bottom of Page 2. We have considered this recommendation and find that the Privacy Act and Public Burden Statement is best located on the front page with the majority of information collected.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, Fax (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication August 7, 2007.

ADDRESSES: Written comments and or suggestions regarding this notice should be directed to: Karen Jacobs, Acting Deputy Associate Director, Center for Talent and Capacity, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6551, Washington, DC 20415; and Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building NW., Room 10235, Washington, DC 20503.

For Administrative Coordination Contact: Scott A. Wilander by telephone at (202) 606–0960; by fax at (202) 606–0390; TTY at (202) 606–3134; or by e-mail at *scott.wilander@opm.gov*.

Office of Personnel Management,

Tricia Hollis,

Chief of Staff & Director of External Affairs.

[FR Doc. E7–15164 Filed 8–6–07; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27920; 812–12973]

Lehman Brothers Asset Management, LLC., et al.; Notice of Application

August 1, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a).

APPLICANTS: Lehman Brothers Asset Management LLC (''LBAM''), Neuberger Berman Management, Inc. (''NBMI''), any other existing or future investment adviser registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') which controls, is controlled by, or is under common control (as defined in section 2(a)(9) of the Act) with, LBH (as defined below) (individually, a ''Future Adviser'' and collectively, the ''Future Advisers''),[1] Merrimac Master Portfolio (''Merrimac''), Institutional Liquidity Trust (the ''Master Trust''), Lehman Brothers Institutional Liquidity Funds (''LB Institutional Liquidity Funds''), Lehman Brothers Institutional Liquidity Cash Management Funds (''LB Institutional Cash Management Funds''), Lehman Brothers Reserve Liquidity Funds (''LB Reserve Funds''), Neuberger Berman Institutional Liquidity Series (''NB Liquidity Funds''), Lehman Brothers Income Funds (''LB Income Funds''),[2] any existing or future registered money market funds that are advised or subadvised by an Adviser,[3] Lehman Brothers, Inc. (''LBI''), and Lehman Commercial Paper, Inc. (''LCP''), (LBI and LCP collectively are referred to as the ''Dealer'' or ''Lehman Brothers'').

SUMMARY OF APPLICATION: Applicants request an order to permit the Money Market Portfolios to engage in certain principal transactions with Lehman Brothers.

FILING DATES: The application was filed on May 12, 2003, and amended on January 2, 2004, and February 12, 2007. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 August 27, 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 may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. *Applicants:* LBAM, 190 South LaSalle Street, Chicago, IL 60603; NBMI, the Master Trust, LB Institutional Liquidity Funds, LB Institutional Cash Management Funds, LB Reserve Funds, NB Liquidity Funds, and LB Income Funds, 605 Third Avenue, New York, NY 10158–3698; Merrimac, 200 Clarendon Street, Boston, MA 02117; LBI and LCP, 399 Park Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (tel. 202–551–8090).

Applicants' Representations

1. Merrimac, a New York common law trust, is an open-end management investment company registered under the Act. The Master Trust, a Delaware statutory trust, is an open-end management investment company registered under the Act. LB Institutional Liquidity Funds, a Delaware statutory trust, is an open-end management investment company registered under the Act. LB Institutional Cash Management Funds and LB Reserve Funds are both Delaware statutory trusts that are open-end management investment companies registered under the Act. NB Liquidity Funds and LB Income Funds are both Delaware statutory trusts that are open-end management investment companies registered under the Act. Each Money Market Portfolio invests all of its assets in various types of taxable money market instruments and repurchase agreements (collectively, ''Money Market Instruments'') and is subject to rule 2a–7 under the Act.

2. LBAM is a Delaware corporation and wholly-owned subsidiary of Lehman Brothers Holdings Inc (''LBH''). NBMI is a New York corporation and a wholly-owned subsidiary of Neuberger Berman, Inc. (''NBI''). LBAM and NBMI are each registered as an investment adviser under the Advisers Act. LB Money Market Funds have entered into investment advisory agreements with NBMI under which NBMI will provide investment advisory and management services. NBMI, in turn, has entered into sub-investment advisory agreements with LBAM under which LBAM will provide day to day investment management services to the LB Money Market Funds. LBAM has also entered into a sub-investment advisory agreement with Investors Bank and Trust Company (''IBT'') under which LBAM will provide investment advisory and management services to Merrimac. NBMI is the investment adviser and administrator to, and principal underwriter of, the LB Money Market Funds.

3. LBI is a wholly-owned subsidiary of LBH and is registered as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act''). LBI, a primary dealer in U.S. Government securities, currently is one of the largest dealers in commercial paper, repurchase agreements and other Money Market Instruments in the United States. LCP is a Delaware corporation and wholly-

[1] LBAM, NBMI, and the Future Advisers are referred to individually in this notice as an ''Adviser'' and collectively as the ''Advisers.'' Any Adviser that currently intends to rely on the requested order is named as an applicant in the application. Any other Adviser that relies on the order in the future will comply with the terms and conditions of the application.

[2] LB Income Funds offers six series that operate as money market funds subject to rule 2a–7 under the Act: Neuberger Berman Cash Reserves, Neuberger Berman Government Money Fund, Lehman Brothers Municipal Money Fund, Lehman Brothers New York Municipal Money Fund, Lehman Brothers National Municipal Money Fund, and Lehman Brothers Tax-Free Money Fund (collectively, the ''LB Income Money Market Series''). The Master Trust, LB Institutional Liquidity Funds, LB Institutional Cash Management Funds, LB Reserve Funds, NB Liquidity Funds, and the LB Income Money Market Series are collectively referred to as the ''LB Money Market Funds.''

[3] All such investment companies and series, including Merrimac and the LB Money Market Funds and their series, are referred to individually in this notice as a ''Money Market Portfolio'' and collectively as the ''Money Market Portfolios.'' The requested relief will not extend to any investment company advised or sub-advised by LBI (as defined below). Any Money Market Portfolios not existing as of the date of the application are referred to in this notice individually as a ''Future Money Market Portfolio'' and collectively as the ''Future Money Market Portfolios.'' Any Money Market Portfolio that currently intends to rely on the requested order is named as an applicant in the application. Any other Money Market Portfolio that relies on the order in the future will comply with the terms and conditions of the application.

owned subsidiary of LBI. LCP trades exempt securities, as defined in section 3(a)(12) of the 1934 Act, and other instruments, including Money Market Instruments, and is a certified dealer in the State of Utah.

4. Applicants state that the Dealer and each of the Advisers are functionally independent of each other and operate as completely separate entities. Specifically, the Dealer and the Advisers: Are separately capitalized, maintain their own books and records and, except as described in the application with respect to certain dual officers, have separate employees. Additionally, each of the Advisers and the Dealer operate on different sides of appropriate information barriers with respect to portfolio management activities and investment banking activities.

5. Investment management decisions for the Money Market Portfolios are determined solely by the Advisers. The portfolio managers and other employees that are responsible for portfolio management for registered investment companies function exclusively on behalf of one or more of the Advisers, and not the Dealer. The compensation of persons assigned to the Advisers does not depend on the volume or nature of trades effected by the Advisers with the Dealer, except to the extent that such trades may affect general firmwide compensation of LBH and its subsidiaries as a whole.

6. The portfolio securities in which the Money Market Portfolios invest that are the subject of the application are Money Market Instruments. Practically all trading in Money Market Instruments takes place in over-the-counter markets consisting of groups of dealers who are primarily major securities firms or large commercial banks. Money Market Instruments generally are traded in lots of $1,000,000 or more on a net basis and normally do not involve payment of either brokerage commissions or transfer taxes. The costs of portfolio transactions to the Money Market Portfolios consist primarily of dealer or underwriter spreads. Spreads vary somewhat among Money Market Instruments, but generally spread levels for short-term investment grade products are in the range of 1 to 5 basis points (.01% to .05%). In the Money Market Portfolios' experience, there is not a great deal of variation in the spreads on Money Market Instruments quoted by the various dealers, except perhaps during turbulent market conditions.

7. The money market consists of an elaborate telephonic and electronic communications network among dealer firms, principal issuers of Money Market Instruments and principal institutional buyers of such instruments. Because the money market is a dealer market, there is not a single obtainable price for a given instrument that generally prevails at any given time. A dealer acts either as ''agent'' on behalf of issuer clients or as ''principal'' for its own account. In either capacity, a dealer posts rates throughout its internal and external distribution networks that are intended to reflect ''market clearing price levels,'' as determined by the dealer. Only customers of the dealer seeking to purchase Money Market Instruments have access to these postings.

8. Because of the variety of types of Money Market Instruments and other factors, the money market tends to be segmented. The markets for the various types of instruments will vary in terms of price, volatility, liquidity and availability. Although the rates for the different types of instruments tend to fluctuate closely together, there may be significant differences in yield among the various types of instruments, even within a particular instrument category, depending upon the maturity of the instrument and the credit quality of the issuer. Moreover, from time to time, segmenting exists within Money Market Instruments with the same maturity date and rating. The segmenting is based on such factors as whether the issuer is an industrial or financial company, whether the issuer is domestic or foreign and whether the securities are asset-backed or unsecured. Because dealers tend to specialize in certain types of Money Market Instruments, the particular needs of a potential buyer or seller with respect to a certain type of security, maturity or credit quality may limit the number of dealers who can provide optimum pricing and execution. Hence, with respect to any given type of instrument, there may be only a few dealers who can be expected to have the instrument available and be in a position to quote an acceptable price.

9. Lehman Brothers is one of the world's largest dealers in Money Market Instruments, ranking among the top firms in each of the major markets and product areas. As of December 2006, Lehman Brothers had become the third largest dealer in terms of the number of U.S. commercial paper programs. LBI is an active participant in the public auction market for U.S. Treasuries, being one of only 22 primary dealers. LBI also has been an active participant in the market for government agency securities. LBI also is one of the leading participants in the medium-term note (''MTNs'') market. MTNs are offered continuously in public or private offerings, with maturities beginning at nine months. Because commercial paper is not issued for a maturity of longer than nine months and bankers acceptances are not issued for a maturity of longer than six months, there are fewer longer term investment alternatives than shorter term investment alternatives for the Money Market Portfolios. Thus, MTNs represent a significant portion of the longer-term money market investment alternatives. In 2006, Lehman Brothers ranked as the fifth largest manager or co-manager of the MTN/BKNT/DPNT/CD market in terms of proceeds ($36.4 billion) and market share (8.7%). Applicants further believe that LBI plays a relatively significant role in the repurchase agreement market. As of September 27, 2006, LBI had outstanding repurchase agreements of approximately $379 billion, which represented approximately 11% of the overall market. LBI also is one of the leading dealers in asset-backed floating rate notes. According to information published by Thompson Financial, as of December 31, 2006, LBI ranked eighth among the leading dealers for the year in the asset-backed floating rate notes market.

10. Applicants state that because of substantial consolidation in the money market industry, there are fewer major dealers who are active in the market than was the case only a few years ago. In light of this consolidation, applicants believe that it has become very important for investors to have access to as many dealers who are actively engaged in the money market as possible. Applicants state that there are far fewer sources of information available to investors. Applicants also contend that the decline in the number of active money market dealers has affected the competition in the pricing of investment opportunities.

11. Subject to the general supervision of the respective boards of directors or trustees for each Money Market Portfolio (each a ''Board''), the Advisers are responsible for making investment decisions and for the placement of portfolio transactions. The Money Market Portfolios have no obligation to deal with any dealer or group of dealers in the execution of their portfolio transactions. When placing orders, an Adviser has an obligation to obtain the best net price and the most favorable execution of its orders. In doing so, it takes into account such factors as price, the size, type and difficulty of the transaction involved and the dealer's general execution and operational facilities.

Applicants' Legal Analysis

1. Applicants request an order pursuant to sections 6(c) and 17(b) of the Act exempting certain transactions from the provisions of section 17(a) of the Act to permit the Dealer, acting as principal, to sell to or purchase from the Money Market Portfolios certain Money Market Instruments, subject to the conditions set forth below.

2. Section 17(a) of the Act generally prohibits an affiliated person or principal underwriter of a registered investment company, or any affiliated person of that person, acting as principal, from selling to or purchasing from the registered company, or any company controlled by the registered company, any security or other property. Because each Adviser is an affiliated person of the Money Market Portfolios it advises and the Dealer and each of the Advisers are under common control, the Money Market Portfolios are currently prohibited from conducting portfolio transactions with the Dealer in transactions in which the Dealer acts as principal.

3. Section 17(b) of the Act provides that the Commission, upon application, may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair, and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act provides that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that 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.

4. Applicants contend that the rationale for the proposed order is based upon the decreased liquidity in the money market, the important role played in the money market by the Dealer and the special requirements of the Money Market Portfolios with respect to their portfolio transactions. In particular applicants note the following:

(a) The Money Market Portfolios have a strong need for a constant flow of large quantities of high quality Money Market Instruments. The applicants believe that access to such significant dealers as the Dealer in these markets increases the Money Market Portfolios' abilities to manage their portfolios effectively.

(b) The fact that the Money Market Portfolios regularly invest in securities with short maturities and repurchase agreements, combined with the active portfolio management techniques employed by the Advisers, often results in high portfolio activity and the need to make numerous purchases and sales of securities and instruments. Such high portfolio activity makes the need to obtain suitable portfolio securities and best price and execution especially compelling.

(c) The Dealer is such an important participant in the money market, including the market for repurchase agreements, that being unable to deal directly with it may, upon occasion, deprive the Money Market Portfolios of obtaining best price and execution.

(d) The money market, including the market for repurchase agreements, is highly competitive, and removing a competitive factor as important as the Dealer from the universe of dealers with which the Money Market Portfolios may conduct principal transactions may indirectly deprive the Money Market Portfolios of obtaining best price and execution even when the Money Market Portfolios trade with other dealers.

5. Applicants believe that the requested order will provide the Money Market Portfolios with broader and more complete access to the money market, which is necessary to carry out the policies and objectives of each of the Money Market Portfolios in obtaining the best price, execution and quality in all portfolio transactions, and will provide the Money Market Portfolios with important new information sources in the money market, to the direct benefit of the shareholders in the Money Market Portfolios. Applicants believe that the transactions contemplated by the application are identical to those in which they currently are engaged except for the proposed participation of the Dealer, and that such transactions are consistent with the policies of the Money Market Portfolios as recited in their registration statements and reports filed under the Act.

6. Applicants believe that the procedures set forth with respect to transactions with the Dealer will be structured in such a way as to insure that the transactions will be, in all instances, reasonable and fair, and will not involve overreaching on the part of any person concerned, and that the requested exemption is 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' Conditions

The applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Transactions Subject to the Exemption—The exemption shall be applicable to principal transactions in the secondary market and primary or secondary fixed price dealer offerings not made pursuant to underwriting syndicates. The principal transactions which may be conducted pursuant to the exemption will be limited to transactions in *Eligible Securities*.[4] As the Money Market Portfolios are subject to rule 2a–7, such *Eligible Securities* must meet the portfolio maturity and quality requirements of paragraphs (c)(2) and (c)(3) of rule 2a–7. Additionally,

(a) No Money Market Portfolio shall make portfolio purchases pursuant to the exemption that would result directly or indirectly in the Money Market Portfolio investing pursuant to the exemption more than 2% of its *Total Assets* in securities which, when acquired by the Money Market Portfolio (either initially or upon any subsequent roll over) were *Second Tier Securities*; provided that any Money Market Portfolio may make portfolio sales of *Second Tier Securities* pursuant to the exemption without regard to this limitation.

(b) The exemption shall not apply to an *Unrated Security* other than a *Government Security*.

(c) The exemption shall not apply to any security, other than a repurchase agreement, issued by LBH or any affiliated person thereof, or to any security subject to a *Demand Feature* or *Guarantee* issued by LBH or any affiliated person thereof.

2. Repurchase Agreement Requirements—The Money Market Portfolios may engage in repurchase agreements with LBI or LCP only if it has: (a) Net capital, as defined in rule 15c3–1 under the 1934 Act, of at least $100 million and (b) a record (including the record of predecessors) of at least five years continuous operations as a dealer during which time it engaged in repurchase agreements relating to the kind of security subject to the repurchase agreement. LBI or LCP, as applicable, shall furnish the Advisers with financial statements for its most recent fiscal year and the most recent semi-annual financial statements made

[4] Italicized terms are defined as set forth in paragraph (a) of rule 2a–7, unless otherwise indicated.

available to its customers. The Advisers shall determine that LBI or LCP, as applicable, complies with the above requirements and with other repurchase agreement guidelines adopted by the Boards. Each repurchase agreement will be *Collateralized Fully*.

3. Volume Limitations on Transactions—Transactions other than repurchase agreements conducted pursuant to the exemption shall be limited to no more than 25% of (a) The direct or indirect purchases or sales, as the case may be, by each Money Market Portfolio of *Eligible Securities* other than repurchase agreements; and (b) the purchases or sales, as the case may be, by the Dealer of *Eligible Securities* other than repurchase agreements. Transactions comprising repurchase agreements conducted pursuant to the exemption shall be limited to no more than 10% of (a) the repurchase agreements directly or indirectly entered into by the relevant Money Market Portfolio and (b) the repurchase agreements transacted by the Dealer. These calculations shall be measured on an annual basis (the fiscal year of each Money Market Portfolio and of the Dealer) and shall be computed with respect to the dollar volume thereof.

4. Information Required to Document Compliance with Price Tests—Before any transaction may be conducted pursuant to the exemption, the relevant Money Market Portfolio or the Advisers must obtain such information as they deem necessary to determine that the price test (as defined in condition (5) below) applicable to such transaction has been satisfied. In the case of purchase or sale transactions, the Money Market Portfolios or the Advisers must make and document a good faith determination with respect to compliance with the price test based upon current price information obtained through the contemporaneous solicitation of bona fide offers in connection with the type of security involved (the same instrument type, credit rating, maturity and segment, if any, but not necessarily the identical security or issuer). With respect to prospective purchases of securities, these dealers must be those who have in their inventories or otherwise have access to Money Market Instruments of the categories and the types desired and who are in a position to quote favorable prices with respect thereto. With respect to the prospective disposition of securities, these dealers must be those who, in the experience of the Money Market Portfolios and the Advisers, are in a position to quote favorable prices. Before any repurchase agreements are entered into pursuant to the exemption, the Money Market Portfolios or the Advisers must obtain and document competitive quotations from at least two other dealers with respect to repurchase agreements comparable to the type of repurchase agreement involved, except that if quotations are unavailable from two such dealers only one other competitive quotation is required.

5. Price Tests—In the case of purchase and sale transactions, a determination will be required in each instance, based upon the information available to the Money Market Portfolios and the Advisers, that the price available from the Dealer is at least as favorable as that available from other sources. In the case of ''swaps'' involving trades of one security for another, the price test will be based upon the transaction viewed as a whole, and not upon the two components thereof individually. With respect to transactions involving repurchase agreements, a determination will be required in each instance, based on the information available to the Money Market Portfolios and the Advisers, that the income to be earned from the repurchase agreement is at least equal to that available from other sources.

6. Permissible Spread—The Dealer's spreads in regard to any transaction between the Dealer and a Money Market Portfolio will be no greater than its customary dealer spreads which will in turn be consistent with the average or standard spread charged by dealers in money market securities for the type of security and the size of transaction involved.

7. Parties Must Be Factually Independent—The Advisers, on the one hand, and the Dealer, on the other, will operate on different sides of appropriate walls of separation with respect to the Money Market Portfolios and *Eligible Securities*. The walls of separation will include all of the following characteristics, and such others as may from time to time be considered reasonable by the Dealer and the Advisers to facilitate the factual independence of the Advisers from the Dealer.

(a) Each of the Advisers will maintain offices physically separate from those of the Dealer.

(b) The compensation of persons assigned to any of the Advisers (i.e., executive, administrative or investment personnel) will not depend on the volume or nature of trades effected by the Advisers for the Money Market Portfolios with the Dealer under this exemption, except to the extent that such trades may affect the profits and losses of LBH and its subsidiaries as a whole.

(c) The Dealer will not share any of its respective profits or losses on such transactions with any of the Advisers, except to the extent that such profits and losses affect the general firmwide compensation of LBH and its subsidiaries as a whole.

(d) Personnel assigned to the Advisers' investment advisory operations on behalf of the Money Market Portfolios will be exclusively devoted to the business and affairs of one or more of the Advisers.

(e) Personnel assigned to the Dealer will not participate in the decision-making process for the Advisers or otherwise seek to influence the Advisers other than in the normal course of sales and dealer activities of the same nature as are simultaneously being carried out with respect to nonaffiliated institutional clients. Each Adviser, on the one hand, and the Dealer, on the other, may nonetheless maintain affiliations other than with respect to the Money Market Portfolios, and in addition with respect to the Money Market Portfolios as follows:

(i) Adviser personnel may rely on research, including credit analysis and reports prepared internally by various subsidiaries and divisions of the Dealer.

(ii) Certain senior executives of LBH with responsibility for overseeing operations of various divisions, subsidiaries and affiliates of LBH are not precluded from exercising those functions over the Advisers because they oversee the Dealer as well, provided that such persons shall not have any involvement with respect to proposed transactions pursuant to the exemption and will not in any way attempt to influence or control the placing by the Money Market Portfolios or the Advisers of orders in respect of *Eligible Securities* with the Dealer.

8. Record-Keeping Requirements—The Money Market Portfolios and the Advisers will maintain such records with respect to those transactions conducted pursuant to the exemption as may be necessary to confirm compliance with the conditions to the requested relief. In this regard:

(a) Each Money Market Portfolio shall maintain an itemized daily record of all purchases and sales of securities pursuant to the exemption showing for each transaction: The name and quantity of securities; the unit purchase or sale price; the time and date of the transaction; and whether the security was a *First Tier Security* or a *Second Tier Security*. The records also shall, for each transaction, document two quotations received from other dealers for comparable securities, including: The names of the dealers; the names of

the securities; the prices quoted; the times and dates the quotations were received; and whether such securities were *First Tier Securities* or *Second Tier Securities*.

(b) Each Money Market Portfolio shall maintain a ledger or other record showing, on a daily basis, the percentage of the Money Market Portfolio's *Total Assets* represented by *Second Tier Securities* acquired from the Dealer.

(c) Each Money Market Portfolio will maintain records sufficient to verify compliance with the volume limitations contained in condition 3, above. The Dealer will provide the Money Market Portfolios with all records and information necessary to implement this requirement.

(d) Each Money Market Portfolio will maintain records sufficient to verify compliance with the repurchase agreement requirements contained in condition 2, above.

The records required by this condition 8 will be maintained and preserved in the same manner as records required under rule 31a–1(b)(1).

9. Guidelines—Each of the compliance departments of the Advisers and of the Dealers (the ''Compliance Departments'') will prepare and, as necessary, update guidelines for personnel of the Advisers and the Dealer, as the case may be, to make certain that transactions conducted pursuant to the exemption comply with the conditions of the exemption, and that the parties generally maintain arm's-length relationships. In training personnel of the Dealer, particular emphasis will be given to the fact that the Money Market Portfolios are to receive rates as favorable as other institutional purchasers buying the same quantities. The Compliance Departments will periodically monitor the activities of the Advisers and Dealer to make certain that the conditions set forth in the exemption are adhered to.

10. Audit Committee Review—The audit committees of the respective Boards of each of the Money Market Portfolios (each an ''Audit Committee''), comprised of trustees or directors who are not ''interested persons'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), will prepare, periodically review and update the guidelines for the Advisers and the Dealer to ensure that transactions conducted pursuant to the exemption comply with the conditions set forth therein and that the above procedures are followed in all respects. The respective Audit Committees will periodically monitor the activities of the Money Market Portfolios, the Advisers, and the Dealer in this regard to ensure that these matters are being accomplished.

11. Scope of Exemption—Applicants expressly acknowledge that any order issued on the application would grant relief from section 17(a) of the Act only, and would not grant relief from any other section of, or rule under, the Act including, without limitation, rule 2a–7. Any order issued on the application will not extend to any investment company advised or sub-advised by LBI.

12. Board Review—The respective Boards, including a majority of the Independent Trustees, have approved the Money Market Portfolio's participation in transactions conducted pursuant to the exemption and have determined that such participation by the Money Market Portfolios is in the best interests of the Money Market Portfolios and their investors. The minutes of the meetings of the Boards at which this approval was given reflect in detail the reasons for the Boards' determinations. The Boards will review no less frequently than annually the Money Market Portfolios' participation in transactions conducted pursuant to the exemption during the prior year and determine whether the Money Market Portfolios' participation in such transactions continues to be in the best interests of the Money Market Portfolios and their investors. Such review will include (but not be limited to) (a) A comparison of the volume of transactions in each type of security conducted pursuant to the exemption to the market presence of the Dealer in the market for that type of security, and (b) a determination that the Money Market Portfolios are maintaining appropriate trading relationships with other sources for each type of security to ensure that there are appropriate sources for the quotations required by condition 4 above. The minutes of the meetings of the Boards at which such determinations are made will reflect in detail the reasons for the Boards' determinations.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E7–15309 Filed 8–6–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56177; File No. SR–CBOE–2007–89]

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

August 1, 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 July 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 December 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

[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 requested that the Commission waive the 5 day pre-filing notice and 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.

the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

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 July 31, 2007.[7] As the duration period expires on July 31, 2007, the Exchange proposes to extend the effectiveness of the Rule through December 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 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–2007–89 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.

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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); 55219 (February 1, 2007), 72 FR 6305 (February 9, 2007) (SR–CBOE–2007–10) (extending the duration of the Rule through April 30, 2007) and 55676 (April 27, 2007), 72 FR 25348 (May 4, 2007) (SR–CBOE–2007–40) (extending the duration of the Rule through July 31, 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), RG07–21 (February 8, 2007) and RG07–53 (May 17, 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] The Exchange has requested that the Commission waive the requirement that the Exchange provide 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 pursuant to Rule 19b–4(f)(6)(iii). The Commission hereby grants this request. *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).

All submissions should refer to File Number SR–CBOE–2007–89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–89 and should be submitted on or before August 28, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E7–15310 Filed 8–6–07; 8:45 am]

BILLING CODE 8010–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56172; File No. SR–NASDAQ–2006–065]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change as Modified by Amendments No. 1, 3, and 4 Thereto To Reestablish a Quotation and Trading System, The PORTAL® Market, for Securities That Are Designated by Nasdaq as PORTAL Securities

July 31, 2007.

I. Introduction

On December 22, 2006, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to reestablish a quotation and trading system, The PORTAL® Market (''PORTAL'' or the ''PORTAL Market''), for securities that are designated by Nasdaq as PORTAL securities. The system would allow PORTAL Participants[3] to trade with one another in a closed system. On March 6, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change.[4] On April 3, 2007, Nasdaq filed Amendment No. 3 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on May 1, 2007.[5] The Commission received seven comment letters on the proposal from six commenters.[6] On July 16, 2007, Nasdaq filed Amendment No. 4 to the proposed rule change.[7] This order approves the proposed rule change, as amended.

II. Description of the Proposal

The National Association of Securities Dealers, Inc. (''NASD'') created the PORTAL Market in 1990,[8] simultaneously with the SEC's adoption of Rule 144A (''Rule 144A'') under the Securities Act of 1933 (''Securities Act''),[9] to be a new trading system for the purpose of quoting, trading, and reporting trades in securities eligible for resale by Qualified Institutional Buyers (''QIBs'') under Rule 144A.[10]

The PORTAL Market did not develop as anticipated. The Exchange believes this is, in part, because PORTAL securities could only be traded in the PORTAL Market and the original PORTAL rules imposed trade reporting for all transactions in PORTAL securities at a time when there were no trade reporting requirements for privately-placed securities.[11] In addition, Nasdaq believes PORTAL did not develop because it required use of cumbersome technology for access to the PORTAL Market computer system for reporting purposes, which was a stand-alone computer system.

After nearly a decade, NASD filed a proposed rule change to delete many features of the PORTAL Market that had become obsolete including rules governing the registration of PORTAL Dealers, PORTAL Brokers, and PORTAL Qualified Investors and rules that were intended to regulate the quotation and

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] Defined *infra.*

[4] Amendment No. 2 was filed and withdrawn on April 3, 2007.

[5] *See* Securities Exchange Act Release No. 55669 (April 25, 2007), 72 FR 23874 (May 1, 2007) (the ''Notice'').

[6] *See* letters to Nancy M. Morris, Secretary, Commission, from NYPPEX, dated May 18, 2007; Lezlee Westine, President and CEO, TechNet, dated May 22, 2007; William J. Ginivan, General Counsel, Friedman, Billings, Ramsey & Co., Inc. (''FBR''), dated May 22, 2007 and July 18, 2007; Deborah L. Wince-Smith, President, Council on Competitiveness, dated May 25, 2007; and Mary Kuan, Managing Director and Assistant General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), dated May 30, 2007. In addition, an individual affiliated with Morgan Stanley, John McGuire, submitted a general inquiry with respect to the filing via e-mail on May 9, 2007.

[7] In response to a comment made by SIFMA, in Amendment No. 4, Nasdaq amended proposed Rule 6513 (Compliance with Rules and Registration Requirements) so that it applies only to PORTAL Dealers and PORTAL Brokers. Nasdaq stated that the inclusion of PORTAL Qualified Investors (defined *infra*) in this rule was an error. In addition, Nasdaq stated that PORTAL would not be operational for debt securities at this time. Once the necessary changes are in place, Nasdaq will file a proposed rule change stating when PORTAL will be available for debt trading. Finally, Nasdaq removed obsolete references in the PORTAL Rules to CINS. This is a technical amendment and is not subject to notice and comment.

[8] *See* Securities Exchange Act Release No. 27956 (April 27, 1990), 55 FR 18781 (May 4, 1990) (SR–NASD–88–23). The PORTAL Rules were subsequently amended. *See* Securities Exchange Act Release Nos. 28678 (December 6, 1990), 55 FR 51194 (December 12, 1990) (SR–NASD–90–50); 33326 (December 13, 1993), 58 FR 66388 (December 20, 1993) (SR–NASD–91–5); 34562 (August 19, 1994), 59 FR 44210 (August 26, 1994) (SR–NASD–94–39); 35083 (December 12, 1994), 59 FR 65104 (December 16, 1994) (SR–NASD–94–65); 40424 (September 10, 1998), 63 FR 49623 (September 16, 1998) (SR–NASD–98–68); 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (SR–NASD–99–65); 44042 (March 6, 2001), 66 FR 14969 (March 14, 2001) (SR–NASD–99–66).

[9] *See* Securities Act Release No. 6862 (April 23, 1990), 55 FR 17933 (April 30, 1990).

[10] 17 CFR 230.144A.

[11] Currently, NASD Rule 6732 requires that transactions in PORTAL equity securities be reported to the OTC Reporting Facility and PORTAL debt securities be reported to the Trade Reporting and Compliance Engine Service (''TRACE'').

trade reporting of PORTAL securities between PORTAL participants using the PORTAL system.[12] Following approval of this proposed rule change, Nasdaq's primary role in the PORTAL Market became designating securities as PORTAL eligible [13] which made those securities eligible for book entry services at The Depository Trust Company (''DTC'').[14]

Nasdaq's PORTAL Proposal

Nasdaq has proposed an updated version of the PORTAL Market, which would operate as a facility of the Exchange.[15] The proposed amendments to the PORTAL rules would: (i) Establish qualification requirements for brokers and dealers that are Nasdaq members, and QIBs [16] that wish to have access to PORTAL; and (ii) implement quotation, trade negotiation, and trade reporting functions in the PORTAL Market for PORTAL-designated securities. Many of the rules proposed by Nasdaq are substantially the same as those approved by the Commission when the PORTAL Market was first implemented by NASD in 1990.[17] The proposed PORTAL Market, described in detail in the Notice, is summarized below.

Security Designation: PORTAL designation is limited to those Rule 144A securities that are initially sold to QIBs by a broker-dealer acting as initial placement agent or initial purchaser. Nasdaq would continue to qualify ''restricted securities,'' as that term is defined in SEC Rule 144(a)(3),[18] and securities that are restricted pursuant to contract or through the terms of the security, for designation as PORTAL securities based on, among other things, the requirements for the resale of a security under Rule 144A(d)(3) and (d)(4).[19] Nasdaq would have authority under the PORTAL Rules to suspend or terminate the designation of a PORTAL security, thus removing the ability to negotiate trades in the security through PORTAL.

Broker-Dealer Access: Nasdaq members that meet the PORTAL qualification requirements would be designated as ''PORTAL Dealers,'' who could trade as principal, and ''PORTAL Brokers,'' who would act as agent for customers. PORTAL Dealers and PORTAL Brokers would be permitted to post anonymous one- or two-sided indicative quotations in PORTAL securities. In addition, PORTAL Dealers and PORTAL Brokers would be permitted to negotiate anonymously and execute trades in PORTAL securities.

QIB Access: An institution that executes a subscriber agreement, agrees to comply with the PORTAL rules and meets the $100 million and other standards in Rule 144A to be a QIB would be qualified by Nasdaq as a ''PORTAL Qualified Investor.'' PORTAL Qualified Investors would be permitted to access the PORTAL Market through a password protected linkage and view quotations of PORTAL Dealers and PORTAL Brokers, and confirm transactions when the PORTAL Qualified Investor uses a PORTAL Dealer or PORTAL Broker to execute a trade in PORTAL. PORTAL Qualified Investors would not be permitted to enter quotations in the PORTAL system or enter orders directly into PORTAL.

Trade Negotiation/Execution: PORTAL has electronic negotiation features that allow PORTAL Dealers and PORTAL Brokers to negotiate both openly and anonymously and execute trades in PORTAL securities. All quotes in PORTAL would be indicative. PORTAL Qualified Investors would not be permitted to participate in negotiations. Once an anonymous trade was negotiated in PORTAL, the identity of the counter-parties would be revealed to each other for purposes of comparison, confirmation, and settlement of the trade.

Trade Reporting: Trade reports in reportable PORTAL debt and equity securities pursuant to NASD Rule 6732 would be forwarded by Nasdaq to TRACE and the OTC Reporting Facility, respectively.

Dissemination of PORTAL Trade Report Information: All trade report information for trades negotiated via PORTAL would be disseminated in PORTAL to PORTAL Brokers, PORTAL Dealers, and PORTAL Qualified Investors (''PORTAL Participants''), but would not include the identity of the parties and, in the case of PORTAL debt, would not aggregate or otherwise follow the dissemination protocols applicable to debt trades reported to TRACE.[20] PORTAL Participants would be prohibited from disclosing any PORTAL Market information, including quotations, transactions, and other information [21] displayed in the PORTAL Market (''PORTAL Market Information''), to any party other than another PORTAL Participant. Nasdaq would not disseminate PORTAL Market Information to the public.

Settlement: Trades in equity securities that have been compared and confirmed will be forwarded automatically to an appropriate subsidiary of Depository Trust & Clearing Corporation (''DTCC'') for settlement. Nasdaq also intends, at a future date, to provide the ability to forward all PORTAL trades in debt securities to an appropriate subsidiary of DTCC for settlement.

Regulatory Surveillance: NASD currently provides and would continue

[12] *See* Securities Exchange Act Release No. 44042 (March 6, 2001), 66 FR 14969 (March 14, 2001) (order approving SR–NASD–99–66). In this order, the Commission also approved rules replacing NASD's trade reporting requirements with a requirement that NASD members submit trade reports of secondary market transactions in PORTAL-designated equity securities through the Automated Confirmation Transaction Service (now know as the OTC Reporting Facility) and in PORTAL U.S. high-yield debt securities through TRACE.

[13] Nasdaq staff historically had responsibility for review of PORTAL Market applications to determine the eligibility of securities and of PORTAL Participants (including broker-dealers and investors). Upon the separation of Nasdaq from the NASD and the approval of Nasdaq as a registered national securities exchange under Section 6 of the Act, the review functions for PORTAL Market eligibility were retained by Nasdaq, and the PORTAL Market rules in the NASD Rule 5300 Series became the Nasdaq Rule 6500 Series. *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

[14] Securities Exchange Act Release No. 33327 (December 13, 1993), 58 FR 67878 (December 22, 1993) (order approving a proposed rule change that authorized DTC to make securities sold pursuant to Rule 144A depository eligible provided that such securities are designated for inclusion in a system of a self-regulatory organization (''SRO'') approved by the Commission for the reporting of quotation and trade information on Rule 144A transactions).

[15] Because the PORTAL Market is a facility of Nasdaq, trades done on the PORTAL Market could be considered trades done on a national securities exchange and thus would be subject to Section 12(a) of the Exchange Act. This section provides that it ''shall be unlawful for any member, broker or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security.'' 15 U.S.C. 78l(a). Section 12(b) of the Act provides all equity and debt securities must be registered before such securities may be traded on a national securities exchange, unless they are ''exempted securities'' or are otherwise exempt from Exchange Act registration requirements. In order to trade unregistered 144A securities on the PORTAL Market, Nasdaq requested, and the Commission provided, exemptive relief pursuant to Section 36 of the Exchange Act from Section 12(a) of the Exchange Act to permit Nasdaq members to trade PORTAL-designated securities that are not registered under Section 12(b) of the Exchange Act. *See* note 55, *infra.*

[16] The requirements for QIBs are set forth in Rule 144A.

[17] *See* note 8, *supra.*

[18] 17 CFR 230.144(a)(3).

[19] 17 CFR 230.144A(d)(3) and (d)(4). Nasdaq has represented that in the future, it will consider allowing Regulation D securities to participate in PORTAL so long as PORTAL Market Information would continue to be available only to PORTAL Participants. *See* Response to Comments, *infra* note 29, at 3.

[20] *See* Notice, 72 FR at 23877. To quote, execute, and view trade report information on any Rule 144A investment-grade debt security in PORTAL, the security must be qualified as a PORTAL security. Trade report information on Rule 144A investment-grade debt that is not a PORTAL security cannot be viewed in PORTAL.

[21] ''Other information'' may include information such as which other PORTAL Participants are in the system, for example.

to provide surveillance of the trade reports in PORTAL securities that are submitted through TRACE and the OTC Reporting Facility. Real-time surveillance of quoting and trading activity in PORTAL will be conducted by Nasdaq's MarketWatch Department.

SEC Exemptions: Nasdaq has requested exemptions and no-action relief so that the PORTAL Market can operate as described in this filing.[22] In summary, Nasdaq requested the following exemptions: Rule 15c2–11 under the Act to allow broker-dealers to post quotations in PORTAL securities without gathering the information required by that rule; [23] Section 12(a) [24] of the Act which requires securities traded on a national securities exchange to be registered, to permit Nasdaq members to trade securities that are not registered under section 12(b) of the Act; [25] and staff no-action relief from Section 12(g) of the Act [26] to permit foreign private issuers to continue to be eligible for the exemption under Rule 12g3–2(b) under the Exchange Act.[27]

III. Comments

Seven comment letters were received on the proposal. The letters from NYPPEX, TechNet, and the Council on Competitiveness expressed general support for the proposal.[28] The letters from SIFMA and FBR raised questions and issues discussed below. Nasdaq responded to those comments.[29]

A. SIFMA

In its comment letter, SIFMA sought clarification on numerous points, including: trade reporting (the scope of information that would be reported, who would be responsible for submitting the information, and the timing of submission); the information that would be disseminated to PORTAL Participants; the role of third-party vendors in the dissemination of PORTAL Market Information; the extent to which PORTAL Qualified Investors would have direct access to the trading and negotiation functionality of PORTAL; and the rationale for limiting order size. In its Response to Comments, Nasdaq provided further explanation and details regarding these points.[30]

SIFMA expressed concern regarding dissemination of PORTAL Market Information. SIFMA requested that Nasdaq consider whether dissemination of any trade information regarding PORTAL securities is necessary or beneficial and whether such dissemination would negatively affect liquidity and the willingness of investors to commit capital in unregistered securities. Nasdaq responded, in part, that it believes dissemination of information to PORTAL Participants is likely to increase their ability to make better informed decisions, thereby increasing confidence and liquidity in the market for 144A securities.

SIFMA also suggested that if trade report information is to be disseminated to PORTAL Participants, dissemination should follow protocols currently applicable to trade report information provided to TRACE [31] and the OTC Reporting Facility to avoid immediately exposing ''trading patterns and intentions of market participants.'' Nasdaq responded that it disagrees and does not believe dissemination of transaction information should be restricted based on limits or time periods applicable to TRACE or the OTC Reporting Facility, because participation in PORTAL is voluntary, and PORTAL Participants know that their trades will be immediately disseminated to other PORTAL Participants and, if required, reported for regulatory purposes.[32]

SIFMA also raised concerns with respect to regulatory jurisdiction. First, SIFMA encouraged Nasdaq, the NASD, and the SEC to work together with respect to PORTAL to avoid overlapping and potentially inconsistent regulation. Nasdaq stated it agrees that regulatory inconsistencies should be avoided where possible, and noted that the proposal is not expected to materially increase any such burdens.

Next, SIFMA took issue with the requirement that access to the system as a PORTAL Broker or PORTAL Dealer is limited to Nasdaq members and sought clarification of Nasdaq's scope of authority over PORTAL Qualified Investors under proposed Rule 6513 (Compliance with Rules and Registration Requirements). Nasdaq noted that since PORTAL is a trading facility of the Nasdaq exchange, execution access to its system must be limited to Nasdaq members registered as PORTAL Brokers and PORTAL Dealers. Nasdaq has limited authority over non-members.

With regard to SIFMA's request for clarification regarding the appropriate scope of Nasdaq's authority over PORTAL Qualified Investors, Nasdaq acknowledged that its regulatory authority over those participating in PORTAL is limited to PORTAL Brokers and PORTAL Dealers, as these would be the only PORTAL Participants that are required to be Nasdaq members and thus subject to Nasdaq's regulatory jurisdiction. Nasdaq stated that it had included PORTAL Qualified Investors in the rule in error. In Amendment No. 4, Nasdaq amended Rule 6513 to reflect that Nasdaq's authority to discipline a participant for failure to comply with any of the rules or requirements applicable to the PORTAL Market extends only to PORTAL Brokers and PORTAL Dealers. Nasdaq does not have authority to discipline PORTAL Qualified Investors that are not Nasdaq members. It can enforce, however, the PORTAL rules through its ability to approve, deny, suspend or terminate the registration of an investor as a PORTAL Qualified Investor.[33]

Finally, SIFMA argued that the subscriber and related agreements should be included in the proposal. Nasdaq stated that the SEC does not routinely require commercial agreements of an SRO to be filed, and Nasdaq believes that nothing in the present proposal should require inclusion of these agreements. SIFMA commented that Nasdaq should make its exemptive requests public so that its members may review the legal analysis

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[22] In connection with its approval of PORTAL in 1990 (*see* note 8, *supra*), the Commission issued similar exemptions. *See* letter to Frank J. Wilson, Executive Vice President and General Counsel, NASD (''Wilson''), from Mary E.T. Beach, Associate Director, Division of Corporation Finance, Commission, dated January 16, 1990, and letter to Wilson from Jonathan G. Katz, Secretary, Commission, dated April 27, 1990.

[23] 17 CFR 240.15c2–11. *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to James A. Brigagliano, Assistant Director, Division of Market Regulation, Commission, dated June 28, 2007.

[24] 15 U.S.C. 78*l*(a).

[25] 15 U.S.C. 78*l*(a) and 15 U.S.C. 78*l*(b). *See* letter to Nancy M. Morris, Secretary, Commission, from Thomas P. Moran, Associate General Counsel, Nasdaq, dated June 28, 2007.

[26] 15 U.S.C. 78*l*(g).

[27] 17 CFR 240.12g3–2(b). *See* letter to Paul Dudek, Chief Counsel, Division of Corporation Finance, Commission, from Thomas P. Moran, Associate General Counsel, Nasdaq, dated July 24, 2007.

[28] Mr. McGuire submitted a one-line, non-substantive e-mail regarding the proposal.

[29] *See* letters to Nancy M. Morris, Secretary, Commission, from Thomas P. Moran, Associate General Counsel, Nasdaq, dated June 28, 2007 and July 23, 2007 (''Response to Comments'').

[30] *See* Response to Comments, *supra* note 29, at 2–4 and 7–8.

[31] SIFMA states that TRACE provides that the volumes for investment grade securities are capped at five million, and volumes for non-investment grade securities are capped at one million.

TRACE does not provide information on mortgage- or asset-backed securities or collateralized mortgage obligations. *See* NASD Rule 6710. NASD Rule 6230 requires that trades be reported with 15 minutes.

[32] Nasdaq stated that it is willing to consider modifying the dissemination parameters of PORTAL debt trades in the system to follow current TRACE standards where the quantity for individual debt trades disseminated is capped at five million for investment-grade securities, and one million for non-investment grade securities. *See* Response to Comments, *supra* note 29, at 3.

[33] *See* Proposed Rule 6506(c).

and policy basis for those requests. Nasdaq declined and noted that it is not the general practice of the SEC to seek public comment on exemptions, and Nasdaq does not believe that the Commission needs to do so for this proposal.

B. FBR

FBR's comments focused on three areas: The PORTAL Qualified Investor concept; accredited investors; and depository eligibility.

First, FBR argues that limiting participation in the PORTAL Market to PORTAL Qualified Investors, and limiting access to PORTAL Market Information to those participants, will create a hidden market. FBR believes that PORTAL Brokers and PORTAL Dealers should be permitted to share PORTAL Market Information with anyone who is eligible to sell restricted shares pursuant to Rule 144A, including Accredited Investors and all QIBs. FBR states that its inability to share PORTAL Market Information with its customers is in conflict with its obligations under the securities laws and rules and NASD Rules, to treat customers, who are qualified to buy and sell under Rule 144A, fairly.

Nasdaq responds that nothing in its proposal prevents FBR from sharing PORTAL Market Information with its QIB customers so long as those customers are qualified as PORTAL Qualified Investors by Nasdaq. Nasdaq states that the limitation exists to ensure that Nasdaq has reasonable procedures to prevent pricing information from reaching non-QIBs, given that it is an SRO responsible for enforcing its rules. Further, Nasdaq notes that the dissemination by PORTAL Dealers and PORTAL Brokers of PORTAL Market quotations and last sale report information of other PORTAL Dealers and PORTAL Brokers to investors not qualified by Nasdaq could constitute a prohibited general solicitation under Rule 144A.

Nasdaq does, however, agree that restrictions on dissemination of PORTAL Market Information could prohibit a PORTAL Dealer from sharing its own quote in a PORTAL security with its own customers.[34] Nasdaq stated it would consider how to modify the rules before PORTAL is operational so that restrictions on transmission of PORTAL information do not apply to a PORTAL Dealer's provision of its proprietary quote information to an established customer of that dealer,[35] however, FBR argues that this is not an acceptable modification because it could result in a situation in which a PORTAL Broker or PORTAL Dealer is permitted to disclose to its customers certain prices that are available but are not the best price if the PORTAL Broker or PORTAL Dealer is not itself quoting at the best price. Further, FBR notes, the modification would not permit disclosure of last sale information. FBR believes that such a result would not be in the best interest of investors and could violate a broker-dealer's duty of fair dealing and subject them to liability under Rule 10b–5 under the Exchange Act.

FBR also believes that Nasdaq's proposed requirement that QIBs be approved by Nasdaq in order to have access to PORTAL Market Information is a departure from the PORTAL Rules that were approved by the Commission when the PORTAL Market was first established.[36] Nasdaq notes that PORTAL will operate under uniform, explicit standards governing access and information receipt, and a QIB would incur only modest costs to become a PORTAL Qualified Investor if it wants access to PORTAL Market Information. Further, Nasdaq points out that the original PORTAL Market was intended to be an entirely ''closed'' system. Investors were only permitted to execute a transaction in a PORTAL security if the investor registered as a PORTAL Qualified Investor and then executed the transaction through a PORTAL Dealer or PORTAL Broker through the PORTAL system. Therefore, Nasdaq argues, there was no need in the original PORTAL system to restrict the dissemination of PORTAL Market Information outside of the PORTAL Market.

Finally, FBR argues that depository eligibility of a security should not be premised on PORTAL eligibility. FBR argues that DTC's rule requiring Rule 144A securities to be included in an SRO system for the reporting of quotation and trade information of resale transactions, in order for those securities to be eligible for DTC's depository services is unnecessary and could impede competition between Nasdaq and alternative trading systems (''ATSs''). Currently, PORTAL is the only facility that satisfies the eligibility standard. Nasdaq disagrees and points out that nothing in DTC's rules would preclude another SRO from establishing and operating a system for quoting, trading, and reporting Rule 144A securities and thereby be eligible to obtain DTC's depository services on behalf of such securities.

IV. Discussion and Commission Findings

A. Sections 6 and 11A(a)(1) of the Act

After careful consideration of the proposal, the comment letters, and Nasdaq's Response to Comments, the Commission finds that the proposed rule change is consistent with the provisions of section 6 of the Act,[37] in general and with section 6(b)(5) of the Act,[38] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. The PORTAL Market will facilitate the trading of Rule 144A securities and will provide a centralized system for the display of interest in Rule 144A securities. Rule 144A(d) conditions the exemption from registration of securities pursuant to Section 5 of the Securities Act[39] on offering and selling the securities only to QIBs. Consequently, Nasdaq structured the PORTAL Market as a closed system for trading of Rule 144A securities among QIBs. Nasdaq has implemented procedures to qualify QIBs under its rules. In light of Nasdaq's procedures as described in the proposed rule change, PORTAL Participants may rely on Nasdaq's procedures for establishing a reasonable belief that a prospective purchaser is a QIB.[40]

In addition, the Commission believes that the proposed rule change is consistent with the goals of section 11A(a)(1) of the Act.[41] Section 11A(a)(1) articulates the Congressional findings and policy goals and objectives respecting the development of a national market system. Essentially, Congress found that new data processing and communication techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, enhance opportunities to achieve best execution

[34] *See* Response to Comments, *supra* note 29, at 10.

[35] *Id.* Any such change must be filed as a proposed rule change with the Commission.

[36] *See* note 6, *supra.*

[37] 15 U.S.C. 78f.

[38] 15 U.S.C. 78f(b)(5).

[39] 15 U.S.C. 77e.

[40] If all the conditions in Rule 144A(d) are not met, transactions in restricted securities may be deemed distributions and persons offering or selling such securities may be deemed underwriters within the meaning of Sections 2(a)(11) and 4(1) of the Securities Act or a participant in a distribution of securities with the meaning of Section 4(3)(C) of the Securities Act. *See* discussion at nn. 9–13, *supra.*

[41] 15 U.S.C. 78k–1(a)(1).

and promote competition among market participants. That provision stresses the importance of implementing communication enhancements that will advance the efficiency and effectiveness of a securities market in servicing the needs of investors. The Commission believes that the changes to the PORTAL Market contained in this proposed rule change should provide these benefits and help to enhance the efficiency of the market for Rule 144A-eligible securities.

B. Rule 144A Under the Securities Act

Because Nasdaq has designed the amendments to the PORTAL Market to facilitate compliance with Rule 144A, section 6(b)(1) of the Act [42] also requires a determination as to whether it is reasonably designed to accomplish this purpose.[43] The Commission believes that the PORTAL system is designed so that participants who comply with its requirements will also be in compliance with the requirements of Rule 144A, assuming they also provide information upon request in compliance with Rule 144A(d)(4).

Rule 144A is available only to institutional investors meeting the definition of QIB in Rule 144A(a)(1). A seller is required to form a reasonable belief that a purchaser is a QIB as the term is defined in Rule 144A(a)(1). With the exception of broker-dealers, a QIB is required to, in the aggregate, own and invest on a discretionary basis at least $100 million in securities of non-affiliated issuers. The proposed amendments to the PORTAL rules require that any investor applying to qualify as a PORTAL Qualified Investor meet the Rule 144A standards for QIBs.

Rule 144A(d)(2) requires that the seller of 144A securities take reasonable steps to ensure that the purchaser is aware that the seller may rely on Rule 144A. To meet this requirement of Rule 144A, the proposed amendments to the PORTAL rules also provide in the designation requirements for PORTAL Qualified Investors that applicants sign an undertaking in a subscriber agreement that states that they are aware that they may purchase a PORTAL security from another QIB who may rely on an exemption from the provisions of section 5 of the Securities Act [44] pursuant to Rule 144A.

The PORTAL rules also have eligibility requirements for admitting securities into PORTAL that parallel the Rule 144A eligibility requirements for securities. The PORTAL rules require that the security be eligible to be sold pursuant to Rule 144A under the Securities Act. The application for designation of a PORTAL security requires the submission of specific information to Nasdaq necessary to support the applicant's claim that the security meets the requirements of Rule 144A.

Furthermore, Rule 144A conditions the availability of the exemption on certain information being available to holders and prospective purchasers. Rule 144A(d)(4) provides that, with respect to securities of an issuer that is not subject to section 13 of the Act,[45] section 15(d) of the Act,[46] exempt from reporting pursuant to Rule 12g3–2(b) under the Act,[47] or a foreign government eligible to register securities under Schedule B of the Securities Act, the holder and a prospective purchaser designated by the holder must have the right to obtain from the issuer, upon request of the holder, and the purchaser must have received at or prior to the time of sale, upon such purchaser's request to the holder, certain information about the issuer. Nasdaq has designed PORTAL to comply with this aspect of Rule 144A because the PORTAL rules currently require that a security meet these Rule 144A requirements and that the issuer undertake to provide the information required by Rule 144A(d)(4) where applicable.

PORTAL is designed to be a trading market in restricted securities limited to highly sophisticated investors. In adopting Rule 144A, the Commission noted that ''[t]he transactions covered by the safe harbor are private transactions'' that do not require the protections of section 5 of the Securities Act.[48] The Commission believes that broad dissemination of trading information in this limited context is not desirable. Nasdaq's restricting the information to PORTAL Qualified Investors to allow Nasdaq to prevent PORTAL Market Information from reaching non-QIBs in this context is reasonable.

In addition to designing the PORTAL rules to facilitate compliance with the requirements of Rule 144A, the proposed rule change would structure PORTAL to limit the possibility that restricted securities enter the U.S. retail market by requiring that PORTAL-designated securities be assigned a CUSIP [49] number that is different than the CUSIP number assigned to any securities of the same class that do not satisfy the eligibility requirements for PORTAL securities. The security explanation protocol employed by Standard & Poor's related to the CUSIP number assigned to PORTAL securities specifically distinguishes those securities from all other publicly-traded and restricted securities by using the words ''Rule 144A'' and ''PORTAL.'' For these reasons, the Commission believes that PORTAL, as proposed, is reasonably designed to facilitate compliance with Rule 144A, so long as there is compliance with the PORTAL rules and procedures.[50]

C. Exemptions and No-Action Relief Requests

The Commission has granted Nasdaq exemptions from Rule 15c2–11 under the Act [51] to allow brokers and dealers to post quotations in PORTAL securities without first gathering information required by that rule [52] and Section 12(a) [53] of the Act to permit trading of securities not registered under section 12(b) [54] of the Act; [55] and the staff has granted no-action relief with respect to section 12(g) [56] of the Act to permit foreign private issuers to continue to be eligible for the exemption under Rule 12g3–2(b) [57] of the Act.[58]

D. Impact on Competition, Efficiency and Capital Formation

Section 3(f) of the Act requires that the Commission consider whether Nasdaq's proposal will promote efficiency, competition, and capital

[42] 15 U.S.C. 78f(b)(1).

[43] Section 6(b)(1) of the Act requires that Nasdaq, as a national securities exchange, be so organized and have the capacity to enforce compliance with, among other things, the federal securities laws. *See* 15 U.S.C. 78f(b)(1).

[44] 15 U.S.C. 77(e).

[45] 15 U.S.C. 78m.

[46] 15 U.S.C. 78o(d).

[47] 17 CFR 240.12g3–2(b).

[48] *See* note 9, *supra*.

[49] Committee on Uniform Securities Identification Procedures.

[50] The Commission notes that information shall still be provided on request, regardless of the exemption for PORTAL securities, as applicable, pursuant to Rule 144A(d)(4). Further, Rule 6502 authorizes Nasdaq to suspend or terminate a security's PORTAL designation if a holder or prospective purchaser did not receive information as required by Rule 144A(d)(4).

[51] 17 CFR 240.15c2–11.

[52] *See* letter from James A. Brigagliano, Associate Director, Division of Market Regulation, Commission, to Thomas P. Moran, Associate General Counsel, Nasdaq, dated July 31, 2007.

[53] 15 U.S.C. 78*l*(a).

[54] 15 U.S.C. 78*l*(b).

[55] *See* Securities Exchange Act Release No. 56176, (July 31, 2007), Order Granting The NASDAQ Stock Market, LLC's Application for an Exemption Pursuant to Section 36 of the Securities Exchange Act of 1934 (''Exemption Order'').

[56] 15 U.S.C. 78*l*(g).

[57] 17 CFR 240.12g3–2(b).

[58] *See* letter from Paul Dudek, Chief, Office of International Corporate Finance, Division of Corporation Finance, Commission, to Thomas P. Moran, Associate General Counsel, Nasdaq, dated July 31, 2007.

formation.[59] The Commission has considered the merits of the issues raised by each of the commenters and has concluded that the PORTAL rules, as proposed, are consistent with the Act.

The Commission notes that in its response to comments, Nasdaq provided SIFMA with additional information regarding the operation of the PORTAL Market and believes Nasdaq sufficiently responded to SIFMA's comments. The Commission agrees with Nasdaq, in particular, that the prompt and complete dissemination of PORTAL Market Information to PORTAL Participants should allow PORTAL Participants to better evaluate their decisions regarding trading in the PORTAL Market and should result in increased investor confidence and liquidity in the PORTAL Market. The Commission also notes that if a PORTAL Participant does not want its trade information disseminated to other PORTAL Participants, there is no requirement that the Participant utilize Nasdaq's system for effecting its trade; use of the PORTAL Market is voluntary. Furthermore, the Commission agrees that Nasdaq need not make the subscriber and related agreements part of this proposal, nor does Nasdaq need to make its exemption requests public.

The Commission does not believe that Nasdaq's proposal is anti-competitive because of the eligibility standard in DTC's rules. Nasdaq does not have any authority with respect to DTC's rules. DTC's rules provide that DTC is authorized to make 144A securities eligible for deposit, book-entry delivery, and other depository services, *provided that* any such Rule 144A securities are designated for inclusion in a system of an SRO approved by the Commission for the reporting of quotation and trade information of Rule 144A transactions.[60] In approving the proposed rule change establishing the DTC eligibility requirement that Rule 144A securities must be included in an SRO Rule 144A System, such as the PORTAL Market, the Commission noted a crucial feature of any such system would be a requirement that the SRO's members report trades involving securities using the system on a routine basis to the SRO, along with information that will facilitate detection of securities law violations.[61]

The Commission believes that re-establishing the PORTAL Market as a quoting and trading system is a reasonable effort by Nasdaq to enhance the quality of the Rule 144A market by providing a centralized market and information to QIBs, promoting greater efficiency in executions, and increasing overall market transparency. While the PORTAL Market will provide a system for quoting and trading Rule 144A securities, it does not represent an exclusive means for selling or purchasing Rule 144A securities, nor does it prevent broker-dealers from seeking alternative trading venues for such transactions.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[62] that the proposed rule change (SR–NASDAQ–2006–065), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[63]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15288 Filed 8–6–07; 8:45 am]

BILLING CODE 8010–01–P

[59] 15 U.S.C. 78c(f).

[60] *See* Securities Exchange Act Release No. 33327 (December 13, 1993); 58 FR 57878 (December 22, 1993) (SR–DTC–90–06).

[61] Given the evolution in the market for these securities since DTC's rule was adopted, the Commission believes it would be reasonable for DTC to review this requirement.

[62] 15 U.S.C. 78s(b)(2).

[63] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56175; File No. SR–NASD–2007–055]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Notice of Filing of Proposed Rule Change Relating to Interpretative Material 9216, Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d–1(c)(2)

July 31, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2007, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NASD.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Interpretative Material 9216 (Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d–1(c)(2)) (''IM–9216'') to expand the list of violations eligible for disposition under NASD's Minor Rule Violation Plan (''MRVP''). The proposed rule change also would delete from IM–9216 references to NASD rules that have been rescinded. The text of the proposed rule change is available at NASD, the Commission's Public Reference Room, and *http://www.finra.org.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 28, 2006, NASD and the NYSE Group, Inc. (''NYSE Group'') announced a plan to consolidate their member regulation operations into a combined organization (the ''Transaction'') that will be the sole U.S. private-sector provider of member firm regulation for securities firms that do business with the public.[4] This consolidation will streamline the broker-dealer regulatory system, combine technologies, permit the establishment of a single set of rules and group examiners with complementary

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to the Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56146 (July 26, 2007).

[4] On July 26, 2007, the Commission approved amendments to NASD's By-Laws to implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56145 (July 26, 2007).

areas of expertise in a single organization—all of which will serve to enhance oversight of U.S. securities firms and help ensure investor protection.

The combined organization, FINRA,[5] will work expeditiously to consolidate the rules that apply to its member firms, reducing to one the two sets of rules currently applicable to members of both the NASD and NYSE (''Dual Members''). During an interim period, however, until the adoption of a consolidated rulebook, NASD has proposed to incorporate into FINRA's rulebook certain NYSE Rules that pertain to the regulation of member firm conduct (the ''Incorporated NYSE Rules'').[6] The Incorporated NYSE Rules will apply solely to Dual Members until such time as FINRA adopts, subject to Commission approval, consolidated rules applicable to all of its members.

As discussed in SR–NASD–2007–054, NASD is not proposing to incorporate, among other rules, the NYSE Disciplinary Rules or related interpretations, including NYSE's MRVP as set forth in NYSE Rule 476A (Imposition of Fines for Minor Violation(s) of Rules).[7] However, the instant proposed rule change would amend NASD's MRVP to include those Incorporated NYSE Rules currently enumerated in NYSE's MRVP. This would permit FINRA, during the interim period until the adoption of a consolidated rulebook, to impose a fine for minor rule violations by a Dual Member of the Incorporated NYSE Rules in lieu of commencing disciplinary proceedings.

The proposed amendments to IM–9216 also would specify the applicability of the rules listed therein to various members of FINRA. Specifically, any Dual Member (including any persons affiliated with such member) may be subject to a fine under Rule 9216(b) with respect to any rule listed in IM–9216 that applies to such member or person; provided, however, that any Dual Member that was not also a member of NASD as of the date of closing of the Transaction and that does not engage in any activities that would have required it to be an NASD member (and its affiliated persons that are not otherwise subject to NASD rules) would only be subject to a fine under Rule 9216(b) with respect to the following rules listed in IM–9216: Any NYSE rule, SEC Exchange Act rule, NASD By-Law or Schedule to By-Laws, or the NASD Rule 8000 Series. In addition, any member of FINRA that is not also a member of the NYSE (and its associated persons that are not otherwise subject to NYSE rules) may be subject to a fine under Rule 9216(b) with respect to any rule listed in IM–9216, with the exception of the NYSE rules.

NASD is not proposing to adopt the provision in NYSE's MRVP that establishes a $5,000 maximum fine that may be imposed under NYSE's MRVP for minor violations of NYSE rules. Rather, FINRA would continue to apply the $2,500 maximum fine level under NASD's MRVP in determining fine levels for minor violations of either an NASD or NYSE rule included in NASD's MRVP. Among other things, such an approach helps to ensure greater consistency in the administration of the disciplinary process for FINRA and its members, as well as in the related reporting obligations for minor violations of rules.[8]

Finally, the proposed rule change would delete from IM–9216 references to NASD rules that have been rescinded. On June 30, 2006, the Commission approved SR–NASD–2005–087, which, among other things, deleted NASD Rules 4619, 4642, 4652, 5430, 6720, and 8212 from the NASD Manual.[9] On September 28, 2006, the Commission approved SR–NASD–2006–091, which, among other things, deleted NASD Rule 6420.[10]

The proposed rule change will become effective upon the later of the closing of the Transaction or the Commission's approval of the proposed rule change.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[11] including section 15A(b)(2) of the Act,[12] in that it will permit FINRA to carry out the purposes of the Act, to comply with the Act and to enforce compliance by FINRA members and persons associated with members with the Act, the rules and regulations thereunder and FINRA rules. The proposed rule change also is consistent with section 15A(b)(7) of the Act,[13] in that it will provide that FINRA members and their associated persons are appropriately disciplined for violations of FINRA rules. The proposed rule change also is consistent with section 15A(b)(8) of the Act[14] in that it furthers the statutory goals of providing a fair procedure for disciplining members and their associated persons. The addition of these violations to NASD's MRVP will provide FINRA staff with the ability to impose minor rule violations for the Incorporated NYSE Rules that are currently enumerated in NYSE's MRVP.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[5] *See supra* note 3. The Commission notes that the Transaction closed on July 30, 2007.

See telephone conference between Nancy Burke-Sanow, Assistant Director, Commission, and Patrice Gliniecki, Senior Vice President and Deputy General Counsel, FINRA, on July 31, 2007.

[6] *See* Securities Exchange Act Release No. 56147 (July 26, 2007) (SR–NASD–2007–054, Exhibit 5) (incorporating certain NYSE Rules relating to member firm conduct into FINRA's rulebook).

[7] NASD is not proposing to incorporate NYSE's MRVP (NYSE Rule 476A), because NYSE Rule 476A contains procedures that would conflict with the finding of a minor rule violation by FINRA. For example, NYSE Rule 476A permits a person against whom a fine is imposed to contest the NYSE's fine determination by, among other things, appealing to the NYSE board of directors.

[8] Rule 19d–1(c)(2) under the Act provides that any disciplinary action taken by a self-regulatory organization (''SRO'') against any person of a rule of the SRO that has been designated as a minor rule violation pursuant to a plan is not considered ''final'' for purposes of Rule 19d–1(c)(1) if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies at the SRO with respect to the matter. SROs are permitted to report such minor rule violations (where the fine does not exceed $2,500) to the SEC on a periodic, rather than immediate, basis. In addition, members are not required to report ''minor rule violations'' on the Forms BD, U4 or U5 (as such term is defined on the forms). These forms provide that a rule violation may be designated as ''minor'' under a plan approved by the SEC if, among other things, the sanction imposed consists of a fine of $2,500 or less. *See also* Securities Exchange Act Release No. 40193 (July 10, 1998), 63 FR 39338 (July 22, 1998) (Order Granting Approval to Proposed Rule Change Relating to Fines for Disruptive Action on the Options Floor) (SR–PCX–98–21) (stating in the context of amendments to the Pacific Exchange's (now NYSE Arca) MRVP that, as noted in PCX's MRVP, pursuant to Securities Exchange Act Release No. 30958, any person or organization found in violation of a minor rule under the MRVP is not required to report such violation on Form BD, provided that, among other things, the sanction imposed consists of a fine not exceeding $2,500).

[9] Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (Order Approving SR–NASD–2005–087).

[10] Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (Order Approving SR–NASD–2006–091).

[11] 15 U.S.C. 78o–3.

[12] 15 U.S.C. 78o–3(b)(2).

[13] 15 U.S.C. 78o–3(b)(7).

[14] 15 U.S.C. 78o–3(b)(8).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2007–055 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–NASD–2007–055. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2007–055 and should be submitted on or before August 28, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Nancy M. Morris,

Secretary.

[FR Doc. E7–15290 Filed 8–6–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56179; File No. SR–NASD–2007–034]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change as Modified by Amendment No. 1 Creating NASD Rule 1160 (Firm Contact Information) Regarding the Reporting and Annual Review of Designated Contact Information to NASD

August 1, 2007.

I. Introduction

On May 11, 2007, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change seeking to adopt new NASD Rule 1160 (Firm Contact Information) regarding the reporting of designated contact information to NASD and the annual review of such information. The proposed rule change also proposed amendments to Rule 1120 (Continuing Education Requirements), Rule 1150 (Executive Representative), Interpretive Material (IM)–3011–2 (Review of Anti-Money Laundering Compliance Person Information), and Rule 3520 (Emergency Contact Information) to eliminate the requirement that members review and update, at the end of each calendar quarter, the contact information required by these rules.

The proposed rule change was published for comment in the **Federal Register** on May 31, 2007.[3] The Commission received two comment letters on the proposal.[4] On July 27, 2007, NASD filed Amendment No. 1 to the proposed rule change.[5] This order approves the proposed rule change, as amended.

II. Description of the Proposal

Currently, there are several NASD rules requiring firms to identify and report to NASD certain designated contact persons: Rule 1120 (Continuing Education Requirements); Rule 1150 (Executive Representative); IM–3011–2 (Review of Anti-Money Laundering Compliance Person Information); and Rule 3520 (Emergency Contact Information). These rules further require firms to review the contact information at the end of each calendar quarter, and if necessary, update such information within 17 business days after the end of each quarter. Members review this information and provide any updates online via the NASD Contact System (''NCS'').[6]

Based on recommendations made by its Small Firm Rules Impact Task Force,[7] NASD has proposed to eliminate these quarterly review requirements in favor of a more comprehensive approach for verifying and updating all contact information required to be reported. Specifically, proposed new Rule 1160 would require members to provide the required contact information via NCS or such other means as NASD may specify. New Rule 1160 also would require members to update the contact information promptly, but in any event not later

[15] CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55810 (May 24, 2007), 72 FR 30404.

[4] *See* letter to Nancy Morris, Secretary, Commission, from Lisa Roth, Members Advocacy Chairman, National Association of Independent Broker-Dealers (''NAIBD''), dated June 13, 2007; letter from Kenneth M. Cherrier, JD, Chief Compliance Officer, Fintegra Financial Solutions (''Fintegra''), dated June 21, 2007.

[5] In Amendment No. 1, NASD responded to comments and made a technical correction to the proposed rule text. This is a technical amendment and is not subject to notice and comment.

[6] NASD also currently requires each firm to report, via NCS, contact information for its Executive Officer and the Head of Compliance. NCS also includes several optional fields for other contact persons.

[7] NASD established the Small Firm Rules Impact Task Force in September 2006 to examine how existing NASD rules affect smaller firms. In particular, the Task Force focuses on possible opportunities to amend or modernize certain conduct rules that may be particularly burdensome for small firms, where such changes are consistent with investor protection and market integrity.

than 30 days following any change in such information, as well as to review and, if necessary, update the information within 17 business days after the end of each calendar year. In addition, the rule would require members to comply with any NASD request for such information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by NASD staff. The proposed rule change would not relieve members from any separate requirements to update such information.[8]

The proposed rule change also would amend Rule 3520 to eliminate the requirement that only a firm's Executive Representative, or his or her written designee, be permitted to review and update the firm's emergency contact information

The effective date of these proposed changes would be December 31, 2007.

III. Comment Summary

Two comment letters were received on the proposed rule change.[9] NASD responded to these comment letters in Amendment No. 1.[10] Both commenters endorsed replacing the current quarterly verification requirement with an annual obligation. Fintegra praised the efficiencies that would result from that aspect of the proposal, while NAIBD noted that an annual verification requirement was more consistent with the infrequent changes in contact information generally experienced at most member firms.

NAIBD, however, suggested that the requirement to update information when a change occurs remain a quarterly requirement, rather than the proposed 30-day requirement, stating that some firms' electronic filing systems and reminders have been programmed to accommodate a systemic quarterly update. In response, NASD noted that, at least with respect to Rule 1120, IM–3011–2, and Rule 3520, firms currently are required to ''promptly'' update such information in the event of a change, in addition to being required to review, and if necessary, update the designated contact information on a quarterly basis.[11] In proposing new Rule 1160, NASD explained that it is seeking to clarify the requirement that firms both promptly update such information upon any change, as well as verify the accuracy of the required contact information on an annual basis. Further, NASD noted that it is seeking to clarify that any such updates must occur not later than 30 days following the change.

Fintegra objected to proposed Rule 1160's 17-business-day time frame for members to verify and update their required contact information after the end of each calendar year. Fintegra suggested that the time frame be shortened to 15 days to align it with the provision in proposed Rule 1160 that would require members to promptly comply with any NASD request for such contact information, but no later than 15 days following the request. The commenter stated that consistent time frames would simplify adherence to the proposed rule and that there appeared to be no justification for the differing compliance timelines.

In response to this comment, NASD explained that the two time periods serve difference purposes, and that retaining the 17-business-day window for the annual verification will aid members' compliance efforts. NASD stated that firms currently are required to update such information within 17 business days following each quarter,[12] and therefore are already familiar with the proposed end of year schedule. In addition, NASD noted that the 17-business-day window is consistent with the requirement that a member's FOCUS report be submitted within 17 business days after the end of each calendar quarter. Currently, when members file FOCUS reports each quarter, NASD reminds them of the need to review and update their designated contact information on NCS. NASD represented that it intends to continue this practice, and will remind members of the need to verify the required contact information at the time they file their fourth quarter FOCUS report.

IV. Discussion

After careful consideration of the proposal, the comment letters, and NASD's response thereto, the Commission finds that the proposed rule change is consistent with the provisions of section 15A of the Act,[13] in general and with section 15A(b)(6) of the Act,[14] in particular, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[15]

The Commission believes that the proposed rule change sets forth a reasonable approach for member firms to provide and keep current required contact information, which should reduce unnecessary burdens on firms by eliminating the requirement that firms review and update the contact information on a quarterly basis; instead, firms would be required to conduct such reviews on an annual basis as well as to promptly update the information following any change. The proposed rule change should also assure NASD's ability to contact its members in the event of an emergency, as well as support members' compliance with certain NASD rules, such as continuing education requirements and anti-money laundering obligations, and facilitate member voting through the Executive Representatives.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NASD–2007–034), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Nancy M. Morris,

Secretary.

[FR Doc. E7–15311 Filed 8–6–07; 8:45 am]

BILLING CODE 8010–01–P

[8] For example, a firm must identify, among others, its Chief Executive Officer and Chief Compliance Officer on Form BD, and promptly update such information by submitting an amendment whenever the information becomes inaccurate or incomplete for any reason. *See also* Article IV, Section 1(c) of the NASD By-Laws, requiring each member to ensure that its membership application is kept current at all times by supplementary amendments, and to file any such amendment no later than 30 days after learning of the facts or circumstances giving rise to the amendment.

[9] *See* note 4, *supra.*

[10] *See* note 5, *supra.*

[11] *See* Rule 1120(a)(7) (Regulatory Element Contact Person), Rule 3011(d) (Anti-Money Laundering Compliance Program), and Rule 3520(b) (Emergency Contact Information).

See also Article IV, Section 3 of the NASD By-Laws, addressing procedures for members to change their Executive Representatives.

[12] *See* Rule 1120(a)(7); Rule 1150; IM–3011–2; Rule 3520(b) (all requiring members to update the contact information required by the respective rules within 17 business days after the end of each calendar quarter).

[13] 15 U.S.C. 78o–3.

[14] 15 U.S.C. 78o–3(b)(6).

[15] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56173; File No. SR–NYSE–2007–67]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to NYSE Rule 2 (''Member,'' ''Membership,'' ''Member Firm,'' etc.)

July 31, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. 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 proposed rule change reflects changes in the requirements for membership in the Exchange as a result of the proposed consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. (''NYSE Regulation'') that will result in a combined self-regulatory organization that will be called Financial Industry Regulatory Authority, Inc. (''FINRA'').[3] The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its membership rules to reflect the changes to the regulatory landscape that will result from the proposed consolidation of the member firm regulatory functions of NASD and NYSE Regulation.

On November 28, 2006, NYSE Regulation and NASD announced a plan to consolidate their member regulation operations into a combined organization that will be the sole U.S. private-sector provider of member firm regulation for securities firms that conduct business with the public (the ''Transaction'').[4] The objective of the Transaction is to increase consistency and efficiency of member firm regulation, including examination, enforcement, and rulemaking, for the benefit of individual investors and overall market integrity. It is also an objective of the Transaction to reduce the regulatory and financial burdens placed on member firms as a result of duplicate self-regulatory structures.

The concentration of member firm regulation in FINRA will further the goal that the NYSE, NASD and the securities industry have already been working on: To harmonize the member firm rules of the two organizations to eliminate overlapping but slightly different (or differently interpreted) rules. Because that harmonization process will not be complete by the closing of the Transaction, the Transaction contemplates a transition period during which FINRA will continue to apply to NYSE member organizations the member firm rules of the NYSE.

To effect this transition, FINRA will adopt the relevant NYSE member firm rules. For administrative convenience, FINRA will accomplish this by incorporating these rules into FINRA's rulebook, necessitating that the rules also remain as rules of the NYSE. The NYSE and FINRA will execute a Rule 17d–2 agreement that will allocate the regulatory responsibility for those rules to FINRA.[5]

A necessary part of this arrangement is that NYSE will require all organizations that currently are or propose to become NYSE member organizations to also be members of FINRA. It is also intended that FINRA will become the designated examining authority (''DEA'') for all NYSE member organizations.[6] So, for example, NYSE rules will provide that it will be a condition to purchase of a NYSE trading license that the organization is a member of FINRA.[7]

Most NYSE member organizations are already also members of NASD, and thus will automatically be members of FINRA. There are approximately 95 NYSE member organizations that are not currently NASD members, and these are the organizations that will be required to become FINRA members in order to remain NYSE member organizations, and remain entitled to utilize a NYSE trading license (''NYSE-only member organizations'').[8]

To address these changes, the Exchange proposes amending the definition of ''member organization'' in NYSE Rule 2(b). Under the Exchange's current rules, NYSE Rule 2(b) defines the term ''member organization'' as a ''registered broker or dealer (unless exempt pursuant to Securities Exchange Act of 1934) approved by the Exchange and authorized to designate an associated natural person to effect transactions on the floor of the Exchange or any facility thereof.'' [9]

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[1] 15 U.S.C 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to the Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56146 (July 26, 2007).

[4] On July 26, 2007, the Commission approved amendments to NASD's By-Laws to implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56145 (July 26, 2007).

[5] Pursuant to the Rule 17d–2 Agreement, NYSE and NASD will share responsibility for certain non-exclusive common rules, including rules relating to supervision, books and records, and conduct. *See* Securities Exchange Act Release No. 56148 (July 26, 2007).

[6] Historically, NYSE was the DEA for virtually all its member organizations. As part of the Transaction, it is contemplated that the Commission will name FINRA as the DEA for all the organizations for which NYSE was the DEA.

[7] NYSE has also allowed an organization to be an NYSE ''regulation only'' member without purchasing a trading license, if the organization qualifies and subjects itself to NYSE regulatory jurisdiction. After the Transaction, NYSE will continue to provide this status to an organization that is or becomes a FINRA member and subjects itself to NYSE jurisdiction, even though the organization does not have a NYSE trading license.

[8] NASD has filed with the Commission a rule filing to specify the terms on which these member organizations will be accommodated with FINRA membership. Pursuant to that proposed rule filing, NASD is proposing to establish Interpretive Material 1013–1 (''IM–1013–1''), which creates a membership waive-in process for NYSE-only member organizations, and Interpretative Material Section 4(e) to Schedule A of the NASD By-Laws, which creates a membership application fee waiver for those NYSE firms that apply for membership pursuant to IM–1013–1. *See* SR–NASD–2007–056.

[9] In 2006, in connection with the creation of NYSE Group, Inc., which is now known as NYSE

Continued

The Exchange proposes to amend NYSE Rule 2(b) to provide that membership in FINRA is a condition to becoming a member organization of NYSE. NYSE intends to retain for itself the discretion to deem an applicant unacceptable for NYSE membership, and is retaining Rule 308 (Acceptability Proceedings) for this purpose.

The Exchange recognizes that the proposed amendments to both the NYSE's and NASD's membership rules will not be approved as of the date of the closing of the Transaction and therefore, as of the closing of the Transaction, NYSE-only firms may not yet be approved FINRA members. Accordingly, the Exchange proposes that NYSE-only member organizations be provided a 60-day grace period within which they must apply for and be approved for FINRA membership. This grace period would run from the later of the date of Commission approval of either this proposed filing or NASD's proposed filing to amend its membership rules.

2. Statutory Basis

The Exchange states that the statutory basis for proposed rule change is the requirement under section 6(b)(5) [10] of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

Euronext, Inc., a publicly-traded corporation, the Exchange amended its rules to reflect the separation of trading privileges at the Exchange from equity ownership in the Exchange. Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (File No. SR–NYSE–2005–77).

[10] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NYSE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2007–67 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–NYSE–2007–67. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–67 and should be submitted on or before August 28, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15274 Filed 8–6–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56181; File No. SR–NYSE–2007–70]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Amend the Gross FOCUS Fee

August 1, 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 July 27, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. On August 1, 2007, NYSE filed Amendment No. 1 to the proposed rule change.[3] The NYSE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the NYSE under section 19(b)(3)(A)(ii) of the Act,[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 deleted a sentence in the statutory basis section of Exhibit 1 to the proposed rule change that was mistakenly included in the proposal and amended the Fee Schedule in Exhibit 5 to reference the file number of this proposal.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reduce its gross FOCUS (Financial and Operational Combined Uniform Single Report) fee by 75% as of January 1, 2008. In addition, following the closing of the proposed consolidation of the member firm regulatory functions of the National Association of Securities Dealers, Inc. (''NASD'') and NYSE Regulation, Inc. (''NYSE Regulation''), the Exchange will transfer 75% of the gross FOCUS fees paid by member organizations for the remainder of 2007 to the resultant combined self-regulatory organization, Financial Industry Regulatory Authority, Inc. (''FINRA'').

The text of the proposed rule change is available on the NYSE's Web site (*http://www.nyse.com*), at the principal office of the NYSE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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

On November 28, 2006, NYSE Regulation and NASD announced a plan to consolidate their member regulation operations into a combined organization that will be the sole U.S. private-sector provider of member firm regulation for securities firms that conduct business with the public (the ''Transaction''). The objective of the Transaction is to increase consistency and efficiency of member firm regulation, including examination, enforcement, and rule making, for the benefit of individual investors and overall market integrity. It is also an objective of the Transaction to reduce the regulatory and financial burdens placed on member firms as a result of duplicate self-regulatory structures.

The Exchange charges its member organizations a fee of $0.42 per $1,000 of gross revenues as reported by each member firm in its FOCUS report,[6] subject to minimum annual fees of $180.00 for member organizations who do not conduct a public business, $1,000.00 for introducing firms, and $2,000.00 for carrying firms and specialists. These fees are imposed on all Exchange member organizations other than those members for whom another self-regulatory organization is the designated examining authority (''DEA'') under Rule 17d–1[7] of the Act. The Exchange allocates the FOCUS fees to NYSE Regulation to fund its performance of its regulatory activities with respect to member organizations.

As a substantial proportion of these regulatory activities will be performed by FINRA after the Transaction, the Exchange has agreed with the NASD that, subject to the closing of the Transaction, 75% of the gross FOCUS fees paid to the Exchange during the remainder of 2007 after the closing of the Transaction will be remitted to FINRA. The Exchange believes that this apportionment of the FOCUS fee revenues is consistent with the relative regulatory activities that will be performed by NYSE Regulation and FINRA respectively after the Transaction. NYSE Regulation and the NASD have agreed upon this transitional period in which the Exchange remits FOCUS fee revenue to FINRA as a matter of administrative convenience to avoid the need for substantial adjustment of member firm billing arrangements mid-year. Assuming that the Transaction has closed, commencing January 1, 2008, the Exchange will reduce its FOCUS fees, including the minimum fees, by 75%, but will charge these fees to all members notwithstanding that they will be members of both the Exchange and FINRA.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6 of the Act[8] in general and furthers the objectives of section 6(b)(4) of the Act[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(2)[11] thereunder because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

[6] FOCUS (Securities Exchange Act Form X–17A–5) is an acronym for Financial and Operational Combined Uniform Single Report. The report is filed periodically with the Commission pursuant to Rule 17a–5 under the Act.

[7] 17 CFR 240.17d–1.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] The effective date of the original proposed rule is July 27, 2007. The effective date of Amendment No. 1 is August 1, 2007. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on August 1, 2007, the date on which the NYSE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–70. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–70 and should be submitted on or before August 28, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E7–15313 Filed 8–6–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56180; File No. SR–NYSEArca–2007–72]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Auction Only Limit Order Type

August 1, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 25, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or ''Corporation'') 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)(6) 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

The Exchange, through NYSE Arca Equities, is proposing to amend its Rule 7.31(t) in order to modify the Auction Only Limit Order. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

As part of its continuing efforts to provide additional flexibility and increased functionality to its system and its Users,[5] the Exchange proposes to modify the Auction Only Limit Order (''Auction Only''). Currently, this order type is defined as a limit order that may be executed only during the Market Order Auction[6] or the Trading Halt Auction.[7] The Exchange proposes to amend and expand Rule 7.31(t) to include market orders and to make the order available in all auctions.

According to the proposed rule change, the Auction Only order will be executable during the next auction following entry of the order and that any unexecuted balance will be cancelled. Auction Only orders are only available for auctions on the Exchange and are not routed to other exchanges.

The Exchange believes that the implementation of the aforementioned rule change will enhance order entry and execution opportunities on NYSE Arca.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[8] in general, and furthers the objectives of section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule

[13] 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)(6).

[5] *See* NYSE Arca Rule 1.1(yy) for the definition of ''User.''

[6] *See* NYSE Arca Rule 7.35(c) for a description of the ''Market Order Auction.''

[7] *See* NYSE Arca Rule 7.35(f) for a description of the ''Trading Halt Auction.''

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

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.

NYSE Arca has asked the Commission to waive the 30-day operative delay. The Commission believes such a waiver is consistent with the protection of investors and the public interest because it would permit the Exchange to modify the Auction Only order without delay.[12] For this reason, the Commission designates the proposal to be operative upon filing with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2007–72 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–NYSEArca–2007–72. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–72 and should be submitted on or before August 28, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E7–15312 Filed 8–6–07; 8:45 am]

BILLING CODE 8010–01–P

[12] For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review.

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before September 6, 2007. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Small Business Week Award Nominees.
No: SBA Form 3300.
Frequency: On occasion.
Description of Respondents: Respondents Are Entrepreneurs and Small Business, Owners Nominated for SBA's National Small Business Week Awards.
Annual Responses: 600.
Annual Burden: 450.

Title: Small Business Administration Application for Certificate of Competency.
No: SBA Form 1531.
Frequency: On occasion.
Description of Respondents: Small Business Owners.
Annual Responses: 300.
Annual Burden: 2,400.

Title: SBIC Financial Reports.
No: SBA Forms 468, 468.1, 468.2, 468.3, 468.4.
Frequency: On occasion.
Description of Respondents: Small Business Investment Companies.
Annual Responses: 1,265.
Annual Burden: 19,855.

Title: Small Business Investment Companies.
No: SBA Form 1031.
Frequency: On occasion.
Description of Respondents: Small Business Investment Companies.
Annual Responses: 4,000.
Annual Burden: 800.

Title: Financing Eligibility Statement Social Disadvantage.
No: SBA Forms 1941A, 1941B, 1941C.
Frequency: On occasion.
Description of Respondents: Small Business Investment Companies (SSBIC).
Annual Responses: 190.
Annual Burden: 380.

Title: Size Status Declaration.
No: SBA Form 480.
Frequency: On occasion.
Description of Respondents: New Licensees.
Annual Responses: 4,200.
Annual Burden: 700.

Title: Stockholders Confirmation (Corporation) Owership Confirmation (Partnership).
No: SBA Forms 1405, 1405a.
Frequency: On occasion.
Description of Respondents: Newly Licensed SBICs.
Annual Responses: 600.
Annual Burden: 600.

Title: CDC Annual Report Guide.
No: SBA Form 1253.

Frequency: On occasion.
Description of Respondents: Certified Development Companies.
Annual Responses: 1.
Annual Burden: 7,500.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E7–15243 Filed 8–6–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10923 and #10924]

Kansas Disaster Number KS–00022

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1711–DR), dated 07/05/2007.
Incident: Severe Storms and Flooding.
Incident Period: 06/26/2007 and continuing through 07/25/2007.
Effective Date: 07/25/2007.
Physical Loan Application Deadline Date: 09/04/2007.
EIDL Loan Application Deadline Date: 04/07/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Kansas, dated 07/05/2007 is hereby amended to establish the incident period for this disaster as beginning 06/26/2007 and continuing through 07/25/2007.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–15304 Filed 8–6–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10919 and #10920]

Texas Disaster Number TX–00254

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–1709–DR), dated 06/29/2007.
Incident: Severe Storms, Tornadoes, and Flooding.
Incident Period: 06/16/2007 and continuing.
Effective Date: 07/31/2007.
Physical Loan Application Deadline Date: 08/28/2007.
EIDL Loan Application Deadline Date: 03/31/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Texas, dated 06/29/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: Bee, Medina.
Contiguous Counties:
Texas: Atascosa, Bandera, Bexar, Frio, Karnes, Live Oak, San Patricio, Uvalde, Zavala.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–15303 Filed 8–6–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

Pursuant to the Federal Advisory Committee Act, Appendix 2 of Title 5, United States Code, Public Law 92–463, notice is hereby given that the U.S. Small Business Administration, National Small Business Development Center Advisory Board will be hosting a public meeting via conference call to discuss such matters that may be presented by members, staff of the U.S. Small Business Administration, and interested others. The conference will be held on Tuesday, August 21, 2007 at 1 p.m. Eastern Standard Time.

The purpose of the meeting is to discuss updates about the Board site visit for the July 2007 Ohio Small Business Development Center Network and logistics for the upcoming National Association of SBDC Annual Conference on September 16–20, 2007 in Denver, Colorado.

Anyone wishing to make an oral presentation to the Board must contact Alanna Falcone, Program Analyst, U.S. Small Business Administration, Office of Small Business Development Centers, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 619–1612 or fax (202) 481–0134.

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–15305 Filed 8–6–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Women's Business Council; Notice of Public Meeting

In accordance with the Women's Business Ownership Act, Public Law 106–554 as amended, the National Women's Business Council (NWBC) would like to announce a forthcoming Council meeting. The meeting will be held on Wednesday, September 19, 2007, starting at 8:30 a.m. to 1 p.m. at the U.S. Small Business Administration, Eisenhower Conference Rooms A&B, 409 Third Street, SW., Second Floor, Washington, DC 20024.

The purpose of the meeting is to discuss the NWBC's fiscal year 2007 and 2008 projects, congressional briefing on U.S. Small Business Administration/Entrepreneurial Development reauthorization, legislative updates, and swearing-in of new members.

Anyone wishing to attend the Council meeting should contact Emily Reynolds no later than Monday, September 17, 2007 by e-mail at *Emily.reynolds@nwbc.gov* or fax to 202–205–6825. Anyone wishing to make a presentation to the Council during the meeting must contact Margaret M. Barton in writing at the National Women's Business Council, 409 Third Street, SW., Suite 210, Washington, DC 20024, by e-mail at *Margaret.barton@nwbc.gov* or fax to 202–205–6825 by Friday, September 7, 2007, in order to be put on the agenda. The meeting is open to the public, and attendance is by RSVP only.

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–15307 Filed 8–6–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region I Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region I Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a National Regulatory Fairness Hearing on Thursday, August 16, 2007, at 10 a.m. The forum will take place at the Portland SCORE Office, 100 Middle Street, 2nd Floor, Portland, ME 04101. The purpose of the meeting is for Business Organizations, Trade Associations, Chambers of Commerce and related organizations serving small business concerns to report experiences regarding unfair or excessive Federal regulatory enforcement issues affecting their members.

Anyone wishing to attend or to make a presentation must contact Bonnie Erickson, in writing or by fax in order to be placed on the agenda. Bonnie Erickson, Public Information Officer, SBA, Augusta District Office, 68 Sewall Street, Room 512, Augusta, ME 04330, phone (207) 622–8275 and fax (207) 622–8277, e-mail: *Bonnie.erickson@sba.gov*.

For more information, see our Web site at *http://www.sba.gov/ombudsman*.

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–15315 Filed 8–6–07; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed, faxed or e-mailed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov*

(SSA), Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov*

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Authorization for SSA to Disclose Tax Information for Your Appeal of Your Medicare Part B Income-Related Monthly Adjustment Premium Amount—20 CFR 418.1350—NEW. Medicare Part B beneficiaries who wish to appeal SSA's reconsideration of their Income-Related Monthly Adjustment Amount (IRMAA) must ensure that the relevant Internal Revenue Service (IRS) income tax data is made available to the Health and Human Services Administrative Law Judge (ALJ) who will consider their appeal. Currently, SSA is using IRS Form–8821 to obtain beneficiary authorization to disclose the IRS beneficiary tax data to the ALJ. With IRS's permission, SSA has developed its own form for this purpose, the SSA–54. The respondents are Medicare Part B recipients who want to appeal SSA's reconsideration of their IRMAA amount.

Type of Request: New information collection.

Number of Respondents: 6,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 1,500 hours.

2. Request for Corrections of Earnings Record—20 CFR 404.820 & 20 CFR 422.125—0960–0029. The information collected by Form SSA–7008 is needed when an individual alleges his/her earnings record is inaccurate. The information is used to check against the record maintained by SSA and, as necessary, initiate development to resolve the issue. The respondents are individuals who request correction of earnings posted to their Social Security earnings record.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 375,000.

Estimated Annual Burden: 62,500 hours.

	Number of respondents	Frequency of response	Estimated burden per response (minutes)	Estimated annual burden (hours)
Paper Version	37,500	1	10	6,250.
In-person or telephone interview	337,500	1	10	56,250.
Total	375,000			62,500.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. Electronic Records Express Third-Party Registration Form—0960–NEW. ERE (Electronic Records Express) is an online system which enables medical providers and various third parties to submit disability claimant information

electronically to SSA as part of the disability application process. Third parties who wish to use this system must complete a unique registration process so the Agency can ensure they are authorized to access a claimant's electronic disability folder. This request is for the Third-Party Registration Form. The respondents are third-party representatives of disability applicants or recipients who want to use ERE to electronically access beneficiary folders and submit information to SSA.

Type of Request: New information collection.

Number of Respondents: 75,784.

Frequency of Response: 1.

Average Burden per Response: 3 minutes.

Estimated Annual Burden: 3,789 hours.

2. Representative Payee Evaluation Report—20 CFR 404.2065 & 416.665—0960–0069. Sections 205(j) and 1631(a)(2) of the Social Security Act provide that a representative payee may be appointed to receive benefits on behalf of an individual entitled to Title II and/or Title XVI benefits when that individual is unable to manage or direct the management of those funds him/herself. The representative payee is required to report to SSA at least once per year on how those funds received have been used or conserved. When a representative payee fails to adequately report to SSA as required, SSA will conduct a face-to-face interview with the payee to complete an SSA–624, Representative Payee Evaluation Report, in order to determine the continued suitability of the representative payee to serve as a payee. The respondents are individuals and organizations who act as representative payees for Title II and Title XVI benefits who fail to comply with SSA's statutory annual reporting requirement.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 252,000.

Frequency of Response: 1.

Average Burden per Response: 30 minutes.

Estimated Annual Burden: 126,000 hours.

3. Request for Change in Time/Place of Disability Hearing—20 CFR 404.914(c)(2) and 416.1414(c)(2)—0960–0348. The information on Form SSA–769 is used by SSA and the State Disability Determination Services to provide claimants with a structured format to exercise their right to request a change in time or place of a scheduled disability hearing. The information will be used as a basis for granting or denying requests for changes and for rescheduling disability hearings. Respondents are claimants who wish to request a change in the time and/or place of their hearing.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 7,483.

Frequency of Response: 1.

Average Burden per Response: 8 minutes.

Estimated Annual Burden: 998 hours.

4. Agency/Employer Government Pension Offset Questionnaire—20 CFR 404.408(a)—0960–0470. The information collected by form SSA–4163 will provide SSA with accurate information from the agency paying the pension, for purposes of applying the pension-offset provision. The form will be used only when (1) The claimant does not have the information and (2) the pension-paying agency has not cooperated with the claimant. Respondents are Federal and State Government agencies which have information needed by SSA to determine if the GPO applies and the amount of offset.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 1,000.

Frequency of Response: 1.

Average Burden per Response: 3 minutes.

Estimated Annual Burden: 50 hours.

Dated: July 31, 2007.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E7–15153 Filed 8–3–07; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2007–0055]

The Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of teleconference.

DATES: August 23, 2007—2 p.m. to 4 p.m. Eastern Daylight Savings Time; Ticket to Work and Work Incentives Advisory Panel Conference Call; Call-in number: 1–888–790–4158; Pass code: PANEL TELECONFERENCE; Leader/Host: Berthy De la Rosa-Aponte.

SUPPLEMENTARY INFORMATION: Type of meeting: On August 23, 2007, the Ticket to Work and Work Incentives Advisory Panel (the ''Panel'') will hold a teleconference. This teleconference meeting is open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces this teleconference meeting of the Ticket to Work and Work Incentives Advisory Panel. Section 101(f) of Public Law 106–170 establishes the Panel to advise the President, the Congress, and the Commissioner of Social Security on issues related to work incentive programs, planning, and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the Act. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of the Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a).

The interested public is invited to listen to the teleconference by calling the phone number listed above. Public testimony will be taken from 3:30 p.m. until 4 p.m. Eastern Standard Time. You must be registered to give public comment. Contact information is given at the end of this notice.

Agenda: The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel* at least one week before the starting date or can be received, in advance, electronically or by fax upon request.

Contact Information: Records are kept of all proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the staff by:

- Mail addressed to the Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024. Telephone contact with Debra Tidwell-Peters at (202) 358–6126.
- Fax at (202) 358–6440.
- E-mail to *TWWIIAPanel@ssa.gov*.
- To register for the public comment portion of the meeting please contact Debra Tidwell-Peters by calling (202) 358–6126, or by e-mail to *debra.tidwell-peters@ssa.gov*.

Dated: July 27, 2007.

Chris Silanskis,

Designated Federal Officer.

[FR Doc. E7–15252 Filed 8–6–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5876]

Culturally Significant Objects Imported for Exhibition Determinations: ''Inspiring Impressionism''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of

October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Inspiring Impressionism'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the High Museum of Art, Atlanta, GA, from on or about October 16, 2007, until on or about January 13, 2008, at the Denver Art Museum, Denver, CO, from on or about February 23, 2008, until on or about May 25, 2008, and at the Seattle Art Museum, Seattle, WA, from on or about June 19, 2008, until on or about September 21, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact attorney, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 30, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–15338 Filed 8–6–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5860]

Shipping Coordinating Committee; Notice of Meeting

The Subcommittee on Dangerous Goods, Solid Cargos and Containers of the Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m. on Thursday, September 6, 2007, in Room 6103 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the 12th Session of the International Maritime Organization (IMO) Sub-Committee on Dangerous Goods, Solid Cargoes and Containers to be held at the Central Hall Westminster in London, England from September 17 to September 21, 2007. Items of principal interest on the agenda are:

—Amendments to the International Maritime Dangerous Goods (IMDG) Code and Supplements including harmonization of the IMDG Code with the United Nations Recommendations on the Transport of Dangerous Goods.

—Amendments to the Code of Safe Practice for Solid Bulk Cargoes (BC Code) including evaluation of properties of solid bulk cargos and mandatory application of the BC Code.

—Casualty and incident reports and analysis.

—Review of the Code of Safety for Special Purpose Ships (SPS Code).

—Amendments to the Code of Safe Practice for Cargo Stowage and Securing (CSS Code).

—Extension of the Code of Practice for the Safe Unloading and Loading of Bulk Carriers (BLU Code) to include grain.

—Guidance on providing safe working conditions for securing of containers.

—Review of the Recommendations on the Safe Use of Pesticides in Ships.

—Application of requirements for dangerous goods in packaged form in the International Convention for the Safety of Life at Sea (SOLAS) and the 2000 High Speed Craft (HSC) Code.

—Guidance on protective clothing.

—Revision of the Code of Safe Practice for Ships Carrying Timber Deck Cargoes.

—Form and procedure for approval of the Cargo Securing Manual.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. R.C. Bornhorst, U.S. Coast Guard (CG–3PSO–3), Room 1210, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 372–1426.

Dated: July 30, 2007.

Mark W. Skolnicki,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E7–15335 Filed 8–6–07; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 5764]

Shipping Coordinating Committee; Notice of Meeting

The Subcommittee on Safety of Life at Sea of the Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Monday, September 10, 2007 in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. The primary purpose of this meeting will be to finalize preparations for the 83rd Session of the Maritime Safety Committee, and associated bodies of the International Maritime Organization (IMO), which is scheduled for 3–12 October, 2007 at Bella Center in Copenhagen, Denmark. At this meeting, papers received and the draft U.S. positions for the Maritime Safety Committee will be discussed. Items of principal interest on the agenda are:

—Adoption of amendments to the following international conventions and codes: International Convention for the Safety of Life at Sea (SOLAS) for Long Range Identification and Tracking (LRIT) of ships; the International Maritime Dangerous Goods (IMDG) Code; the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW); the Fire Safety Systems (FSS) Code; and the International Lifesaving Appliance (LSA) Code.

—Measures to enhance maritime security.

—Goal-based new ship construction standards.

—Formal safety assessment.

—Reports of nine related Subcommittees of the SHC: Stability, Load Lines and Fishing Vessel Safety; Dangerous Goods, Solid Cargoes and Containers; Training, Certification and Watchkeeping; Fire Protection; Radio Communications and Search and Rescue; Ship Design and Equipment; Flag State Implementation; Carriage of Bulk Liquids and Gases; and Safety of Navigation.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to LCDR Kevin Ferrie, Commandant (CG–3PSE–1), U.S. Coast Guard Headquarters, 2100 2nd St., SW., Room 1218, Washington, DC 20593–0001 or by calling (202) 372–1357.

Dated: July 30, 2007.

Mark W. Skolnicki,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E7–15333 Filed 8–6–07; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2006–25755]

Operating Limitations at New York LaGuardia Airport; Proposed Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed amendments and request for comments.

SUMMARY: The Federal Aviation Administration (FAA) has tentatively determined that it will be necessary to amend the December 12, 2006, order that places temporary limitations on flight operations at New York's LaGuardia Airport (LaGuardia).

FOR FURTHER INFORMATION CONTACT: Komal Jain, Regulations Division, Office of the Chief Counsel; Telephone: (202) 267–3073; E-mail: *komal.jain@faa.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Amendments to Order

The Federal Aviation Administration (FAA) proposes to modify its December 12, 2006, order (the Order) that temporarily limits flight operations at New York's LaGuardia Airport (LaGuardia), pending its promulgation of a long-term regulation to manage congestion at the airport. We propose to (1) provide an approval process for Operating Authorization (OA) transfers for day-of carrier substitutions; (2) amend provisions affecting the 80 percent minimum-use requirement by adding a waiver for holiday periods and providing the Administrator greater discretion to suspend the requirement under certain conditions; and (3) provide a mechanism for withdrawal of OAs for FAA operational reasons. These proposed amendments would not affect unscheduled operations.

The FAA invites air carriers and other interested persons to submit written comments on this proposal by no later than September 6, 2007 in Docket FAA–2006–25755. We will give full consideration to comments received before we issue a final modification to the Order. You may send comments 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.

Mail: U.S. Department of Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590.

Fax: (202) 493–2251.

Hand Delivery: West Building, Ground Floor, Room W12–140, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

I. Background

Due to LaGuardia's limited runway capacity, the airport cannot accommodate the number of flights that airlines would like to operate without causing significant congestion. The FAA has long limited the number of arrivals and departures at LaGuardia during peak demand periods through the promulgation and implementation of the High Density Rule (HDR).[1] By statute enacted in April 2000, the HDR's applicability to LaGuardia operations terminated as of January 1, 2007.[2] On August 29, 2006, the FAA published a notice of proposed rulemaking (NPRM) in anticipation of the HDR's expiration (71 FR 51360). In the NPRM, the agency proposed another congestion management program for LaGuardia, which, among other things, proposed to continue to limit the number of scheduled and unscheduled operations at LaGuardia. Because the rulemaking was not completed before January 1, 2007, the FAA, after notice and comment, adopted interim operational limitations on LaGuardia flights through the Order (71 FR 77854; Dec. 27, 2006). Without the limits contained in the Order, the FAA projected that severe congestion-related delays would occur as a result of excessive demand at LaGuardia, leading to delays both at LaGuardia and at other airports throughout the National Airspace System (NAS).

When the FAA issued the Order, we (1) maintained hourly limits at 75 scheduled and six unscheduled operations at LaGuardia from 6 a.m. through 9:59 p.m., Eastern time, Monday through Friday, and from noon through 9:59 p.m., Eastern time on Sundays; (2) imposed an 80 percent minimum usage requirement for OAs; (3) provided for a lottery to reallocate withdrawn, surrendered or unallocated OAs; and (4) allowed for trades and leases of OAs for consideration for the duration of the Order.

II. Proposed Amendments

The Order, which took effect on January 1, 2007, is a temporary measure while the FAA completes its final rule (Rule) to manage congestion at LaGuardia. The agency is in the process of reviewing comments received on the NPRM, but the review is not complete. Until the Rule becomes effective, we propose several amendments to the Order to improve the administration of the congestion management program at LaGuardia.

The FAA's authority to limit the number of flight operations at LaGuardia is an essential component of the FAA's statutory responsibilities. The FAA holds broad authority under 49 U.S.C. 40103(b) to regulate the use of the navigable airspace of the United States. This provision authorizes the FAA to develop plans and policy for the use of navigable airspace and, by order or rule, to regulate the use of the airspace as necessary to ensure its efficient use.

Secondary Market: Approval Process

Some air carriers with affiliated or regional carrier flights expressed concerns about the burden associated with obtaining prior approval from the FAA for OA transfers when making day-of carrier substitutions. Due to the around-the-clock nature of an airline's operations, and the real-time nature of operational logistics, it is not unusual for an air carrier to make day-of flight service substitutions from one carrier to another. The FAA recognizes that advance approval of an OA transfer is not always possible, in part because the FAA Slot Administration Office is not open 24 hours a day. Therefore, we propose to amend the Order to permit a transfer request to be submitted for FAA approval up to 72-hours after the actual operation. In order to support the request for the post-transfer approval, the FAA would require flight information, including flight number, origin, destination and scheduled time of operation.

The FAA is not prepared to eliminate entirely the requirement that we receive advance notice of OA transfers. The initial scheduling decisions are normally made with sufficient time to obtain the requisite approval, even in the case of common ownership and affiliated carriers. The FAA proposes to limit post-transaction approvals to unplanned, day-of operational schedule changes between commonly owned or affiliated carriers under the same marketing control, and we are seeking

[1] *See* 49 CFR part 93, subpart K.

[2] Aviation Investment and Reform Act for the 21st Century (AIR–21), Pub. L. 106–181 (April 5, 2000), 49 U.S.C. 41715(a)(2).

comment on whether the transfer provisions should be revised to recognize these operational issues and whether the procedure outlined meets carrier needs.

Minimum Usage Requirements and Waivers

Holiday Waiver

On January 9, 2007, the Air Transport Association (ATA) submitted a petition for an amendment to the Order related to the minimum usage requirement.[3] ATA noted that the Order contains no provision to address the ''predictable drop-off in operations on and immediately after certain holidays.'' By contrast, ATA noted that the HDR and the governing rules for O'Hare state ''the FAA will treat as used any slot held by a carrier at a High Density Traffic Airport on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.''

ATA is correct in its conclusion that the FAA inadvertently omitted a holiday waiver provision under the Order. The FAA proposes to correct that omission and include a holiday waiver under this proposed amendment.

Start-up Waiver

The FAA recognizes that carriers obtaining an OA in a lottery would require time prior to its use to market the flights and arrange for aircraft, crew, gate, and terminal availability. Most carriers have indicated in past proceedings for LaGuardia that 120 days provides sufficient planning time. Therefore, the FAA proposes to adopt a waiver of the minimum usage requirements for 120 days after an OA is allocated in a lottery. A similar start-up waiver is not warranted when an OA is leased or transferred because carriers should consider the usage requirements in their discussions.

Administrator's Waiver Authority

Under the Order, the FAA Administrator can ''waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which exists for a period of 5 consecutive days or more.'' We propose the Administrator be given greater discretion to issue a waiver if the *impact* of a particular event is five consecutive days versus the duration of the event existing for more than five days. This recognizes that carrier operations may require several days to return to normal after significant disruptions to service; for example, aircraft and crew may need to be repositioned. We believe this proposed amendment allows carriers and the FAA, in its administration of the congestion management program at LaGuardia, greater latitude and flexibility to deal with unpredictable conditions; while still maintaining the integrity and purpose of the usage requirement.

Reversion and Withdrawal of Operating Authorizations

As the FAA has indicated in various proceedings related to capacity-constrained airports, operating authority is subject to absolute FAA control. The FAA may reduce flight operations at an airport in order to meet operational needs or to recognize reductions in available airport capacity. The Order currently does not provide a process for the FAA to reduce the number of OAs should that become necessary. The FAA proposes to use a weighted lottery system if we determine that OAs need to be withdrawn or temporarily suspended.

Under this weighted lottery proposal, all air carriers holding OAs at the airport would be included. The FAA will use weights when establishing the air carrier rank order for OA selections. For example, if an air carrier has a weight equal to seven, the carrier's name will be placed seven times in a random draw. Once we have completed this process for all lottery participants, a representative of the FAA will begin drawing names. Although there is a possibility that any air carrier participating in the lottery could be chosen first in the rank order, carriers with greater operations at LaGuardia would have higher odds of being selected. Using a random drawing to establish a carrier rank order, carriers would relinquish two OAs in each sequence until the FAA's reduced level of operations by half-hour or hour, as appropriate, has been achieved. Withdrawal would not be made from any carrier if the result would reduce its holdings below 20 OAs on any weekday. For these purposes, the FAA would consider commonly owned and affiliated carriers to be single air carriers. The FAA would provide at least 45 days' notice unless otherwise required by operational needs. Any OA that is withdrawn or temporarily suspended would, if reallocated, be reallocated to the carrier from which it was taken, provided that the carrier continues to operate scheduled service at LaGuardia.

III. Proposed Amendment to the Order

A. Scheduled Operations

With respect to scheduled operations at LaGuardia, the FAA proposes the following amendments to ordering paragraphs:

5. An air carrier can lease or trade an Operating Authorization to another carrier for any consideration, not to exceed the duration of the Order. Notice of a trade or lease under this paragraph would be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267–7277 or e-mail *7-AWA-Slotadmin@faa.gov*, and must come from a designated representative of each carrier. The FAA must confirm and approve these transactions in writing prior to the effective date of the transaction. However, the FAA would approve transfers between carriers under the same marketing control up to 72-hours after the actual operation. This post-transfer approval would be limited to accommodate operational disruptions that occur on the same day of the scheduled operation.

6. Each air carrier holding an Operating Authorization would forward in writing to the FAA Slot Administration Office a list of all Operating Authorizations held by the carrier along with a listing of the Operating Authorizations actually operated for each day of the two-month reporting period within 14 days after the last day of the two-month reporting period beginning January 1 and every two months thereafter. Any Operating Authorization not used at least 80 percent of the time over a two-month period would be withdrawn by the FAA except:

The FAA would treat as used any Operating Authorization held by an air carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

The FAA would treat as used any Operating Authorization obtained by an air carrier through a lottery under paragraph 7 for the first 120 days after allocation in the lottery.

The Administrator of the FAA could waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the air carrier and which affects carrier operations for a period of five consecutive days or more.

[*The following paragraph would be inserted as ordering paragraph 8, and existing paragraph 8 would be renumbered as ordering paragraph 9*].

8. If the FAA determines that a reduction in the number of allocated Operating Authorizations is required to

[3] See Docket FAA–2006–25755.

meet operational needs, such as reduced airport capacity, the FAA would conduct a weighted lottery to withdraw Operating Authorizations to meet a reduced hourly or half-hourly limit for scheduled operations. Withdrawal would not be made from any air carrier if the result would reduce their holdings below 20 Operating Authorizations on any weekday. The FAA would provide at least 45 days' notice unless otherwise required by operational needs. Any Operating Authorization that is withdrawn or temporarily suspended would, if reallocated, be reallocated to the air carrier from which it was taken, provided that the air carrier continues to operate scheduled service at LaGuardia.

IV. Request for Comments

The FAA invites all interested persons to submit written comments on the proposals described in this Order by filing their written views in Docket FAA–2006–25755 on or before September 6, 2007.

Issued in Washington, DC on August 2, 2007.

Kerry B. Long,

Chief Counsel.

[FR Doc. 07–3855 Filed 8–2–07; 4:30 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Baton Rouge Metropolitan Airport; Baton Rouge, LA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Greater Baton Rouge Airport District for Baton Rouge Metropolitan Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Baton Rouge Metropolitan Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before January 25, 2008.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is July 30, 2007. The public comment period ends September 27, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Lance Key, Federal Aviation Administration. ASW–615, 2601 Meacham Blvd, Fort Worth, TX 76137–4298; telephone number 817–222–5681. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Baton Rouge Metropolitan Airport are in compliance with applicable requirements of Part 150, effective July 30, 2007. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before January 25, 2008. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C. 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The Greater Baton Rouge Airport District submitted to the FAA on May 14, 2007, noise exposure maps, descriptions and other documentation that were produced during the Baton Rouge Metropolitan Airport's Part 150 Study, May 2005–May 2007. It was requested that the FAA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Greater Baton Rouge Airport District. The specific documentation determined to constitute the noise exposure maps includes the following from the May 2007 14 CFR Part 150 Noise Study: Figure A, 2006 Noise Exposure Map (Existing); Figure B, 2011 Noise Exposure Map (Future); Figure 1–3, Existing and Planned Airport Facilities; Table 1–2, Actual and Forecast Aircraft Operations; Figure 1–4, Generalized Existing Land Use Map; Figure 1–5, Generalized Existing Zoning Map; Table 2–2, Average Daily Aircraft Operations by Type, Time of Day, and Stage Length (2006); Table 2–3, Average Daily Aircraft Operations by Type, Time of Day, and Stage Length (2011); Table 2–4, Runway Utilization by Aircraft Type; Figure 2–1, Generalized Flight Tracks; Table 2–5, Flight Track Utilization by Aircraft Category (2006 and 2011); Table 2–6, Noise Exposure Impacts (1991, 2006, 2011); Figure 3–1, Single Arrival/Departure Noise Contours, Figure 3–2, Potential Noise Abatement Departure Turns, Appendix E, Coordination, Consultation and Public Involvement and Appendix F, Public Hearing. The FAA has determined that these maps for Baton Rouge Metropolitan Airport are in compliance with applicable requirements. This determination is effective on July 30, 2007. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part

150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formerly received the noise compatibility program for Baton Rouge Metropolitan Airport, also effective on July 30, 2007. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 25, 2008.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Planning and Programming Branch, Room 697, 2601 Meacham Boulevard, Forth Worth, TX 76137–4298 and Mr. Anthony Marino, 9430 Jackie Cochran Dr., Suite 300, Baton Rouge, LA 70807.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. 07–3846 Filed 8–6–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Limitation on Claims For the Big Bear Bridge Replacement Project, San Bernardino National Forest, California

AGENCY: U.S. Department of Transportation, Federal Highway Administration (FHWA).

SUMMARY: This notice announces the actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). These actions relate to a proposed bridge replacement project in the San Bernardino National Forest, California. The federal actions grant approvals and authorize funding for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C.(l)(1). A claim seeking judicial review of the Federal agency actions on the bridge replacement project will be barred unless a claim is filed on February 4, 2008. If the Federal law that authorizes judicial review of a claim provides a time period less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: David Cohen, Environmental Protection Specialist, Federal Highway Administration, 650 Capitol Mall, Suite 4–100, Sacramento, CA 95814, weekdays between 9 a.m. and 5 p.m. (Pacific Time), telephone (916) 498–5868, e-mail: *David.Cohen@dot.gov;* Tay Dam, Project Development Engineer, Federal Highway Administration, 888 S. Figueroa, Suite 1850, Los Angeles, CA 90017, telephone (213) 202–3954, e-mail: *Tay.Dam@dot.gov;* Mr. Boniface Udotor, Senior Environmental Planner, Caltrans District 8, 464 West 4th Street, San Bernardino, CA 92401, telephone (909) 388–1387, e-mail: *Boniface_Udotor@dot.ca.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing approvals for the following bridge replacement project in the State of California: The Big Bear Lake Bridge on State Route 18 in the San Bernardino National Forest. This project will provide a structurally sound and operationally efficient transportation facility which will blend into and add value to its environmental setting. The project will also realign the approach roadways to the bridge and signalize the intersection between State Route 18 and State Route 38. The existing bridge will be removed from the top of the dam to facilitate the Big Bear Municipal Water District's planned spillway and outlet works improvements.

The actions by the Federal agencies and the laws under which such actions were taken are described in the Final Environmental Impact Statement for the project, approved on March 30, 2007, and in other documents in the administrative record. The FEIS, the Record of Decision, and other project records are available by contacting the FHWA or Caltrans at the addresses provided above. The environmental document is also published on-line at *http://www.dot.ca.gov/dist8/pdf/bigbear-FEIS-R.pdf.*

This notice applies to all final decisions of Federal agencies as of the issuance date of this notice, and all laws under which such actions were taken, including but not limited to:

1. *General:* The National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109]

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)]

3. *Land:* The Section 4(f) of the U.S. Department of Transportation Act of 1966 [49 U.S.C. 303; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319]

4. *Wildlife:* The Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712]

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013]

6. *Social and Economic Impacts:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251–1377]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Flood Disaster Protection Act [42 U.S.C. 4001–4128]

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)]

9. *Executive Orders:* E.O. 11990 Protection of Wetlands, E.O. 11988 Floodplain Management; E.O. 12898

Federal Actions to Address Environmental Justice in Minority and Low Income Populations, E.O. 11593 Protection and Enhancement of Cultural Resources, E.O. 13007 Indian Sacred Sites, E.O. 13287 Preserve America, E.O. 13175 Consultation and Coordination with Indian Tribal Governments, E.O. 11514 Protection and Enhancement of Environmental Quality, E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this activity.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: July 30, 2007.

Maiser Khaled,

Director, Project Development & Environment, Federal Highway Administration, California Division.

[FR Doc. E7–15267 Filed 8–6–07; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2007–27995; Notice 2]

Decision That Nonconforming 1994 and 1996 Left-Hand and Right-Hand Drive Jeep Cherokee Multipurpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of decision by the National Highway Traffic Safety Administration (NHTSA) that nonconforming 1994 and 1996 left-hand drive (LHD) and right-hand drive (RHD) Jeep Cherokee multipurpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This document announces a decision by NHTSA that certain 1994 and 1996 LHD and RHD Jeep Cherokee MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 1994 and 1995 LHD and RHD Jeep Cherokee MPVs), and (2) they are capable of being readily altered to conform to the standards.

DATES: This decision is effective [insert date of letter notifying RI that petition has been granted].

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (''G&K'') (Registered Importer 90–007) petitioned NHTSA to decide whether 1994 and 1996 LHD and RHD Jeep Cherokee MPVs are eligible for importation into the United States. In its petition, G&K compared these nonconforming vehicles to substantially similar U.S.-certified 1994 and 1996 LHD and RHD models. NHTSA published notice of the petition on April 26, 2007 (72 FR 20915) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. Comments were received in response to the notice of the petition from Nippon Security, Inc., doing business as Yokohama Trading LLC, Yokohama Motors Ltd., and Yokohama Trading of Japan (collectively ''Yokohama Trading'').

NHTSA's analysis of the petition and Yokohama Trading's comments are set forth below, with regard to each of the issues raised in those comments.

Whether the Vehicles Are in Fact Nonconforming.

Yokohama Trading's Contention: Yokohama Trading disputed G&K's characterization of the subject vehicles as nonconforming by contending that:

> The vehicles already bear valid U.S. vehicle identification numbers (VINs), are certified as complying with U.S. Environmental Protection Agency (EPA) standards, and meet the safety requirements of the FMVSS and therefore should not be considered ''non-conforming,'' but returned U.S. goods for importation purposes and allowed in the country without modifications.
>
> Vehicles intended for use by U.S. Postal carriers are EXEMPT from the FMVSS under the Federal Motor Carrier Safety Regulations at 49 CFR 390.3(f).
>
> The vehicles are in fact conforming vehicles so long as their use is restricted to U.S. Postal Service (USPS) Rural Route Carriers as they are exempt from full compliance with FMVSS guidelines, notwithstanding the fact that, except for a few inconsequential features, they meet those guidelines.

NHTSA's Response: The assignment of a U.S.-complaint VIN to a vehicle does not signify that the vehicle complies with all applicable FMVSS. Instead, as provided in NHTSA's certification regulations at 49 CFR part 567, the vehicle must bear a label, permanently affixed by its original manufacturer, certifying that the vehicle complies with all applicable FMVSS in effect on the vehicle's date of manufacture. The vehicles that are the subject of the petition were manufactured by Chrysler Corporation for sale in markets outside the United States such as Japan, and consequently were labeled ''For Export Only.'' As such, they cannot be regarded for importation purposes as conforming motor vehicles.

The regulations cited by Yokohama Trading, 49 CFR part 390 Federal Motor Carrier Safety Regulations, are regulations issued by the Federal Motor Carrier Safety Administration (FMCSA), an agency within DOT that is separate from NHTSA, for the purpose of regulating commercial motor vehicles and their operation in the United States. Section 390.3(f) of those regulations provides that the Federal Motor Carrier Safety Regulations do not apply, among other things, to transportation

performed by the Federal government. These regulations (which only apply to vehicles with a weight rating in excess of 10,000 pounds, far heavier than the vehicles that are the subject of the petition) are not issued or administered by NHTSA, and cannot and do not establish any exemption from the requirements of the FMVSS that pertain to motor vehicles manufactured or imported for sale or use in the United States.

Although there are certain exemptions in FMVSS No. 208 Occupant Crash Protection and other standards for vehicles that are ''designed to be exclusively sold to the U.S. Postal Service'' (see, e.g., paragraph S4.2.2 of 49 CFR 571.208), the vehicles that are the subject of the petition were manufactured for sale in markets other than the United States and were labeled by their manufacturer ''For Export Only.'' As such, they were not designed to be exclusively sold to the U.S. Postal Service and therefore do not qualify for any of these exemptions. It is also worth noting that there is no general exemption from the FMVSS for U.S. Postal Service vehicles. Vehicles manufactured for the U.S. Postal Service must be labeled by their manufacturer as conforming to all applicable FMVSS in effect on their date of manufacture, in the same manner that is required under NHTSA's certification regulations at 49 CFR part 567 for any other motor vehicle manufactured for sale or use in the United States.

Whether Necessary Conformance Modifications May Only Be Performed by Registered Importers

Yokohama Trading's Contention: That parties other than importers registered with NHTSA (RIs) could perform some of the modifications to conform the subject vehicles to the FMVSS, on the theory that those modifications do not require any special techniques.

NHTSA's Response: This argument has no bearing on whether the vehicles that are the subject of the petition are capable of being modified to conform to all applicable FMVSS. As such, it provides no basis for the denial of the petition. In point of fact, the petition was filed under 49 U.S.C. 30141(a)(1)(A), which requires a showing that the vehicles are ''capable of being readily altered to conform to all applicable FMVSS.'' NHTSA's regulations at 49 CFR 592.6, which specify the duties of an RI, require an RI to personally witness each modification performed on a vehicle to effect compliance, or to know that the person who performed the necessary modifications is an employee of that RI, so that the RI can certify that the vehicle has been brought into compliance with all applicable Federal motor vehicle safety and bumper standards.

Canadian Imports That Do Not Require an RI

Yokohama Trading's Contention: That Canadian vehicles are often missing required labeling and are still allowed to be imported into the U.S. without the need for the services of an RI.

NHTSA's Response: This is another issue that has no bearing on whether the vehicles that are the subject of the petition are capable of being modified to conform to all applicable FMVSS. As a consequence, it also provides no basis for denying the petition. In point of fact, NHTSA's regulations at 49 CFR 591.5(g) do permit a motor vehicle that is not a salvage motor vehicle, a repaired salvage motor vehicle, or a reconstructed motor vehicle to be imported for personal use without the need to engage the services of an RI if certain requirements are met. Those requirements are that the vehicle be certified by its original manufacturer as complying with all applicable Canadian motor vehicle safety standards and that NHTSA be informed by the vehicle's original manufacturer that the vehicle complies with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, or that it complies with all such standards except for the labeling requirements of FMVSS Nos. 101 Controls and Displays and 110 or 120 Tire Selection and Rims, and/or the specifications of FMVSS No. 108 Lamps, Reflective Devices, and Associated Equipment relating to daytime running lamps. Proof of such conformity must be furnished in the form of a letter from the original manufacturer. The letter must be presented to U.S. Customs and Border Protection at the port of entry along with a completed HS–7 Declaration form declaring the vehicle under Box 2B on that form.

Whether Yokohama Trading is a Manufacturer Yokohama Trading's Contention: That it has filed the proper paperwork and been granted approval to be a motor vehicle manufacturer in the US.

NHTSA's Response: This is another issue that has no bearing on whether the vehicles that are the subject of the petition are capable of being modified to conform to all applicable FMVSS. As such, it also provides no basis for denying the petition. In point of fact, NHTSA does not approve any manufacturers or products. Instead, it is the manufacturer's responsibility to ensure that any motor vehicle or motor vehicle equipment item that it manufactures for sale in the U.S. conforms to all applicable FMVSS. The agency's regulations at 49 CFR part 567 require manufacturers to affix to vehicles offered for sale in the U.S. labels certifying that the vehicle conforms to all applicable FMVSS in effect on the vehicle's date of manufacture. Other than issuing the standards to which the vehicles must be certified, NHTSA plays no role in the certification process.

Manufacturers of motor vehicles and motor vehicle equipment items that are subject to the FMVSS must file identifying information with NHTSA within 30 days from the date they begin to manufacture those products, as required by the agency's regulations at 49 CFR part 566 Manufacturer Identification. The acceptance of such a filing from the manufacturer, however, does not constitute agency approval of the manufacturer or its products. We have searched our manufacturer database and found no record of manufacturer identifying information being submitted by Yokohama Trading pursuant to 49 CFR part 566.

Because none of the issues raised by Yokohama Trading have any bearing on whether 1994 & 1996 Jeep Cherokee LHD & RHD MPVs are capable of being modified to conform to applicable FMVSS, they provide no basis for NHTSA to deny the petition. Accordingly, the agency has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–493 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA has decided that 1994 and 1996 LHD and RHD Jeep Cherokee MPVs that were not originally manufactured to comply with all applicable FMVSS are substantially similar to 1994 and 1996 LHD and RHD Jeep Cherokee MPVs originally manufactured for sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable FMVSS.

Note

NHTSA has been informed by DaimlerChrysler Corporation, the successor to Chrysler Corporation, the original manufacturer of the subject vehicles, that Chrysler Corporation manufactured for sale in the United States, and certified as conforming to the FMVSS, not only the 1994 and 1996 RHD Jeep Cherokees to which the nonconforming vehicles that are the subject of the instant petition have been compared, but also certain 1995 RHD Jeep Cherokee MPVs. NHTSA has previously determined that nonconforming 1995 LHD Jeep Cherokee MPVs are eligible for importation and has assigned vehicle eligibility number VSP–180 to those vehicles. See notice of final decision at 61 FR 51739 (October 3, 1996). In light of the information furnished by DaimlerChrysler, NHTSA has concluded that nonconforming 1995 RHD Jeep Cherokee MPVs may also be imported under eligibility number VSP–180.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 1, 2007.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E7–15249 Filed 8–6–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities; Proposed Revision of Information Collection; Renewal; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comments.

SUMMARY: The OCC and FDIC (Agencies), as part of their continuing effort to reduce paperwork and respondent burden, invite the public and other Federal agencies to comment on proposed revisions to a continuing information collection, as required by the Paperwork Reduction Act of 1995. The Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies are soliciting comments on proposed revisions to the information collections titled: ''Interagency Bank Merger Act Application.'' The General Information and Instructions section has been revised to delete information about the Bank Insurance Fund (BIF), the Savings Association Insurance Fund (SAIF), and the Oakar statutory provisions. In addition, corresponding legal citations on the form to these provisions are being deleted. The Agencies also solicit comment on the renewal without change to the information collections titled: ''Interagency Biographical and Financial Report'' and ''Interagency Notice of Change in Control.'' The OCC solicits comment on the renewal without change to its ''Interagency Notice of Change in Directors or Senior Executive Officers'' information collection. Additionally, the OCC is making other clarifying changes to the *Comptroller's Licensing Manual* (Manual).

DATES: You should submit written comments by October 9, 2007.

ADDRESSES: Interested parties are invited to submit comments to any or all of the Agencies and the OMB Desk Officer. All comments, which should refer to the OMB control number, will be shared among the Agencies:

OCC: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mail Stop 1–5, Attention: 1557–0014, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

FDIC: Steven Hanft, Clearance Officer, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to ''Interagency Bank Merger Act Application,'' the ''Interagency Biographical and Financial Report,'' or the ''Interagency Notice of Change in Control,'' as appropriate. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [e-mail address: *comments@fdic.gov*]. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/notices.html* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 4 p.m. on business days.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer for the Agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You may request additional information from:

OCC: Mary Gottlieb, OCC Clearance Officer, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. For subject matter information, you may contact Yoo Jin Na at (202) 874–4604, Licensing Activities, Licensing Department, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

FDIC: Steven Hanft, Clearance Officer, (202) 898–3907, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Proposal to extend for three years, with revision, the following currently approved collections of information:

OCC's Information Collection Title: Comptroller's Licensing Manual (Manual). The specific portions of the Manual covered by this notice are those that pertain to the ''Business Combinations,'' ''Branches and Relocations,'' ''Capital and Dividends,'' ''Charters,'' ''Change in Bank Control,'' ''Comments to Other Agencies,'' ''General Policies and Procedures,'' ''Investment in Bank Premises,'' ''Investment in Subsidiaries and Equities,'' ''Management Interlocks,'' and ''Public Notice and Comments'' booklets of the Manual and various portions to which the OCC is making technical and clarifying changes.

All Agencies' Report Title and FDIC's Information Collection Title: Interagency Bank Merger Act Application.

All Agencies' Report Titles and FDIC's Information Collection Title: Interagency Biographical and Financial Report and Interagency Notice of Change in Control.

OCC Report Title: Interagency Notice of Change in Directors or Senior Executive Officers.

OMB Numbers:

OCC: 1557–0014.

FDIC: Interagency Bank Merger Act Application, 3064–0015; Interagency Biographical and Financial Report, 3064–0006; Interagency Notice of Change in Control, 3064–0019.

Form Numbers:

OCC: None.

FDIC: Interagency Bank Merger Act Application, 6220/01 and 6220/07; Interagency Notice of Change in Control, Form 6822/01; Interagency Biographical and Financial Report, Form 6200/06.

Affected Public: Individuals or households; Businesses or other for-profit.

Type of Review: Revision or renewal of currently approved collections.

Estimated Number of Respondents:

OCC: Interagency Bank Merger Act Application—152; Interagency Biographical and Financial Report—450; Interagency Notice of Change in Directors or Senior Executive Officers—150; Interagency Notice of Change in Control—13.

FDIC: Interagency Bank Merger Act Application—275; Interagency Biographical and Financial Report—1,769; Interagency Notice of Change in Control—27.

Frequency of Response: On occasion.

Estimated Annual Burden Hours per Response:

OCC: Interagency Bank Merger Act Application—23.5; Interagency Biographical and Financial Report—4; Interagency Notice of Change in Directors or Senior Executive Officers—2; Interagency Notice of Change in Control—30.

FDIC: Interagency Bank Merger Act Application—23.5; Interagency Biographical and Financial Report—4; Interagency Notice of Change in Control—30.

Estimated Total Annual Burden Hours:

OCC: Interagency Bank Merger Act Application—3,572; Interagency Biographical and Financial Report—1,800; Interagency Notice of Change in Directors or Senior Executive Officers—300; Interagency Notice of Change in Control—510. Total: 6,182 burden hours.

FDIC: Interagency Bank Merger Act Application—6,463; Interagency Biographical and Financial Report—7,076; Interagency Notice of Change in Control—810. Total: 14,349 burden hours.

General Description of Report: These information collections are mandatory. Interagency Bank Merger Act Application: 12 U.S.C. 1828(c), 1815(a), 12 U.S.C. 215, 215a–c. Interagency Biographical and Financial Report: 12 U.S.C. 1814, 1816, 1817(j), 2903, and 4804. Interagency Notice of Change in Directors or Senior Executive Officers: 12 U.S.C. 1831i; Interagency Notice of Change in Control: 12 U.S.C. 1817(j) and 4804. The notices and reporting form are treated as public documents. The organizations and individuals that use the forms may request that all or a portion of the submitted information be kept confidential. In such cases, the burden is on the filer to justify the exemption by demonstrating that disclosure would cause ''substantial competitive harm'' or result in ''an unwarranted invasion of personal privacy'' or would otherwise qualify for an exemption under the Freedom of Information Act (5 U.S.C. 552). The confidentiality status of the information submitted will be judged on a case-by-case basis.

Abstract: The OCC, FDIC, Office of Thrift Supervision (OTS), and the Board of Governors of the Federal Reserve System (Board) each use the Interagency Bank Merger Act Application form to collect information for bank merger proposals that require prior approval under the Bank Merger Act. Prior approval is required for every merger transaction involving affiliated or nonaffiliated institutions and must be sought from the regulatory agency of the depository institution that would survive the proposed transaction. A merger transaction may include a merger, consolidation, assumption of deposit liabilities, or certain asset-transfers between or among two or more institutions. The information collected by the remaining notifications and forms assist the regulatory agency in fulfilling their statutory responsibilities as supervisors. The regulatory agency uses the information to evaluate the controlling owners, senior officers, and directors of the insured depository institutions subject to their oversight.

Current Actions: This submission covers a revision to the Agencies' Interagency Bank Merger Act Application. The General Information and Instructions section of the application would be revised based on the passage of the Federal Deposit Insurance Reform Act of 2005, enacted on February 8, 2006. Provisions of the legislation directed the FDIC to merge the Bank Insurance Fund and the Savings Association Insurance Fund to form the new Deposit Insurance Fund, which subsequently merged on March 31, 2006. The formation of the single insurance fund eliminated the need for two types of insurance-related applications that existed to allow certain depository institutions to convert their coverage from one insurance fund to another. Accordingly, references in the Instructions to the previously required applications have been deleted. Also, the legal citations on page 1 of the application form, that correspond to the previously required application have been deleted (previously 12 U.S.C. 1815(d)(2), 1815(d)(3)). There are no other proposed changes to this information collection. Additionally, each of the Agencies proposes to renew two other forms, Interagency Biographical and Financial Report and the Interagency Notice of Change in Control, with no changes. The OCC proposes to renew, with no changes, one additional form, the Interagency Notice of Change in Directors or Senior Executive Officers. The Agencies need the information from these forms to ensure that the proposed transactions are permissible under law and regulation and are consistent with safe and sound banking practices. The Board published a separate **Federal Register** notice (72 FR 39428 (July 18, 2007)) and the OTS plans to publish a notice requesting public comment on these revisions.

Comments: Comments submitted in response to this notice will be summarized in each Agency's request for OMB approval, and analyzed to determine the extent to which the collection should be modified. All comments will become a matter of public record. Written comments are invited on:

a. Whether the information collection is necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

b. The accuracy of the Agencies' estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 20, 2007.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Dated at Washington, DC, this 11th day of July, 2007.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 07–3834 Filed 8–6–07; 8:45 am]

BILLING CODE 4810–33–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–143453–05]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning temporary regulation, REG–143453–05, Capital Costs Incurred to Comply With EPA Sulfur Regulations.

DATES: Written comments should be received on or before October 9, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Joseph Durbala, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6514, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Residence and Source Rules Involving U.S. Possessions and Other Conforming Changes.

OMB Number: 1545–2076.

Regulation Project Number: REG–143453–05.

Abstract: This temporary regulation provides rules for claiming the deduction allowable under section 179B of the Internal Revenue Code for qualified capital costs paid or incurred by a small business refiner. The temporary regulations provide the time and manner for (i) a small business refiner to make the election to claim this deduction for the taxable year; and (ii) a cooperative small business refiner to make the election to allocate its deduction allowable under section 179B of the taxable year to the cooperative owners and to provide the written notice, as required by section 179B(e)(3), to the cooperative owners.

Current Actions: There is no change to this temporary regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Total Burden Hours: 50.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 25, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–15244 Filed 8–6–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8847

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8847, Credit for Contributions to Selected Community Development Corporations.

DATES: Written comments should be received on or before October 9, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Joe Durbala, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Credit for Contributions to Selected Community Development Corporations.

OMB Number: 1545–1416

Form Number: Form 8847.

Abstract: Internal Revenue Code section 38 allows a credit for contributions to selected community development corporations as part of the general business credit. Form 8847 is used to compute the amount of the credit for qualified contributions to a selected community development corporation.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 22.

Estimated Time per Respondent: 1 hr., 52 min.

Estimated Total Annual Burden Hours: 41.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 23, 2007

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–15247 Filed 8–6–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–33–92]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–33–92 (TD 8507), Information Reporting for Reimbursements of Interest on Qualified Mortgages (§ 1.6050H–2).

DATES: Written comments should be received on or before October 9, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carolyn N. Brown, at (202) 622–6688, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Information Reporting for Reimbursements of Interest on Qualified Mortgages.

OMB Number: 1545–1339.

Regulation Project Number: IA–33–92.

Abstract: Section 6050H of the Internal Revenue Code relates to the information reporting requirements for reimbursements of interest paid in connection with a qualified mortgage. This information is required by the Internal Revenue Service to encourage compliance with the tax laws relating to the deductibility of payments of mortgage interest. The information is used to determine whether mortgage interest reimbursements have been correctly reported on the tax return of the taxpayer who receives the reimbursement.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

The burden for the collection of information is reflected in the burden of Form 1098, Mortgage Interest Statement.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 24, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–15256 Filed 8–6–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8886–T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8886–T, Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction.

DATES: Written comments should be received on or before October 9, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, (202) 622–6688, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *Carolyn.N.Brown@irs.gov*

SUPPLEMENTARY INFORMATION:

Title: Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction.

OMB Number: 1545–2078.

Form Number: Form 8886–T.

Abstract: Certain tax-exempt entities are required to file Form 8886–T to disclose information for each prohibited tax shelter transaction to which the entity was a party.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, State, Local or Tribal Government.

Estimated Number of Respondents: 6,500.

Estimated Time per Respondent: 8 hours, 36 minutes.

Estimated Total Annual Burden Hours: 55,900.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 26, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–15257 Filed 8–6–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–251520–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–251520–96 (TD 8785), Classification of Certain Transactions Involving Computer Programs (§ 1.861–18).

DATES: Written comments should be received on or before October 9, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carolyn N. Brown, at (202) 622–6688, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Classification of Certain Transactions Involving Computer Programs.

OMB Number: 1545–1594.

Regulation Project Number: REG–251520–96.

Abstract: Section 1.861–18 of this regulation provides rules for classifying transactions involving the transfer of computer programs. This regulation grants the taxpayer consent to change its method of accounting for such transactions by filing Form 3115 with its original return for the year of change.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

The burden for the collection of information in this regulation is reflected in the burden of Form 3115.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 24, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–15261 Filed 8–6–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–135898–04]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulation, REG–135898–04, Extension of Time to Elect Method for Determining Allowable Loss; REG–152524–02, Guidance Under Section 1502, Amendment of Waiver of Loss Carryovers from Separate Return Limitation Years; REG–123305–02, REG–102740–02, Loss Limitation Rules.

DATES: Written comments should be received on or before October 9, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carolyn N. Brown, at (202) 622–6688, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: REG–135898–04 (NPRM and Temporary Regulations) Extension of Time to Elect Method for Determining Allowable Loss; REG–152524–02 (NPRM and Temporary Regulations) Guidance Under Section 1502; Amendment of Waiver of Loss Carryovers from Separate Return Limitation Years; REG–123305–02 (formerly REG–102305–02) (NPRM and Temporary Regulations); REG–102740–02 (NPRM and Temporary Regulations) Loss Limitation Rules.

OMB Number: 1545–1774.

Regulation Project Number: REG–135898–04.

Abstract: The information is necessary to allow the taxpayer to make certain elections to determine the amount of allowable loss under § 1.337(d)–2T, § 1.1502–20 as currently in effect or under § 1.1502–20 as modified; to allow the taxpayer to waive loss carryovers up to the amount of the § 1.1502–20(g) election; and to ensure that loss is not disallowed under § 1.337(d)–2T and basis is not reduced under § 1.337(d)-2T to the extent the taxpayer establishes that the loss or basis is not attributable to the recognition of built in gain on the disposition of an asset. With respect to § 1.1502–20T, the information also is necessary to allow the common parent of the selling group to reapportion a separate, subgroup or consolidated section 382 limitation when the acquiring group amends its § 1.1502–32(b)(4) election. Furthermore, regarding § 1.1502–32(b)(4), the information also is necessary to allow the taxpayer that acquired a subsidiary of a consolidated group to amend its election under § 1.1502–32(b)(4), so that the acquiring group can use the acquired subsidiary's losses to offset its income. The information also is necessary to allow the taxpayer to make certain elections to determine the amount of allowable loss pursuant to a new due date, and to amend or revoke certain prior elections to determine the amount of allowable loss.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 18,360.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Hours: 36,720.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 25, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–15262 Filed 8–6–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–4–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–4–89 (TD 8580), Disposition of an Interest in a Nuclear Power Plant (§ 1.468A–3).

DATES: Written comments should be received on or before October 9, 2007.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Robert Black at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or

through the internet at *Robert.G.Black@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Disposition of an Interest in a Nuclear Power Plant.

OMB Number: 1545–1378.

Regulation Project Number: PS–4–89 (Final).

Abstract: This regulation relates to certain Federal income tax consequences of a disposition of an interest in a nuclear power plant by a taxpayer that has maintained a nuclear decommissioning fund with respect to that plant. The regulation affects taxpayers that transfer or acquire interests in nuclear power plants by providing guidance on the tax consequences of these transfers. In addition, the regulation extends the benefits of Internal Revenue Code section 468A to electing taxpayers with an interest in a nuclear power plant under the jurisdiction of the Rural Electrication Administration.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 70.

Estimated Time per Respondent: 8 hrs., 13 minutes.

Estimated Total Annual Burden Hours: 575 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 27, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–15265 Filed 8–6–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2007–37

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2007–37, Substitute Mortality Tables for Single Employer Defined Benefit Plans.

DATES: Written comments should be received on or before October 9, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Joseph Durbala, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Allan Hopkins at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Substitute Mortality Tables for Single Employer Defined Benefit Plans.

OMB Number: 1545–2073.

Revenue Procedure Number: Revenue Procedure 2007–37.

Abstract: Revenue Procedure 2007–37 describes the process for obtaining a letter ruling as to the acceptability of substitute mortality tables under section 430(h)(3)(C) of the Code.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions and farms.

Estimated Number of Responses: 450.

Estimated Annual Average Time per Response: 56 hrs., 25 min.

Estimated Total Annual Hours: 25,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 25, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–15266 Filed 8–6–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2004–45

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2004–45, Relief from Late GST Allocation.

DATES: Written comments should be received on or before October 9, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Joseph Durbala, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Allan Hopkins at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Relief from Late GST Allocation.

OMB Number: 1545–1895.

Revenue Procedure Number: Revenue Procedure 2004–45.

Abstract: Revenue Procedure 2004–45 provides guidance to certain taxpayers in order to obtain an automatic extension of time to make an allocation of the generation-skipping transfer tax exemption. Rather than requesting a private letter ruling, the taxpayer may file certain documents directly with the Cincinnati Service Center to obtain relief.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Annual Average Time per Respondent: 7 hour.

Estimated Total Annual Hours: 350.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 25, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–15268 Filed 8–6–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure RP–144921–06

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure RP–144921–06, Income Attributable to Domestic Production Activities.

DATES: Written comments should be received on or before October 9, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Joe Durbala, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Income Attributable to Domestic Production Activities.

OMB Number: 1545–2072.

Revenue Procedure Number: RP–144921–06.

Abstract: This revenue procedure provides for determining when statistical sampling may be used in purposes of section 199, which provides a deduction for income attributable to domestic production activities, and establishes acceptable statistical sampling methodologies.

Current Actions: Extension of a previously approved collection.

Affected Public: Business or other for-profit institutions, and individuals or households or farms.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 8 hours.

Estimated Total Annual Burden Hours: 2,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 23, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–15269 Filed 8–6–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending June 30, 2007.

Last name	First name	Middle name/ initials
ANDO	TAMIE.	
MCBRIDE	PRISCILLA	REYNOLDS
EAGERLAND	ROY	MARVIN
BELL	ALAN	W.
PAYNE	JOHN	R.
DAI	QIANG.	
TSAI	VIVIAN	CHUNG-HO
KIM	BOKNYO.	
MEERT	DENIS	E.
LINDBERG	ANNA	H.
SOKOL	ANDRE	AKIRA GUS-TAVE
MORE	ALEXANDER	LINDHARDT
RIABOKON	VLADIMIR.	
HAND	JEREMY.	
LEE	LINDA	Y.
RIESTERER	ROLF.	
GROBEL	ANNA	RENATA
KIM	LISA.	
RIESTERER	BERTA	M.
YONAHA	TATSUSHIGE.	
YONAHA	AIMI.	
JOHNSON	JOE.	
BANKES	SHERILYN	HEALD
TSOU	WAYNE	WEN-TSUI
RAPHAEL	THOMAS	GEOFFREY
GIVENS	CHRISTOPHER	BRUCE
TEO	HIS	LEANG
FISHER	RODNEY	BRIAN NEVILLE
ZAKARDJIAN	BRIGITTE	MARTINE
SHOHAT	MICHAEL.	
BEST	DAVID	GRAHAM
LALOE	JEAN-LUC	MICHEL
MINI	JUAN	FRANCISCO
BOYCE	EDWARD	R.
LALOE	DOMINIQUE	MARIE
ODDSSON	ALFUR	KONRAD
BODMER	RUDOLF.	
KASSIN	RAPHAEL	JORDAN
STAHL	JAMES	GREGORY
ESTEY	GEORGE	C.
KAKIAGE	MASATOSHI.	
ESTEY	DOONE	P.
MILOJEVIC	ZELJKO.	
WINTER	WILLEM	A.
TANG	ZHENGYU.	
WINTER	TRUDY	T.
KAVANAGH	KATHLEEN.	
BROWN	JOHN	H.
HILL	ALICE	EDDY
CARTER	ROBERT	S.
LIM	LOONG	KENG

Last name	First name	Middle name/ initials
KOSKI	CHRISTOPHER.	
THILLAIMUTHU	LAUREN.	
MEDINA	LARRY	CHARLES
THILLAIMUTHU	KUMARASINGHAM.	
DEFARES	ROBERT	HANS
SIDDIQUI	AHMAD	SAEED
VAKILI	PARISA.	
THILLAIMUTHU	CHRISTINE.	
BELLINGER	CHRISTOPHE.	
YANG	WINNIE	S.
FOK	GLENN.	
HABER	MARC	PHILIP
LEE	HOUGHTON.	
SETHE	TINA	VON
LUDWAR	MARGOT	PEARCE
GERBER	DANIEL	JONATHON
CATO	HELEN	PEEPLES
TAN	NATALIA	TANWIR
YU	DAVID	HO-WAI
KAKIAGE	YAYOI.	
SIH	CHANG	LOO
WONG	LINCOLN	TENG
SIH	TANIA	MARIA
BEAUMAN	CHRISTOPHER.	
CROCKER	AMANDA	JEAN BUSBEE
SCOTT	PHILLIPA	CHANTAL
SULLIVAN	DESMOND	GODFREY
SCHOTANUS	DIRK.	
SCHOTANUS	AMERENS.	
COYLE	HEDI.	
HONG	MAK	WING
TSENG	HING-FUNG	FRANKLIN
WALKER	TREVOR	M.
PALMER	STEPHEN	JOHN
LAW	JOYCE	C.
LOCHEAD	BRIAN	G.
THEODOROPOULOS	STEPHEN	T.
VON KLEYDORFF	URSULA.	
CHAUNCEY	EVELYN	JOY
ONG	TIMOTHY	ZHONG-WEI
CIFUENTES	REBECCA	L.
GO	SWAN	KHING
TYRRELL	SIMON	JOHN BALY
CHAN	SIMON	CHAMMAN
DAVID	NADINE	BAUDIN
LAM	WINDY	SUET KWAN
CHUNG	KWOK-KEUN.	
HEIDER	ANDREA.	
RANDOLPH	GAYE	F.
BELAMARIC	MARK.	
BURGES	ROSEMARIE	CATHERINE
LAURENTI	MAURICE	L.
ARNOLD	CONNIE	ANN
MEESE	EVA.	
MEESE	GERHARD.	
RAMSAY	JOHN	W.
KELDER	MAARTEN	A.
EHLERT	SANDRA.	
PHILIPP	THOMAS	L.
CALVERT	CHRISTOPHER	JOHN
POETON	WILLIAM	G.
ODIER	CAMILLE	ALEXANDRA
SORSBIE	CAMILLA	J.

Dated: July 25, 2007.

Linda Tomlinson,

Manager Team 103, Examinations Operations, Philadelphia Compliance Services.

[FR Doc. E7–15270 Filed 8–6–07; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
August 7, 2007

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Poa atropurpurea (San Bernardino bluegrass) and Taraxacum californicum (California taraxacum); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AV04

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Poa atropurpurea (San Bernardino bluegrass) and Taraxacum californicum (California taraxacum)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for *Poa atropurpurea* and *Taraxacum californicum* under the Endangered Species Act of 1973, as amended (Act). We propose approximately 3,014 acres (ac) (1,221 hectares (ha)) of land in San Bernardino and San Diego Counties, California, as critical habitat for *P. atropurpurea*, and approximately 1,930 ac (782 ha) of land in San Bernardino County, California, as critical habitat for *T. californicum*.

DATES: We will accept comments from all interested parties until October 9, 2007. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by September 21, 2007.

ADDRESSES: If you wish to comment on the proposed rule, you may submit your comments and materials by any one of several methods:

1. You may mail or hand-deliver written comments and information to Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011.

2. You may send comments by electronic mail (e-mail) to *fw8cfwocomments@fws.gov*. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

3. You may fax your comments to 760–431–9624.

4.You may go to the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011 (telephone 760–431–9440).

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–9624. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why habitat should or should not be designated as critical habitat under section 4 of the Act (16 U.S.C. 1531 et seq.), including whether the benefit of designation would outweigh threats to the species caused by designation such that the designation of critical habitat is prudent;

(2) Specific information on the amount and distribution of *Poa atropurpurea* and *Taraxacum californicum* habitat, what areas occupied at the time of listing and that contain features essential for the conservation of the species should be included in the designations and why, and what areas not occupied at the time of listing are essential to the conservation of the species and why;

(3) Specifically with reference to those U.S. Forest Service (USFS) lands that are proposed for designation, information on any areas covered by conservation or management plans that we should consider for exclusion from the designation under section 4(b)(2) of the Act, particularly the appropriateness of including or excluding lands covered by the Cleveland National Forest (CNF) habitat management guide for four sensitive plant species in mountain meadows (CNF 1991), and the San Bernardino National Forest (SBNF) Meadow Habitat Management Guide (SBNF 2002a);

(4) Any additional proposed critical habitat areas covered by conservation or management plans that we should consider for exclusion from the designation under section 4(b)(2) of the Act. We specifically request information on any operative or draft habitat conservation plans that include *Poa atropurpurea* or *Taraxacum californicum* as covered species that have been prepared under section 10(a)(1)(B) of the Act, or any other management or other conservation plan or agreement that benefits either plant or its primary constituent elements;

(5) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(6) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts; and

(7) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

You may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please include ''Attn: *Poa atropurpurea* and *Taraxacum californicum*'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your message, contact us directly by calling our Carlsbad Fish and Wildlife Office at 760–431–9440.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on the taxonomy and biology of *Poa atropurpurea* and *Taraxacum californicum,* refer to the final listing rule published in the **Federal Register** on September 14, 1998 (63 FR 49006).

Poa atropurpurea, a member of the grass family (Poaceae), is a dioecious (separate male and female plants), tufted perennial with creeping rhizomes (Soreng 1993, p. 1287). This species occurs in the Big Bear region of the San Bernardino Mountains, as well as in meadows in the Laguna Mountains and Palomar Mountains of San Diego County (California Department of Fish and Game's California Natural Diversity Database (CNDDB) 2006a, pp. 1–21).

Taraxacum californicum, a thick rooted perennial herb in the sunflower family (Asteraceae), often co-occurs with *P. atropurpurea* (Krantz 1981, pp. 10, 14, 16, 21, 26, 30, and 32) in montane meadows in the Big Bear region of the San Bernardino Mountains.

Poa atropurpurea is restricted to wet montane meadows (Volgarino 2000a, p. 1), subject to flooding in wet years (described as ''vernally wet marshlands'' by Hirshberg 1994, p. 1), and is commonly found along the drier margins apart from more mesic plants such as *P. pratensis, Carex* spp., or *Juncus* spp. (Krantz 1981, pp. 4, 10, 14, 16, 21, 26, 30, and 32). In Laguna Meadow, relatively high densities of *P. atropurpurea* (over 500 individuals at one location) have been reported from within marshy areas and drainages inside the meadow (Hirshberg 1994, p. 1), indicating this species is not restricted to the drier meadow margins. The perimeter of such meadows often intergrades with sagebrush scrub dominated by sagebrush or pine forest (Krantz 1981, p. 4).

Taraxacum californicum is also found in wet meadows (Volgarino 2000b, p. 1), as well as meadow-like forest openings associated with riparian areas such as Heart Bar Creek (SBNF 2000, p. 55), or the east fork of Lost Creek, (SBNF 2000, p. 55; CNDDBb, p. 10).

According to the final listing rule (63 FR 49006; September 14, 1998), *Poa atropurpurea* was known from fewer than 20 populations throughout its range on Federal, State, and private lands in the San Bernardino, Laguna, and Palomar Mountains. The final listing rule (63 FR 49006; September 14, 1998) estimated fewer than 100 acres (ac) (40 hectares (ha)) of *P. atropurpurea* habitat remained in the San Bernardino Mountains at the time of listing. However, the total area of documented habitat reported by CNDDB prior to listing (CNDDB 1996, pp. 1–7) was 2,789 ac (1,129 ha) throughout the species range.

According to the final listing rule, *Taraxacum californicum* was known from about 20 occurrences on Federal, State, local, and private lands in the San Bernardino Mountains at the time of listing (63 FR 49006; September 14, 1998). About half of these occurrences were described in the final listing rule as being located ''within, or adjacent to, urbanized areas such as Big Bear City, Big Bear Lake Village, and Sugarloaf in San Bernardino County, California'' (also referred to as ''Bear Valley'' in herbarium collections; Curto 1992, pp. 3–5).

According to survey information recorded in the CNDDB, 21 occurrences of Poa *atropurpurea* (CNDDB 2006a, pp. 1–21) and 41 occurrences of *Taraxacum californicum* are currently known (CNDDB 2006b, pp. 1–42). However, surveyor information submitted to the CNDDB comes from surveyors using various methods to record species occurrence information. For example, one surveyor may record an area containing several individual patches as a single occurrence while another may record each individual patch as a separate occurrence. Therefore, the status and distribution of these species is discussed below in terms of the number of meadow areas historically or currently occupied by either species.

Survey information for both *Poa atropurpurea* and *Taraxacum californicum* is relatively sparse; no systematic surveys have been conducted for either species on a regular basis. However, between 2000 and 2002, much of the meadow habitat in San Bernardino National Forest and surrounding lands was surveyed and mapped by San Bernardino National Forest (SBNF) personnel and private contractors (SBNF 2000, pp. 47–49; SBNF 2002a, p. 8; Eliason 2007, p. 1). The results were summarized in a Meadow Habitat Management Guide (Management Guide) (SBNF 2002a). According to this 2002 Management Guide, a minimum of 4,430 ac (1,793 ha) of meadow habitat has been mapped on SBNF and surrounding lands (SBNF 2002a, pp. 8 and 13). According to occurrence information from the SBNF (SBNF 2000, pp. 47–49; SBNF 2002a, p. 8) and the CNDDB (2006a, pp. 1–21), *P. atropurpurea* has been documented in 15 meadow areas in the Big Bear area, and 4 meadow areas in the Laguna and Palomar mountains of San Diego; *T. californicum* has been documented in 29 meadow areas and 6 meadow-like forest openings in the Big Bear Lake area (CNDDB 2006b, pp. 1–39).

The number of *Taraxacum californicum* individuals reported from any one location during 1999–2002 surveys ranged from 1 to over 150 (CNDDB 2006b, pp. 1–39; Denslow *et al.* 2002, pp. 12 and 13; SBNF 2000, pp. 56–59). The highest *T. californicum* occurrence concentrations have been reported in South Fork Meadows, Fish Creek Meadow, Bluff Meadow, Cienega Seca Meadow, Hitchcock Meadow (also referred to as Hitchcock Ranch), Belleville Meadow (Hitchcock and Belleville Meadows also referred to as Holcomb Valley), Broom Flat Meadow, Wildhorse Meadow, and North Shay Meadow (SBNF 2000, pp. 56–59). According to the final listing rule, population sizes of *Poa atropurpurea* typically range from 2 to 300 individuals, although 3,000 individuals were reported from Belleville Meadow in 1999 (SBNF 2000, p. 49). In San Bernardino County, *P. atropurpurea* occurrences have been reported near Big Bear Lake in Bluff Meadow, Hitchcock Meadow, Belleville Meadow, North Shay Meadow, North Baldwin Lake Meadow, Cienega Seca Meadow, and Pan Hot Springs Meadow (SBNF 2000, pp. 47–49). In San Diego County, *P. atropurpurea* has also been reported from Mendenhall Valley on Palomar Mountain (CNDDB 2006a, p. 3), Laguna Meadow on Laguna Mountain (CNDDB 2006a, pp. 4, 19, and 20), and Bear Valley southwest of Laguna Mountain (CNDDB 2006a, p. 21). Tables 1 and 2 summarize all occurrence records for both species.

TABLE 1.—MEADOW AREAS HISTORICALLY AND/OR CURRENTLY OCCUPIED BY TARAXACUM CALIFORNICUM IN SAN BERNARDINO COUNTY

Meadow name	USFS identification # [1]	CNDDB identification # [2]
Arrastre Meadow	----[3]	19
Belleville Meadow	8, 9, 60	25
Big Meadow	17, 16, 45	36
Bluff Meadow	50, 49, 11, 30, 33, 48, 12	13
Bow Meadow	39	33
Broom Flat Meadow	69, 58	32
China Gardens/Eagle Point Meadows	3, 6, 7, 2, 34, 29	21
Cienega Seca Meadow	63	2

TABLE 1.—MEADOW AREAS HISTORICALLY AND/OR CURRENTLY OCCUPIED BY TARAXACUM CALIFORNICUM IN SAN BERNARDINO COUNTY—Continued

Meadow name	USFS identification # [1]	CNDDB identification # [2]
Division Meadow	38	41
East/West Observatory Meadows	4, 32	30
Erwin Meadows	64	26
Fawnskin Meadow	----	45
Fish Creek Meadow	56, 57	6
	18, 55	31
	54	37
	67	x [4]
Green Spring Meadow	23	12
Hitchcock Meadow	24, 5, 10	20
Horse Meadow	35	5
Juniper Point Meadow	42, 41, 40	43
Merriman Meadow	51	39
Metcalf Meadow	46, 47, 59	29
Metcalf/Coldbrook Meadows	13, 14	16
Minnelusa Meadow	44, 43	42
North Baldwin Meadow	26	17
Pan Hot Springs Meadow	27	24
	25	27
Rathbun Meadow	----	22
Red Ant Meadow	37	38
Seven Oaks Meadow	----	14
Shay Meadow	62	28
	36	40
South Fork Meadow	19, 31, 21, 20, 52	1
	53, 22	3
Wildhorse Meadow	1, 15	34
	60	35
Un-named Meadow area (E of Southfork Meadow)	65	11
Un-named Meadow area (west of Shay Meadow and town of Sugarloaf)	28	9
Un-named Meadow area (S of Horse Meadow)	----	44
Un-named Meadow area (S of Sugarloaf Meadow)	----	7
Un-named Meadow area (SE of Big Meadow)	66	4
Un-named Meadow area (vicinity of Fish Creek Meadow)	----	10

[1] U.S. Forest Service (USFS) identification # = occurrence number or numbers assigned by the San Bernardino National Forest (SBNF 2000).
[2] CNDDB identification # = occurrence number assigned by the California Natural Diversity Database (CNDDB) (2006).
[3] ---- = No geographically corresponding occurrence identified by the San Bernardino National Forest (SBNF 2000).
[4] x = No geographically corresponding occurrence identified by the CNDDB (2006).

TABLE 2.—MEADOW AREAS HISTORICALLY AND/OR CURRENTLY OCCUPIED BY POA ATROPURPUREA IN SAN BERNARDINO AND SAN DIEGO COUNTIES

Meadow name	USFS identification # [1]	CNDDB identification # [2]
San Bernardino County		
Alden Meadow	---[3]	14
Belleville Meadow	1, 2, 3, 4, 5, 6, 59, 54	10
Big Bear City meadow fragments	16, 17, 18, 19, 20	19
Bluff Meadow	10	13
China Gardens/Eagle Point Meadows	7, 8, 9, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31,32, 57, 58, 63	2
Cienega Seca Meadow	62	12
East Baldwin Meadow	56	x [4]
Erwin Meadows	----	24
Hitchcock Meadow	33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47,48, 49, 50, 51, 52, 53, 55	11
Metcalf/Coldbrook Meadows	----	16
North Baldwin Meadow	12	1
Pan Hot Springs Meadow	13	17
	----	"near 17"

TABLE 2.—MEADOW AREAS HISTORICALLY AND/OR CURRENTLY OCCUPIED BY POA ATROPURPUREA IN SAN BERNARDINO AND SAN DIEGO COUNTIES—Continued

Meadow name	USFS identification # [1]	CNDDB identification # [2]
Rathbun Meadow	----	−21
	----	23
Shay Meadow	60	x
		14, 15, 61
Wildhorse Meadow	11	22
San Diego County		
Bear Valley		29
	----	5
Laguna Meadow	----	27
	----	28
Filaree Flats (N of Laguna Meadow)		8
Mendanhall Valley		4

[1] U.S. Forest Service (USFS) USFS identification # = occurrence number or numbers assigned by the San Bernardino National Forest (SBNF 2000).
[2] CNDDB identification # = occurrence number assigned by the California Natural Diversity Database (CNDDB) (2006).
[3] --- = No geographically corresponding occurrence identified by the San Bernardino National Forest (SBNF 2000).
[4] x = No geographically corresponding occurrence identified by the CNDDB (2006).

As stated in the final listing rule, co-occurrence of male and female plants of *Poa atropurpurea* is necessary for seed production (63 FR 49006; September 14, 1998). There is evidence that populations of *P. atropurpurea* in San Diego County are threatened by loss of genetic diversity and skewed sex ratios. According to the CNDDB (2006a, p. 21), all individuals reported from Bear Valley may be a single clone. Hirshberg (1994, pp. 1–2) reported only 4 males out of 1,140 total individuals during field surveys of Laguna Meadow, an overall 1:285 male to female ratio. All five herbarium specimens from Laguna Meadow reviewed by Curto (1992, p. 3) were female (one from 1978, three from 1981, and one from 1991). It is not known what may be the cause of these skewed sex ratios, or how the sex ratios may vary annually.

According to the final listing rule introduced plant taxa have likely reduced the amount of suitable habitat for both species, and hybridization with exotic congeners may also be a threat (63 FR 49006; September 14, 1998). Of particular concern for *Poa atropurpurea* in grazed areas is exacerbation of the invasion of *P. pratensis* by grazing and consumption of *P. atropurpurea* seeds prior to seed set (Sproul and Beauchamp 1979, pp. 4, 5, and 6; CNF 1991, pp. 13–17; Curto 1992, pp. 10 and 11; Soreng 2000, pp. 1–4). Possible hybridization with common nonnative congeners has been discussed as a threat for *P. atropurpurea* (Curto 1992, p. 11), but is of particular concern with regard to *Taraxacum californicum* and the common invasive *T. officinale* (SBNF 2000 p. 40; SBNF 2002a, p. 114).

Previous Federal Actions

For more information on previous Federal actions concerning *Poa atropurpurea* or *Taraxacum californicum,* refer to the final listing rule for six plants from the mountains of southern California, including both of these species, published in the **Federal Register** on September 14, 1998 (63 FR 49006). At that time, we determined that the designation of critical habitat was not prudent due to the potential increase of threats from vandalism, over-collection, or other human activities. On September 13, 2004, the Center for Biological Diversity and the California Native Plant Society filed suit against the Service (*CBD and CNPS* v. *Norton,* 04–1150 RT SGLx; C.D. Cal.) challenging our not prudent finding. As a result of a stipulation approved by the court on April 20, 2007, the Service is required to submit a proposed rule to designate critical habitat for these species, if prudent, to the **Federal Register** on or before July 27, 2007, and a final rule on or before July 25, 2008. We agreed to complete a critical habitat determination for these two species in a single rulemaking because they share similar habitats. We have re-evaluated our previous not prudent determination and now believe that identification of primary constituent elements and areas containing those features essential to the conservation of the species may provide educational information to individuals, local and State governments, and other entities. We do not have any documentation that over-collection has increased since these species were listed, and most landowners and collectors have been aware of the location of occupied habitat adjacent to or bisected by classified and unclassified roads since publication of the final listing rule in 1998. Although these species are limited in their ecological and geographical ranges, we have no information supporting our concern that a critical habitat designation would not be prudent due to the threat of over-collection or vandalism, and now believe that the benefits of identifying critical habitat for these species outweighs the potential risk of over-collection.. Thus, we are proposing to designate critical habitat for *P. atropurpurea* and *T. californicum* in accordance with section 4(b)(2) of the Act.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7(a)(2) of the Act is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, habitat within the geographical area occupied by the species at the time of listing must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Areas unoccupied at the time of listing can be designated as critical habitat. However, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, the Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b) of the Act, we use the best scientific data available in determining areas occupied at the time of listing that contain the features essential to the conservation of *Poa atropurpurea* and *Taraxacum californicum* individually, and areas not occupied at the time of listing that are essential to the conservation of *P. atropurpurea* and *T. californicum* individually. We have also reviewed available information that pertains to the habitat requirements of these species. These sources of information included, but were not limited to, the proposed (60 FR 39337; August 2, 1995) and final (63 FR 49006; September 14, 1998) rules to list these species; data and information published in peer-reviewed articles; data and information contained in reports prepared for or by the U.S. Forest Service (USFS); discussions with species experts including USFS personnel; data and information presented in academic research theses; data provided by the CNDDB; herbarium records; data submitted during section 7 consultations; and regional Geographic Information Systems (GIS) data. We are not currently proposing as critical habitat any areas outside the geographical area presently occupied by either species.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat within areas occupied by the species at the time of listing, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to: (1) Space for individual and population growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, and rearing (or development) of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific primary constituent elements (PCEs) required for *Poa atropurpurea* and *Taraxacum californicum* individually, are derived from the biological needs of each species as described in the final listing rule (63 FR 49006; September 14, 1998) and discussed below.

Space for Individual and Population Growth, and Nutritional Requirements

Open-canopy forested areas supporting relatively undisturbed, wet meadows subject to flooding during wet years support growth, reproduction (SBNF 2002a, p. 109; Curto 1997, p. 12), and pollination (by wind for *Poa atropurpurea,* by insects for *Taraxacum californicum*) of both species. *T. californicum* also occurs in smaller forest openings with seeps, springs, or creeks. Due to the relatively small size of these forest openings, these areas are not generally mapped or named as meadows. We've referred to these areas as unnamed meadow areas (please refer to Table 1). These species require non-

compacted or non-eroded soils for reproduction, growth, and survival (Curto 1997, p. 12). Invasive nonnative species may compete for open, bare ground and reduce space available for growth (Curto 1992, p. 10), and therefore, these species require micro-habitats free of exotic, invasive competitors. Habitat invaded by the nonnative species *T. officinale* may result in hybridization with *T. californicum,* and prevent population growth (SBNF 2000 p. 40; SBNF 2002a, p. 114). Both species require a perennial water source, as exists in relatively intact, wet meadow systems (Service GIS database; Eliason 2007, p. 1).

Soils occupied by *Poa atropurpurea* have been characterized as loamy alluvial to sandy loam (CNDDB 2006a, pp. 1–21) that experience periodic saturation (Volgarino et al. 2000a, p. 1; Hirshberg 1994, p. 1). In a distribution study of *P. atropurpurea,* Krantz (1981, p. 8) noted that in San Bernardino County the species usually occurs in open (50 percent bare ground) soils with some clay content in the A horizon (0 to 12 inches (in) (0–30 centimeters (cm)). Krantz (1981, p. 8) also stated, however, that the San Diego County population (Laguna Meadow) had somewhat different habitat parameters than the San Bernardino populations, and limited his descriptions to the latter. Volgarino et al. (2000a, p.1) listed United States Department of Agriculture (USDA) soil series for an incomplete list of meadows, in which *P. atropurpurea* occurs in San Diego County as Lu, Rieff (USDA 2000a, p. 1), and Crouch (USDA 1997a, p.1). We are currently not able to find a description of ''Lu'' series soils. Volgarino et al. (2000a, p.1) listed USDA soil series in which *P. atropurpurea* occurs in San Bernardino County as Morical (USDA 2004, p. 1), Hodgson (USDA 2005a, p. 1), Hecker (USDA 1997a, p. 1), Avawatz (USDA 1978, p. 1), Oak Glen (USDA 2003, p. 1), Olete (USDA 1999a, p. 1), Goulding (USDA 1999b, p. 1), Pacifico (USDA 2000b, p. 1), and Preston (USDA 1998, p. 1). The soil series descriptions cited above support the general ''loamy alluvial to sandy loam'' characterization of *P. atropurpurea* habitat soils (CNDDB 2006a, pp. 1–21).

Soils occupied by *Taraxacum californicum* appear to be similar to those occupied by *Poa atropurpurea.* Volgarino et al. (2000b, p. 1) listed USDA soil series for an incomplete list of meadows, in which *T. californicum* occurs as Morical (USDA 2004, p. 1), Hodgson (USDA 2005a, p. 1), Hecker (USDA 1997a, p. 1), Pacifico (USDA 2000b, p. 1), Preston (USDA 1998, p. 1), Merkel (USDA 2005b), and Wapal (USDA 2005c, p. 1). Similar to *P. atropurpurea,* the soil series descriptions cited above also support a general ''loamy alluvial to sandy loam'' characterization of *T. californicum* habitat soils.

The two species do appear to differ in their ability to colonize steeper slopes. Volgarino *et al.* (2000a, p. 2; 2000b, p. 2) described slopes on which *Poa atropurpurea* occurs as 0 to16 percent (with potential for occurrence on steeper slopes), and slopes on which *Taraxacum californicum* occurs as 0 to 46 percent. This difference in maximum slope where the species are found may be due to *P. atropurpurea o*ccurring farther from the banks of meadow water courses than *T. californicum.*

Primary Constituent Elements for Poa atropurpurea and Taraxacum californicum

Under the Act and its implementing regulations, we are required to identify the physical and biological features (PCEs) within the geographical area occupied by the species at the time of listing that may require special management considerations or protection.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species, we have determined that the PCEs for *Poa atropurpurea* are:

(1) Wet meadows subject to flooding during wet years in the San Bernardino Mountains in San Bernardino County at elevations of 6,700 to 8,100 feet (2,000 to 2,469 meters), and in the Laguna and Palomar Mountains of San Diego County at elevations of 6,000 to 7,500 feet (1,800 to 2,300 meters), that provide space for individual and population growth, reproduction, and dispersal; and

(2) Well-drained, loamy alluvial to sandy loam soils occurring in the wet meadow system, with a 0 to 16 percent slope, to provide water, air, minerals, and other nutritional or physiological requirements to the species.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species, we have determined that the PCEs for *Taraxacum californicum* are:

(1)Wet meadows subject to flooding during wet years and forest openings with seeps, springs, or creeks in the San Bernardino Mountains in San Bernardino County located at elevations of 6,700 to 9,000 feet (2,000 to 2,800 meters), that provide space for individual and population growth, reproduction, and dispersal; and

(2)Well-drained, loamy alluvial to sandy loam soils occurring in the wet meadow system or forest openings with seeps, springs, or creeks, with a 0 to 46 percent slope, to provide water, air, minerals, and other nutritional or physiological requirements to the species.

We propose to designate units based on sufficient PCEs being present to support at least one of the species' life history functions. This proposed designation is designed for the conservation of PCEs necessary to support the life history functions of the species and the areas containing those PCEs.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas occupied at the time of listing contain the features essential to the conservation of the species that may require special management considerations or protection. Major threats to *Poa atropurpurea* and *Taraxacum californicum* include development on private lands, grazing, off-highway vehicle (OHV) use, road maintenance activities, ground disturbance that affects surface hydrology, mining activities, recreational activities, habitat fragmentation, and the invasion of nonnative herbaceous plants. Please refer to the unit descriptions in the Proposed Critical Habitat Designation section for further discussion of special management considerations or protection of the PCEs related to geographically specific threats to *P. atropurpurea* and *T. californicum.*

Control and monitoring of exotic, invasive plant species may be required to maintain wet meadows and/or forest openings such that they can continue to support populations of *P. atropurpurea* and/or *T. californicum.*

Special management considerations or protection of the wet meadows may need to be implemented to support fertilization and seed set of *P. atropurpurea* (Curto 1992, p. 11; Soreng 2000, pp. 1–4), and monitoring and protection of male *P. atropurpurea* clones may be required to maintain populations of *P. atropurpurea.*

There are two USFS management guides that address conservation of *Poa atroputpurea* and *Taraxacum californicum*: the CNF habitat management guide for four sensitive plant species in mountain meadows (CNF 1991, pp. 1–36) addresses conservation of *P. atropurpurea*, and the SBNF Meadow Habitat Management Guide (SBNF 2002a, pp. 1–155) addresses conservation of both species. In some cases significant management actions have been implemented by the

USFS, for example cattle exclosures in Laguna Meadow (CNF 1991, p. 17), and recreational trail closures in Belleville Meadow near Big Bear Lake (SBNF 2002a, p. 5). However, the habitat management guides and plans are voluntary and may not provide for the long-term conservation of the species on USFS lands.

Criteria Used To Identify Critical Habitat

We are proposing to designate critical habitat in areas that we have determined were occupied at the time of listing and that contain sufficient primary constituent elements (PCEs) to support life history functions essential for the conservation of the species. We are proposing lands for designation based on sufficient PCEs being present to support the life processes. To delineate proposed critical habitat, we identified habitat that contains features essential to the conservation of *Poa atroputpurea* and *Taraxacum californicum*, was occupied at the time of listing, and is currently occupied. Occupancy status was determined using occurrence data from the SBNF (SBNF 2000, SBNF 2002a, SBNF GIS database), the CNDDB (2005a and b), and the Rancho Santa Ana Botanical Gardens (Denslow et al. 2002, pp. 12 and 13). We determined occupancy at the time of listing by comparison of survey and collection information and descriptions of occupied areas in the final listing rule published in the **Federal Register** on September 14, 1998 (63 FR 49006). Areas containing a large number of individual plants (relative to all known occupied locations) recorded within at least two years of listing, were considered to be occupied at the time of listing because the presence of a large number of individual plants within an area indicates that such area has been occupied for over two years.

We determined current occupancy based on the most recent survey information. Areas containing occurrence records dated 1999 or later were considered currently occupied. Once we determined areas currently occupied by each of the species, we used the following rule set to identify areas for inclusion in this proposed critical habitat designation for each species: (1) We considered areas within existing USFS-modeled potential habitat specific to the species (Volgarino et al. 2000a, pp. 1–2; 2000b, pp. 1–2) and meadow outlines drawn from aerial or satellite imagery, and selected habitat that appeared to appropriately capture features essential to the conservation of each species (PCEs); (2) we limited the delineation within any modeled habitat to within 328 ft (100 meters) of occurrence locations, a distance commonly acknowledged as the limit for short-distance wind-driven dispersal of seeds in *Taraxacum* spp. (Tackenberg et al. 2003, p. 1), and a likely distance for flood-driven dispersal of *P. atropurpurea* rhizomes; and (3) as a final step, we removed any meadow habitat that was developed or degraded (i.e. not likely to contain PCEs) to ensure proposed critical habitat contains features essential to conservation of each of the species. We also did not consider any meadows containing less than 10 reported individuals, as these populations are likely to be extirpated and we therefore do not believe these populations would likely contribute to the conservation of each species.

When determining proposed critical habitat boundaries for each species within this proposed rule, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack PCEs for *Poa atroputpurea* and *Taraxacum californicum*. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they may affect the species or primary constituent elements in adjacent critical habitat.

Proposed Critical Habitat Designation

In total, we are proposing as critical habitat 9 units for *Poa atropurpurea* and 11 units for *Taraxacum californicum*, with 5 of these units containing both species (see Tables 3, 4, and unit descriptions below). The critical habitat areas described below constitute our best current assessment of areas that meet the definition of critical habitat for *P. atropurpurea* and *T. californicum*. We have determined that all areas proposed as critical habitat for *P. atropurpurea* and *T. californicum* were occupied at the time of listing and are currently occupied (Tables 3 and 4).

TABLE 3.—OCCUPANCY AND APPROXIMATE SIZE OF CRITICAL HABITAT UNITS FOR TARAXACUM CALIFORNICUM.

Unit	Occupied at time of listing	Currently occupied	Acres (hectares)
2 North Baldwin Meadow	Yes	Yes	176 (72)
3 Belleville Meadow	Yes	Yes	414 (168)
4 Hitchcock Meadow	Yes	Yes	497 (201)
5 Bluff Meadow	Yes	Yes	205 (83)
6 North Shay Meadow	Yes	Yes	21 (8)
7 Horse Meadow	Yes	Yes	74 (30)
8 Fish Creek Meadow	Yes	Yes	89 (36)
9 Broom Flat Meadow	Yes	Yes	188 (76)
10 Wildhorse Meadow	Yes	Yes	52 (21)
11 Cienega Seca Meadow	Yes	Yes	98 (40)
12 South Fork Meadow	Yes	Yes	116 (47)

TABLE 4.—OCCUPANCY AND APPROXIMATE SIZE OF CRITICAL HABITAT UNITS FOR POA ATROPURPUREA

Unit	Occupied at time of listing	Currently occupied	Acres (hectares)
1 Pan Hot Springs Meadow	Yes	Yes	142 (57)
2 North Baldwin Meadow	Yes	Yes	176 (72)
3 Belleville Meadow	Yes	Yes	414 (168)
4 Hitchcock Meadow	Yes	Yes	497 (201)

TABLE 4.—OCCUPANCY AND APPROXIMATE SIZE OF CRITICAL HABITAT UNITS FOR POA ATROPURPUREA—Continued

Unit	Occupied at time of listing	Currently occupied	Acres (hectares)
5 Bluff Meadow	Yes	Yes	205 (83)
11 Cienega Seca Meadow	Yes	Yes	98 (40)
13 Mendenhall Valley	Yes	Yes	291 (118)
14 Laguna Meadow	Yes	Yes	1,089 (441)
15 Bear Valley	Yes	Yes	102 (41)

The areas proposed as critical habitat for *Taraxacum californicum* are: (1) Unit 2—North Baldwin Meadow; (2) Unit 3—Belleville Meadow; (3) Unit 4—Hitchcock Meadow; (4) Unit 5—Bluff Meadow; (5) Unit 6—North Shay Meadow; (6) Unit 7—Horse Meadow; (7) Unit 8—Fish Creek Meadow; (8) Unit 9—Broom Flat Meadow; (9) Unit 10—Wildhorse Meadow; (10) Unit 11—Cienega Seca Meadow; and (11) Unit 12—South Fork Meadow.

The areas proposed as critical habitat for *Poa atropurpurea* are: (1) Unit 1—Pan Hot Springs Meadow; (2) Unit 2—North Baldwin Meadow; (3) Unit 3—Belleville Meadow; (4) Unit 4—Hitchcock Meadow; (5) Unit 5—Bluff Meadow; (6) Unit 11—Cienega Seca Meadow; (7) Unit 13—Mendenhall Valley; (8) Unit 14—Laguna Meadow; and (9) Unit 15—Bear Valley.

The approximate area and land ownership of each proposed critical habitat unit is shown in Tables 5 and 6.

TABLE 5.—CRITICAL HABITAT UNITS PROPOSED FOR TARAXACUM CALIFORNICUM

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership [1]	Acres (hectares)
2 North Baldwin Meadow	SBNF	78 (32)
	CDFG	98 (40)
3 Belleville Meadow	SBNF	409 (166)
	Private (LSA)	5 (2)
4 Hitchcock Meadow	SBNF	166 (67)
	Private (BSA, others)	330 (134)
5 Bluff Meadow	SBNF	135 (55)
	Private (WC)	70 (28)
6 North Shay Meadow	SBNF	21 (8)
7 Horse Meadow	SBNF	74 (30)
8 Fish Creek Meadow	SBNF	89 (36)
9 Broom Flat Meadow	SBNF	188 (76)
10 Wildhorse Meadow	SBNF	52 (21)
11 Cienega Seca Meadow	SBNF	20 (8)
	Private (LACEF)	78 (32)
12 South Fork Meadow	SBNF	116 (47)

[1] BSA = Boy Scouts of America, CDFG = California Department of Fish and Game, LACEF = Los Angeles County Education Foundation, LSA = Lithuanian Scouts Association, SBNF = U.S. Forest Service (lands in the San Bernardino National Forest), WC = Wildlands Conservancy.

TABLE 6.—CRITICAL HABITAT UNITS PROPOSED FOR POA ATROPURPUREA

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership [1]	Acres (hectares)
1 Pan Hot Springs Meadow	SBNF	13 (5)
	Private (BBCCSD, others)	129 (52)
2 North Baldwin Meadow	SBNF	78 (32)
	CDFG	98 (40)
3 Belleville Meadow	SBNF	409 (166)
	Private (LSA)	5 (2)
4 Hitchcock Meadow	SBNF	166 (67)
	Private (BSA, others)	330 (134)
5 Bluff Meadow	SBNF	135 (55)
	Private (WC)	70 (28)
11 Cienega Seca Meadow	SBNF	20 (8)
	Private (LACEF)	78 (32)
13 Mendenhall Valley	CNF	160 (65)
	Private	130 (53)
14 Laguna Meadow	CNF	1,089 (441)
15 Bear Valley	CNF	102 (41)

[1] BBCCSD = Big Bear City Community Services District, BSA = Boy Scouts of America, CDFG = California Department of Fish and Game, CNF = U.S. Forest Service (lands in the Cleveland National Forest), LACEF = Los Angeles County Education Foundation, LSA = Lithuanian Scouts Association, SBNF = U.S. Forest Service (lands in the San Bernardino National Forest), WC = Wildlands Conservancy.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for Poa atropurpurea and/or *Taraxacum californicum*, below. The PCEs for these two species, and their occupancy patterns, may not always overlap. For example, steeper slopes near a watercourse at the center of a meadow are more likely to support *T. californicum*. However, such micro-habitat components cannot be differentiated within a meadow based on information we have available for unit mapping. If we were proposing these designations separately, the units for each species would still be mapped the same. Therefore, the boundaries for Units 2, 3, 4, 5, and 11 are the same for both species, and we are proposing these units for each species individually.

Unit 1: Pan Hot Springs Meadow

We are proposing to designate Unit 1 as critical habitat for *Poa atropurpurea.* Unit 1 consists of an approximately 142-ac (57-ha) meadow occupied by the species at the time of listing, and the species continues to occur within this unit. In the last known survey conducted for *Taraxacum californicum* in 1985, fewer than 10 individuals were also reported from Unit 1 (CNDDB 2006; SBNF 2000). Therefore, this unit is being proposed as critical habitat for *P. atropurpurea* only. This unit contains all of the features essential to the conservation of the species, and both sexes of *P. atropurpurea* have been reported from this location (CNDDB 2006a, p. 12; SBNF 2000, p. 47). It is located within the San Bernardino National Forest boundary, east of Big Bear Lake, just west of Baldwin Lake. The majority of Unit 1 is privately owned by the Big Bear City Community Service District (BBCCSD).

The species is threatened in this unit by invasion of nonnative herbaceous annuals. Horse grazing and roadside dumping have also been reported at this location (CNDDB 2006a, p. 12). Although ten acres of the BBCCSD property are under a deed-restriction to protect known occurrences of *Thelypodium stenopetalum* and *Sidalcea pedata* (federally listed pebble plains plants; 49 FR 34497; August 31, 1984), the drainage feeding the habitat was not included in the deed restriction. Without control of water availability, the plants are still threatened (SBNF 2002a, p. 25). Therefore, special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit 1 due to the threats from human disturbance, water source alteration, and invasive nonnative plant species.

Unit 2: North Baldwin Meadow

We are proposing to designate Unit 2 as critical habitat for *Poa atropurpurea* and *Taraxacum californicum.* Unit 2 consists of approximately 176 ac (72 ha) of non-degraded meadow occupied by both species at the time of listing, and both species continue to occur within this unit. Unit 2 contains all of the features essential to the conservation of both species. It is located within the San Bernardino National Forest, on the north shore of Baldwin Lake, and northeast of Big Bear Lake. Approximately half of Unit 2 is federally owned, and half is owned by CDFG.

Habitat in this area was historically impacted by authorized and unauthorized vehicle use, mining activity, residential development, and grazing by burros (CNDDB 2006a, p. 1; SBNF 2002a, p. 33; SBNF 2002b, p. 57). The meadow is relatively protected, but it is adjacent to State Route 18 and accessible to the public (SBNF 2000, p. 57). Disruption of the hydrologic regime by upstream development, trampling during illegal woodcutting, and quartzite theft activities have been identified as past threats in this unit (CNDDB 2006b, p. 16). *Poa atropurpurea* and *Taraxacum californicum* are threatened in this unit by competition from invasion of nonnative, herbaceous annuals. Therefore, special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit 2 due to the threats from upstream development, nonnative species invasion, and human disturbance.

Unit 3: Belleville Meadow

We are proposing to designate Unit 3 as critical habitat for *Poa atropurpurea* and *Taraxacum californicum.* Unit 3 consists of an approximately 414-ac (168-ha) meadow occupied by both species at the time of listing, and both species continue to occur within this unit. Unit 3 (also referred to as Upper Holcomb Valley) contains all of the features essential to the conservation of both species. Although most individuals of *P. atropurpurea* observed were reported to be male, both sexes are present (SBNF 2000, p. 47). In 1999, the *T. californicum* population in Unit 3 was reported to be ''large'' and ''healthy'' with no apparent *T. officinale* hybrids (SBNF 2000, p. 56). Unit 3 is located within the San Bernardino National Forest, north of Big Bear Lake, and east of Hitchcock Meadow (Unit 4). The vast majority of lands within this unit are federally owned (409 ac (166 ha)), with only 5 ac (2 ha) of meadow habitat privately owned by the Lithuanian Scouts Association.

Habitat in this unit may be impacted by recreational activities and nearby diffuse mining operations (CNDDB 2006a, p. 6; Eliason 2007), and USFS roads have impacted meadow habitat, resulting in direct habitat loss and effects to meadow hydrology. Several areas of Belleville Meadow are currently heavily utilized for dispersed recreation, including vehicle use along the classified roads through the site, hiking and mountain biking along the Gold Fever Trail, and use of Holcomb Valley Campground near the western portion of the meadow. Several mining claims also exist in the meadow. Unauthorized vehicle activity and mountain biking off of classified roads and trails have caused devegetation and alteration of surface hydrology in some areas (SBNF 2002a, p. 36). *P. atropurpurea* and *T. californicum* are also threatened in this unit by invasion of nonnative, herbaceous annuals.

USFS has erected signs and fencing, and conducted outreach to protect occurrences in this unit (SBNF 2002a, p. 37). For example, to reduce impacts to *Poa atropurpurea,* trails from Holcomb Valley Campground were disguised and rehabilitated, and the area was protected through barricading and signing (SBNF 2002a, p. 5). Nearby trails that did not go through listed plant habitat were delineated and signed to encourage visitors to use those trails (SBNF 2002a, p. 5). However, special management considerations or protection may still be required to restore, protect, and maintain the PCEs supported by Unit 3 due to the threats from human disturbance, current nearby mining activities, and invasive, nonnative plant species.

Unit 4: Hitchcock Meadow

We are proposing to designate Unit 4 as critical habitat for *Poa atropurpurea* and *Taraxacum californicum.* Unit 4 consists of an approximately 497-ac (201-ha) meadow occupied by both species at the time of listing, and both species continue to occur within this unit. Although *T. officinale* is present, no apparent hybrids have been reported (SBNF 2000, p. 56). Unit 4 contains all of the features essential to the conservation of both species and is located within the San Bernardino National Forest, north of Big Bear Lake, and west of Belleville Meadow (Unit 3). The majority of Unit 4 (also referred to as Holcomb Valley) is privately owned by the Boy Scouts of America (BSA),

and is a recreational and educational activity camp (BSA 2006).

This unit has been historically impacted by OHV use, horse grazing, and other human disturbance (CNDDB 2006b, p. 18). It is currently impacted by recreational and educational activities and horse grazing (SBNF 2000, p. 56; SBNF 2002a, p. 51). *Poa atropurpurea* and *Taraxacum californicum* are also threatened in this unit by invasion of nonnative, herbaceous annuals. Therefore, special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit 4 due to the threats from past human disturbance, current camp activities, and invasive, nonnative plant species.

Unit 5: Bluff Meadow

We are proposing to designate Unit 5 as critical habitat for *Poa atropurpurea* and *Taraxacum californicum.* Unit 5 consists of an approximately 205-ac (83-ha) meadow occupied by both species at the time of listing, and both species continue to occur within this unit. Unit 5 contains all of the features essential to the conservation of both species. It is located within the San Bernardino National Forest, south of the west end of Big Bear Lake. The majority of Unit 5 is privately owned by the Wildlands Conservancy, and currently leased to the San Bernardino County Regional Parks Division as an outdoor science education camp (Wildlands Conservancy 2005).

This unit has been historically impacted by recreational activities, cattle grazing, and other human disturbance (CNDDB 2006b, p. 12), but impacts are limited to recreational and educational activities (Eliason 2007; SBNF 2000, p. 57; SBNF 2002a, p. 42). *Poa atropurpurea* and *Taraxacum californicum* are also threatened in this unit by invasion of nonnative herbaceous annuals, including potential hybridization of *T. californicum* with *T. officinale* (SBNF 2000, p. 57; SBNF 2002a, p. 42). Therefore, special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit 5 due to the potential impacts of past human disturbance, current camp activities, and invasive, nonnative plant species.

Unit 6: North Shay Meadow

We are proposing to designate Unit 6 as critical habitat for *Taraxacum californicum.* Unit 6 consists of an approximately 21-ac (8-ha) meadow occupied by the species at the time of listing, and the species continues to occur within this unit. Occupancy of Unit 6 was documented one year after listing. Unit 6 hosts approximately 12 percent of the total number of individuals reported since 1999, and has the second highest number of total individuals reported from any one unit. This unit contains all of the features essential to the conservation of the species. It is located within the San Bernardino National Forest, east of Big Bear Lake, on the southern shore of Baldwin Lake, and north of Shay Road. The land in this unit is federally owned.

This northern portion of Shay Meadow has been isolated by development from the southern meadow adjacent to East Big Bear Boulevard. Lakeshore habitat within the unit is currently impacted by recreational activities due to the use of trails connecting private land to the lakeshore for OHV use, hiking, mountain biking, and horseback riding (SBNF 2000, p. 57, SBNF 2002a, p. 23). *T. californicum* is also threatened in this unit by invasion of nonnative herbaceous annuals, including potential hybridization with *T. officinale* (CNDDB 2006b, p. 36; SBNF 2000, p. 57). Therefore, special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit 6 due to the impacts of human disturbance and invasive, nonnative plant species.

Unit 7: Horse Meadow

We are proposing to designate Unit 7 as critical habitat for *Taraxacum californicum.* Unit 7 consists of an approximately 74-ac (30-ha) meadow occupied by the species at the time of listing, and the species continues to occur within this unit. Occupancy throughout the meadow was confirmed as recently as 2002 (Denslow *et al.* 2002, pp. 12 and 13). Unit 7 contains all of the features essential to the conservation of the species. It is located within the San Bernardino National Forest, southwest of Big Bear Lake, and northwest of San Gorgonio Mountain. Unit 7 is federally owned and located in the San Gorgonio Wilderness Area of the SBNF.

Recreational impacts from foot-traffic have been reported (Denslow et al. 2002, pp. 12 and 13; CNDDB 2006b, p. 5; SBNF 2000, p. 57; SBNF 2002a, p. 54). *Taraxacum californicum* is also threatened in this unit by invasion of nonnative, herbaceous annuals, including potential hybridization with *T. officinale* (SBNF 2000, p. 57). Therefore, special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit 7 due to threats from human disturbance and invasive, nonnative plant species.

Unit 8: Fish Creek Meadow

We are proposing to designate Unit 8 as critical habitat for *Taraxacum californicum.* Unit 8 consists of an approximately 89-ac (36-ha) meadow occupied by the species at the time of listing, and the species continues to occur within this unit. Unit 8 contains all of the features essential to the conservation of the species. It is located within the San Bernardino National Forest, southwest of Big Bear Lake, and northeast of San Gorgonio Mountain. Unit 8 is federally owned, and occurs within USFS' San Gorgonio Wilderness Area of the SBNF.

Habitat conditions in this unit are reported to be undisturbed, but diffuse recreational use impacts are likely due to trails around meadow in forested area (CNDDB 2006b, p. 6; SBNF 2002a, p. 52). *Taraxacum californicum* is also threatened in this unit by invasion of nonnative, herbaceous annuals, including potential hybridization with *T. officinale* (SBNF 2000, p. 58). Therefore, special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit 8 due to the threats from human disturbance and invasive, nonnative plant species.

Unit 9: Broom Flat Meadow

We are proposing to designate Unit 9 as critical habitat for *Taraxacum californicum.* Unit 9 consists of an approximately 188-ac (76-ha) meadow occupied by the species at the time of listing, and the species continues to occur within this unit. Occupancy of Unit 9 was documented 2 years after listing. Unit 9 supports approximately 9 percent of the total number of *T. californicum* individuals reported since 1999, supporting the fifth largest recorded population out of 35 (see Table 1 for complete population list), more than double the average recorded population size. This unit contains all of the features essential to the conservation of the species. Unit 9 is federally owned, and is located within the San Bernardino National Forest, southeast of Big Bear Lake.

This unit has been historically impacted by OHV activity, cattle and burro grazing, and other human disturbance (CNDDB 2006b, p. 28; USFS 2002b p. 64). This unit is currently impacted by diffuse recreational activities and cattle grazing (SBNF 2000, p. 58; SBNF 2002a, p. 46). *Taraxacum californicum* is also threatened in this unit by invasion of nonnative herbaceous annuals, including potential hybridization with *T. officinale* (CNDDB

2006b, p. 28; SBNF 2002a, p. 45). Therefore, special management considerations or protection may be required to restore, protect and maintain the PCEs supported by Unit 9 due to the potential impacts of human disturbance and invasive, nonnative plant species.

Unit 10: Wildhorse Meadow

We are proposing to designate Unit 10 as critical habitat for *Taraxacum californicum*. Unit 10 consists of an approximately 52-ac (21-ha) meadow occupied by the species at the time of listing, and the species continues to occur within this unit. Occupancy of Unit 10 by *T. californicum* was documented 1 year after listing. Unit 10 has the highest number of total documented individuals since the time of listing among all the units (230 individuals; SBNF 2000, p. 56; CNDDB 2006b, pp. 30 and 31) and hosts approximately 20 percent of the total number of individuals reported since 1999. Unit 10 was also reported to be occupied by *Poa atropurpurea* in 1981, but surveys in 1999 and 2000 did not locate any individuals (SBNF 2000, p. 47). Therefore, this unit is being proposed for *T. californicum* only. This unit contains all of the features essential to the conservation of the species. It is located within the San Bernardino National Forest, southeast of Big Bear Lake. The land in this unit is federally owned.

Habitat in this unit is reported to be of ''excellent'' quality and well protected, but some diffuse recreation impacts have been reported (SBNF 2000, pp. 56 and 58; SBNF 2002a, p. 69). *Taraxacum californicum* is also threatened in this unit by invasion of nonnative herbaceous annuals, including potential hybridization with *T. officinale* (CNDDB 2006b, p. 31; SBNF 2000, p. 56, 58). Therefore, special management considerations or protection may be required to restore, protect and maintain the PCEs supported by Unit 10 due to the potential impacts of invasive, nonnative plant species and diffuse recreation impacts.

Unit 11: Cienega Seca Meadow

We are proposing to designate Unit 11 as critical habitat for *Poa atropurpurea* and *Taraxacum californicum.* Unit 11 consists of an approximately 98-ac (40-ha) meadow occupied by both species at the time of listing, and both species continue to occur within this unit. Unit 11 contains all of the features essential to the conservation of both species. It is located within the San Bernardino National Forest, adjacent to State Route 38, southeast of Big Bear Lake, and northeast of San Gorgonio Mountain. The majority of Unit 11 (also referred to Blue Sky Meadow) is privately owned by the Los Angeles County Education Foundation (LACEF), and currently used as an outdoor science education camp (Wildlands Conservancy 2005; LACEF 2007).

Unit 11 has been historically impacted by changes in the hydrologic regime due to recreational activities, cattle grazing, and other human disturbance (CNDDB 2006a, p. 2, 2006b, p. 2). Use of the well and access roads are current threats to meadow habitat (SBNF 2002a, p. 77). *Poa atropurpurea* and *Taraxacum californicum* are also threatened in this unit by invasion of nonnative, herbaceous annuals, including potential hybridization of *T. californicum* with *T. officinale* (CNDDB 2006b p. 2; SBNF 2000, p. 58). Therefore, special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit 11 due to the threats from past human disturbance, current camp activities, and invasive, nonnative plant species.

Unit 12: South Fork Meadow

We are proposing to designate Unit 12 as critical habitat for *Taraxacum californicum.* Unit 12 consists of approximately 116 ac (47 ha) of meadows occupied by the species at the time of listing, and the species continues to occur within this unit. Unit 12 contains all of the features essential to the conservation of the species. It is located within the San Bernardino National Forest, southwest of Big Bear Lake on the northern slope of San Gorgonio Mountain. Unit 12 is federally owned, and is located in the San Gorgonio Wilderness Area of the SBNF.

Habitat in this unit is reported to be virtually undisturbed, but possibly impacted by some diffuse recreational use (CNDDB 2006b, p. 1; SBNF 2000, pp. 56 and 58). Threats include impacts of hikers, horseback riding, and camping; however, the meadows are minimally disturbed (SBNF 2002a, p. 66). *Taraxacum californicum* is also threatened in this unit by invasion of nonnative, herbaceous annuals, including potential hybridization with *T. officinale* (SBNF 2000, pp. 56 and 58). Therefore, special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit 12 due to the threats from human disturbance and invasive, nonnative plant species.

Unit 13: Mendenhall Valley

We are proposing to designate Unit 13 as critical habitat for *Poa atropurpurea*. Unit 13 consists of an approximately 291-ac (118-ha) meadow occupied by the species at the time of listing, and the species continues to occur within this unit. This unit contains all of the features essential to the conservation of the species. It is located within the Cleveland National Forest, on Palomar Mountain in San Diego County; 160 ac (65 ha) of the unit are federally owned, and the remaining portion (131 ac (53 ha)) is privately owned. We are not including a large portion of the meadow on the northwest end as proposed critical habitat because a field survey determined that the habitat appeared to be degraded and of a different vegetative type (Anderson 2007, p. 1). The Mendenhall Valley meadow contains a mid-range population of *P. atropurpurea* isolated from the southern populations (Laguna Mountain and Bear Valley) by at least 36 miles (58 km), and northern populations (Big Bear Lake area) by at least 60 miles (109 km).

Habitat in this unit has been impacted by cattle grazing (CNDDB 2006a, p. 4; CNF 1991, pp. 13–17), land-use changes, and recreational activities (2006 GIS satellite imagery). Under a biological opinion resulting from Service consultation with the CNF (Service 2001, p. 5), annual surveys are to be conducted in this unit for *Poa atropurpurea,* and cattle are to be excluded from grazing on CNF land until completion of seed set is documented. Annual phenology monitoring is currently being conducted, and grazing is permitted starting May 1 (Winter 2007, p. 1). USFS has also conducted ongoing gully repair work in this unit to benefit endangered meadow plants (Winter 2007, p. 3). *P. atropurpurea* is also threatened in this unit by invasion of nonnative, herbaceous annuals. Therefore, special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit 13 due to threats from grazing and invasive, nonnative plant species.

Unit 14: Laguna Meadow

We are proposing to designate Unit 14 as critical habitat for *Poa atropurpurea*. Unit 14 consists of an approximately 1,089-ac (441-ha) meadow occupied by the species at the time of listing, and the species continues to occur within this unit. Although all 5 herbarium specimens collected in this unit and reviewed by Curto (1992, p. 3) were female (one from 1978, three from 1981,

and one from 1991), Hirshberg (1994, p. 2) reported a 1:250 female to male ratio during field surveys. This unit contains all of the features essential to the conservation of the species. It is located within the Cleveland National Forest, on Laguna Mountain, in San Diego County. Unit 14 is federally owned.

Habitat in this unit has been impacted by grazing and recreational activities (CNF 1991, pp. 13–17; CNDDB 2006a, pp. 4 and 20). Under a biological opinion resulting from Service consultation with the CNF (Service 2001, p. 5), annual surveys are to be conducted in this unit for *Poa atropurpurea,* and cattle are to be excluded from grazing until completion of seed set is documented. Currently, no annual surveys are conducted; however, grazing is not permitted until July 1, after seed set (Winter 2007, p. 1). CNF is also conducting ongoing gully repair work, with six projects having been completed (Winter 2007, p. 3). *P. atropurpurea* is also threatened in this unit by invasion of nonnative, herbaceous annuals. Therefore, special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit 14 due to the threats from grazing and invasive, nonnative plant species.

Unit 15: Bear Valley

We are proposing to designate Unit 15 as critical habitat for *Poa atropurpurea.* Unit 15 consists of an approximately 102-ac (41-ha) meadow occupied by the species at the time of listing, and the species continues to occur within this unit. This unit contains all of the features essential to the conservation of the species. All individuals reported from this location may be a single clone (CNDDB 2006a, p. 21). Unit 15 is federally owned and located within the Cleveland National Forest, southwest of Laguna Mountain and south of the town of Pine Valley, in San Diego County.

Habitat in this unit has been impacted by cattle grazing (CNDDB 2006a, p. 21) and diffuse recreational activities (2006 GIS satellite imagery). Under a biological opinion resulting from Service consultation with the CNF (Service 2001, pp. 3 and 4), annual surveys are supposed to be conducted in this unit for *P. atropurpurea*, and cattle are to be excluded from grazing until completion of seed set is documented. Currently, no annual surveys are conducted; however, grazing is not permitted until August 1, after seed set (Winter 2007, p. 1). *P. atropurpurea* is also threatened in this unit by invasion of nonnative, herbaceous annuals. Therefore, special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit 15 due to the threats from grazing, human disturbance, and invasive, nonnative plant species.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our definition of ''destruction or adverse modification'' at 50 CFR 402.02 (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve its intended conservation role for the species.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once a species proposed for listing becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider species proposed for listing and proposed critical habitat and avoid potential delays in implementing their proposed action because of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the species proposed for listing or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to species proposed for listing or proposed critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report, while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that are likely to adversely affect listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed

species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect *Poa atropurpurea* or *Taraxacum californicum* or their individually designated critical habitats will require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 et seq.) or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the Adverse Modification Standard for Actions Involving Effects to the Critical Habitat for *Poa atropurpurea* and *Taraxacum californicum* Individually

For the reasons described in the Director's December 9th, 2004 memorandum, the key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for *Poa atropurpurea* and *Taraxacum californicum,* individually, is appreciably reduced. Generally, the conservation role of critical habitat units for *Poa atropurpurea* and *Taraxacum californicum* is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for *Poa atropurpurea* or *Taraxacum californicum* include, but are not limited to:

(1) Actions that result in ground disturbance to meadows. Such activities could include, but are not limited to: residential or recreational development, OHV activity, dispersed recreation, new road construction or widening, existing road maintenance, and grazing. These activities could cause direct mortality of *Poa atropurpurea* or *Taraxacum californicum,* and impact meadows by damaging or eliminating habitat, altering soil composition due to increased erosion, and increasing densities of nonnative plant species. In addition, changes in soil composition may lead to cascading changes in the vegetation composition, such as growth of shrub cover that decreases density of or eliminates *P. atropurpurea* or *T. californicum.*

(2) Actions that result in alteration of the hydrological regime of the wet meadow habitat. Such activities could include residential or recreational development adjacent to meadows, OHV activity, dispersed recreation, new road construction or widening, and existing road maintenance. These activities could alter surface layers and hydrological regime in a manner that promotes loss of soil matrix components and moisture necessary to support the growth and reproduction of *Poa atropurpurea* or *Taraxacum californicum.*

(3) Actions that would significantly reduce pollination or seed set (reproduction). Such activities could include, but are not limited to, grazing or mowing prior to seed set. These activities could prevent reproduction by removal or destruction of reproductive plant parts.

Exemptions and Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary is afforded broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If we are considering an exclusion, then we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to the section 4(b)(2) analysis.

We are conducting an economic analysis of the impacts of the proposed critical habitat designation and related factors, which will be available for public review and comment when it is complete. Based on public comment on that document, the proposed designation itself, and the information in the final economic analysis, areas may be excluded from critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act. This is provided for in the Act and in our implementing regulations at 50 CFR 424.19.

Under section 4(b)(2) of the Act, we must consider all relevant impacts, including economic ones. The Service considers a number of factors in its analysis under section 4(b)(2) of the Act. For example, the Service considers whether there are lands owned or managed by the Department of Defense (DOD) where there might be a national security impact. We also consider

whether the landowners have developed any conservations plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. We look at any Tribal issues, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social or economic impacts that might occur because of the designation. In this instance, we have determined that the lands within this proposed designation of critical habitat individually for *Poa atropurpurea* and *Taraxacum californicum* are not owned or managed by the Department of Defense, the lands within this proposed designation of critical habitat are currently not covered by any habitat conservation plans for *P. atropurpurea* or *T. californicum,* and the proposed designation does not include any Tribal lands or trust resources.

At this time, we are not proposing to exclude any areas of habitat under section 4(b)(2) of the Act from critical habitat for *Poa atropurpurea* or *Taraxacum californicum.* We are inviting comment from the public in reference to those USFS lands that are proposed for designation. We would like to receive any available information on any areas covered by conservation or management plans that we should consider for exclusion from the designation under section 4(b)(2) of the Act including whether the benefit of exclusion of those lands would outweigh the benefits of their inclusion. Furthermore, we are unaware of any additional conservation or management plans that we should consider for exclusion from the designation under section 4(b)(2) of the Act. We specifically request any information on any operative or draft habitat conservation plans for *P. atropurpurea* or *T. californicum* that have been prepared under section 10(a)(1)(B) of the Act, or any other management or other conservation plan or agreement that benefits either plant or its primary constituent elements.

Economics

An analysis of the economic impacts of proposing critical habitat for *Poa atropurpurea* and *Taraxacum californicum* is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.fws.gov/carlsbad*, or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES**). We may exclude areas from critical habitat in our final rule based on the information in the economic analysis.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment during the public comment period on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing within 45 days after the date of publication of the proposed rule pursuant to section 4(b)(5)(E) of the Act. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Persons needing reasonable accommodations to attend and participate in any scheduled public hearings should contact Alison Anderson, Carlsbad Fish and Wildlife Office, at 760–431–9440 as soon as possible following a public hearing announcement. To allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding the proposal is available in alternative formats upon request.

Clarity of the Rule

Executive Order 12866 (Regulatory Planning and Review) requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, Executive Order 12630, Executive Order 13211, and Executive Order 12875.

Further, Executive Order 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (OMB Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, then the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement under the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts under

section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat provided that the benefits of such exclusion outweigh the benefits of including the area in critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or both, in a designation constitutes our regulatory alternative analysis.

The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments. At that time, the draft economic analysis will be available from the Internet at *http://www.fws.gov/carlsbad* or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES**).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and Executive Order 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because all of the lands included in the proposed designation are within National Forest boundaries. As such, a Small Government Agency Plan is not required. However, as we conduct our economic analysis, we will further evaluate this issue and revise this assessment if appropriate.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule to designate critical habitat for *Poa atropurpurea* and *Taraxacum californicum* is a significant regulatory action under Executive Order 12866 in that it may raise novel legal and policy issues, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and revise this assessment as warranted.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for *Poa atropurpurea* and *Taraxacum californicum* in a takings implications assessment. The takings implications assessment concludes that, if adopted, this designation of critical habitat for *P. atropurpurea* and *T. californicum* does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. Because all of the lands included in the proposed designation are within National Forest boundaries, we believe the designation of critical habitat for *Poa atropurpurea* and *Taraxacum californicum* would have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Poa atropurpurea* and *Taraxacum californicum.*

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the Tenth Federal Circuit, we do not need to prepare environmental analyses as defined by NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997, ''American Indian Tribal Rights, Federal—Tribal Trust Responsibilities, and the Endangered Species Act,'' we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We have determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation, and no Tribal lands that are essential for the conservation, of *Poa atropurpurea* and/or *Taraxacum californicum.* Therefore, we are not proposing critical habitat for *P. atropurpurea* and/or *T. californicum* on Tribal lands.

References Cited

A complete list of all references cited in this proposal is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Author(s)

The primary author of this package is Alison Anderson, Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h), revise the entries for ''*Poa atropurpurea*'' and ''*Taraxacum californicum*'' under ''FLOWERING PLANTS'' in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Poa atropurpurea	San Bernardino bluegrass.	U.S.A. (CA)	Poaceae	E	644	17.96(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Taraxacum californicum	California taraxacum	U.S.A. (CA)	Asteraceae	E	644	17.96(a)	NA
*	*	*	*	*	*		*

3. Amend § 17.96(a) by adding an entry for ''*Taraxacum californicum*'' in alphabetical order under Family Asteraceae and by adding an entry for ''*Poa atropurpurea*'' in alphabetical order under Family Poaceae, to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Asteraceae: *Taraxacum californicum* (California taraxacum)

(1) Critical habitat units are depicted for San Diego and San Bernardino Counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Taraxacum californicum* are:

(i) Wet meadows subject to flooding during wet years and forest openings with seeps, springs, or creeks in the San Bernardino Mountains in San Bernardino County located at elevations of 6,700 to 9,000 feet (2,000 to 2,800 meters), that provide space for individual and population growth, reproduction, and dispersal; and

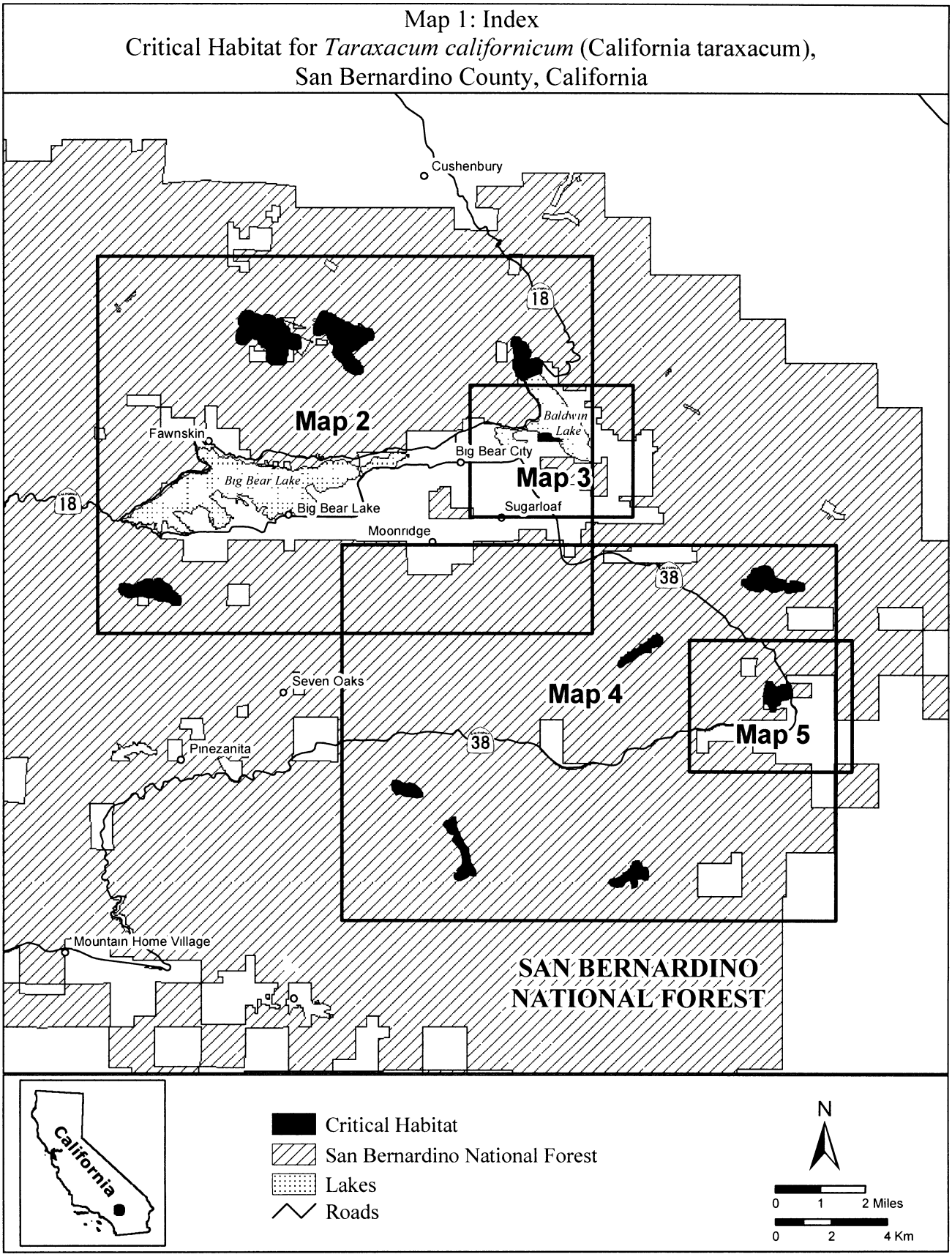
(ii) Well-drained, loamy alluvial to sandy loam soils occurring in the wet meadow system or forest openings with seeps, springs, or creeks, with a 0 to 46 percent slope, to provide water, air, minerals, and other nutritional or physiological requirements to the species.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Data layers defining map units were created on a base of USGS 1:24,000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Note: Index map of critical habitat units for *Taraxacum californicum* (California taraxacum) (Map 1) follows:

BILLING CODE 4310–55–P



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(6) Unit 2 for *Taraxacum californicum* and *Poa atropurpurea*: North Baldwin Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Big Bear City. Land bounded by the following UTM NAD27 coordinates (E, N): 516578, 3795213; 516595, 3795205; 516597, 3795204; 516602, 3795201; 516608, 3795198; 516613, 3795194; 516618, 3795190; 516623, 3795185; 516628, 3795181; 516632, 3795176; 516632, 3795175; 516639, 3795166; 516642, 3795161; 516646, 3795156; 516649, 3795150; 516652, 3795144; 516654, 3795138; 516656, 3795132; 516656, 3795131; 516659, 3795122; 516660, 3795116; 516661, 3795109; 516661, 3795108; 516662, 3795107; 516668, 3795104; 516674, 3795101; 516680, 3795098; 516685, 3795094; 516690, 3795090; 516695, 3795085; 516699, 3795081; 516703, 3795076; 516707, 3795070; 516711, 3795065; 516714, 3795059; 516716, 3795053; 516719, 3795047; 516721, 3795041; 516722, 3795034; 516723, 3795028; 516724, 3795021; 516724, 3795015; 516724, 3795008; 516723, 3795002; 516723, 3795000; 516725, 3794999; 516731, 3794997; 516736, 3794994; 516742, 3794990; 516747, 3794986; 516752, 3794982; 516756, 3794979; 516759, 3794976; 516760, 3794975; 516765, 3794970; 516769, 3794965; 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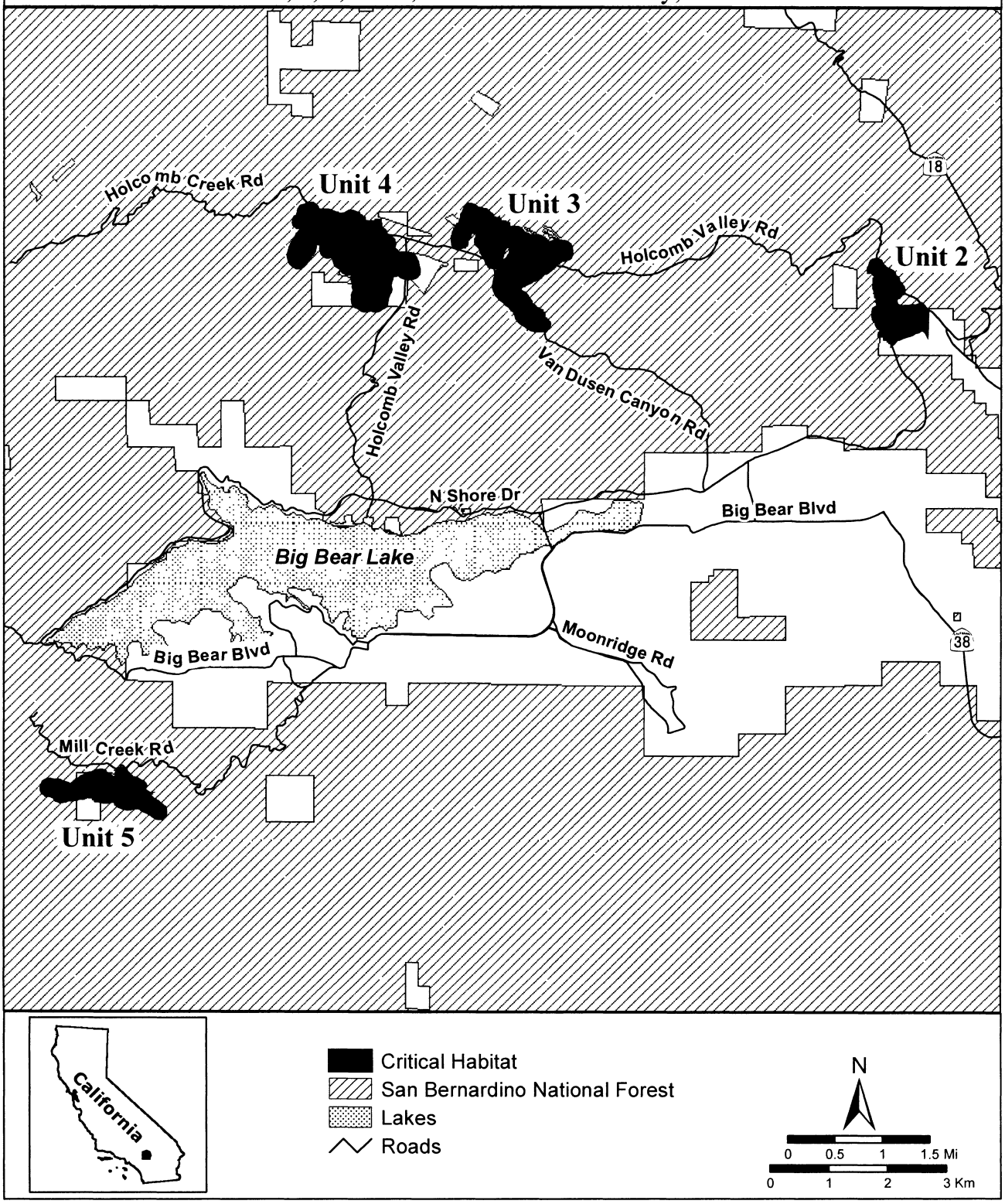
(ii) Note: Map of Units 2, 3, 4, and 5 for *Taraxacum californicum* and *Poa atropurpurea* (Map 2) follows:

BILLING CODE 4310–55–P

Map 2
Critical Habitat for *Taraxacum californicum* (California taraxacum)
and *Poa atropurpurea* (San Bernardino bluegrass),
Units 2, 3, 4, and 5, San Bernardino County, California



BILLING CODE 4310–55–C

(7) Unit 3 for *Taraxacum californicum* and *Poa atropurpurea*: Belleville Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Fawnskin. 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(ii) *Note:* Unit 3 for *Taraxacum californicum* is depicted on Map 2 in paragraph (6)(ii) of this entry.

(8) Unit 4 for *Taraxacum californicum* and *Poa atropurpurea:* Hitchcock Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Fawnskin. Land bounded by the following UTM NAD27 coordinates (E, N): 507473, 3794979; 507468, 3794984; 507464, 3794989; 507460, 3794994; 507459, 3794996; 507457, 3794999; 507456, 3795000; 507454, 3795005; 507452, 3795007; 507444, 3795025; 507443, 3795029; 507440, 3795035; 507440, 3795037; 507438, 3795041; 507437, 3795048; 507436, 3795054; 507435, 3795061; 507435, 3795067; 507435, 3795074; 507436, 3795080; 507437, 3795087; 507437, 3795088; 507443, 3795114; 507444, 3795119; 507446, 3795126; 507448, 3795132; 507451, 3795138; 507454, 3795144; 507455, 3795144; 507455, 3795150; 507455, 3795152; 507455, 3795154; 507455, 3795155; 507449, 3795159; 507448, 3795158; 507442, 3795156; 507441, 3795156; 507438, 3795156; 507429, 3795153; 507424, 3795151; 507421, 3795149; 507420, 3795148; 507419, 3795148; 507413, 3795145; 507407, 3795143; 507400, 3795141; 507394, 3795139; 507388, 3795138; 507381, 3795138; 507375, 3795137; 507368, 3795138; 507361, 3795138; 507355, 3795139; 507349, 3795141; 507342, 3795143; 507338, 3795144; 507309, 3795156; 507307, 3795156; 507301, 3795159; 507296, 3795162; 507290, 3795166; 507285, 3795169; 507280, 3795174; 507275, 3795178; 507270, 3795183; 507266, 3795188; 507264, 3795191; 507255, 3795204; 507254, 3795206; 507253, 3795206; 507250, 3795211; 507247, 3795217; 507246, 3795219; 507244, 3795223; 507244, 3795223; 507239, 3795237; 507234, 3795238; 507227, 3795240; 507221, 3795242; 507215, 3795244; 507209, 3795247; 507203, 3795250; 507198, 3795253; 507194, 3795255; 507185, 3795262; 507183, 3795264; 507178, 3795268; 507173, 3795272; 507169, 3795277; 507165, 3795282; 507161, 3795287; 507157, 3795293; 507154, 3795299; 507151, 3795305; 507149, 3795311; 507147, 3795317; 507146, 3795323; 507145, 3795330; 507144, 3795336; 507144, 3795340; 507141, 3795344; 507138, 3795349; 507135, 3795355; 507132, 3795361; 507130, 3795367; 507128, 3795374; 507127, 3795380; 507125, 3795386; 507125, 3795393; 507125, 3795398; 507124, 3795410; 507122, 3795423; 507122, 3795427; 507121, 3795430; 507119, 3795453; 507119, 3795456; 507119, 3795463; 507119, 3795470; 507119, 3795471; 507116, 3795469; 507107, 3795464; 507107, 3795463; 507103, 3795459; 507098, 3795454; 507093, 3795450; 507088, 3795446; 507088, 3795446; 507081, 3795442; 507076, 3795439; 507070, 3795436; 507066, 3795434; 507066, 3795433; 507060, 3795431; 507054, 3795428; 507047, 3795426; 507041, 3795425; 507035, 3795424; 507028, 3795423; 507021, 3795423; 507013, 3795423; 507008, 3795423; 506989, 3795428; 506970, 3795437; 506953, 3795449; 506938, 3795464; 506926, 3795481; 506918, 3795500; 506912, 3795520; 506912, 3795522; 506909, 3795539; 506909, 3795541; 506906, 3795565; 506908, 3795573; 506908, 3795574; 506910, 3795581; 506912, 3795587; 506915, 3795593; 506916, 3795596; 506915, 3795599; 506914, 3795606; 506913, 3795612; 506912, 3795619; 506912, 3795625; 506912, 3795632; 506912, 3795634; 506914, 3795650; 506915, 3795663; 506915, 3795667; 506916, 3795673; 506918, 3795679; 506920, 3795686; 506922, 3795690; 506922, 3795691; 506916, 3795694; 506911, 3795698; 506909, 3795699; 506905, 3795702; 506891, 3795696; 506867, 3795682; 506855, 3795669; 506850, 3795664; 506847, 3795660; 506829, 3795660; 506799, 3795660; 506799, 3795669; 506797, 3795670; 506782, 3795676; 506781, 3795666; 506779, 3795650; 506780, 3795649; 506782, 3795647; 506794, 3795631; 506794, 3795630; 506799, 3795630;

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(ii) Note: Unit 4 for *Taraxacum californicum* is depicted on Map 2 in paragraph (6)(ii) of this entry.

(9) Unit 5 for T*araxacum californicum* and *Poa atropurpurea:* Bluff Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Big Bear Lake. Land bounded by the following UTM NAD27 coordinates (E, N): 503026, 3786299; 503217, 3786627; 503222, 3786623; 503228, 3786620; 503233, 3786615; 503237, 3786611; 503242, 3786606; 503245, 3786602; 503256, 3786592; 503266, 3786584; 503266, 3786584; 503271, 3786580; 503272, 3786578; 503278, 3786577; 503284, 3786576; 503290, 3786574; 503296, 3786572; 503302, 3786569; 503308, 3786566; 503314, 3786562; 503319, 3786559; 503324, 3786554; 503329, 3786550; 503342, 3786537; 503345, 3786534; 503359, 3786518; 503368, 3786514; 503374, 3786513; 503412, 3786521; 503433, 3786531; 503433, 3786580; 503434, 3786587; 503434, 3786592; 503434, 3786593; 503435, 3786600; 503437, 3786606; 503439, 3786612; 503441, 3786618; 503444, 3786624; 503447, 3786630; 503450, 3786636; 503454, 3786641; 503456, 3786644; 503465, 3786646; 503488, 3786649; 503508, 3786665; 503527, 3786673; 503547, 3786673; 503559, 3786669; 503582, 3786657; 503594, 3786642; 503606, 3786618; 503606, 3786606; 503606, 3786606; 503607, 3786606; 503607, 3786606; 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(ii) Note: Unit 5 for *Taraxacum californicum* is depicted on Map 2 in paragraph (6)(ii) of this entry.

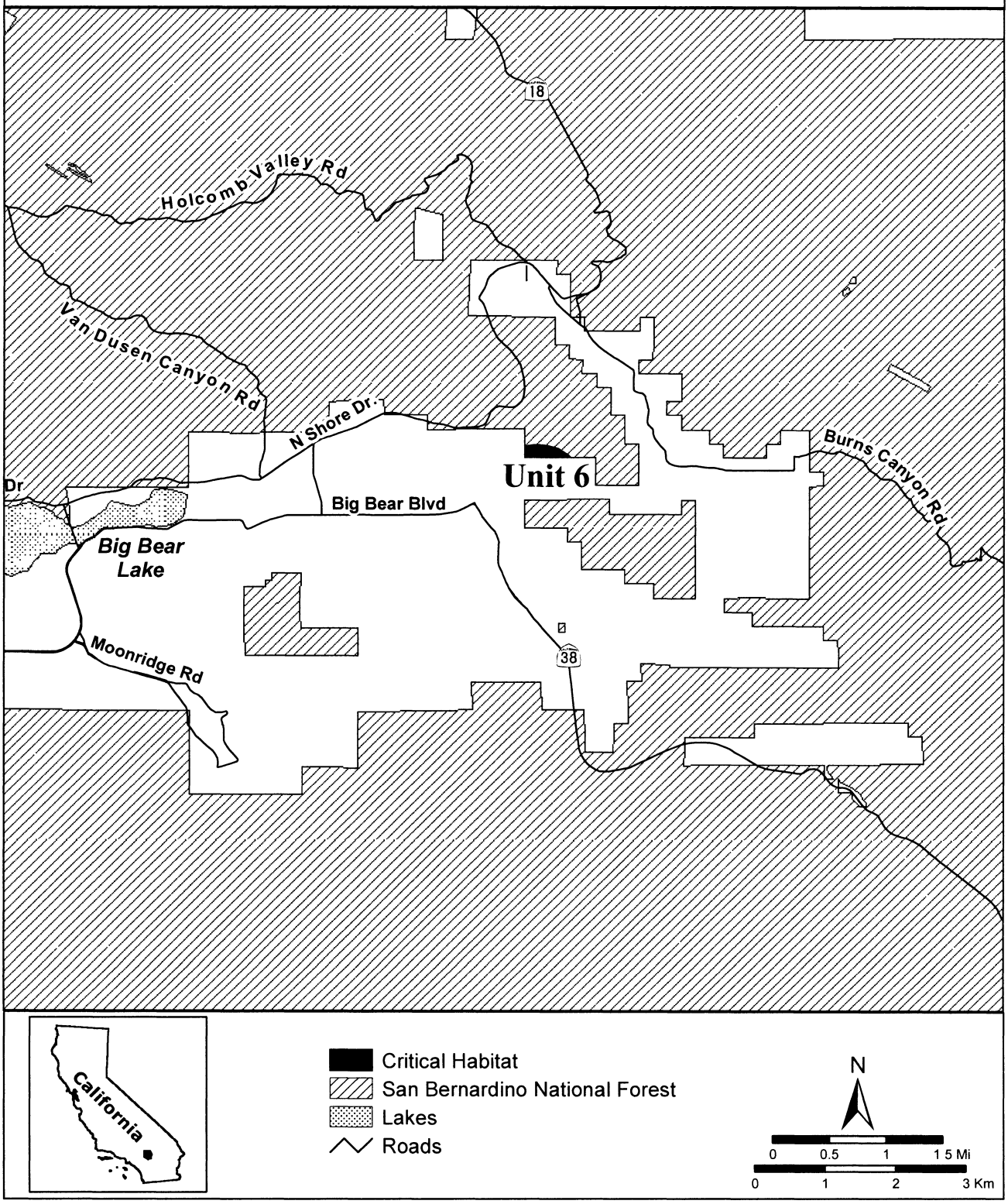
(10) Unit 6: North Shay Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Big Bear City. Land bounded by the following UTM NAD27 coordinates (E, N): 517452, 37991854; 517196, 37991888; 517196, 37991904; 517240, 37991919; 517315, 37991927; 517405, 37991930; 517486, 37991923; 517594, 37991902; 517674, 37991877; 517734, 37991836; 517815, 37991781; 517839, 37991756; 517766, 37991756; 517730, 37991757; 517694, 37991757; 517675, 37991757; 517619, 37991758; 517577, 37991758; 517502, 37991759; 517469, 37991759; 517422, 37991759; 517367, 37991760; 517344, 37991760; 517310, 37991760; 517280, 37991761; 517243, 37991761; 517195, 37991762; 517195, 37991777; 517195, 37991798; 517195, 37991829; 517196, 37991866; 517196, 37991888; 517452, 37991854.

(ii) Note: Map of Unit 6 for *Taraxacum californicum* (Map 3) follows:

BILLING CODE 4310–55–P

Map 3
Critical Habitat for *Taraxacum californicum* (California taraxacum),
Unit 6, San Bernardino County, California

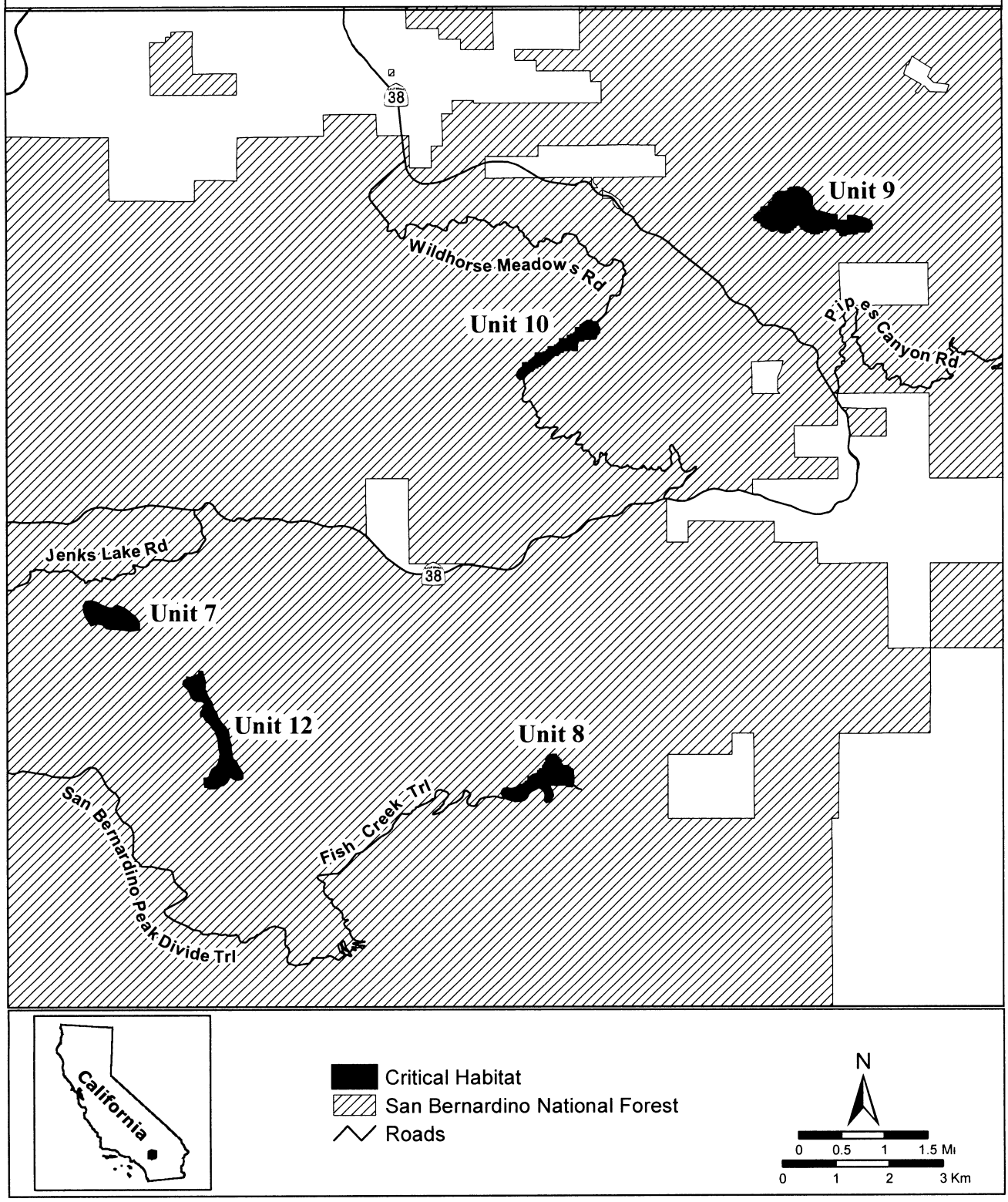


(11) Unit 7: Horse Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Moonridge. Land bounded by the following UTM NAD27 coordinates (E,N): 512365, 3779133; 512329, 3779237; 512402, 3779220; 512461, 3779223; 512527, 3779265; 512638, 3779227; 512725, 3779175; 512784, 3779116; 512843, 3779078; 512888, 3779019; 512919, 3778956; 512926, 3778935; 512922, 3778873; 512791, 3778848; 512659, 3778876; 512537, 3778887; 512433, 3778890; 512350, 3778900; 512284, 3778966; 512159, 3778994; 512061, 3778963; 512020, 3779039; 511975, 3779095; 511947, 3779199; 511936, 3779293; 511968, 3779345; 512051, 3779355; 512145, 3779331; 512190, 3779296; 512249, 3779265; 512329, 3779237; 512365, 3779133.

(ii) Note: Map of Units 7, 8, 9, 10, and 12 for Taraxacum californicum (Map 4) follows:

Map 4
Critical Habitat for *Taraxacum californicum* (California taraxacum),
Units 7, 8, 9, 10, and 12, San Bernardino County, California



BILLING CODE 4310–55–C

(12) Unit 8: Fish Creek Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Moonridge and San Gorgornio Mountain. Land bounded by the following UTM NAD27 coordinates (E, N): 520732, 3776069; 521043, 3776130; 521043, 3776107; 521043, 3776100; 521042, 3776094; 521041, 3776087; 521040, 3776081; 521039, 3776080; 521042, 3776075; 521042, 3776075; 521045, 3776069; 521047, 3776063; 521049, 3776056; 521051, 3776050; 521052, 3776043; 521052, 3776039; 521055, 3776005; 521056, 3776002; 521056, 3775996; 521056, 3775973; 521056, 3775967; 521055, 3775960; 521054, 3775954; 521052, 3775947; 521050, 3775941; 521048, 3775935; 521045, 3775929; 521045, 3775929; 521036, 3775910; 521033, 3775904; 521029, 3775899; 521026, 3775893; 521021, 3775888; 521019, 3775886; 521019, 3775890; 520989, 3775890; 520989, 3775920; 520959, 3775920; 520959, 3775950; 520941, 3775950; 520930, 3775942; 520899, 3775936; 520899, 3775920; 520869, 3775920; 520839, 3775920; 520811, 3775920; 520787, 3775916; 520762, 3775916; 520743, 3775916; 520737, 3775920; 520719, 3775920; 520719, 3775931; 520718, 3775932; 520699, 3775945; 520689, 3775950; 520689, 3775950; 520659, 3775950; 520634, 3775950; 520629, 3775949; 520629, 3775920; 520607, 3775920; 520600, 3775910; 520600, 3775910; 520599, 3775902; 520599, 3775892; 520605, 3775871; 520617, 3775816; 520649, 3775772; 520662, 3775739; 520668, 3775689; 520655, 3775653; 520642, 3775633; 520622, 3775612; 520584, 3775595; 520576, 3775604; 520572, 3775627; 520577, 3775666; 520577, 3775721; 520557, 3775780; 520524, 3775816; 520504, 3775848; 520488, 3775878; 520471, 3775893; 520445, 3775897; 520419, 3775875; 520410, 3775866; 520399, 3775864; 520380, 3775855; 520358, 3775837; 520271, 3775795; 520217, 3775748; 520191, 3775699; 520179, 3775662; 520164, 3775648; 520137, 3775633; 520081, 3775624; 520046, 3775620; 519990, 3775611; 519949, 3775631; 519921, 3775634; 519862, 3775646; 519823, 3775660; 519787, 3775685; 519766, 3775724; 519765, 3775743; 519769, 3775766; 519787, 3775787; 519842, 3775797; 519886, 3775793; 519933, 3775793; 519990, 3775805; 520046, 3775812; 520059, 3775814; 520059, 3775830; 520089, 3775830; 520119, 3775830; 520119, 3775860; 520149, 3775860; 520159, 3775860; 520171, 3775871; 520179, 3775877; 520179, 3775890; 520198, 3775890; 520209, 3775897; 520209, 3775920; 520236, 3775920; 520238, 3775922; 520255, 3775970; 520267, 3775992; 520267, 3775993; 520269, 3775995; 520269, 3775995; 520269, 3776010; 520277, 3776010; 520281, 3776016; 520333, 3776059; 520380, 3776068; 520419, 3776062; 520419, 3776070; 520449, 3776070; 520449, 3776100; 520449, 3776130; 520479, 3776130; 520479, 3776160; 520509, 3776160; 520509, 3776130; 520539, 3776130; 520539, 3776120; 520569, 3776142; 520569, 3776160; 520539, 3776160; 520539, 3776190; 520539, 3776220; 520539, 3776247; 520541, 3776249; 520546, 3776253; 520551, 3776256; 520556, 3776260; 520560, 3776262; 520564, 3776266; 520569, 3776271; 520574, 3776275; 520580, 3776279; 520585, 3776282; 520591, 3776285; 520593, 3776286; 520593, 3776289; 520592, 3776294; 520592, 3776300; 520592, 3776307; 520593, 3776311; 520596, 3776340; 520596, 3776342; 520597, 3776348; 520599, 3776355; 520601, 3776361; 520603, 3776367; 520606, 3776373; 520609, 3776379; 520612, 3776384; 520616, 3776390; 520620, 3776395; 520625, 3776400; 520629, 3776404; 520635, 3776408; 520640, 3776412; 520645, 3776415; 520651, 3776419; 520657, 3776421; 520663, 3776424; 520667, 3776425; 520698, 3776434; 520701, 3776435; 520708, 3776436; 520714, 3776438; 520719, 3776438; 520719, 3776430; 520719, 3776400; 520719, 3776370; 520749, 3776370; 520779, 3776370; 520779, 3776340; 520809, 3776340; 520809, 3776310; 520809, 3776280; 520809, 3776250; 520839, 3776250; 520839, 3776220; 520840, 3776220; 520869, 3776220; 520899, 3776220; 520929, 3776220; 520959, 3776220; 520959, 3776190; 520989, 3776190; 520989, 3776160; 521019, 3776160; 521019, 3776130; 521043, 3776130; 520732, 3776069.

(ii) Note: Unit 8 for *Taraxacum californicum* is depicted on Map 4 in paragraph (11)(ii) of this entry.

(13) Unit 9: Broom Flat Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Onyx Peak. Land bounded by the following UTM NAD27 coordinates (E, N): 525279, 3786553; 524842, 3786873; 524848, 3786876; 524854, 3786878; 524860, 3786880; 524865, 3786881; 524874, 3786883; 524869, 3786900; 524869, 3786902; 524867, 3786908; 524866, 3786914; 524866, 3786921; 524865, 3786927; 524866, 3786934; 524866, 3786941; 524867, 3786947; 524869, 3786953; 524871, 3786960; 524873, 3786966; 524876, 3786972; 524879, 3786977; 524882, 3786983; 524884, 3786986; 524893, 3786998; 524895, 3787000; 524895, 3787001; 524901, 3787009; 524905, 3787013; 524910, 3787018; 524914, 3787023; 524919, 3787027; 524925, 3787031; 524930, 3787034; 524936, 3787037; 524942, 3787040; 524948, 3787042; 524949, 3787042; 524959, 3787046; 524962, 3787047; 524968, 3787049; 524974, 3787051; 524980, 3787053; 524987, 3787054; 524993, 3787054; 524999, 3787054; 525018, 3787055; 525019, 3787055; 525025, 3787055; 525032, 3787054; 525038, 3787053; 525045, 3787051; 525051, 3787049; 525057, 3787047; 525061, 3787045; 525071, 3787041; 525078, 3787039; 525079, 3787039; 525086, 3787037; 525092, 3787034; 525093, 3787034; 525100, 3787031; 525103, 3787036; 525107, 3787041; 525108, 3787042; 525116, 3787052; 525119, 3787056; 525122, 3787059; 525126, 3787064; 525129, 3787066; 525133, 3787071; 525138, 3787075; 525141, 3787077; 525143, 3787079; 525143, 3787080; 525153, 3787094; 525156, 3787097; 525160, 3787102; 525164, 3787107; 525169, 3787112; 525174, 3787116; 525179, 3787120; 525185, 3787123; 525191, 3787126; 525197, 3787129; 525203, 3787131; 525209, 3787133; 525215, 3787135; 525222, 3787136; 525222, 3787136; 525247, 3787139; 525254, 3787139; 525260, 3787140; 525267, 3787139; 525270, 3787139; 525273, 3787139; 525275, 3787139; 525294, 3787136; 525296, 3787136; 525313, 3787133; 525316, 3787132; 525319, 3787131; 525347, 3787125; 525350, 3787124; 525357, 3787122; 525357, 3787122; 525390, 3787111; 525396, 3787109; 525402, 3787106; 525407, 3787103; 525413, 3787099; 525418, 3787096; 525423, 3787091; 525427, 3787088; 525448, 3787068; 525468, 3787050; 525468, 3787050; 525473, 3787046; 525477, 3787041; 525493, 3787024; 525493, 3787023; 525494, 3787023; 525509, 3787006; 525512, 3787001; 525516, 3786996; 525525, 3786983; 525525, 3786983; 525529, 3786977; 525532, 3786971; 525534, 3786965; 525537, 3786959; 525539, 3786953; 525540, 3786947; 525541, 3786940; 525542, 3786934; 525542, 3786927; 525542, 3786920; 525542, 3786919; 525541, 3786907; 525540, 3786902; 525539, 3786895; 525538, 3786889; 525536, 3786883; 525533, 3786877; 525531, 3786871; 525528, 3786865; 525522, 3786855; 525522, 3786855; 525518, 3786849; 525515, 3786844; 525512, 3786840; 525506, 3786833; 525505, 3786831; 525508, 3786828; 525511, 3786822; 525514, 3786816; 525517, 3786810; 525517, 3786809; 525518, 3786809; 525519, 3786808; 525519, 3786799; 525519, 3786780; 525549, 3786780;

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(ii) Note: Unit 9 for *Taraxacum californicum* is depicted on Map 4 in paragraph (11)(ii) of this entry.

(14) Unit 10: Wildhorse Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Moonridge. Land bounded by the following UTM NAD27 coordinates (E, N): 520986, 3784179; 521409, 3784620; 521409, 3784590; 521439, 3784590; 521469, 3784590; 521469, 3784616; 521469, 3784616; 521477, 3784610; 521479, 3784609; 521484, 3784604; 521489, 3784600; 521493, 3784595; 521505, 3784582; 521505, 3784582; 521509, 3784577; 521513, 3784572; 521514, 3784571; 521521, 3784559; 521524, 3784554; 521527, 3784548; 521530, 3784543; 521532, 3784537; 521536, 3784525; 521536, 3784525; 521537, 3784524; 521539, 3784517; 521543, 3784514; 521548, 3784509; 521552, 3784504; 521556, 3784499; 521557, 3784499; 521557, 3784498; 521559, 3784496; 521559, 3784470; 521529, 3784470; 521529, 3784440; 521499, 3784440; 521499, 3784410; 521499, 3784398; 521502, 3784394; 521504, 3784377; 521494, 3784365; 521485, 3784361; 521476, 3784360; 521469, 3784360; 521469, 3784350; 521439, 3784350; 521409, 3784350; 521379, 3784350; 521379, 3784380; 521380, 3784410; 521349, 3784410; 521349, 3784380; 521319, 3784380; 521289, 3784380; 521289, 3784350; 521259, 3784350; 521259, 3784320; 521229, 3784320; 521199, 3784320; 521195, 3784320; 521185, 3784314; 521156, 3784289; 521153, 3784284; 521155, 3784280; 521152, 3784275; 521150, 3784267; 521144, 3784259; 521139, 3784249; 521124, 3784245; 521109, 3784236; 521109, 3784230; 521109, 3784200; 521139, 3784200; 521139, 3784170; 521139, 3784140; 521109, 3784140; 521109, 3784170; 521079, 3784170; 521049, 3784170; 521019, 3784170; 520989, 3784170; 520989, 3784140; 520959, 3784140; 520929, 3784140; 520899, 3784140; 520883, 3784131; 520869, 3784128; 520869, 3784110; 520839, 3784110; 520809, 3784110; 520809, 3784110; 520809, 3784080; 520779, 3784080; 520779, 3784050; 520749, 3784050; 520719, 3784050; 520712, 3784050; 520706, 3784046; 520689, 3784029; 520689, 3784020; 520679, 3784020; 520659, 3784003; 520659, 3783990; 520644, 3783990; 520629, 3783976; 520629, 3783960; 520609, 3783960; 520601, 3783954; 520577, 3783939; 520569, 3783934; 520569, 3783930; 520563, 3783930; 520550, 3783923; 520539, 3783920; 520539, 3783900; 520509, 3783900; 520509, 3783870; 520479, 3783870; 520449, 3783870; 520449, 3783840; 520419, 3783840; 520414, 3783840; 520402, 3783835; 520389, 3783826; 520389, 3783810; 520365, 3783810; 520357, 3783805; 520338, 3783793; 520329, 3783787; 520329, 3783780; 520322, 3783780; 520308, 3783765; 520307, 3783763; 520302, 3783758; 520300, 3783756; 520300, 3783756; 520299, 3783755; 520299, 3783750; 520293, 3783750; 520291, 3783748; 520274, 3783733; 520252, 3783711; 520223, 3783691; 520193, 3783657; 520165, 3783622; 520137, 3783600; 520111, 3783595; 520096, 3783595; 520079, 3783611; 520071, 3783630; 520074, 3783669; 520100, 3783717; 520129, 3783747; 520177, 3783775; 520227, 3783805; 520236, 3783810; 520209, 3783810; 520179, 3783810; 520179, 3783840; 520209, 3783840; 520239, 3783840; 520269, 3783840; 520282, 3783840; 520299, 3783855; 520299, 3783870; 520315, 3783870; 520320, 3783874; 520329, 3783880; 520329, 3783900; 520348, 3783900; 520349, 3783901; 520359, 3783908; 520359, 3783930; 520389, 3783930; 520391, 3783930; 520412, 3783942; 520419, 3783945; 520419, 3783960; 520419, 3783990; 520419, 3784020; 520449, 3784020; 520449, 3783990; 520449, 3783960; 520453, 3783960; 520479, 3783974; 520479, 3783990; 520505, 3783990; 520526, 3784004; 520539, 3784013; 520539, 3784020; 520549, 3784020; 520569, 3784034; 520569, 3784050; 520597, 3784050; 520600, 3784052; 520629, 3784069; 520629, 3784080; 520653, 3784080; 520659, 3784082; 520659, 3784110; 520659, 3784140; 520689, 3784140; 520689, 3784110; 520710, 3784110; 520717, 3784114; 520719, 3784116; 520719, 3784140; 520749, 3784140; 520753, 3784140; 520754, 3784141; 520777, 3784155; 520779, 3784155; 520779, 3784170; 520809, 3784170; 520813, 3784170; 520839, 3784182; 520839, 3784200; 520869, 3784200; 520869, 3784230; 520869, 3784260; 520869, 3784290; 520899, 3784290; 520929, 3784290; 520929, 3784260; 520953, 3784260; 520957, 3784264; 520959, 3784265; 520959, 3784290; 520989, 3784290; 521006, 3784290; 521006, 3784290; 521019, 3784298; 521019, 3784320; 521019, 3784350; 521049, 3784350; 521079, 3784350; 521079, 3784380; 521109, 3784380; 521139, 3784380; 521139, 3784410; 521169, 3784410; 521197, 3784410; 521199, 3784411; 521199, 3784440; 521169, 3784440; 521169, 3784470; 521169, 3784500; 521199, 3784500; 521229, 3784500; 521229, 3784470; 521259, 3784470; 521289, 3784470; 521289, 3784500; 521259, 3784500; 521259, 3784530; 521259, 3784560; 521259, 3784564; 521276, 3784574; 521301, 3784590; 521319, 3784590; 521319, 3784603; 521328, 3784609; 521331, 3784612; 521337, 3784615; 521343, 3784618; 521346, 3784620; 521349, 3784620; 521349, 3784621; 521350, 3784622; 521363, 3784627; 521368, 3784629; 521374, 3784631; 521381, 3784632; 521387, 3784633; 521390, 3784634; 521400, 3784635; 521404, 3784635; 521409, 3784635; 521409, 3784620; 520986, 3784179.

(ii) Note: Unit 10 for *Taraxacum californicum* is depicted on Map 4 in paragraph (11)(ii) of this entry.

(15) Unit 11 for *Taraxacum californicum* and *Poa atropurpurea:* Cienega Seca Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Onyx Peak. Land bounded by the following UTM NAD27 coordinates (E, N): 525801, 3782531; 525489, 3782961; 525489, 3782940; 525489, 3782910; 525519, 3782910; 525519, 3782880; 525519, 3782850; 525549, 3782850; 525549, 3782827; 525553, 3782820; 525579, 3782820; 525579, 3782790; 525609, 3782790; 525609, 3782760; 525639, 3782760; 525669, 3782760; 525699, 3782760; 525699, 3782730; 525729, 3782730; 525759, 3782730; 525759, 3782760; 525789, 3782760; 525789, 3782730; 525803, 3782730; 525816, 3782735; 525819, 3782735; 525819, 3782760; 525849, 3782760; 525849, 3782790; 525879, 3782790; 525909, 3782790; 525939, 3782790; 525939, 3782820; 525939, 3782850; 525969, 3782850; 525999, 3782850; 525999, 3782855; 526001, 3782855; 526008, 3782855; 526010, 3782854; 526026, 3782852; 526030, 3782851; 526037, 3782850; 526038, 3782849; 526043, 3782848; 526049, 3782845;

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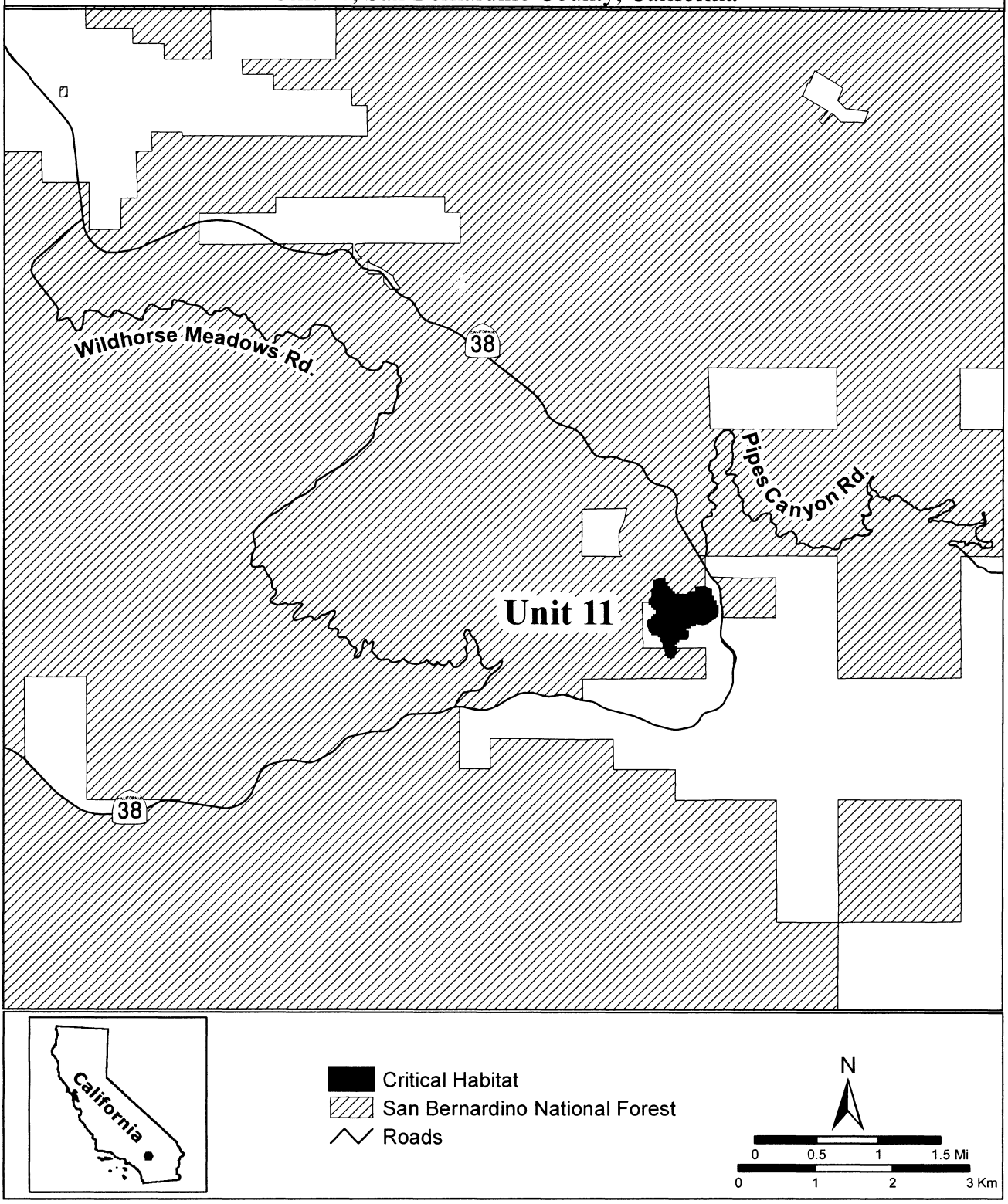
(ii) Note: Map of Unit 11 for *Taraxacum californicum* (Map 5) follows:

BILLING CODE 4310–55–P

Map 5
Critical Habitat for *Taraxacum californicum* (California taraxacum)
and *Poa atropurpurea* (San Bernardino bluegrass),
Unit 11, San Bernardino County, California



BILLING CODE 4310–55–C

(16) Unit 12: South Fork Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Moonridge. Land bounded by the following UTM NAD27 coordinates (E, N): 514285, 3775859; 514256, 3775878; 514234, 3775891; 514215, 3775891; 514206, 3775893; 514194, 3775933; 514194, 3775971; 514201, 3775992; 514203, 3775992; 514234, 3776002; 514260, 3776015; 514288, 3776030; 514301, 3776045; 514298, 3776087; 514316, 3776131; 514337, 3776179; 514377, 3776210; 514397, 3776207; 514406, 3776215; 514428, 3776246; 514447, 3776272; 514469, 3776342; 514479, 3776377; 514485, 3776392; 514494, 3776392; 514489, 3776412; 514495, 3776489; 514483, 3776577; 514469, 3776633; 514469, 3776716; 514448, 3776804; 514416, 3776866; 514410, 3776934; 514357, 3776975; 514321, 3777040; 514280, 3777087; 514261, 3777109; 514255, 3777108; 514239, 3777118; 514229, 3777134; 514214, 3777153; 514204, 3777175; 514191, 3777200; 514172, 3777216; 514147, 3777229; 514139, 3777237; 514134, 3777242; 514137, 3777270; 514163, 3777305; 514169, 3777324; 514176, 3777353; 514198, 3777381; 514204, 3777413; 514204, 3777448; 514204, 3777473; 514137, 3777515; 514090, 3777521; 514087, 3777521; 514055, 3777521; 514010, 3777531; 513975, 3777556; 513956, 3777585; 513931, 3777635; 513918, 3777674; 513883, 3777743; 513852, 3777762; 513817, 3777797; 513801, 3777820; 513810, 3777848; 513829, 3777861; 513858, 3777877; 513871, 3777902; 513877, 3777908; 513925, 3777902; 513944, 3777915; 513945, 3777913; 513947, 3777915; 513975, 3777928; 514008, 3777938; 514063, 3777951; 514076, 3777947; 514080, 3777959; 514093, 3777972; 514099, 3778013; 514112, 3778016; 514122, 3777985; 514122, 3777956; 514131, 3777934; 514137, 3777918; 514141, 3777893; 514150, 3777854; 514150, 3777823; 514150, 3777797; 514150, 3777759; 514141, 3777731; 514134, 3777702; 514139, 3777681; 514152, 3777678; 514177, 3777666; 514185, 3777630; 514190, 3777594; 514195, 3777585; 514207, 3777553; 514229, 3777518; 514255, 3777483; 514268, 3777454; 514280, 3777423; 514283, 3777388; 514306, 3777346; 514325, 3777299; 514353, 3777264; 514369, 3777239; 514379, 3777207; 514385, 3777178; 514388, 3777161; 514392, 3777152; 514439, 3777087; 514469, 3777048; 514522, 3776992; 514584, 3776910; 514589, 3776842; 514595, 3776772; 514634, 3776660; 514631, 3776574; 514642, 3776512; 514645, 3776451; 514672, 3776380; 514671, 3776375; 514731, 3776327; 514781, 3776230; 514834, 3776138; 514854, 3776094; 514853, 3776077; 514848, 3776039; 514846, 3776032; 514796, 3776029; 514772, 3776029; 514742, 3776035; 514715, 3776046; 514698, 3776065; 514681, 3776075; 514675, 3776087; 514653, 3776103; 514637, 3776106; 514616, 3776079; 514610, 3776058; 514590, 3776033; 514589, 3776018; 514580, 3776005; 514571, 3775974; 514538, 3775945; 514509, 3775926; 514476, 3775916; 514438, 3775898; 514405, 3775889; 514392, 3775878; 514372, 3775876; 514368, 3775869; 514352, 3775859; 514350, 3775858; 514287, 3775858; 514285, 3775859; 514285, 3775859.

(ii) *Note:* Map of Unit 12 for *Taraxacum californicum* is depicted on Map 4 in paragraph (11)(ii) of this entry.

* * * * *

Family Poaceae: *Poa atropurpurea* (San Bernardino bluegrass)

(1) Critical habitat units for this species are found in San Diego and San Bernardino counties, California.

(2) The primary constituent elements of critical habitat for *Poa atropurpurea* are:

(i) Wet meadows subject to flooding during wet years in the San Bernardino Mountains in San Bernardino County at elevations of 6, 700 to 8,100 feet (2, 000 to 2,469 meters), and in the Laguna and Palomar Mountains of San Diego County at elevations of 6,000 to 7,500 feet (1,800 to 2,300 meters), that provide space for individual and population growth, reproduction, and dispersal; and

(ii) Well-drained, loamy alluvial to sandy loam soils occurring in the wet meadow system, with a 0 to 16 percent slope, to provide water, air, minerals, and other nutritional or physiological requirements to the species.

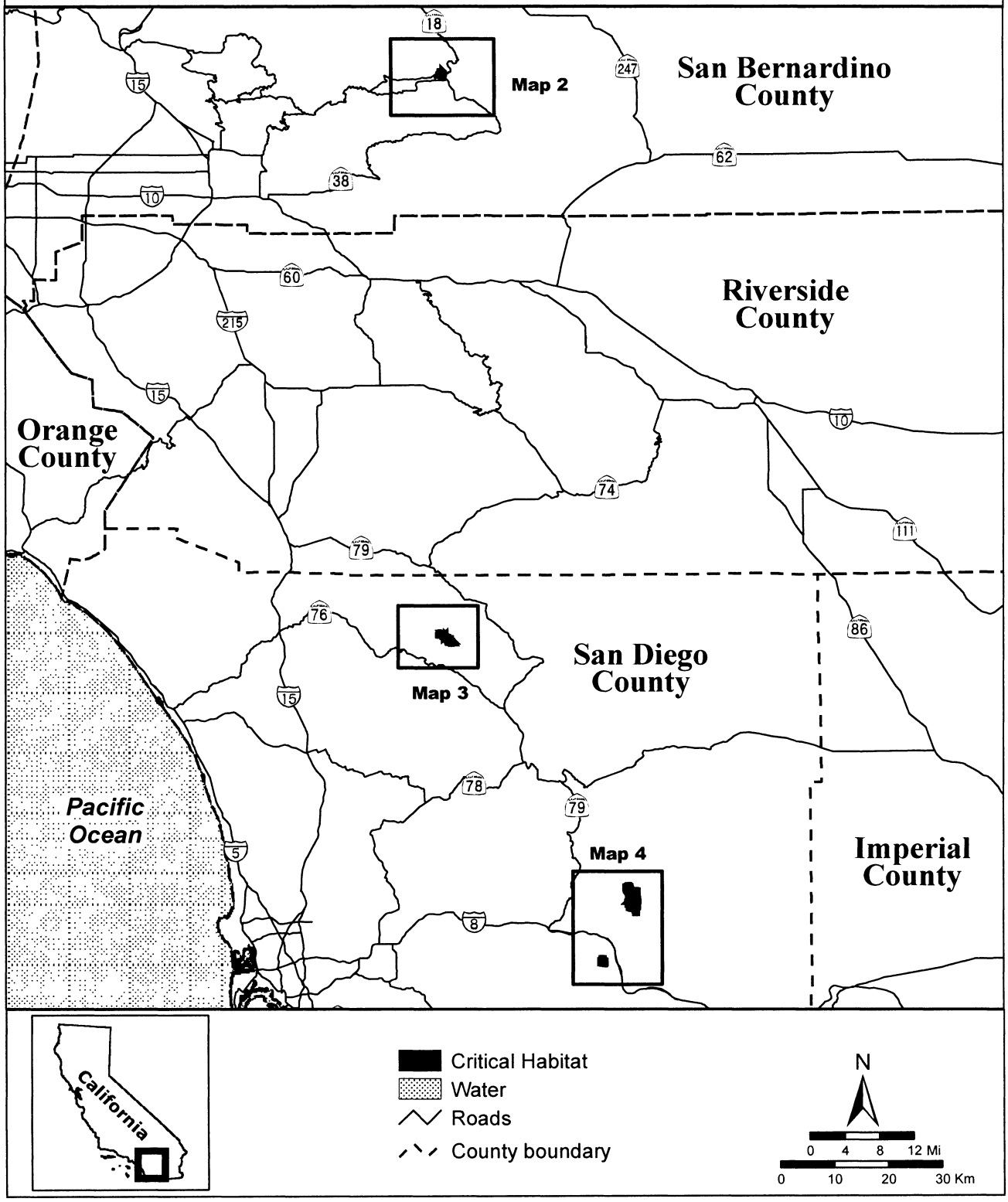
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Data layers defining map units were created on a base of USGS 1:24, 0000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) *Note:* Index map of critical habitat units for Family Poaceae: *Poa atropurpurea* (San Bernardino bluegrass) (Map 1) follows:

BILLING CODE 4310–55–P

Map 1: Index
Critical Habitat for *Poa atropurpurea* (San Bernardino bluegrass),
San Bernardino and San Diego Counties, California

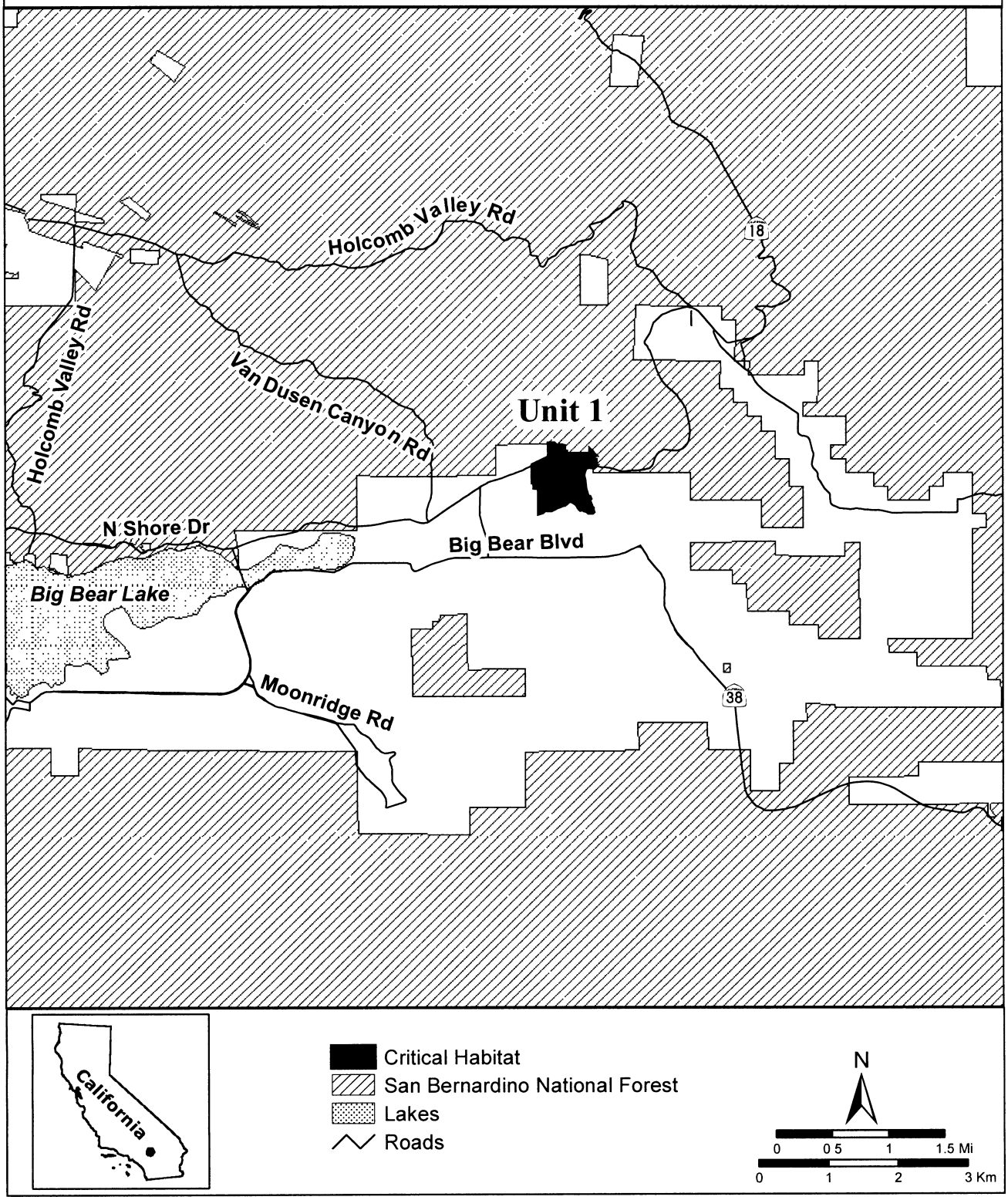


(6) Unit 1: Pan Hot Springs Meadow, San Bernardino County, California.

(i) From USGS 1:24:000 quadrangle map Big Bear City. Land bounded by the following UTM NAD27 coordinates (E, N): 515298, 3792133; 515169, 3792570; 515212, 3792570; 515239, 3792570; 515242, 3792563; 515250, 3792549; 515255, 3792547; 515271, 3792542; 515292, 3792542; 515328, 3792542; 515330, 3792542; 515336, 3792542; 515343, 3792541; 515345, 3792541; 515349, 3792541; 515349, 3792540; 515352, 3792540; 515379, 3792536; 515379, 3792450; 515409, 3792450; 515409, 3792420; 515559, 3792420; 515559, 3792390; 515619, 3792390; 515619, 3792420; 515769, 3792420; 515769, 3792460; 515770, 3792459; 515775, 3792455; 515780, 3792451; 515785, 3792446; 515789, 3792441; 515790, 3792439; 515804, 3792420; 515799, 3792420; 515799, 3792374; 515799, 3792360; 515799, 3792330; 515817, 3792330; 515829, 3792330; 515829, 3792300; 515817, 3792300; 515729, 3792300; 515721, 3792272; 515720, 3792270; 515799, 3792270; 515799, 3792240; 515816, 3792240; 515815, 3792240; 515813, 3792233; 515812, 3792230; 515767, 3792244; 515699, 3792237; 515686, 3792218; 515672, 3792201; 515660, 3792166; 515653, 3792121; 515654, 3792091; 515664, 3792042; 515671, 3791995; 515682, 3791931; 515691, 3791884; 515710, 3791819; 515723, 3791785; 515747, 3791787; 515750, 3791780; 515732, 3791762; 515734, 3791755; 515757, 3791692; 515779, 3791640; 515788, 3791635; 515788, 3791600; 515792, 3791583; 515788, 3791581; 515740, 3791576; 515709, 3791604; 515676, 3791607; 515653, 3791627; 515618, 3791619; 515609, 3791630; 515592, 3791652; 515584, 3791675; 515565, 3791697; 515523, 3791728; 515491, 3791746; 515458, 3791746; 515432, 3791727; 515411, 3791713; 515387, 3791695; 515374, 3791690; 515346, 3791680; 515318, 3791670; 515283, 3791654; 515237, 3791630; 515203, 3791617; 515177, 3791613; 515142, 3791615; 515117, 3791621; 515091, 3791602; 515067, 3791586; 515034, 3791573; 515030, 3791936; 514966, 3791942; 514967, 3792008; 514940, 3792012; 514940, 3792261; 515178, 3792375; 515169, 3792570; 515298, 3792133.

(ii) Note: Map of Unit 1 for *Poa atropupurea* (Map 2) follows:

Map 2
Critical Habitat for *Poa atropurpurea* (San Bernardino bluegrass),
Unit 1, San Bernardino County, California



BILLING CODE 4310–55–C

(7) Unit 2: North Baldwin Meadow, San Bernardino County, California. The legal description and map of Unit 2 for *Poa atropurpurea* are in paragraphs (6)(i) and (6)(ii), respectively, of the entry for Family Asteraceae: *Taraxacum californicum* (California taraxacum) in this section.

(8) Unit 3: Belleville Meadow, San Bernardino County, California. The legal description and map of Unit 3 for *Poa atropurpurea* are in paragraphs (7)(i) and (6)(ii), respectively, of the entry for Family Asteraceae: *Taraxacum californicum* (California taraxacum) in this section.

(9) Unit 4: Hitchcock Meadow, San Bernardino County, California. The legal description and map of Unit 4 for *Poa atropurpurea* are in paragraphs (8)(i) and (6)(ii), respectively, of the entry for Family Asteraceae: *Taraxacum californicum* (California taraxacum) in this section.

(10) Unit 5: Bluff Meadow, San Bernardino County, California. The legal description and map of Unit 5 for *Poa atropurpurea* are in paragraphs (9)(i) and (6)(ii), respectively, of the entry for Family Asteraceae: *Taraxacum californicum* (California taraxacum) in this section.

(11) Unit 11: Cienega Seca Meadow, San Bernardino County, California. The legal description and map of Unit 11 for *Poa atropurpurea* are in paragraphs (15)(i) and (11)(ii), respectively, of the entry for Family Asteraceae: *Taraxacum californicum* (California taraxacum) in this section.

(12) Unit 13: Mendenhall Valley, San Diego County, California.

(i) From USGS 1:24:000 quadrangle map Palomar Observatory. Land bounded by the following UTM NAD27 coordinates (E, N): 549685, 3640036; 549692, 3640037; 549698, 3640037; 549699, 3640037; 549699, 3640020; 549729, 3640020; 549729, 3640037; 549736, 3640037; 549773, 3640058; 549778, 3640060; 549784, 3640063; 549790, 3640065; 549793, 3640066; 549836, 3640080; 549870, 3640094; 549883, 3640110; 549969, 3640110; 549969, 3640140; 549999, 3640140; 549999, 3640170; 549969, 3640170; 549969, 3640191; 549974, 3640193; 549981, 3640195; 549987, 3640197; 549993, 3640198; 550000, 3640198; 550006, 3640199; 550013, 3640198; 550013, 3640198; 550059, 3640195; 550059, 3640170; 550029, 3640170; 550029, 3640080; 550059, 3640080; 550059, 3640050; 550089, 3640050; 550089, 3640020; 550059, 3640020; 550059, 3639990; 550089, 3639990; 550089, 3639960; 550149, 3639960; 550149, 3639990; 550263, 3639990; 550268, 3639971; 550270, 3639950; 550270, 3639923; 550272, 3639920; 550271, 3639915; 550268, 3639883; 550268, 3639854; 550268, 3639848; 550267, 3639841; 550266, 3639835; 550265, 3639828; 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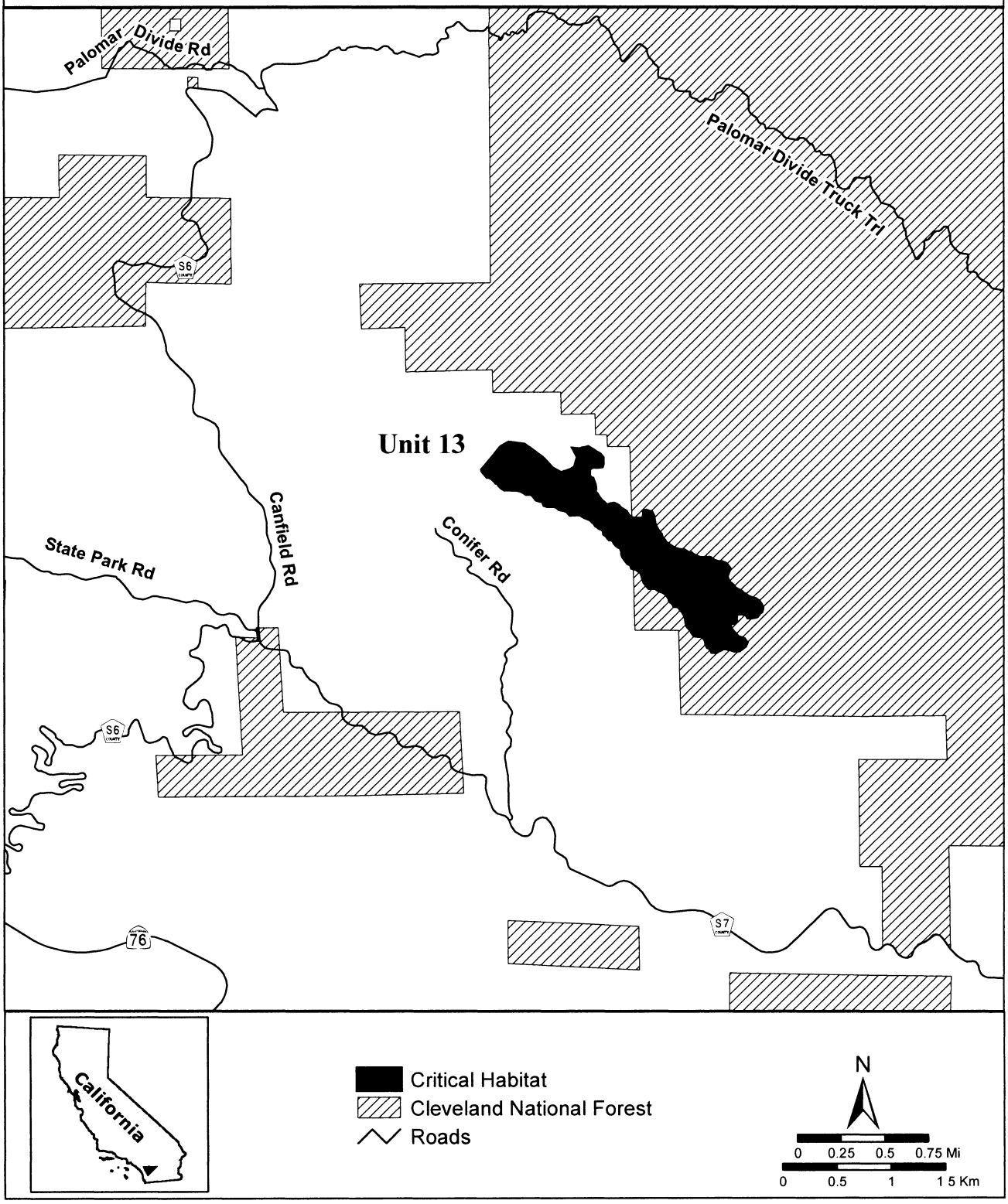
(ii) Note: Map of Unit 13 for *Poa atropurpurea* (Map 3) follows:

BILLING CODE 4310–55–P

Map 3
Critical Habitat for *Poa atropurpurea* (San Bernardino bluegrass),
Unit 13, San Diego County, California



BILLING CODE 4310–55–C

(13) Unit 14: Laguna Meadow, San Diego County, California.

(i) From USGS 1:24:000 quadrangle maps Monument Peak and Mount Laguna. Land bounded by the following UTM NAD27 coordinates (E, N):
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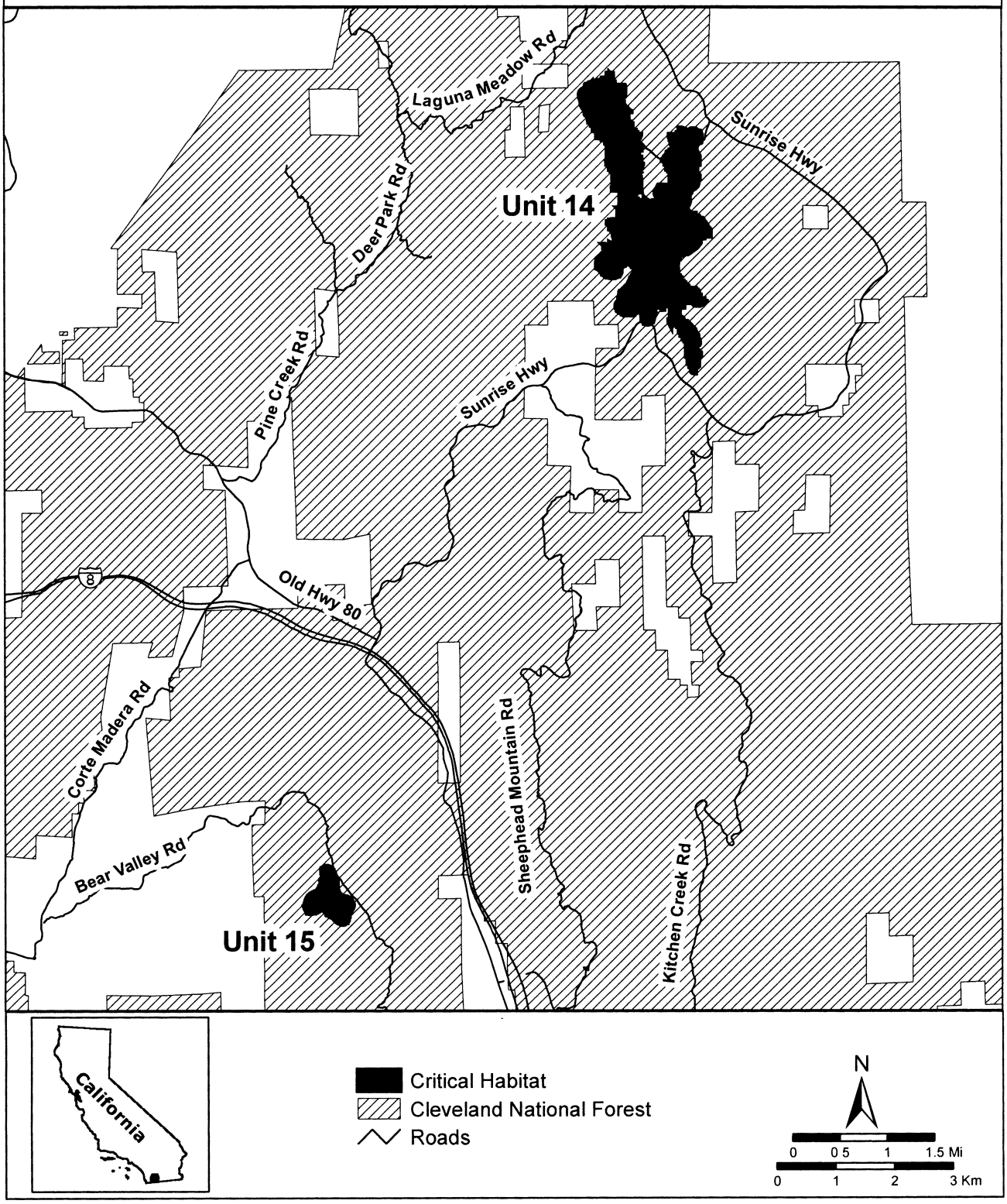
(ii) Note: Map of Units 14 and 15 for *Poa atropurpurea* (Map 4) follows:

BILLING CODE 4310–55–P

Map 4
Critical Habitat for *Poa atropurpurea* (San Bernardino bluegrass),
Units 14 and 15, San Diego County, California



BILLING CODE 4310–55–C

(14) Unit 15: Bear Valley, San Diego County, California.

(i) From USGS 1:24:000 quadrangle map Descanso. Land bounded by the following UTM NAD27 coordinates (E, N): 545174, 3625878; 545395, 3626051; 545402, 3626040; 545449, 3626040; 545450, 3626040; 545471, 3626038; 545491, 3626033; 545510, 3626024; 545527, 3626012; 545542, 3625997; 545544, 3625994; 545566, 3625966; 545576, 3625952; 545585, 3625933; 545590, 3625913; 545592, 3625892; 545590, 3625871; 545585, 3625851; 545576, 3625832; 545572, 3625827; 545553, 3625797; 545549, 3625791; 545541, 3625780; 545525, 3625765; 545524, 3625759; 545520, 3625750; 545518, 3625735; 545513, 3625714; 545511, 3625710; 545515, 3625703; 545517, 3625692; 545516, 3625687; 545516, 3625684; 545514, 3625677; 545505, 3625643; 545505, 3625643; 545503, 3625636; 545501, 3625630; 545498, 3625624; 545495, 3625619; 545492, 3625613; 545488, 3625608; 545484, 3625603; 545479, 3625598; 545474, 3625593; 545469, 3625589; 545464, 3625585; 545459, 3625582; 545453, 3625579; 545447, 3625576; 545441, 3625574; 545434, 3625572; 545428, 3625570; 545422, 3625569; 545415, 3625569; 545409, 3625569; 545402, 3625569; 545395, 3625569; 545389, 3625570; 545383, 3625572; 545376, 3625574; 545370, 3625576; 545370, 3625576; 545342, 3625588; 545337, 3625590; 545331, 3625594; 545325, 3625597; 545320, 3625601; 545315, 3625605; 545312, 3625608; 545268, 3625649; 545266, 3625651; 545244, 3625673; 545210, 3625692; 545208, 3625693; 545204, 3625696; 545164, 3625721; 545163, 3625722; 545158, 3625726; 545153, 3625730; 545148, 3625734; 545144, 3625739; 545139, 3625744; 545136, 3625748; 545111, 3625785; 545110, 3625786; 545107, 3625792; 545104, 3625798; 545101, 3625804; 545099, 3625810; 545097, 3625816; 545096, 3625819; 545095, 3625820; 545090, 3625825; 545065, 3625849; 545064, 3625847; 545060, 3625841; 545056, 3625836; 545052, 3625832; 545036, 3625816; 545035, 3625815; 545030, 3625811; 545025, 3625806; 545020, 3625803; 545015, 3625800; 544993, 3625787; 544992, 3625786; 544986, 3625783; 544980, 3625780; 544974, 3625778; 544969, 3625776; 544939, 3625768; 544938, 3625768; 544931, 3625766; 544929, 3625766; 544897, 3625760; 544892, 3625759; 544886, 3625759; 544881, 3625759; 544840, 3625758; 544838, 3625758; 544832, 3625758; 544825, 3625759; 544819, 3625760; 544815, 3625761; 544810, 3625762; 544809, 3625763; 544809, 3625800; 544783, 3625800; 544773, 3625818; 544766, 3625838; 544764, 3625842; 544763, 3625846; 544759, 3625860; 544761, 3625860; 544758, 3625878; 544758, 3625897; 544763, 3625920; 544764, 3625924; 544772, 3625943; 544787, 3626000; 544791, 3626010; 544799, 3626029; 544811, 3626046; 544824, 3626059; 544861, 3626092; 544896, 3626114; 544938, 3626131; 544942, 3626132; 544962, 3626137; 544982, 3626139; 544983, 3626152; 544988, 3626169; 544997, 3626196; 545013, 3626228; 545034, 3626257; 545040, 3626277; 545041, 3626288; 545040, 3626291; 545037, 3626300; 545036, 3626304; 545032, 3626320; 545031, 3626328; 545061, 3626365; 545068, 3626378; 545068, 3626388; 545059, 3626412; 545057, 3626416; 545055, 3626422; 545054, 3626429; 545053, 3626435; 545052, 3626442; 545052, 3626444; 545050, 3626499; 545049, 3626504; 545050, 3626510; 545050, 3626517; 545051, 3626523; 545052, 3626526; 545054, 3626534; 545065, 3626541; 545084, 3626550; 545103, 3626556; 545118, 3626558; 545138, 3626560; 545159, 3626558; 545179, 3626553; 545198, 3626544; 545216, 3626532; 545230, 3626517; 545232, 3626515; 545242, 3626502; 545244, 3626500; 545246, 3626497; 545253, 3626485; 545263, 3626469; 545275, 3626441; 545277, 3626434; 545291, 3626394; 545294, 3626385; 545311, 3626318; 545314, 3626296; 545317, 3626246; 545317, 3626232; 545316, 3626205; 545317, 3626172; 545319, 3626169; 545324, 3626161; 545333, 3626143; 545339, 3626122; 545339, 3626120; 545342, 3626099; 545343, 3626099; 545374, 3626074; 545395, 3626051; 545174, 3625878.

(ii) Note: Unit 15 for *Poa atropurpurea* is depicted on Map 4 in paragraph (13)(ii) of this entry.

* * * * *

Dated: July 25, 2007.

Todd Willens,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07–3836 Filed 8–6–07; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
August 7, 2007

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2008; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1551–F]

RIN 0938–AO63

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2008

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

ACTION: Final rule.

SUMMARY: This final rule will update the prospective payment rates for inpatient rehabilitation facilities (IRFs) for Federal fiscal year (FY) 2008 (for discharges occurring on or after October 1, 2007 and on or before September 30, 2008) as required under section 1886(j)(3)(C) of the Social Security Act (the Act). Section 1886(j)(5) of the Act requires the Secretary to publish in the **Federal Register** on or before the August 1 that precedes the start of each fiscal year, the classification and weighting factors for the IRF prospective payment system's (PPS) case-mix groups and a description of the methodology and data used in computing the prospective payment rates for that fiscal year.

We are revising existing policies regarding the PPS within the authority granted under section 1886(j) of the Act.

DATES: The regulatory changes to 42 CFR part 412 are effective October 1, 2007. The updated IRF prospective payment rates are applicable for discharges on or after October 1, 2007 and on or before September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Pete Diaz, (410) 786–1235, for information regarding the 75 percent rule.

Susanne Seagrave, (410) 786–0044, for information regarding the payment policies.

Zinnia Ng, (410) 786–4587, for information regarding the wage index and prospective payment rate calculation.

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Regulation Text

Addendum

Acronyms

Because of the many terms to which we refer by acronym in this final rule, we are listing the acronyms used and their corresponding terms in alphabetical order below.

ASCA Administrative Simplification Compliance Act of 2002, Pub. L. 107–105
BBA Balanced Budget Act of 1997, Pub. L. 105–33
BBRA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, Pub. L. 106–113
BIPA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Benefits Improvement and Protection Act of 2000, Pub. L. 106–554
CBSA Core-Based Statistical Area
CCR Cost-to-Charge Ratio
CFR Code of Federal Regulations
CMG Case-Mix Group
DRA Deficit Reduction Act of 2005, Pub. L. 109–171
DSH Disproportionate Share Hospital
ECI Employment Cost Indexes
FI Fiscal Intermediary
FR Federal Register
FY Federal Fiscal Year
HHH Hubert H. Humphrey Building
HIPAA Health Insurance Portability and Accountability Act, Pub. L. 104–191
IFMC Iowa Foundation for Medical Care
IOM Internet-Only Manual
IPPS Inpatient Prospective Payment System
IRF Inpatient Rehabilitation Facility
IRF–PAI Inpatient Rehabilitation Facility-Patient Assessment Instrument
IRF PPS Inpatient Rehabilitation Facility Prospective Payment System
IRVEN Inpatient Rehabilitation Validation and Entry
LIP Low-Income Percentage
MEDPAR Medicare Provider Analysis and Review
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173)
MSA Metropolitan Statistical Area
NAICS North American Industrial Classification System
OMB Office of Management and Budget
PAI Patient Assessment Instrument
PPS Prospective Payment System
RAND RAND Corporation
RAC Recovery Audit Contractor
RFA Regulatory Flexibility Act, Pub. L. 96–354
RIA Regulation Impact Analysis
RIC Rehabilitation Impairment Category
RPL Rehabilitation, Psychiatric, and Long-Term Care Hospital Market Basket
SCHIP State Children's Health Insurance Program
SIC Standard Industrial Code
TEFRA Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248

I. Background

A. Historical Overview of the Inpatient Rehabilitation Facility Prospective Payment System (IRF PPS) for Fiscal Years (FYs) 2002 Through 2007

Section 4421 of the Balanced Budget Act of 1997 (BBA, Pub. L. 105–33), as amended by section 125 of the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 (BBRA, Pub. L. 106–113), and by section 305 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA, Pub. L. 106–554), provides for the implementation of a per discharge prospective payment system (PPS), through section 1886(j) of the Social Security Act (the Act), for inpatient rehabilitation hospitals and inpatient rehabilitation units of a hospital (hereinafter referred to as IRFs).

Payments under the IRF PPS encompass inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs) but not costs of approved educational activities, bad debts, and other services or items outside the scope of the IRF PPS. Although a complete discussion of the IRF PPS provisions appears in the August 7, 2001 final rule (66 FR 41316) as revised in the FY 2006 IRF PPS final rule (70 FR 47880, August 15, 2005), we are providing below a general

description of the IRF PPS for fiscal years (FYs) 2002 through 2005.

Under the IRF PPS from FY 2002 through FY 2005, as described in the August 7, 2001 final rule, the Federal prospective payment rates were computed across 100 distinct case-mix groups (CMGs). We constructed 95 CMGs using rehabilitation impairment categories (RICs), functional status (both motor and cognitive), and age (in some cases, cognitive status and age may not be a factor in defining a CMG). In addition, we constructed five special CMGs to account for very short stays and for patients who expire in the IRF.

For each of the CMGs, we developed relative weighting factors to account for a patient's clinical characteristics and expected resource needs. Thus, the weighting factors accounted for the relative difference in resource use across all CMGs. Within each CMG, we created tiers based on the estimated effects that certain comorbidities would have on resource use.

We established the Federal PPS rates using a standardized payment conversion factor (formerly referred to as the budget neutral conversion factor). For a detailed discussion of the budget neutral conversion factor, please refer to our August 1, 2003 final rule (68 FR 45674, 45684 through 45685). In the FY 2006 IRF PPS final rule, we discussed in detail the methodology for determining the standard payment conversion factor.

We applied the relative weighting factors to the standard payment conversion factor to compute the unadjusted Federal prospective payment rates. Under the IRF PPS from FYs 2002 through 2005, we then applied adjustments for geographic variations in wages (wage index), the percentage of low-income patients, and location in a rural area (if applicable) to the IRF's unadjusted Federal prospective payment rates. In addition, we made adjustments to account for short-stay transfer cases, interrupted stays, and high cost outliers.

For cost reporting periods that began on or after January 1, 2002 and before October 1, 2002, we determined the final prospective payment amounts using the transition methodology prescribed in section 1886(j)(1) of the Act. Under this provision, IRFs transitioning into the PPS were paid a blend of the Federal IRF PPS rate and the payment that the IRF would have received had the IRF PPS not been implemented. This provision also allowed IRFs to elect to bypass this blended payment and immediately be paid 100 percent of the Federal IRF PPS rate. The transition methodology expired as of cost reporting periods beginning on or after October 1, 2002 (FY 2003), and payments for all IRFs now consist of 100 percent of the Federal IRF PPS rate.

We established a CMS Web site as a primary information resource for the IRF PPS. The Web site URL is *http://www.cms.hhs.gov/InpatientRehabFacPPS/* and may be accessed to download or view publications, software, data specifications, educational materials, and other information pertinent to the IRF PPS.

Section 1886(j) of the Act confers broad statutory authority to propose refinements to the IRF PPS. We finalized the refinements described in this section in the FY 2006 IRF PPS final rule. The provisions of the FY 2006 IRF PPS final rule became effective for discharges beginning on or after October 1, 2005. We published correcting amendments to the FY 2006 IRF PPS final rule in the **Federal Register** on September 30, 2005 (70 FR 57166). Any reference to the FY 2006 IRF PPS final rule in this final rule also includes the provisions effective in the correcting amendments.

In the FY 2006 final rule (70 FR 47880 and 70 FR 57166), we finalized a number of refinements to the IRF PPS case-mix classification system (the CMGs and the corresponding relative weights) and the case-level and facility-level adjustments. These refinements were based on analyses by the RAND Corporation (RAND), a non-partisan economic and social policy research group, using calendar year 2002 and FY 2003 data. These were the first significant refinements to the IRF PPS since its implementation. In conducting the analysis, RAND used claims and clinical data for services furnished after the IRF PPS implementation. These newer data sets were more complete, and reflected improved coding of comorbidities and patient severity by IRFs. The researchers were able to use new data sources for imputing missing values and more advanced statistical approaches to complete their analyses. The RAND reports supporting the refinements made to the IRF PPS are available on the CMS Web site at: *http://www.cms.hhs.gov/InpatientRehabFacPPS/09_Research.asp.*

The final key policy changes, effective for discharges occurring on or after October 1, 2005, are discussed in detail in the FY 2006 IRF PPS final rule (70 FR 47880 and 70 FR 57166). The following is a brief summary of the key policy changes:

- Adopted the Office of Management and Budget's (OMB's) Core-Based Statistical Area (CBSA) market area definitions in a budget neutral manner.
- Implemented a budget-neutral 3-year hold harmless policy for IRFs that had been classified as rural in FY 2005, but became urban in FY 2006.
- Implemented a payment adjustment to account for changes in coding that did not reflect real changes in case mix. We reduced the standard payment amount by 1.9 percent to account for such changes in coding following implementation of the IRF PPS.
- Modified the CMGs, tier comorbidities, and relative weights in a budget-neutral manner. The five special CMGs remained the same as they had been before FY 2006 and continued to account for very short stays and for patients who expire in the IRF.
- Implemented a teaching status adjustment in a budget neutral manner for IRFs, similar to the one adopted for inpatient psychiatric facilities.
- Revised and rebased the market basket and labor-related share to reflect the operating and capital cost structures for rehabilitation, psychiatric, and long-term care (RPL) hospitals to update IRF payment rates.
- Updated the rural adjustment from 19.14 percent to 21.3 percent in a budget neutral manner.
- Updated the low-income percentage (LIP) adjustment from an exponent of 0.484 to an exponent of 0.6229 in a budget neutral manner.
- Updated the outlier threshold amount from $11,211 to $5,129.

As noted above, a detailed discussion of the final key policy changes for FY 2006 appears in the FY 2006 IRF PPS final rule (70 FR 47880 and 70 FR 57166).

In the FY 2007 final rule (71 FR 48354) we made the following revisions and updates:

- Updated the relative weight and average length of stay tables based on re-analysis of the data by CMS and our contractor, the RAND Corporation.
- Reduced the standard payment amount by 2.6 percent to account more fully for coding changes that do not reflect real changes in case mix.
- Updated the IRF PPS payment rates by the FY 2007 estimates of the market basket and the labor-related share.
- Updated the IRF PPS payment rates by the FY 2007 wage indexes.
- Applied the second year of the hold harmless policy in a budget neutral manner.
- Updated the outlier threshold from $5,129 to $5,534.
- Updated the urban and rural national cost-to-charge ratio ceilings for

the purposes of determining outlier payments under the IRF PPS and clarified the methodology described in the regulations text.

• Revised the regulation text in § 412.23(b)(2)(i) and § 412.23(b)(2)(ii) to reflect the statutory changes in section 5005 of the Deficit Reduction Act of 2005 (DRA, Pub. L. 109–171). The regulation text change prolongs the overall duration of the phased transition to the full 75 percent threshold established in § 412.23(b)(2)(i) and § 412.23(b)(2)(ii), by extending the transition's 60 percent phase for an additional 12 months. In addition to the above DRA requirements pertaining to the applicable compliance percentage requirements under § 412.23(b)(2), we also permitted a comorbidity that meets the criteria as specified in § 412.23(b)(2)(i) to continue to be used before the 75 percent compliance threshold must be met.

B. Requirements for Updating the IRF PPS Rates

On August 7, 2001, we published a final rule titled ''Medicare Program; Prospective Payment System for Inpatient Rehabilitation Facilities'' in the **Federal Register** (66 FR 41316) that established a PPS for IRFs as authorized under section 1886(j) of the Act and codified at subpart P of part 412 of the Medicare regulations. In the August 7, 2001 final rule, we set forth the per discharge Federal prospective payment rates for FY 2002, which provided payment for inpatient operating and capital costs of furnishing covered rehabilitation services (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 IRF PPS. The provisions of the August 7, 2001 final rule were effective for cost reporting periods beginning on or after January 1, 2002. On July 1, 2002, we published a correcting amendment to the August 7, 2001 final rule in the **Federal Register** (67 FR 44073). Any references to the August 7, 2001 final rule in this final rule include the provisions effective in the correcting amendment.

Section 1886(j)(5) of the Act and § 412.628 of the regulations require the Secretary to publish in the **Federal Register**, on or before the August 1 that precedes the start of each new FY, the classifications and weighting factors for the IRF CMGs and a description of the methodology and data used in computing the prospective payment rates for the upcoming FY. On August 1, 2002, we published a notice in the **Federal Register** (67 FR at 49928) to update the IRF Federal prospective payment rates from FY 2002 to FY 2003 using the methodology as described in § 412.624. As stated in the August 1, 2002 notice, we used the same classifications and weighting factors for the IRF CMGs that were set forth in the August 7, 2001 final rule to update the IRF Federal prospective payment rates from FY 2002 to FY 2003. We continued to update the prospective payment rates in accordance with the methodology set forth in the August 7, 2001 final rule for each succeeding FY up to and including FY 2005. For FY 2006, however, we published a final rule that revised several IRF PPS policies (70 FR 47880). The provisions of the FY 2006 IRF PPS final rule became effective for discharges occurring on or after October 1, 2005. We published correcting amendments to the FY 2006 IRF PPS final rule in the **Federal Register** (70 FR 57166). Any reference to the FY 2006 IRF PPS final rule in this final rule includes the provisions effective in the correcting amendments.

In the final rule for FY 2007, we updated the IRF Federal prospective payment rates. In addition, we updated the cost-to-charge ratio ceilings and the outlier threshold. We implemented a 2.6 percent reduction to the FY 2007 standard payment amount to account more fully for changes in coding practices that do not reflect real changes in case mix. We revised the tier comorbidities and the relative weights to ensure that IRF PPS payments reflect, as closely as possible, the costs of caring for patients in IRFs. The final FY 2007 Federal prospective payment rates were effective for discharges occurring on or after October 1, 2006 and on or before September 30, 2007.

C. Operational Overview of the Current IRF PPS

As described in the August 7, 2001 final rule, upon the admission and discharge of a Medicare Part A fee-for-service patient, the IRF is required to complete the appropriate sections of a patient assessment instrument, the Inpatient Rehabilitation Facility-Patient Assessment Instrument (IRF–PAI). All required data must be electronically encoded into the IRF–PAI software product. Generally, the software product includes patient grouping programming called the GROUPER software. The GROUPER software uses specific Patient Assessment Instrument (PAI) data elements to classify (or group) patients into distinct CMGs and account for the existence of any relevant comorbidities.

The GROUPER software produces a five-digit CMG number. The first digit is an alpha-character that indicates the comorbidity tier. The last four digits represent the distinct CMG number. (Free downloads of the Inpatient Rehabilitation Validation and Entry (IRVEN) software product, including the GROUPER software, are available on the CMS Web site at *http://www.cms.hhs.gov/InpatientRehabFacPPS/06_Software.asp).*

Once a patient is discharged, the IRF completes the Medicare claim (UB–92 or its equivalent) using the five-digit CMG number and sends it to the appropriate Medicare fiscal intermediary (FI). Claims submitted to Medicare must comply with both the Administrative Simplification Compliance Act (ASCA, Pub. L. 107–105), and the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Pub. L. 104–191). Section 3 of the ASCA amends section 1862(a) of the Act by adding paragraph (22) which requires the Medicare program, subject to section 1862(h) of the Act, to deny payment under Part A or Part B for any expenses for items or services ''for which a claim is submitted other than in an electronic form specified by the Secretary.'' Section 1862(h) of the Act, in turn, provides that the Secretary shall waive such denial in two types of cases and may also waive such denial ''in such unusual cases as the Secretary finds appropriate.'' See also the final rule on Electronic Submission of Medicare Claims (70 FR 71008, November 25, 2005). Section 3 of the ASCA operates in the context of the administrative simplification provisions of HIPAA, which include, among others, the requirements for transaction standards and code sets codified as 45 CFR parts 160 and 162, subparts A and I through R (generally known as the Transactions Rule). The Transactions Rule requires covered entities, including covered providers, to conduct covered electronic transactions according to the applicable transaction standards. (See the program claim memoranda issued and published by CMS at: *http://www.cms.hhs.gov/ElectronicBillingEDITrans/* and the Internet-Only Manual (IOM) at Pub. 100–04 published by CMS at: *http://www.cms.hhs.gov/Manuals/IOM/list.asp*). Instructions for the limited number of claims submitted to Medicare on paper are published by CMS at: *http://www.cms.hhs.gov/manuals/downloads/clm104c25.pdf.*

The Medicare FI processes the claim through its software system. This software system includes pricing programming called the PRICER software. The PRICER software uses the CMG number, along with other specific

claim data elements and provider-specific data, to adjust the IRF's prospective payment for interrupted stays, transfers, short stays, and deaths, and then applies the applicable adjustments to account for the IRF's wage index, percentage of low-income patients, rural location, and outlier payments. For discharges occurring on or after October 1, 2005, the IRF PPS payment also reflects the new teaching status adjustment that became effective as of FY 2006, as discussed in the FY 2006 IRF PPS final rule (70 FR 47880).

II. Provisions of the Proposed Regulation

As discussed in the FY 2008 IRF PPS proposed rule (72 FR 26230), we proposed to make revisions to the regulation text in order to implement policy changes for IRFs for FY 2008 and subsequent fiscal years. Specifically, we proposed to make conforming changes in 42 CFR part 412. We discuss these proposed revisions and others in detail below.

A. Section 412.624 Methodology for Calculating the Federal Prospective Payment Rates

We proposed to revise the current regulations text in paragraph (f)(2)(v) to clarify that we determine whether a high-cost outlier payment would be applicable for transfer cases. We emphasize that this is not a change to our current methodology for determining whether a high-cost outlier payment applies to transfer cases.

B. Additional Proposed Changes

- Update the FY 2008 IRF PPS payment rates by the market basket, as discussed in section IV.A of the FY 2008 IRF PPS proposed rule (72 FR 26320).
- Update the FY 2008 IRF PPS payment rates by the proposed wage index and the labor related share in a budget neutral manner, as discussed in section IV.A and B of the FY 2008 IRF PPS proposed rule (72 FR 26320).
- Update the pre-reclassified and pre-floor wage indexes based on the CBSA changes published in the most recent OMB bulletins that apply to the hospital wage data used to determine the current IRF PPS wage index, as discussed in section IV.B of the FY 2008 IRF PPS proposed rule (72 FR 26320).
- Revise the wage index policy for rural areas without hospital wage data by imputing an average wage index from all contiguous CBSAs to represent a reasonable proxy for the rural area within a State, as discussed in section IV.B of the proposed rule (72 FR 26320).
- Implement the final year of the 3-year hold harmless policy adopted in the FY 2006 IRF PPS final rule (70 FR 47880, 447923 through 47926) in a budget neutral manner, as discussed in section IV.B of the FY 2008 IRF PPS proposed rule (72 FR 26320).
- Update the outlier threshold amount for FY 2008 to $7,522, as discussed in section V.A of the FY 2008 IRF PPS proposed rule (72 FR 26320).
- Update the cost-to-charge ratio ceiling and the national average urban and rural cost-to-charge ratios for purposes of determining outlier payments under the IRF PPS, as discussed in section V.B of the FY 2008 IRF PPS proposed rule (72 FR 26320).

III. Analysis of and Responses to Public Comments

We received approximately 40 timely items of correspondence containing multiple comments on the FY 2008 proposed rule (72 FR 26230) from the public. We received comments from a university, various trade associations, inpatient rehabilitation facilities, health care industry organizations, and health care consulting firms. The following discussion, arranged by subject area, includes a summary of the public comments that we received, and our responses to the comments appear under the appropriate subject heading.

IV. 75 Percent Rule Policy

In order to be excluded from the acute care inpatient hospital PPS specified in § 412.1(a)(1) and instead be paid under the IRF PPS, a hospital or rehabilitation unit of an acute care hospital must meet the requirements for classification as an IRF stipulated in subpart B of part 412. As discussed in previous **Federal Register** publications 68 FR 26786 (May 16, 2003), 68 FR 53266 (September 9, 2003), 69 FR 25752 (May 7, 2004), 70 FR 36640 (June 24, 2005), and 71 FR 48354 (August 18, 2006)), § 412.23(b)(2) specifies one criterion that Medicare uses for classifying a hospital or unit of a hospital as an IRF. The criterion is that a minimum percentage of a facility's total inpatient population must require intensive rehabilitative services for the treatment of at least one of 13 medical conditions listed in § 412.23(b)(2)(iii) in order for the facility to be classified as an IRF. The minimum percentage is known as the ''compliance threshold.'' In addition, for cost reporting periods beginning on or after July 1, 2004, and before July 1, 2008, a patient's comorbidity, as defined at § 412.602, as well as the patient's principal diagnosis, may be included when determining the medical conditions of the inpatient population that count toward the required applicable percentage, if certain requirements are met.

Prior to the May 7, 2004 final rule (69 FR 25752), § 412.23(b)(2) stipulated that the compliance threshold was 75 percent. Therefore, the compliance threshold was commonly referred to as the ''75 percent rule.'' In addition, prior to the May 7, 2004 final rule, the regulation only specified 10 medical conditions. However, in the May 7, 2004 final rule, we revised § 412.23(b)(2) to increase the number of medical conditions to 13. We also temporarily lowered the compliance threshold, while at the same time specifying a transition period at the end of which IRFs would once again have to meet a compliance threshold of 75 percent. Also, as described below, the revised regulation specified that during the compliance threshold transition period, a patient's comorbidity may be used to determine whether a provider met the compliance threshold, provided certain applicable requirements were met.

The regulations at § 412.602 define a comorbidity as a specific patient condition that is secondary to the patient's principal diagnosis. A patient's principal diagnosis is the primary reason a patient is admitted to an IRF, and this diagnosis is used to determine whether the patient had a medical condition that can be counted toward meeting the compliance threshold. As specified in the May 7, 2004 final rule, in order for an inpatient with a certain comorbidity to be included in the inpatient population that counts toward the applicable percentage, the following criteria must be met:

- The patient is admitted for inpatient rehabilitation for a condition that is not one of the conditions listed in § 412.23(b)(2)(iii).
- The patient also has a comorbidity that falls within one of the conditions listed in § 412.23(b)(2)(iii).
- The comorbidity has caused significant decline in functional ability in the individual such that, even in the absence of the admitting condition, the individual would require the intensive rehabilitation treatment that is unique to inpatient rehabilitation facilities paid under the IRF PPS and that cannot be appropriately performed in another Medicare-covered care setting.

In accordance with the May 7, 2004 final rule, IRFs would have had to meet a compliance threshold of 75 percent for cost reporting periods starting on or after July 1, 2007. However, section 5005 of the Deficit Reduction Act of 2005 (DRA, Pub. L. 109–171) modified the applicable time periods when the various compliance thresholds, as originally specified in the May 7, 2004 final rule, must be met. The net effect of the DRA was extension of the

compliance threshold transition period. Due to the DRA, the transition period was extended to include cost reporting periods starting on or after July 1, 2004, and before July 1, 2008. Therefore, in order to conform the regulations to the DRA, we revised § 412.23(b)(2) by stipulating that an IRF must meet the full 75 percent compliance threshold as of its first cost reporting period that starts on or after July 1, 2008, rather than on or after July 1, 2007. In addition, we also permitted a comorbidity that meets the criteria as specified in paragraph (b)(2)(i) of § 412.23 to continue to be used, along with principal diagnosis, to determine the compliance threshold for cost reporting periods beginning before July 1, 2008, rather than before July 1, 2007. (For a complete description of all of the changes, see the FY 2007 IRF PPS final rule (71 FR 48354)).

Under existing policy, for cost reporting periods beginning on or after July 1, 2008, comorbidities will not be eligible for inclusion in the calculations used to determine whether the provider meets the 75 percent compliance threshold specified in § 412.23(b)(2)(ii). However, in the May 7, 2004 final rule (69 FR 25762), we encouraged research evaluating the continued use of comorbidities in determining compliance with the 75 percent rule. Therefore, in the May 8, 2007 proposed rule (72 FR 26230), we solicited comments supporting current policy or other options, including use of some or all of the existing comorbidities in calculating the compliance percentage for an additional fixed period of one or more years or to integrate the inclusion of some or all of the existing comorbidities on a permanent basis. In addition, we solicited comments that include clinical data based on scientifically sound research that provide evidence to support these and other options.

We received many comments on this proposal, which are summarized below.

Comment: Commenters cited our acknowledgement, made during a conference on Medicare and Medicaid payment issues held March 2007 in Baltimore, Maryland, that approximately 7 percent of inpatients from July 2005 through June 2006 were counted toward the compliance threshold because they met the medical conditions listed in § 412.23(b)(2)(iii) only because of the patient's comorbidities. They argued that eliminating use of comorbidities to determine the compliance percentage would be equivalent to adding an additional 7 percent to the compliance threshold.

Response: One method that we use to determine compliance with the requirements specified at § 412.23(b)(2) is analysis of the impairment group and etiologic diagnosis codes, as well as the comorbidity codes, recorded on the IRF–PAI. It is true that IRF–PAI data from July 1, 2005, to June 30, 2006, indicates that approximately 7 percent of IRF cases met the compliance standards based on the IRF–PAI comorbidity codes alone rather than on the IRF–PAI impairment group or etiologic diagnosis codes. However, this does not mean that the cases were evenly distributed across providers or that 7 percent of IRFs met the compliance threshold solely because of the comorbid conditions of their inpatients. The commenters offer no evidence that IRFs needed to rely on those 7 percent of cases in order to meet the compliance threshold. Also, our rules already provide that up to 25 percent of the cases do not have to be admitted because of a qualifying diagnosis. It does not follow that, because 7 percent of the IRF cases met the compliance standards only because of the comorbidities recorded on the IRF–PAIs, using just the principal diagnoses to determine compliance would result in a higher ''effective'' compliance threshold. For example, although an IRF may have had a certain percentage of cases that presumptively met a medical condition listed in § 412.23(b)(2)(iii) only because of the comorbid conditions recorded on the IRF–PAI, the IRF may also have a sufficient number of other cases with impairment group or etiologic codes that meet one of the medical conditions identified in § 412.23(b)(2)(iii), and these other cases by themselves could allow the IRF to meet the compliance threshold.

In addition, there is a second method of verifying compliance, which is the FI analyzing a random sample of medical records. Consequently, although the IRF may fail to meet the compliance threshold by an analysis of its IRF–PAI data, the IRF may meet the compliance threshold when the medical records are analyzed. The medical records identify the principal diagnoses, as well as the information supporting the principal diagnoses, which is much more detailed than the list of codes recorded on the IRF–PAIs. Thus, the medical record of a patient may indicate the presence of a qualifying condition that meets the 75 percent rule when the IRF data does not.

The medical conditions that we believe are most appropriate for treatment in an IRF are listed in § 412.23(b)(2)(iii). However, these medical conditions are not specific diagnoses, but broad medical categories. In addition, we acknowledge that there may be atypical patients with medical conditions not listed in § 412.23(b)(2)(iii) who may occasionally also require treatment in an IRF. Therefore, § 412.23(b)(2) has always allowed the IRF the flexibility to admit a percentage of patients with medical conditions not listed in this section of the regulations without losing its classification status as an IRF and the higher reimbursement rate than would be paid to hospitals under the IPPS.

It is important to note that even when the compliance threshold increases to 75 percent, an IRF may admit up to 25 percent of patients who have medical needs that meet the IRF medical necessity criteria but do not have as a principal diagnosis one of the 13 medical conditions used to classify a provider as an IRF. Thus, an IRF may admit up to 25 percent of patients not meeting the 75 percent rule and still be eligible to be paid under the IRF PPS. In other words, when the compliance threshold increases to 75 percent, as many as 1 in every 4 patients may still be admitted with a principal diagnosis that is not one of the medical conditions listed in § 412.23(b)(2)(iii), as long as the patient requires an IRF level of care. Therefore, if an IRF believes that the clinical status of some patients involves principal diagnoses or comorbidities that are so unusually medically and functionally complex as to demonstrate medical necessity to be admitted the IRF, then the IRF may admit these atypical cases as part of the percentage of cases that do not have to meet the 75 percent rule.

Comment: Many commenters urged CMS to permanently continue to use a patient's comorbidities to determine whether a provider met the 75 percent rule. Some commenters stated that terminating the use of comorbidities would decrease the number of IRFs that can achieve compliance as they are adapting their admissions policies and operating procedures. Several commenters urged us to continue the use of comorbidities in the compliance calculations until we can refine the way we identify patients that are most appropriate for an IRF-level of care, or until such time as we have sufficient data to reassess all the provisions of the 75 percent rule. These commenters state that the simple diagnosis-based criteria used in the 75 percent rule is insensitive to the special needs of individual patients, and encouraged CMS to move toward more patient-specific criteria. These commenters also urged CMS to modernize the classifying conditions. Several commenters argued that

comorbidities should be retained for use in compliance calculations at a minimum until further research examining the use of comorbidities is conducted, such as assessing the potential negative patient outcomes that may result from the discontinued use. Commenters believed that expiration of the comorbidity provision would change provider behavior, and specifically change admission patterns, in ways that cannot be evaluated using historical data.

Response: We believe a patient's principal diagnosis most accurately identifies the medical condition that required intensive inpatient rehabilitation. A patient's principal diagnosis is determined from the combination of items and services the IRF furnished to the inpatient as documented in the patient's medical record, including the data derived from medical tests, lab tests, procedures, and therapy, as well as the notes of the IRF's clinicians. Medical conditions that are secondary to the patient's principal reason for the inpatient rehabilitation stay are comorbid medical conditions.

It is not unusual for patients admitted to an IRF to have more than one ailment for which the patient exhibited a need for medical treatment. However, it is the patient's principal diagnosis that most accurately denotes whether a patient had a medical condition listed in § 412.23(b)(2)(iii) that required intensive inpatient rehabilitation because of how, as described previously, the principal diagnosis is determined. In other words, the data used to determine the principal diagnosis makes it the most accurate diagnosis that identifies the medical condition which required intensive inpatient rehabilitation. Additionally, as stated above, § 412.23(b)(2) has always allowed the IRF the flexibility to admit a percentage of patients with medical conditions not listed in this regulation section, as long as the patient requires an IRF level of care, without jeopardizing the IRF's classification and eligibility for payment under the IRF PPS.

We believe it is essential that we maintain appropriate criteria to ensure that only facilities providing medically necessary intensive inpatient rehabilitation are classified as IRFs. Thus, it is imperative to identify medical conditions that would typically require intensive inpatient rehabilitation in IRFs, because rehabilitation in general can be delivered in a variety of settings, such as acute care hospitals, SNFs, and outpatient settings. The most appropriate method we can use to identify the medical condition of an inpatient is to determine the impairment that led to admission of the patient to the IRF. It is the principal diagnosis that best identifies the impairment which resulted in the patient's admission providing the principal diagnosis was made in accordance with acceptable medical practice and appropriate clinical coding standards.

The inclusion of comorbidities in determining provider compliance with IRF classification requirements was established as a temporary policy in our May 7, 2004 final rule (69 FR 25752), and the revised regulation continues to be commonly referred to as the 75 percent rule. After careful review of a large volume of comments, we stated in the May 7, 2004 final rule (69 FR 25752, 25762) that we recognized IRFs could need additional time in order to adjust to the revised regulations. Therefore, in order to give IRFs flexibility to adapt we implemented a phase-in to meeting the 75 percent compliance threshold. Similarly, the intent of the comorbidity provision was to provide flexibility that would help providers adapt to the phase-in of enforcement of the compliance threshold.

Originally the transition time period, which provided for a phase-in of the compliance percentage and included the use of comorbid conditions in compliance calculations, was 3 years. However, in accordance with the DRA, the transition time period was extended one additional year. We also decided to extend the use of comorbidities for one additional year as well to maintain consistency with our current approach with respect to the counting of comorbidities before the 75 percent threshold applies. Therefore, providers will have had 4 years to adjust their case-mixes and adapt their operations in order to comply with the 75 percent rule.

As stated in the May 7, 2004 final rule (69 FR 25752, 25762) we have encouraged stakeholders to conduct research studies that could assist us in evaluating IRF compliance criteria. (Elsewhere in this preamble we describe our research efforts.) While we are aware that some studies have been initiated, they have not yet yielded results. The commenters urging the continuation of comorbidities did not support their arguments with sound clinical evidence on the value of including comorbidities when calculating the compliance percentage. In the absence of such evidence, we do not believe it would be appropriate to convert what was always intended to be a temporary accommodation during the phase-in period to a permanent policy. Similarly, we think it would be inappropriate to adopt an extension of indefinite duration because we have no way to estimate when and if sufficient data will become available to reevaluate the IRF classification criteria. However, we will examine our policies as the results of well-designed, rigorous, scientific studies become available and continue to encourage the industry and academics to conduct rehabilitation research. We will continue to evaluate the 75 percent rule and as appropriate will consider improvements to the criteria identifying appropriate IRF admissions that are supported by high-quality research and/or our data analysis.

Miscellaneous 75 Percent Rule Comments

Although it is difficult to separate comments on our comorbidity policy and comments on the other provisions of the 75 percent rule, we believe that the following comments were generally about the other aspects of the 75 percent rule.

Comment: Commenters stated that the 75 percent rule jeopardized the care of patients who required treatment in an IRF by restricting access to treatment. They believe that patients with medical conditions not listed in § 412.23(b)(2)(iii) should be admitted to IRFs because IRFs provide better care for these types of patients. One commenter further stated that the 75 percent rule, by restricting access to care, is denying patients with disabilities access to the comprehensive, coordinated rehabilitation services in an IRF. Another commenter referenced research that the commenter believes shows the length of stay (LOS) of patients with single joint replacements was less in an IRF as opposed to a SNF.

Response: In this rule, we did not propose changes to the 13 qualifying conditions considered to be appropriate for IRF care. However, in the May 7, 2004 final rule (69 FR 25752) we responded to similar comments. We continue to believe that an IRF is appropriately characterized as an inpatient hospital setting designed to provide the specialized, intensive, and interdisciplinary rehabilitation level of care that certain types of patients need. Although we remain committed to maintaining access to rehabilitation care for all Medicare beneficiaries, not all patients require the intensive degree of rehabilitation services that an IRF furnishes. We believe that those specific patients with certain medical conditions requiring intensive inpatient physical therapy, occupational therapy, and, if necessary, speech and language therapy

are the patients most appropriate for treatment in an IRF.

We do not believe that the 75 percent rule jeopardizes access to an appropriate level of rehabilitation care, nor do we have data to support that perspective. In addition, although an IRF is capable of extensive medical management of patients by virtue of its inpatient hospital status, as we stated in the May 7, 2004 final rule (69 FR 25752, 25764) ''patients who require medical management but not intensive, interdisciplinary rehabilitation can be cared for in another setting.'' The fact that care in an IRF may be preferred by some patients and/or their physicians does not make it the most appropriate clinical treatment setting or the most optimal use of intensive rehabilitation resources uniquely provided by IRFs. As part of our ongoing efforts to evaluate the impact of the requirements at § 412.23(b)(2) since we revised the regulations, we have analyzed the available data extensively. Our most recent analysis of this data is available at the following Web site: *http://www.cms.hhs.gov/InpatientRehabFacPPS/Downloads/IRF_PPS_75_percent_Rule_060807.pdf.*

As the IRF industry has noted, the reduced claims volume identified since 2004, which shows the decrease in the inpatient population of IRFs, is almost entirely attributable to cases in one of these five IRF PPS rehabilitation impairment categories (RICs): Lower extremity joint replacement, cardiac, osteoarthritis, pain syndrome, and the miscellaneous category. These five RICs are precisely the types of medical conditions that the 75 percent rule was designed to screen out, because they are not generally thought to require the intensive rehabilitation services provided by IRFs. The clinical experts that CMS consulted prior to publishing the May 7, 2004 final rule (69 FR 25752) indicated that the vast majority of patients with these medical conditions could typically be cared for appropriately in other less intensive settings. In addition, while we have and are continuing to encourage research studies, these studies have not yet been completed. In the absence of findings generated from well-designed scientific studies, we have no evidence showing that the medical conditions in these 5 RICs require treatment in an IRF as opposed to receiving treatment at another treatment setting. Therefore, we do not agree that without a more complete analysis of the patient characteristics and care needs of patients served in the different settings that a shortened length of stay for single joint replacement cases is, in itself, a compelling reason for these cases to be treated in an IRF.

In addition, as more fully described in the analysis, which is available on the previously identified Web site, our examination of the data indicates that patients requiring post-acute rehabilitation care for four common conditions (total knee replacement, total hip replacement, hip fracture, and stroke) have access to and are receiving services in different settings. Therefore, we believe that the data indicate beneficiaries have access to care and are receiving the appropriate level of care at an appropriate cost to the Medicare program. Further, we believe the 75 percent rule promotes equal access to those who require an IRF level of care.

The IRF classification polices are used to identify those patients who have a need for a more intensive level of rehabilitation than is generally required by most patients. Recent industry reports emphasize only a very selective subset of the CMS data, using as their starting point the highest level of utilization and then focusing on the relative decreases that follow. It is important to note, however, that the highest historical level of utilization is not necessarily the most appropriate or even the most typical level of utilization, and that patients who need rehabilitation services have continued access to these services in other settings, as shown by the data in the analysis on the previously referenced Web site. For example:

- Although the proportion of total knee replacement and total hip replacement patients receiving care in IRFs has dropped significantly since 2004, our data show that the proportions of these patients receiving care in the other post-acute care settings are increasing.
- The SNFs, particularly, are now better able to manage patients with musculoskeletal conditions with the introduction of 9 new resource utilization group payment categories beginning in FY 2006. These new payment categories compensate SNFs more fully for patients who have both significant rehabilitation and medical needs—precisely the type of patient who may need some level of medical monitoring but does not require the intense level of inpatient rehabilitation services provided in an IRF setting.

The analyses described above are part of our ongoing evaluation of our IRF classification policies. However, although we have encouraged research to be undertaken that would contribute to improving the criteria for identifying appropriate IRF admissions, we have not received results of well-designed scientific studies that would support such changes at this time.

Comment: Several commenters stated that we should suspend increasing the compliance percentage until we have implemented a single post-acute assessment instrument. One commenter stated that we should devise a price-neutral payment system to pay for care that could be furnished in either a SNF or an IRF. Although the commenter was not clear, we believe that by ''price-neutral payment system'' the commenter means payments that are basically the same regardless of the setting where the services were furnished. We refer to such a payment system as being site-neutral. Another commenter stated that instead of the broad 13 medical conditions we should use facility characteristics to define a provider as an IRF. Many commenters recommended that the medical conditions listed at § 412.23(b)(2)(iii) should be updated. Other commenters suggested that we should use more specific patient-centered criteria than the broad 13 medical conditions in order to identify which patients should receive care in an IRF. Similarly, a commenter stated that a patient's overall function should be used to determine compliance. Another commenter encouraged us to better identify patients who ''typically'' are in need of inpatient rehabilitation. This commenter urged CMS to consider that the comorbidity in combination with the primary diagnosis establishes the need for inpatient rehabilitation. Some commenters stated that the 75 percent rule is insensitive and inadequate as a tool to determine a patient's need for IRF care.

Response: While these recommendations address issues that are beyond the scope of this rule because they concern issues about which we did not make any proposals, we will address them briefly because they generally pertain to the 75 percent rule. We agree that future data analysis and the results of well-designed scientific studies may inform policy decisions regarding the IRF classification criteria. With input from all our stakeholders, we will continue our efforts to make these refinements as quickly as possible. In attempting to promote research that better identifies the types of patients whose treatment needs require an IRF setting, CMS has collaborated with several crucial stakeholders to create a framework for future research. We describe some of these efforts below.

- At CMS's request, the National Center for Medical Rehabilitation Research at the National Institute of Child Health and Human Development

(NCMRR/NICHD) at the National Institutes of Health (NIH) convened a panel in February 2005 to develop a research agenda on appropriate settings for rehabilitation.

• Recently, NCMRR/NICHD also issued a notice on the NIH Web site recognizing the need to enhance the evidence base for clinical practice, with a commitment to work with providers and research groups to encourage the design of clinical studies that meet NIH standards. We also intend to work with researchers conducting NIH-approved studies so that they can meet their study objectives within the overall framework of the Medicare program benefit.

• Over the past year, we have been actively participating in various NIH panel discussions to foster research in the area of medical rehabilitation, with the goal to better identify typical characteristics of patients in need of the intensive rehabilitative services that only IRFs can provide. In the course of attending these meetings, we have established connections with many of the researchers conducting the research in this area and have been helping them to identify the appropriate resources within CMS.

• We strongly support industry research efforts by serving on project advisory boards and by participating in industry-sponsored meetings and research conferences.

We also want to express our support for our integrated post-acute payment system demonstration project. As part of that demonstration, we are developing an assessment instrument that can be used to assess patients in different treatment settings. We expect that the demonstration will generate much needed data on differences in patient characteristics and treatment outcomes across settings that will be extremely useful in our ongoing evaluation of the IRF PPS. Further, in an effort to try to move toward a site-neutral payment system as suggested by a commenter, the proposed FY 2008 President's Budget includes a proposal to reduce the difference in payment between IRFs and SNFs for total knee and hip replacements. We will continue to look for opportunities to propose policies which move the program in the direction of our ultimate goal of PAC payment reform.

In summary, we will continue to examine our IRF classification polices and the criteria for identifying appropriate IRF admissions using sound data analysis or well-designed scientific studies.

Comment: A commenter believes that our CMG data should be used to identify the concentrations of typical conditions treated in an IRF and use that data instead of or in combination with the 13 medical conditions listed in the regulations as the criteria to classify a provider as an IRF.

Response: We addressed a similar comment in the May 7, 2004 final rule (69 FR 25752, 25758–25759) regarding why it would be inappropriate to use the RICs to classify a provider as an IRF. The CMGs are derived from the RICs and, thus, using CMGs to classify a provider as an IRF would also be inappropriate. The payment system, which is based on the RICs, was devised to pay for all the patients an IRF admits, including the patients not counted as part of the compliance percentage the IRF must meet. Thus, a PPS created to pay for IRF cases is different than a classification system that specifies the percentage of patients that must have certain medical conditions. We refer the commenter to the May 7, 2004 final rule for a more detailed explanation.

Comment: A commenter suggested that we modify our medical review policies to assume that any claim with a qualifying diagnosis or a comorbidity code used in the 75 percent rule calculations can be deemed to meet Medicare's medical necessity provisions. Another commenter stated that FIs were incorrectly performing medical necessity reviews. The same commenter expressed concerns regarding how the Recovery Audit Contractors (RACs) are performing their reviews. Another commenter stated that the 75 percent rule is being used as a crude measure of medical necessity. A few commenters suggested all local coverage determination polices be suspended until we fully examine the issues associated with medical necessity for IRF level of care. Another commenter requested that we use the criteria specified in the Health Care Financing Administration (HCFA) ruling 85–2 as the sole determinant for the medical necessity of an IRF admission, and implement a moratorium on new rehabilitation programs participating in Medicare until we revise the 75 percent rule. One commenter requested that CMS expand our policy to include additional complicating conditions as comorbidities, which count toward compliance with the 75 percent rule.

Response: These comments relate to regulatory policies or operational issues that are outside the scope of the rule. Nevertheless, we address them briefly here. First, the purpose of the comorbidity policy has been to recognize patients with one of the 13 qualifying conditions, even when that qualifying condition is not the primary reason for the IRF admission. The effect of adding new codes would be to inappropriately expand the set of qualifying conditions without any clinical evidence or review. Second, our medical review protocols and IRF compliance criteria were designed to perform two distinct oversight functions. For example, medical review protocols are used to ensure that claims are paid appropriately, but our IRF classification criteria are used to ensure that only facilities that provide intensive inpatient rehabilitation services are paid under the IRF PPS. While we continue to work diligently to improve consistency between the review protocols where appropriate, we realize that there will always be some differences that reflect differences in statutory, regulatory and operational priorities and the two distinct oversight functions. Third, regarding the reviews performed by our contractors, it should be noted that we believe these reviews are necessary to ensure the integrity of the Medicare trust fund. As part of this oversight function, we continuously review the performance of our contractors to ensure that they are functioning in accordance with our policies and guidance. Finally, we believe that implementing a moratorium on new rehabilitation programs participating in Medicare could result in restricting access to care and therefore is not appropriate at this time.

Comment: A commenter stated that the impact of the 75 percent rule combined with reviews being performed by FIs and RACs have decreased IRF admissions well beyond the estimates we envisioned in the May 7, 2004 final rule (69 FR 25752). In addition, the commenter appeared to indicate that the significant drop in IRF admissions as a result of the 75 percent rule and the contractor reviews calls into question the validity of the revisions to § 412.23(b)(2) that we made in the May 7, 2004 final rule.

Response: In evaluating the potential effect of an impending rule change, the regulatory impact analysis represents our best effort to project the economic impact of the change, based on the data available at the time of publication. It is important to note that such projections are estimates, and that they consider only the potential effect of the change itself. Moreover, we do not use such projections as program targets or benchmarks, but rather, conduct reviews and analyses of program data after the change is implemented in order to evaluate its actual impact.

In order to put a proposed change in perspective, a regulatory impact analysis generally is projected on the

assumption that all other variables remain constant. Thus, the projections in a regulatory impact analysis take historical data on provider behavior, utilization of services, and expenditure levels and simply trend them forward, in order to show more clearly the effect of the single policy change under review.

When we imposed the temporary moratorium on enforcing the 75 percent rule in June 2002, we assumed that provider case-mix and utilization would remain stable while we took steps to standardize the provider classification procedures. However, our data indicate that during the period when the moratorium was in effect, there was actually a pronounced increase in the volume of IRF cases involving certain specific categories of conditions. In general, the medical conditions in these particular rehabilitation impairment categories—lower extremity joint replacement, cardiac, osteoarthritis, pain syndrome, and miscellaneous—are unlikely to require intensive rehabilitation in IRFs. According to the clinical experts that CMS consulted in revising the 75 percent rule criteria prior to publishing the May 7, 2004 final rule, the vast majority of patients with these medical conditions can typically be appropriately cared for in other less intensive settings. In addition, we have not received reports from well-designed scientific studies showing that these medical conditions are typically appropriate for treatment in an IRF. Thus, we continue to believe that these medical conditions are appropriately treatable in other, less intensive settings.

When we resumed enforcement of the 75 percent rule, the volume of these less intensive IRF cases decreased, accompanied by a concomitant increase in the volume of cases involving conditions that typically do require intensive rehabilitation: brain injury and certain nervous system conditions. This phenomenon would appear to indicate that:

- The 75 percent rule accurately identifies as IRFs those facilities serving patients who genuinely need intensive rehabilitation; and
- Significant behavior changes occurred among IRFs in response to both the initial imposition and the subsequent lifting of the moratorium, underscoring the inappropriateness of utilizing the 2004 final rule's regulatory impact analysis projections (which were not designed to take possible behavior changes into account) as a benchmark in analyzing subsequent utilization patterns.

We do not believe that the decline in IRF utilization levels for certain conditions in the period since we lifted the moratorium is an indication that beneficiaries are being denied access to needed care in this setting. As explained above, we believe that the moratorium itself may well have triggered aberrant IRF utilization patterns, which were skewed toward certain conditions that generally do not require the exceptionally intensive type of rehabilitation that characterizes the IRF setting. As a consequence, what would appear to be a relative decline in IRF utilization since that time may, in fact, represent a return to more normal utilization patterns, which better reflect the actual prevalence of patient need for the kind of intensive rehabilitation that the IRF setting is intended to provide.

We will continue to review Medicare claim and patient assessment data closely as part of our ongoing effort to monitor Medicare beneficiary access to rehabilitation services in IRFs.

Comment: A commenter stated that the 75 percent rule is negatively affecting the financial operations of IRFs because the 75 percent rule and other IRF policies have resulted in more severely ill patients being treated in IRFs, which is not being reflected in IRF PPS payment rates.

Response: We agree that IRF utilization patterns have changed since we began enforcing the 75 percent rule in 2004. The CMS data show a shift in the pattern of admissions away from lower acuity cases such as unilateral knee replacements to more severe conditions. However, we do not agree that the IRF PPS rates do not cover the cost of treating these more severely ill patients, in fact, comparisons of IRF payments and costs, as calculated by both CMS and MedPAC, showed double digit profit margins from the start of the IRF PPS in 2002 through 2005. The IRF profit margins are expected to decline in FY 2008, but should still remain positive. Based on this profitability analysis, we believe that the existing IRF PPS rate structure adequately accounts for the full range of IRF patients. Further, these analyses support our understanding that the IRF case-mix system was specifically designed to reflect the needs and costs of a unique segment of the post acute population requiring both intensive rehabilitation and medical management.

Final Decision: After carefully considering the comments, we are maintaining the comorbidity policy specified in § 412.23(b)(2). Therefore, for cost reporting periods beginning on or after July 1, 2007, and before July 1, 2008, the compliance threshold remains 65 percent and we will continue to include comorbidities when calculating the compliance percentage. However, for cost reporting periods beginning on or after July 1, 2008, the compliance threshold will increase to 75 percent, but the comorbidities will not be used to determine whether a provider met the 75 percent of the compliance threshold.

V. Classification System for the Inpatient Rehabilitation Facility Prospective Payment System

For the FY 2008 IRF PPS, we will use the same case-mix classification system that we used for FY 2007, as set forth in the FY 2007 IRF PPS final rule (71 FR 48354). Table 1 below, ''Relative Weights and Average Lengths of Stay for Case-Mix Groups'', presents the CMGs, the comorbidity tiers, the corresponding relative weights, and the average length of stay value for each CMG and tier. The average length of stay for each CMG is used to determine when an IRF discharge meets the definition of a short-stay transfer, which results in a per diem case level adjustment. Because these data elements are not changing, Table 1 shown below is identical to Table 4 that was published in the FY 2007 IRF PPS final rule (71 FR 48354, 48364 through 48370). The methodology we used to construct the data elements in Table 1 is described in detail in the FY 2007 IRF PPS final rule (71 FR 48354).

We received a few comments on the proposed classification system for FY 2008, which are summarized below.

Comment: A few commenters expressed concerns about the proposed CMG relative weight and average length of stay values for FY 2008, noting that they are based on FY 2003 data and that these data do not reflect the changes in IRF cost structures that may be occurring in response to the renewed enforcement of the 75 percent rule. These commenters requested that CMS use the latest available data to update the CMG relative weights and average length of stay values for FY 2008 and future years. One commenter suggested that CMS update the CMG definitions regularly to reflect changes in clinical practice that affect resource use.

Response: We agree with the commenters that it is important to update the CMG relative weights, average length of stay values, and CMG definitions regularly to reflect changes in IRF admission patterns and cost structures, using the most recent available data. We are analyzing the data carefully to prepare to update the IRF classification system, as appropriate, in the future. However, we also believe it is important to balance the need to update these elements with the benefits derived from maintaining

stability within the IRF classification system and payment rates. In the FY 2006 IRF PPS final rule (70 FR 47880, 47886 through 47904), we implemented major changes to the IRF classification system, including revising the CMG definitions and recalibrating the CMG relative weights and average length of stay values. Given that these major changes to the classification system took effect less than 2 years ago, we believe that, in the interest of fostering stability in the IRF PPS, we should allow more time to pass before we implement more changes to the system. By waiting at least one additional year before making further changes to the system, we will ensure that we have sufficient time to analyze the effects of the FY 2006 revisions and the impact they are having on providers, which will improve the accuracy of future IRF PPS refinements. We also believe that further analysis of the FY 2006 data is needed to determine how the changes to the classification system, as well as the changes to the facility-level adjustments and the other changes we adopted in the FY 2006 final rule, are affecting providers. Now that the FY 2006 claims data are available, we are analyzing them and will propose updates to the system as appropriate in the future.

Although we believe that it is best to delay updating the CMG relative weights and average length of stay values, we have conducted an analysis of these components of the IRF classification system using FY 2006 data. This analysis shows that updating these elements of the classification system would not materially change payments for the vast majority of IRF discharges. From this analysis, we found that payments for about 90 percent of the cases in our data would change by less than 4 percent. CMGs for which payments would change by more than 4 percent contain a small number of cases. Based on our analysis, we believe that it is more appropriate to update the CMG relative weights and average length of stay values after we conduct careful analysis of the FY 2006 data and analyze IRFs' responses to the changes that we implemented to the system in FY 2006. We believe that the results that we will obtain from this analysis of the effects of the FY 2006 revisions on providers will improve the accuracy of future revisions to the IRF PPS.

Comment: One commenter suggested that CMS should review the FY 2006 revisions to the classification system with more recent data to determine whether the revisions caused a 2.2 percent decrease in aggregate IRF payments and whether further revisions to the system are needed to account for this.

Response: Since this comment is on revisions that we implemented for FY 2006, and we did not propose additional revisions to the IRF classification system for FY 2008, this comment is outside the scope of this final rule. Further, we responded to a very similar comment in the FY 2007 IRF PPS final rule (71 FR 48373 through 48374). However, our analysis of the data continues to show that the FY 2006 refinements to the IRF classification system did not cause a reduction in aggregate IRF payments. We are continuing to work with the industry to understand its concerns, and we are analyzing the FY 2006 IRF claims data in detail to identify any unanticipated effects of the FY 2006 revisions to the classification system on IRF payments. However, our analysis of the data continues to show that we implemented the FY 2006 refinements to the IRF classification system in a budget neutral manner, so that estimated aggregate payments to providers did not increase or decrease as a result of these refinements. Although our preliminary data do not show any decrease in IRF aggregate payments for FY 2006 resulting from the FY 2006 revisions to the IRF classification system, we will continue to analyze the FY 2006 data to determine whether additional refinements to the IRF classification system are necessary in the future.

Final Decision: After carefully reviewing the comments that we received on the proposed changes to the CMG relative weights and average length of stay values, we proposed and will finalize our decision to update the CMG relative weights and the average length of stay values for FY 2008, as shown in Table 1.

TABLE 1.—RELATIVE WEIGHTS AND AVERAGE LENGTHS OF STAY FOR CASE MIX GROUPS

CMG	CMG description (M=motor, C=cognitive, A=age)	Relative weights				Average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0101	Stroke M>51.05	0.7707	0.7303	0.6572	0.6347	8	11	9	9
0102	Stroke M>44.45 and M<51.05 and C>18.5	0.9493	0.8995	0.8095	0.7818	11	15	11	10
0103	Stroke M>44.45 and M<51.05 and C<18.5	1.1192	1.0605	0.9544	0.9218	14	13	12	12
0104	Stroke M>38.85 and M<44.45	1.1885	1.1260	1.0134	0.9787	13	14	13	13
0105	Stroke M>34.25 and M<38.85	1.4261	1.3512	1.2161	1.1745	16	17	16	15
0106	Stroke M>30.05 and M<34.25	1.6594	1.5722	1.4150	1.3666	18	20	18	18
0107	Stroke M>26.15 and M<30.05	1.9150	1.8145	1.6330	1.5771	21	23	21	20
0108	Stroke M<26.15 and A>84.5	2.2160	2.0997	1.8897	1.8250	28	29	25	24
0109	Stroke								

TABLE 1.—RELATIVE WEIGHTS AND AVERAGE LENGTHS OF STAY FOR CASE MIX GROUPS—Continued

CMG	CMG description (M=motor, C=cognitive, A=age)	Relative weights				Average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
	M>22.35 and M<26.15 and A<84.5	2.1998	2.0843	1.8758	1.8116	23	26	24	23
0110	Stroke M<22.35 and A<84.5	2.6287	2.4907	2.2416	2.1649	30	33	28	27
0201	Traumatic brain injury M>53.35 and C>23.5	0.8143	0.6806	0.6080	0.5647	10	9	9	8
0202	Traumatic brain injury M>44.25 and M<53.35 and C>23.5	1.0460	0.8743	0.7810	0.7254	12	10	11	9
0203	Traumatic brain injury M>44.25 and C<23.5	1.2503	1.0450	0.9335	0.8671	15	15	12	12
0204	Traumatic brain injury M>40.65 and M<44.25	1.3390	1.1192	0.9998	0.9287	15	16	13	13
0205	Traumatic brain injury M>28.75 and M<40.65	1.6412	1.3718	1.2254	1.1382	17	18	16	15
0206	Traumatic brain injury M>22.05 and M<28.75	2.1445	1.7924	1.6011	1.4873	23	22	21	20
0207	Traumatic brain injury M<22.05	2.7664	2.3122	2.0655	1.9185	35	29	26	25
0301	Non-traumatic brain injury M>41.05	1.1394	0.9533	0.8552	0.7772	12	12	11	10
0302	Non-traumatic brain injury M>35.05 and M<41.05	1.4875	1.2446	1.1164	1.0147	14	16	14	13
0303	Non-traumatic brain injury M>26.15 and M<35.05	1.7701	1.4810	1.3285	1.2074	20	19	17	16
0304	Non-traumatic brain injury M<26.15	2.4395	2.0410	1.8309	1.6640	32	25	23	21
0401	Traumatic spinal cord injury M>48.45	0.9587	0.8456	0.7722	0.6858	12	12	11	10
0402	Traumatic spinal cord injury M>30.35 and M<48.45	1.3256	1.1691	1.0676	0.9482	18	16	14	13
0403	Traumatic spinal cord injury M>16.05 and M<30.35	2.3069	2.0347	1.8580	1.6502	22	24	24	22
0404	Traumatic spinal cord injury M<16.05 and A>63.5	4.1542	3.6639	3.3458	2.9717	51	46	41	37
0405	Traumatic spinal cord injury M<16.05 and A<63.5	3.1371	2.7668	2.5266	2.2441	33	37	33	28
0501	Non-traumatic spinal cord injury M>51.35	0.7648	0.6455	0.5687	0.5071	9	8	8	7
0502	Non-traumatic spinal cord injury M>40.15 and M<51.35	1.0262	0.8661	0.7630	0.6804	13	12	11	9
0503	Non-traumatic spinal cord injury M>31.25 and M<40.15	1.3596	1.1476	1.0109	0.9014	15	15	13	12
0504	Non-traumatic spinal cord injury M>29.25 and M<31.25	1.6984	1.4335	1.2628	1.1260	21	19	16	15
0505	Non-traumatic spinal cord injury M>23.75 and M<29.25	2.0171	1.7025	1.4997	1.3373	23	22	19	18
0506	Non-traumatic spinal cord injury M<23.75	2.7402	2.3128	2.0374	1.8167	29	28	26	23
0601	Neurological								

TABLE 1.—RELATIVE WEIGHTS AND AVERAGE LENGTHS OF STAY FOR CASE MIX GROUPS—Continued

CMG	CMG description (M=motor, C=cognitive, A=age)	Relative weights				Average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
	M>47.75	0.8991	0.7330	0.7019	0.6522	11	10	9	9
0602	Neurological M>37.35 and M<47.75	1.1968	0.9757	0.9342	0.8682	13	13	13	12
0603	Neurological M>25.85 and M<37.35	1.5326	1.2495	1.1965	1.1118	17	17	15	15
0604	Neurological M<25.85	1.9592	1.5973	1.5295	1.4213	22	20	21	19
0701	Fracture of lower extremity M>42.15	0.9028	0.7717	0.7338	0.6617	12	11	10	9
0702	Fracture of lower extremity M>34.15 and M<42.15	1.1736	1.0033	0.9539	0.8602	13	14	13	12
0703	Fracture of lower extremity M>28.15 and M<34.15	1.4629	1.2506	1.1890	1.0722	16	17	16	14
0704	Fracture of lower extremity M<28.15	1.7969	1.5361	1.4605	1.3170	20	20	19	18
0801	Replacement of lower extremity joint M>49.55	0.6537	0.5504	0.5131	0.4607	7	7	7	6
0802	Replacement of lower extremity joint M>37.05 and M<49.55	0.8542	0.7193	0.6704	0.6020	10	10	9	8
0803	Replacement of lower extremity joint M>28.65 and M<37.05 and A>83.5	1.2707	1.0700	0.9974	0.8956	15	15	13	12
0804	Replacement of lower extremity joint M>28.65 and M<37.05 and A<83.5	1.1040	0.9296	0.8665	0.7781	13	12	12	10
0805	Replacement of lower extremity joint M>22.05 and M<28.65	1.3927	1.1727	1.0931	0.9816	17	16	14	13
0806	Replacement of lower extremity joint M<22.05	1.6723	1.4082	1.3126	1.1787	18	19	17	15
0901	Other orthopedic M>44.75	0.8425	0.7641	0.6868	0.6120	10	11	10	9
0902	Other orthopedic M>34.35 and M<44.75	1.1088	1.0057	0.9039	0.8056	13	13	12	11
0903	Other orthopedic M>24.15 and M<34.35	1.4638	1.3277	1.1934	1.0635	18	19	16	15
0904	Other orthopedic M<24.15	1.8341	1.6636	1.4952	1.3325	25	23	21	19
1001	Amputation, lower extremity M>47.65	0.9625	0.8879	0.7957	0.7361	11	11	11	10
1002	Amputation, lower extremity M>36.25 and M<47.65	1.2709	1.1724	1.0507	0.9719	14	15	14	13
1003	Amputation, lower extremity M<36.25	1.7876	1.6491	1.4779	1.3671	19	22	19	18
1101	Amputation, non-lower extremity M>36.35	1.2554	1.0482	0.9225	0.8496	14	15	12	11
1102	Amputation, non-lower extremity M<36.35	1.8824	1.5717	1.3832	1.2739	19	19	18	17
1201	Osteoarthritis M>37.65	1.0177	0.8785	0.8182	0.7405	11	12	11	10
1202	Osteoarthritis								

TABLE 1.—RELATIVE WEIGHTS AND AVERAGE LENGTHS OF STAY FOR CASE MIX GROUPS—Continued

CMG	CMG description (M=motor, C=cognitive, A=age)	Relative weights				Average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
	M>30.75 and M<37.65	1.3168	1.1367	1.0586	0.9581	15	16	14	13
1203	Osteoarthritis M<30.75	1.6241	1.4020	1.3057	1.1817	21	19	17	16
1301	Rheumatoid, other arthritis M>36.35	1.0354	0.9636	0.8511	0.7429	12	13	11	10
1302	Rheumatoid, other arthritis M>26.15 and M<36.35	1.4321	1.3327	1.1772	1.0275	15	18	15	14
1303	Rheumatoid, other arthritis M<26.15	1.8250	1.6984	1.5002	1.3094	22	21	20	18
1401	Cardiac M>48.85	0.8160	0.7351	0.6534	0.5861	10	9	9	8
1402	Cardiac M>38.55 and M<48.85	1.1038	0.9944	0.8839	0.7928	12	13	12	11
1403	Cardiac M>31.15 and M<38.55	1.3705	1.2347	1.0975	0.9844	16	16	14	13
1404	Cardiac M<31.15	1.7370	1.5649	1.3910	1.2477	21	20	18	16
1501	Pulmonary M>49.25	0.9986	0.8870	0.7793	0.7399	11	13	10	10
1502	Pulmonary M>39.05 and M<49.25	1.2661	1.1246	0.9880	0.9381	13	15	12	12
1503	Pulmonary M>29.15 and M<39.05	1.5457	1.3730	1.2062	1.1453	16	16	15	15
1504	Pulmonary M<29.15	2.0216	1.7957	1.5775	1.4979	26	21	20	18
1601	Pain syndrome M>37.15	1.0070	0.8550	0.7774	0.6957	12	11	10	10
1602	Pain syndrome M>26.75 and M<37.15	1.3826	1.1739	1.0673	0.9552	15	17	14	13
1603	Pain syndrome M<26.75	1.7025	1.4455	1.3143	1.1762	19	19	18	16
1701	Major multiple trauma without brain or spinal cord injury M>39.25	0.9818	0.9641	0.8479	0.7368	12	12	11	10
1702	Major multiple trauma without brain or spinal cord injury M>31.05 and M<39.25	1.2921	1.2688	1.1158	0.9696	14	16	15	13
1703	Major multiple trauma without brain or spinal cord injury M>25.55 and M<31.05	1.5356	1.5080	1.3262	1.1524	17	20	18	16
1704	Major multiple trauma without brain or spinal cord injury M<25.55	1.9246	1.8899	1.6620	1.4443	26	26	22	19
1801	Major multiple trauma with brain or spinal cord injury M>40.85	1.1920	0.9866	0.8243	0.7342	15	13	13	10
1802	Major multiple trauma with brain or spinal cord injury M>23.05 and M<40.85	1.9058	1.5774	1.3179	1.1738	19	21	18	16
1803	Major multiple trauma with brain or spinal cord injury M<23.05	3.4302	2.8391	2.3721	2.1127	43	33	30	27

TABLE 1.—RELATIVE WEIGHTS AND AVERAGE LENGTHS OF STAY FOR CASE MIX GROUPS—Continued

CMG	CMG description (M=motor, C=cognitive, A=age)	Relative weights				Average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
1901	Guillian Barre M>35.95	1.2399	1.0986	1.0965	0.9350	14	13	14	12
1902	Guillian Barre M>18.05 and M<35.95	2.3194	2.0552	2.0512	1.7491	27	25	25	23
1903	Guillian Barre M<18.05	3.3464	2.9651	2.9593	2.5235	37	39	31	33
2001	Miscellaneous M>49.15	0.8734	0.7381	0.6735	0.6084	10	10	9	8
2002	Miscellaneous M>38.75 and M<49.15	1.1447	0.9674	0.8827	0.7975	12	13	12	11
2003	Miscellaneous M>27.85 and M<38.75	1.4777	1.2488	1.1395	1.0294	16	16	15	14
2004	Miscellaneous M<27.85	1.9716	1.6662	1.5204	1.3735	25	22	20	18
2101	Burns M>0	2.1842	2.1842	1.6606	1.4587	27	24	20	17
5001	Short-stay cases, length of stay is 3 days or fewer ..	.....	.....	.....	0.2201	.....	.....	.....	2
5101	Expired, orthopedic, length of stay is 13 days or fewer.	.....	.....	.....	0.6351	.....	.....	.....	8
5102	Expired, orthopedic, length of stay is 14 days or more.	.....	.....	.....	1.5985	.....	.....	.....	22
5103	Expired, not orthopedic, length of stay is 15 days or fewer.	.....	.....	.....	0.7203	.....	.....	.....	8
5104	Expired, not orthopedic, length of stay is 16 days or more.	.....	.....	.....	1.8784	.....	.....	.....	24

VI. FY 2008 IRF PPS Federal Prospective Payment Rates

A. FY 2008 IRF PPS Market Basket Increase Factor and Labor-Related Share

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered IRF services, which is referred to as a market basket index. In updating the FY 2008 payment rates outlined in this final rule, CMS applied an appropriate increase factor to the FY 2007 IRF PPS payment rates that is based on the rehabilitation, psychiatric, and long-term care hospital (RPL) market basket. In constructing the RPL market basket, we used the methodology set forth in the FY 2006 IRF PPS final rule (70 FR 47880, 47908 through 47915).

As discussed in that final rule, the RPL market basket primarily uses the Bureau of Labor Statistics' (BLS) data as price proxies, which are grouped in one of the three BLS categories: Producer Price Indexes (PPI), Consumer Price Indexes (CPI), and Employment Cost Indexes (ECI). We evaluated and selected these particular price proxies using the criteria of reliability, timeliness, availability, and relevance, and believe they continue to be the best measures of price changes for the cost categories.

As discussed in the FY 2007 IRF PPS proposed rule, beginning April 2006 with the publication of March 2006 data, the BLS' ECI has used a different classification system, the North American Industrial Classification System (NAICS), instead of the Standard Industrial Codes (SIC). We have consistently used the ECI as the data source for our wages and salaries and other price proxies in the RPL market basket and did not propose to make any changes to the data source in the proposed rule. This final rule's estimated FY 2008 IRF market basket increase factor and labor-related share is based on the most recent data available from the BLS.

We will use the same methodology described in the FY 2006 IRF PPS final rule to compute the FY 2008 IRF market basket increase factor and labor-related share. For this final rule, the FY 2008 IRF market basket increase factor is 3.2 percent. This is based on Global Insight, Inc.'s (GII) forecast of price proxies for the second quarter of 2007 (2007Q2) with historical data through the first quarter of 2007 (2007Q1).

In addition, we have used the methodology described in the FY 2006 IRF PPS final rule to update the labor-related share for FY 2008. As discussed in the FY 2006 IRF PPS final rule (70 FR 47880, 47915 through 47917), we rebased and revised the market basket for FY 2006 using the 2002-based cost structures for IRFs, inpatient psychiatric hospitals, and long-term care hospitals to determine the FY 2006 labor-related share. For FY 2007, we used the same methodology discussed in the FY 2006 IRF PPS final rule (70 FR 47880, 47908 through 47917) to determine the FY 2007 IRF labor-related share. For FY 2008, we continue to use the same

methodology discussed in the FY 2006 IRF PPS final rule. As shown in Table 2, the total FY 2008 RPL labor-related share is 75.818 percent in this final rule.

TABLE 2.—FY 2008 IRF LABOR-RELATED SHARE RELATIVE IMPORTANCE

Cost category	FY 2008 IRF labor-related relative importance
Wages and salaries	52.640
Employee benefits	14.125
Professional fees	2.907
All other labor intensive services	2.144
Subtotal	71.816
Labor-related share of capital costs	4.002
Total	75.818

Source: Global Insight, Inc, 2nd Qtr, 2007; *@USMACRO/CONTROL0507@CISSIM/TL0507.SIM,* Historical Data through 1st QTR, 2007.

We received two comments on the proposed FY 2008 IRF PPS market basket and labor-related share, which are summarized below.

Comment: One commenter requested that the IRF PPS market basket adjustments be calculated using more current market basket data, stating that the inflation factors for FY 2008 are based upon data that are 5 years old (FY 2002). The commenter suggested that this may result in an underestimation of the labor cost inflation experienced by IRFs.

Response: We disagree with the comment that the inflation factors used in the market basket are based upon data that are 5 years old. To derive the IRF market basket, we use FY 2002 data to derive the relative cost weights for the base year. While these cost weights remain fixed until the market basket is rebased to a new base year, data for the respective price proxies are frequently updated to reflect more recent data as they become available. The final IRF market basket update for FY 2008 is based on GII's forecast for the second quarter of 2007 (2007Q2). This forecast reflects historical data for the various inflation factors through the first quarter of 2007 (2007Q1).

Comment: Several commenters expressed concern about the methodology for computing the labor-related share. One commenter requested that we begin updating the labor-related share on an annual basis in FY 2009 using the most recent available data. The commenter stated that the current calculation of the labor-related share is based on 2002 data and expressed concern that this time lag is distorting actual labor cost trends being experienced by IRFs. Another commenter said that the methodology does not adequately reflect the difficulty IRFs have in recruiting a skilled labor force.

Response: We disagree with the commenters' view that the methodology does not reflect accurate labor-related costs for IRFs. The FY 2008 labor-related share is calculated as the sum of the relative importance of those costs that are related to, influenced by, or vary with the local labor market. This includes wages and salaries, fringe benefits, professional fees, labor-intensive services, and a portion of capital costs. We calculate this share based on the cost weights associated with the 2002-based RPL market basket, which is constructed using Medicare Cost Reports submitted by IRFs.

Further, we believe these weights adequately reflect the current cost structures of Medicare-participating IRFs given our methodology for calculating the labor-related relative importance for FY 2008. 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 2002) weight. Finally, we sum the FY 2008 relative importance for each of the labor-related categories to produce the FY 2008 labor-related relative importance.

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 when compared to the base year weights from the 2002-based RPL market basket. We revised and rebased the market basket and labor-related share in FY 2006 and expect to conduct additional updates on a regular basis.

Final Decision: We will continue to update the IRF PPS payment rates using our current methodology, which reflects the most recent available data. For this final rule, the FY 2008 IRF market basket increase factor is 3.2 percent and the labor-related share is 75.818 percent. This is based on GII's forecast for the second quarter of 2007 (2007Q2) with historical data through the first quarter of 2007 (2007Q1).

B. Area Wage Adjustment

Section 1886(j)(6) of the Act requires the Secretary to adjust the proportion (as estimated by the Secretary from time to time) of rehabilitation facilities' costs attributable to wages and wage-related costs by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for those facilities. The Secretary is required to update the wage index on the basis of information available to the Secretary on the wages and wage-related costs to furnish rehabilitation services. Any adjustments or updates made under section 1886(j)(6) of the Act for a FY are made in a budget neutral manner.

In the FY 2007 IRF PPS final rule, we maintained the methodology described in the FY 2006 IRF PPS final rule to determine the wage index, labor market area definitions, and hold harmless policy consistent with the rationale outlined in that final rule (70 FR 47880, 47917 through 47933). In the FY 2006 IRF PPS final rule, we adopted a 3-year hold harmless policy specifically for rural IRFs whose labor market designations changed from rural to urban under the CBSA-based labor market area designations. This policy specifically applied to IRFs that had been previously designated rural and which, effective for discharges on or after October 1, 2005, would otherwise have become ineligible for the 19.14 percent rural adjustment. For FY 2008, the third and final year of the 3-year phase-out of the budget neutral hold harmless policy, we will no longer apply an adjustment for IRFs that meet the criteria described in the FY 2006 final rule (70 FR 47880, 47923 through 47926).

For FY 2008, we will maintain the policies and methodologies described in the FY 2007 IRF PPS final rule relating to the labor market area definitions, the wage index methodology for areas with wage data, and hold harmless policy consistent with the rationale outlined in the FY 2006 IRF PPS final rule (70 FR 47880, 47917 through 47933). Therefore, this final rule continues to use the CBSA labor market area definitions and the pre-reclassification and pre-floor hospital wage index based on 2003 cost report data. In addition, the budget neutral hold harmless policy established in the FY 2006 final rule will expire for discharges occurring on or after October 1, 2007.

In adopting the CBSA geographic designations in FY 2006, we provided 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 metropolitan statistical area (MSA)-based wage index and 50 percent of the FY 2006 CBSA-based wage index (both using FY 2001 hospital data). We referred to the blended wage index as the FY 2006 IRF PPS transition wage index. As discussed in the FY 2006 IRF PPS final rule (70 FR 47880, 47926), subsequent to the expiration of this 1-year transition on September 30, 2006, we used the full CBSA-based wage index values as published in the Addendum of the FY 2007 IRF PPS final rule (71 FR 48354) and in the Addendum of this final 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 IRF PPS wage index (70 FR 47880).

In this final rule, we are revising our methodology to determine a proxy for rural areas without hospital wage data. Under the CBSA labor market areas, there are no rural hospitals in rural Massachusetts and rural Puerto Rico. Because there was no rural proxy for more recent rural data within those areas, we used the FY 2006 wage index value in both FY 2006 and FY 2007 for rural Massachusetts and rural Puerto Rico.

Due to the use of the same wage index value (from FY 2006) for these areas for 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 rural hospital wage index data. We believe that the best imputed proxy would (1) use pre-floor, pre-reclassified hospital data, (2) be easy to evaluate, (3) use the most local data, and (4) be easily updateable from year-to-year. Since the implementation of the IRF PPS, we have used the pre-floor, pre-reclassified hospital wage data that is easy to evaluate and is updatable from year-to-year. In addition, the IRF PPS wage index is based on hospitals' cost report data, which reflects local available data. Therefore, we believe the imputed proxy for a rural area without hospital wage data is consistent with our past methodology and other post-acute PPS wage index policy. Although our current methodology uses 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 rural hospital wage data, we are finalizing the use of the average wage index from all contiguous CBSAs to represent a reasonable proxy for the rural area within a State. While this approach does not use rural data, it does use pre-floor, pre-reclassified hospital wage data, it is easy to evaluate, it is updateable from year-to-year, and it 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 local and contiguous with Barnstable and Bristol counties. Under this methodology, the wage indexes for the counties of Barnstable (CBSA 12700: 1.2539) and Bristol (CBSA 39300: 1.0783) are averaged, resulting in an imputed rural wage index of 1.1661 for rural Massachusetts for FY 2008. We believe that this policy could be readily applied to other rural areas that lack hospital wage data (possibly due to hospitals converting to a different provider type, such as a critical access hospital, that does not submit the appropriate wage data), and we may re-examine this policy should a similar situation arise in the future.

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) that a separate and 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 these economic differences and the payment rates hospitals receive in Puerto Rico. 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. By maintaining our current policy for Puerto Rico, we will maintain consistency with other post-acute care PPS wage index policies. Accordingly, we will continue using the most recent wage index previously available for Puerto Rico; that is, a wage index of 0.4047.

In the FY 2006 IRF PPS final rule (70 FR 47880, 47920), we notified the public that the Office of Management and Budget (OMB) published a bulletin that changed the titles of certain CBSAs after the publication of our FY 2006 IRF PPS proposed rule (70 FR 30186). Since the publication of the FY 2006 IRF PPS final rule, OMB published additional bulletins that updated the CBSAs. Specifically, OMB added or deleted certain CBSA numbers and revised certain titles. Accordingly, in this final rule, we are clarifying that this and all subsequent IRF 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 IRF PPS wage index. The OMB bulletins may be accessed online at *http://www.whitehouse.gov/omb/bulletins/index.html.*

To calculate the wage-adjusted facility payment for the payment rates set forth in this final rule, we multiply the unadjusted Federal prospective payment by the FY 2008 RPL labor-related share (75.818 percent) to determine the labor-related portion of the Federal prospective payments. We then multiply this labor-related portion by the applicable IRF wage index shown in Table 1 for urban areas and Table 2 for rural areas in the Addendum.

Adjustments or updates to the IRF wage index made under section 1886(j)(6) of the Act must be made in a budget neutral manner; therefore, we calculated a budget neutral wage adjustment factor as established in the August 1, 2003 final rule and codified at § 412.624(e)(1), and described in the steps below. We use the following steps to ensure that the FY 2008 IRF standard payment conversion factor reflects the update to the wage indexes (based on the FY 2003 pre-reclassified and pre-floor hospital wage data) and the labor-related share in a budget neutral manner:

Step 1. Determine the total amount of the estimated FY 2007 IRF PPS rates, using the FY 2007 standard payment conversion factor and the labor-related share and the wage indexes from FY 2007 (as published in the FY 2007 IRF PPS final rule).

Step 2. Calculate the total amount of estimated IRF PPS payments, using the FY 2007 standard payment conversion factor and the FY 2008 labor-related share and CBSA urban and rural wage indexes.

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2, which equals the FY 2008 budget neutral wage adjustment factor of 1.0028.

Step 4. Apply the FY 2008 budget neutral wage adjustment factor from step 3 to the FY 2007 IRF PPS standard payment conversion factor after the

application of the estimated market basket update to determine the FY 2008 standard payment conversion factor.

We received a few comments on the proposed IRF PPS wage index, which are summarized below.

Comment: A few commenters recommended that we revise the urban IRF PPS wage index policies to stabilize the wage index from one year to the next. The commenters stated that the FY 2008 IRF PPS proposed wage indexes would be lower than other IRFs or acute care hospitals in their local market area. In addition, the variability of the wage index from one year to the next causes unpredictable annual revenue swings that make it difficult to retain staff. Thus, it is difficult for these IRFs to compete for healthcare personnel in the same market area as other local IRFs and acute care hospitals. The wage index recommendations varied from a general change to the urban wage index to specific criteria an IRF must meet in order to qualify for the commenter's recommended wage index policy.

We also received a few public comments that recommend that we consider wage index policies under the acute IPPS because IRFs compete in a similar labor pool as acute care hospitals. The IPPS wage index policies would allow IRFs to benefit from the IPPS reclassification and/or floor policies. (A discussion of the IPPS reclassification and floor policies may be found on our Web site at *http://www.cms.hhs.gov/AcuteInpatientPPS/01_overview.asp*.)

In addition, commenters recommended that we conduct further analysis and discussions with the industry regarding alternative wage index methodologies that would minimize fluctuations in the wage index and better reflect the costs of IRF labor in the market areas.

Response: For FY 2008, we proposed a revision to our methodology to determine a proxy for rural areas without hospital wage data. This proxy would be applied to rural geographic areas in a State where there is no hospital wage data. We did not propose changes in the IRF PPS methodology for urban areas with available hospital wage data nor did we propose to revise our current wage index policies to adopt the reclassification or floor provisions used in the IPPS. For this reason, we are not making changes at this time to wage index policies beyond what we discussed in the FY 2008 IRF PPS proposed rule (72 FR 26230).

A few commenters recommended alternative approaches to the IRF PPS wage index that we would like to further analyze and may consider in the future. For example, we received recommendations ranging from a general change to the urban wage index and wage data to specific criteria an IRF must meet in order to qualify for the commenter's recommended wage index policy. We met in 2006 and 2007 with industry representatives that recommended several different approaches to the IRF PPS wage index that they believe would minimize the shifts in the wage index from one year to the next. However, we agree with the commenters that urged us to conduct further analysis. For this reason, we believe that it is prudent to refrain from acting on these recommendations at this time so that we can consider, if appropriate, these recommended approaches and provide the public the opportunity in future rulemaking to evaluate and comment upon any alternatives we may propose.

We reviewed Medicare Payment Advisory Commission's (MedPAC) wage index recommendations as discussed in MedPAC's June 2007 report titled, ''Report to Congress: Promoting Greater Efficiency in Medicare.'' Although some commenters recommend that we adopt the IPPS wage index policies such as reclassification and floor policies, we note that MedPAC's June 2007 report to Congress recommends that Congress ''repeal the existing hospital wage index statute, including reclassification and exceptions, and give the Secretary authority to establish new wage index systems.'' We believe that adopting the IPPS wage index policies, such as reclassification or floor, would not be prudent at this time because MedPAC suggests that the reclassification and exception policies in the IPPS wage index alters the wage index values for one-third of IPPS hospitals. In addition, MedPAC found that the exceptions may lead to anomalies in the wage index. By adopting the IPPS reclassification and exceptions at this time, the IRF PPS wage index may be vulnerable to similar issues that MedPAC identified in their June 2007 Report to Congress. However, we will continue to review and consider MedPAC's recommendations on a refined or an alternative wage index methodology for the IRF PPS in future years.

Therefore, we will only revise the methodology for computing a wage index for rural areas without hospital wage data by computing an average wage index from all contiguous CBSAs to represent a reasonable proxy for the rural area within a State (as discussed above). We may consider the commenters' recommended alternative wage index policies and methodology in the future.

Comment: We received a comment that supports the expiration of the hold-harmless policy implemented in FY 2006 for IRFs that were rural in FY 2005 and became urban based on the CBSAs. Specifically, the budget neutral hold harmless policy established in the FY 2006 final rule will expire for discharges occurring on or after October 1, 2007.

Response: As discussed above and in the FY 2006 IRF PPS final rule (70 FR 47880), the hold harmless policy was implemented in FY 2006 and, as recommended by the commenter, will expire for discharges occurring on or after October 1, 2007.

Final Decision: Although we solicited public comments on revising the wage index for rural areas without hospital wage data, we did not receive any comments regarding the use of an imputed wage index for rural areas without wage data within a State. Therefore, we proposed and will finalize in this rule the methodology for computing a wage index for rural areas without hospital wage data by computing an average wage index from all contiguous CBSAs to represent a reasonable proxy for the rural area within a State (as discussed above), as proposed in the FY 2008 proposed rule. In addition, the wage index tables for the IRF PPS in this and all subsequent IRF PPS rules and notices are considered to incorporate the CBSA changes published in the most recent OMB bulletin (see Web site at *http://www.whitehouse.gov/omb/bulletins/index.html*) that applies to the hospital wage data used to determine the current IRF PPS wage index.

C. Description of the IRF Standard Payment Conversion Factor and Payment Rates for FY 2008

To calculate the standard payment conversion factor for FY 2008 and as illustrated in Table 3 below, we begin by applying the estimated market basket increase factor (3.2 percent) to the standard payment conversion factor for FY 2007 ($12,981), which equals $13,396. We then apply the combined budget neutrality factor for the wage index and labor related share and final year of the hold harmless policy of 1.0041 (1.0028 * 1.0013 = 1.0041), which would result in a standard payment conversion factor of $13,451.

TABLE 3.—CALCULATIONS TO DETERMINE THE FY 2008 STANDARD PAYMENT CONVERSION FACTOR

Explanation for adjustment	Calculations
FY 2007 Standard Payment Conversion Factor	12,981
FY 2008 Market Basket Increase Factor	× 1.032
Subtotal	= 13,396
Budget Neutrality Factor for the Wage Index, Labor-Related Share, and the Hold Harmless Provision	× 1.0041
FY 2008 Standard Payment Conversion Factor	= $13,451

After the application of the relative weights, the resulting unadjusted IRF prospective payment rates for FY 2008 are shown below in Table 4, ''FY 2008 Payment Rates.''

TABLE 4.—FY 2008 PAYMENT RATES

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidity
0101	$10,366.69	$9,823.27	$8,840.00	$8,537.35
0102	12,769.03	12,099.17	10,888.58	10,515.99
0103	15,054.36	14,264.79	12,837.63	12,399.13
0104	15,986.51	15,145.83	13,631.24	13,164.49
0105	19,182.47	18,174.99	16,357.76	15,798.20
0106	22,320.59	21,147.66	19,033.17	18,382.14
0107	25,758.67	24,406.84	21,965.48	21,213.57
0108	29,807.42	28,243.06	25,418.35	24,548.08
0109	29,589.51	28,035.92	25,231.39	24,367.83
0110	35,358.64	33,502.41	30,151.76	29,120.07
0201	10,953.15	9,154.75	8,178.21	7,595.78
0202	14,069.75	11,760.21	10,505.23	9,757.36
0203	16,817.79	14,056.30	12,556.51	11,663.36
0204	18,010.89	15,054.36	13,448.31	12,491.94
0205	22,075.78	18,452.08	16,482.86	15,309.93
0206	28,845.67	24,109.57	21,536.40	20,005.67
0207	37,210.85	31,101.40	27,783.04	25,805.74
0301	15,326.07	12,822.84	11,503.30	10,454.12
0302	20,008.36	16,741.11	15,016.70	13,648.73
0303	23,809.62	19,920.93	17,869.65	16,240.74
0304	32,813.71	27,453.49	24,627.44	22,382.46
0401	12,895.47	11,374.17	10,386.86	9,224.70
0402	17,830.65	15,725.56	14,360.29	12,754.24
0403	31,030.11	27,368.75	24,991.96	22,196.84
0404	55,878.14	49,283.12	45,004.36	39,972.34
0405	42,197.13	37,216.23	33,985.30	30,185.39
0501	10,287.32	8,682.62	7,649.58	6,821.00
0502	13,803.42	11,649.91	10,263.11	9,152.06
0503	18,287.98	15,436.37	13,597.62	12,124.73
0504	22,845.18	19,282.01	16,985.92	15,145.83
0505	27,132.01	22,900.33	20,172.46	17,988.02
0506	36,858.43	31,109.47	27,405.07	24,436.43
0601	12,093.79	9,859.58	9,441.26	8,772.74
0602	16,098.16	13,124.14	12,565.92	11,678.16
0603	20,615.00	16,807.02	16,094.12	14,954.82
0604	26,353.20	21,485.28	20,573.30	19,117.91
0701	12,143.56	10,380.14	9,870.34	8,900.53
0702	15,786.09	13,495.39	12,830.91	11,570.55
0703	19,677.47	16,821.82	15,993.24	14,422.16
0704	24,170.10	20,662.08	19,645.19	17,714.97
0801	8,792.92	7,403.43	6,901.71	6,196.88
0802	11,489.84	9,675.30	9,017.55	8,097.50
0803	17,092.19	14,392.57	13,416.03	12,046.72
0804	14,849.90	12,504.05	11,655.29	10,466.22
0805	18,733.21	15,773.99	14,703.29	13,203.50
0806	22,494.11	18,941.70	17,655.78	15,854.69
0901	11,332.47	10,277.91	9,238.15	8,232.01
0902	14,914.47	13,527.67	12,158.36	10,836.13
0903	19,689.57	17,858.89	16,052.42	14,305.14
0904	24,670.48	22,377.08	20,111.94	17,923.46
1001	12,946.59	11,943.14	10,702.96	9,901.28
1002	17,094.88	15,769.95	14,132.97	13,073.03
1003	24,045.01	22,182.04	19,879.23	18,388.86
1101	16,886.39	14,099.34	12,408.55	11,427.97

TABLE 4.—FY 2008 PAYMENT RATES—Continued

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidity
1102	25,320.16	21,140.94	18,605.42	17,135.23
1201	13,689.08	11,816.70	11,005.61	9,960.47
1202	17,712.28	15,289.75	14,239.23	12,887.40
1203	21,845.77	18,858.30	17,562.97	15,895.05
1301	13,927.17	12,961.38	11,448.15	9,992.75
1302	19,263.18	17,926.15	15,834.52	13,820.90
1303	24,548.08	22,845.18	20,179.19	17,612.74
1401	10,976.02	9,887.83	8,788.88	7,883.63
1402	14,847.21	13,375.67	11,889.34	10,663.95
1403	18,434.60	16,607.95	14,762.47	13,241.16
1404	23,364.39	21,049.47	18,710.34	16,782.81
1501	13,432.17	11,931.04	10,482.36	9,952.39
1502	17,030.31	15,126.99	13,289.59	12,618.38
1503	20,791.21	18,468.22	16,224.60	15,405.43
1504	27,192.54	24,153.96	21,218.95	20,148.25
1601	13,545.16	11,500.61	10,456.81	9,357.86
1602	18,597.35	15,790.13	14,356.25	12,848.40
1603	22,900.33	19,443.42	17,678.65	15,821.07
1701	13,206.19	12,968.11	11,405.10	9,910.70
1702	17,380.04	17,066.63	15,008.63	13,042.09
1703	20,655.36	20,284.11	17,838.72	15,500.93
1704	25,887.79	25,421.04	22,355.56	19,427.28
1801	16,033.59	13,270.76	11,087.66	9,875.72
1802	25,634.92	21,217.61	17,727.07	15,788.78
1803	46,139.62	38,188.73	31,907.12	28,417.93
1901	16,677.89	14,777.27	14,749.02	12,576.69
1902	31,198.25	27,644.50	27,590.69	23,527.14
1903	45,012.43	39,883.56	39,805.54	33,943.60
2001	11,748.10	9,928.18	9,059.25	8,183.59
2002	15,397.36	13,012.50	11,873.20	10,727.17
2003	19,876.54	16,797.61	15,327.41	13,846.46
2004	26,519.99	22,412.06	20,450.90	18,474.95
2101	29,379.67	29,379.67	22,336.73	19,620.97
5001	0.00	0.00	0.00	2,960.57
5101	0.00	0.00	0.00	8,542.73
5102	0.00	0.00	0.00	21,501.42
5103	0.00	0.00	0.00	9,688.76
5104	0.00	0.00	0.00	25,266.36

D. Example of the Methodology for Adjusting the Federal Prospective Payment Rates

Table 5 illustrates the methodology for adjusting the Federal prospective payments (as described in sections VI.A through VI.C of this final rule). The examples below are based on two hypothetical Medicare beneficiaries, both classified into CMG 0110 (without comorbidities). The unadjusted Federal prospective payment rate for CMG 0110 (without comorbidities) can be found in Table 4 above.

One beneficiary is in Facility A, an IRF located in rural Spencer County, Indiana, and another beneficiary is in Facility B, an IRF located in urban Harrison County, Indiana. Facility A, a non-teaching hospital, has a disproportionate share hospital (DSH) percentage of 5 percent (which results in a LIP adjustment of 1.0309), a wage index of 0.8538, and an applicable rural adjustment of 21.3 percent. Facility B, a teaching hospital, has a DSH percentage of 15 percent (which results in a LIP adjustment of 1.0910), a wage index of 0.9118, and an applicable teaching status adjustment of 0.109.

To calculate each IRF's labor and non-labor portion of the Federal prospective payment, we begin by taking the unadjusted Federal prospective payment rate for CMG 0110 (without comorbidities) from Table 4 above. Then, we multiply the estimated labor-related share (75.818) described in section VI.A of this final rule by the unadjusted Federal prospective payment rate. To determine the non-labor portion of the Federal prospective payment rate, we subtract the labor portion of the Federal payment from the unadjusted Federal prospective payment.

To compute the wage-adjusted Federal prospective payment, we multiply the result of the labor portion of the Federal payment by the appropriate wage index found in the Addendum in Tables 1 and 2, which will result in the wage-adjusted amount. Next, we compute the wage-adjusted Federal payment by adding the wage-adjusted amount to the non-labor portion.

To adjust the Federal prospective payment by the facility-level adjustments, there are several steps. First, we take the wage-adjusted Federal prospective payment and multiply it by the appropriate rural and LIP adjustments (if applicable). Then, to determine the appropriate amount of additional payment for the teaching status adjustment (if applicable), we multiply the teaching status adjustment (0.109, in this example) by the wage-adjusted and rural-adjusted amount (if applicable). Finally, we add the additional teaching status payments (if applicable) to the wage, rural, and LIP-adjusted Federal prospective payment rate. Table 5 illustrates the components of the adjusted payment calculation.

TABLE 5.—EXAMPLE OF COMPUTING AN IRF'S FY 2008 FEDERAL PROSPECTIVE PAYMENT

Steps		Rural Facility A (Spencer Co., IN)	Urban Facility B (Harrison Co., IN)
1	Unadjusted Federal Prospective Payment	$29,120.07	$29,120.07
2	Labor Share	× 0.75818	× 0.75818
3	Labor Portion of Federal Payment	= $22,078.25	= $22,078.25
4	CBSA Based Wage Index (shown in the Addendum, Tables 1 and 2)	× 0.8538	× 0.9118
5	Wage-Adjusted Amount	= $18,850.41	= $20,130.95
6	Non-labor Amount	+ $7,041.82	+ $7,041.82
7	Wage-Adjusted Federal Payment	= $25,892.23	= $27,172.77
8	Rural Adjustment	× 1.213	× 1.000
9	Wage- and Rural-Adjusted Federal Payment	= $31,407.27	= $27,172.77
10	LIP Adjustment	× 1.0309	× 1.0910
11	FY2007 Wage-, Rural- and LIP-Adjusted Federal Prospective Payment Rate	= $32,377.76	= $29,645.49
12	FY2007 Wage- and Rural-Adjusted Federal Prospective Payment	$31,407.27	$27,172.77
13	Teaching Status Adjustment	× 0.000	× 0.109
14	Teaching Status Adjustment Amount	= $0.00	= $2,961.83
15	FY2007 Wage-, Rural-, and LIP-Adjusted Federal Prospective Payment Rate	+ $32,377.76	+ $29,645.49
16	Total FY2007 Adjusted Federal Prospective Payment	= $32,377.76	= $32,607.32

Thus, the adjusted payment for Facility A would be $32,377.76 and the adjusted payment for Facility B would be $32,607.32.

VII. Update to Payments for High-Cost Outliers Under the IRF PPS

A. Update to the Outlier Threshold Amount for FY 2008

Section 1886(j)(4) of the Act provides the Secretary with the authority to make payments in addition to the basic IRF prospective payments for cases incurring extraordinarily high costs. A case qualifies for an outlier payment if the estimated cost of the case exceeds the adjusted outlier threshold. We calculate the adjusted outlier threshold by adding the IRF PPS payment for the case (that is, the CMG payment adjusted by all of the relevant facility-level adjustments) and the adjusted threshold amount (also adjusted by all of the relevant facility-level adjustments). Then, we calculate the estimated cost of a case by multiplying the IRF's overall cost-to-charge ratio (CCR) by the Medicare allowable covered charge. If the estimated cost of the case is higher than the adjusted outlier threshold, we make an outlier payment for the case equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold.

In the August 7, 2001 final rule (66 FR 41316, 41362 through 41363), we discussed our rationale for setting the outlier threshold amount for the IRF PPS so that estimated outlier payments would equal 3 percent of total estimated payments. Subsequently, we updated the IRF outlier threshold amount in the FYs 2006 and 2007 IRF PPS final rules (70 FR 47880 and 71 FR 48354) to maintain estimated outlier payments at 3 percent of total estimated payments, and we also stated that we would continue to analyze the estimated outlier payments for subsequent years and adjust the outlier threshold amount as appropriate to maintain the 3 percent target.

For this final rule, we performed an updated analysis of FY 2006 claims and IRF-PAI data using the same methodology that we used to set the initial outlier threshold amount when we first implemented the IRF PPS in the August 7, 2001 final rule (66 FR 41316), which is also the same methodology that we used to update the outlier threshold amounts for FYs 2006 and 2007. Using the updated FY 2006 claims and IRF-PAI data, we estimate that IRF outlier payments as a percentage of total estimated payments for FY 2007 increased from 3 percent using the FY 2004 data to approximately 3.7 percent using the updated FY 2006 data.

Based on the updated analysis using FY 2006 data, and consistent with the broad statutory authority conferred upon the Secretary in sections 1886(j)(4)(A)(i) and 1886(j)(4)(A)(ii) of the Act, we are updating the outlier threshold amount to $7,362 to decrease estimated outlier payments from approximately 3.7 to 3 percent of total estimated aggregate IRF payments for FY 2008.

B. Update to the IRF Cost-to-Charge Ratio Ceilings

In accordance with the methodology stated in the August 1, 2003 final rule (68 FR 45692 through 45694), we apply a ceiling to IRFs' cost-to-charge ratios (CCRs). Using the methodology described in that final rule, we are updating the national urban and rural CCRs for IRFs. We apply the national urban and rural CCRs in the following situations:

- New IRFs that have not yet submitted their first Medicare cost report.
- IRFs whose overall CCR is in excess of 3 standard deviations above the corresponding national geometric mean, which is set at 1.56 for FY 2008.
- Other IRFs for whom accurate data with which to calculate an overall CCR are not available.

Specifically, for FY 2008, we estimate a national CCR of 0.596 for rural IRFs and 0.476 for urban IRFs. For new facilities, we use these national ratios until the data become available for us to compute the facility's actual CCR using the first tentative settled or final settled cost report data, which we will then use for the subsequent cost reporting period.

C. Adjustment of IRF Outlier Payments

In the August 1, 2003 final rule (68 FR 45674, 45693 through 45694), we finalized a proposal to make IRF outlier payments subject to reconciliation when IRFs' cost reports are settled, consistent with the policy adopted for IPPS hospitals in the June 9, 2003 IPPS final rule (68 FR 34494, 34501). The revised methodology provides for retroactive adjustments to IRF outlier payments to account for differences between the CCRs from the latest settled cost report and the actual CCRs computed at the time the cost report that coincides with the date of discharge is settled using the cost and charge data from that cost report. This revised methodology addresses vulnerabilities found in the IPPS and the IRF outlier payment policies, which may have resulted in outlier payments that were too high or too low. Along these lines, we are analyzing IRF outlier payments from the

beginning of the IRF PPS through FY 2005, obtained from IRFs' cost report filings, to identify specific payment vulnerabilities in the IRF outlier payment policy.

Under this policy, which is outlined in § 412.624(e)(5), which in turn references § 412.84(i) and § 412.84(m) of the IPPS regulations, outlier payments will be processed on an interim basis throughout the year using IRFs' CCRs based on the best information available at the time. When an IRF's cost report is settled, any reconciliation of outlier payments by fiscal intermediaries will be based on the relationship between an IRF's costs and charges at the time a particular discharge actually occurred. This revised methodology ensures that the final outlier payments reflect an accurate assessment of the actual costs that the IRF incurred for treating the case.

We have not yet issued instructions to the fiscal intermediaries regarding IRF outlier reconciliation because we have been analyzing the data and assessing the systems changes necessary to conduct the reconciliation. Thus, we will soon issue instructions to fiscal intermediaries to begin reconciling IRF outlier payments upon settlement of IRF cost reports.

We received several comments on the proposed high-cost outliers under the IRF PPS, which are summarized below.

Comment: One commenter suggested that CMS adopt a new methodology for modeling charge increases and cost-to-charge ratio (CCR) changes in estimating the outlier threshold amount, similar to the methodology implemented for IPPS hospitals in the FY 2007 IPPS final rule (71 FR 47870, 48150 through 48151).

Response: In response to the comment, we considered adopting the same methodology described in the FY 2007 IPPS final rule (71 FR 47870, 48150 through 48151) for projecting cost and charge growth in estimating the FY 2008 IRF outlier threshold amount. However, we discovered that the accuracy of the projections depends on the case mix of patients in the facilities remaining similar from year to year, as it does in IPPS hospitals. However, with the recent phase in of the enforcement of the 75 percent rule criteria, we find evidence of relatively large changes in the case mix of patients in IRFs, especially in the years immediately following the reinstatement of enforcement of the 75 percent rule (FYs 2004 through 2006). In performing our analysis, we discovered that we could get inaccurate results if we based future projections of cost and charge growth on data from years in which IRFs were experiencing abnormal fluctuations in case mix. Rather than implementing an outlier threshold amount for FY 2008 based on these potentially inaccurate results, we thought a better approach would be to wait until we could further analyze the interactions between case mix changes and IRF cost and charge growth. Our analysis of the data suggests that it is likely better to wait until the 75 percent rule has been fully phased in, and the IRF case mix has stabilized, before we attempt to project cost and charge growth using a new methodology. Otherwise, the substantial changes occurring in the system all at the same time, including changes in IRFs' charges, costs, and case mix, could compromise the accuracy of our results. For the reasons described above, our analysis shows that using the same methodology we used previously for updating the outlier threshold amount for FY 2008 is the best approach at this time. However, we will carefully consider the commenter's suggestions as we investigate alternative approaches for projecting IRF cost and charge growth in estimating future updates to the IRF outlier threshold amount.

Comment: One commenter requested that we use updated FY 2006 data to estimate the IRF outlier threshold amount for FY 2008, because the FY 2006 data better reflect changes in the volume of IRF cases due to the 75 percent rule.

Response: We agree with the commenter and we have updated our analysis for this final rule based on FY 2006 data using the same methodology that was described in the August 7, 2001 final rule (66 FR 41316), which was the same methodology used to calculate the proposed outlier threshold for the FY 2008 proposed rule (72 FR 26250).

Comment: In the proposed rule, we indicated that we would investigate the reasons for our finding that estimated FY 2007 outlier payments increased from 3.0 to 3.8 percent of total estimated payments when we updated the claims data used in the calculations from FY 2004 to FY 2005. Two commenters requested that we report the findings of our analysis and our rationale for increasing the outlier threshold amount in this final rule.

Response: Our analysis of the increase in estimated FY 2007 outlier payments using the updated FY 2005 claims data (compared with the FY 2004 claims data) shows that the increase was caused primarily by increases in IRF charges and cost-to-charge ratios (CCRs) between FY 2004 and FY 2005. As discussed above in section VII.C of this final rule, we are continuing to examine these changes closely to assess whether they indicate the presence of specific payment vulnerabilities in the IRF outlier payment policy. This is ongoing research, but we have already discovered large variations in charges and CCRs among IRFs from year to year since the implementation of the IRF PPS that we believe may be indicative of specific payment vulnerabilities in the IRF PPS outlier payment policy.

For this final rule, we used updated FY 2006 IRF claims data to analyze IRF outliers. Similar to the findings from the FY 2005 data, the FY 2006 data show that estimated IRF outlier payments would equal 3.7 percent of total estimated payments in FY 2007. Thus, based on the analysis of both the FYs 2005 and 2006 data, we believe that continuing to use the same outlier threshold amount for FY 2008 that we implemented for FY 2007 would result in an overpayment of IRF outlier payments, above the 3 percent outlier pool that we established when we first implemented the IRF PPS. For this reason, we are finalizing our decision to update the IRF outlier threshold amount for FY 2008 to $7,362, based on analysis of FY 2006 data.

Comment: Two commenters supported the proposed change to the IRF outlier threshold amount for FY 2008 to maintain estimated outlier payments at 3 percent of total estimated payments. One commenter indicated that the outlier threshold amount may have been set too low in FYs 2006 and 2007, which they said may have meant that the standard payment conversion factor in these years was also too low.

Response: We agree with these commenters that it is important to adjust the outlier threshold amount to maintain estimated outlier payments at 3 percent of total estimated payments for FY 2008. However, our calculation of the outlier threshold amount for a given FY has no effect on the amount of the standard payment conversion factor for that FY. Therefore, we disagree that the standard payment conversion factor was too low in FYs 2006 and 2007.

Comment: One commenter requested that CMS provide additional data and information to the public to allow the IRF industry and external researchers to conduct a more thorough review of CMS's proposed updates to the outlier threshold amount. Specifically, the commenter asked that we provide information on IRF charges and CCRs, a discussion of the data sources and time periods used in computing the outlier threshold, an IRF Medpar file (including total payments, outlier payments, and actual, estimated, and proposed CMGs), historical information on IRF facility-level payment factors (specifically

CCRs), and actual levels and percentages of outlier payments.

Response: We will carefully consider all of the commenter's suggestions in updating the IRF rate setting files that we post on the IRF PPS Web site in conjunction with each IRF PPS proposed and final rule. These files are available for download from the IRF PPS Web site at *http://www.cms.hhs.gov/InpatientRehabFacPPS/07_DataFiles.asp.* These files already contain much of the facility-level payment data requested by the commenter, including the CCRs used to compute the IRF outlier threshold amount. For this final rule, we used FY 2006 IRF claims data, merged with FY 2006 IRF–PAI data, to conduct patient-level payment simulations to estimate the outlier threshold amount for FY 2008. This data file contains information that can be used to identify individual Medicare beneficiaries and is therefore not publicly available. We obtained the provider-level CCR data used in this analysis from the Provider-Specific Files, which contain historical CCR data and are available for download from the CMS Web site at *http://www.cms.hhs.gov/ProspMedicareFeeSvcPmtGen/03_psf.asp.*

The modified Medpar data files that CMS provides to IPPS hospitals already contain IRF stay data. However, we have recently discovered that these files do not include the CMGs, and we recognize that there may be other limitations to the usefulness of these files for analyzing IRF payments. Based on the commenter's request, we will carefully consider the usefulness and feasibility of including additional variables on the Medpar file in the future to facilitate IRF analyses.

Comment: One commenter recommended that CMS consider placing a 10 percent upper limit on the amount of an IRF's outlier payments (as a percentage of total payments) to encourage IRFs to strengthen their management of cases that might become high-cost outlier cases. In addition, the commenter requested that CMS incorporate any unused funds from the 3 percent IRF outlier pool back into the IRF base rate to increase payments for all IRF discharges.

Response: We appreciate the commenter's suggestion to place a cap on an IRF's outlier payments, and will consider this approach in the future as we work to eliminate potential vulnerabilities in the IRF outlier payment policy. However, at this time, we believe that a better approach to mitigating the vulnerabilities in the IRF outlier payment methodology is to increase the accuracy of the IRF outlier payments. As discussed previously in section VII.C of this final rule, we will soon be issuing instructions to fiscal intermediaries to begin reconciling the IRF CCRs upon settlement of the cost reports. We believe that using the actual CCR computed from an IRF's cost report at the time the cost report is settled, rather than an older CCR, to compute the outlier payments on the discharges that coincide with that cost report will improve the accuracy of the outlier payment calculations. We expect that much of the variation in outlier payments (as a percentage of total payments) among IRFs will be reduced by this approach, because it will limit IRFs' ability to increase their outlier payments by increasing their charges.

As discussed in the August 7, 2001 final rule (66 FR 41316, 41362 through 41363), we believe that setting estimated outlier payments equal to 3 percent of total estimated payments effectively balances the need to encourage IRFs to continue admitting potential high-cost outlier cases, while simultaneously ensuring that adequate funds are available to reimburse IRFs for treating the non-high-cost outlier cases. As we discussed in response to comments that we received on the FY 2006 IRF PPS rule and other PPS rules, we do not make adjustments to IRF PPS payment rates to account for differences between the 3 percent target and actual outlier payments. (See 70 FR 47936 for the IRF PPS response and a list of the FRs addressing this issue for other PPS systems.) If outlier payments for a given year are higher than 3 percent, we do not recoup money from IRFs. Similarly, if outlier payments in a given year are below 3 percent, we do not increase IRF PPS payments to account for this. We believe that this policy is consistent with the statute and with the goals of the prospective payment systems.

Comment: Two commenters supported CMS's plan to instruct fiscal intermediaries to begin reconciling IRF outlier payments, in certain instances, upon settlement of the IRF cost reports. However, both commenters recommended that CMS limit the administrative burden of these reviews by conducting reconciliation on only those IRF providers whose outlier payments and cost-to-charge ratio fluctuations exceed certain thresholds, similar to the process for IPPS hospitals. Specifically, one commenter recommended that CMS structure the IRF outlier reconciliation policy so that it is similar to the reconciliation policies for IPPS and long-term care hospitals. In addition, one commenter suggested that CMS limit our reconciliation efforts to discharges that occurred on or after October 1, 2003, the effective date of recent improvements to the methodology for determining IRF outlier payments.

Response: We agree with the commenters that we should conduct outlier reconciliation to address vulnerabilities in IRF outlier payments, and we also agree that we should apply the outlier reconciliation policies used in the IPPS and long-term care hospital settings as closely as possible. To this end, we have been working closely with the CMS components that develop the outlier reconciliation policies for these facilities. We also agree that focusing our outlier reconciliation efforts on those IRFs whose outlier payments and cost-to-charge ratio fluctuations exceed certain thresholds, similar to the process for IPPS hospitals, would limit the administrative burden of the reconciliation process. We are in the process now of determining the appropriate thresholds to apply in the IRF setting, and will carefully consider the commenters' recommendations in this regard. We will issue the final thresholds in our instructions to the fiscal intermediaries. We will also consider the commenter's suggestions in deciding which years to review for outlier reconciliation.

Final Decision: Based on a careful review of the comments that we received on the proposed update to the outlier threshold amount for FY 2008 and based on updated analysis of the FY 2006 data, we are finalizing our decision to update the outlier threshold amount for FY 2008 to $7,362. In addition, we did not receive any comments on the IRF cost-to-charge ratio ceilings and are finalizing the national average urban CCR at 0.476 and the national average rural CCR at 0.596. We are also finalizing our estimate of 3 standard deviations above the corresponding national geometric mean, at 1.56 for FY 2008.

VIII. Clarification to the Regulation Text for Special Payment Provisions for Patients That Are Transferred

Section 125(a)(3) of the BBRA amended section 1886(j)(1) of the Act by adding a paragraph (E) that states ''Construction relating to transfer authority—Nothing in this subsection shall be construed as preventing the Secretary from providing for an adjustment to payments to take into account the early transfer of a patient from a rehabilitation facility to another site of care.'' In the FY 2002 proposed and final IRF PPS rules, we proposed and adopted the transfer payment policy

under § 412.624(f). The transfer policy provides payments that more accurately reflect facility resources used and services delivered for patients that transfer to another site of care as discussed in the FY 2002 IRF PPS final rule (66 FR 41316, 41353 through 41355). We are revising our regulations text to clarify our existing policy under § 412.624(f).

In the FY 2002 IRF PPS final rule (66 FR 41316, 41353 through 41355), we discuss our rationale, criteria for defining a transfer case, and the methodology to determine the unadjusted Federal prospective payment for the transfer case. In addition, we discuss several adjustments that we apply to the unadjusted Federal prospective payment rate. The final adjustments described in the FY 2002 IRF PPS final rule (65 FR 66304, 66347 through 66357) include the area wage adjustment, rural adjustment, the LIP adjustment, and the high-cost outlier adjustment. In our FY 2006 IRF PPS final rule (70 FR 47880), we refined the facility level adjustments and also adopted a teaching status adjustment.

We define a ''transfer'' under § 412.602 to mean the release of a Medicare inpatient from an IRF to another IRF, a short-term, acute-care prospective payment hospital, a long-term care hospital as described in § 412.23(e), or a nursing home that qualifies to receive Medicare or Medicaid payment. In order to receive a transfer payment under § 412.624(f), a patient must be transferred to another site of care as defined in § 412.602 and must have been admitted to the IRF for less than the average length of stay for the CMG. Table 1 in this final rule presents the CMGs, the comorbidity tiers, the corresponding relative weights, and the average length of stay value for each CMG and tier. We use the average length of stay for each CMG to determine when an IRF discharge meets the definition of a transfer, which results in a per diem case level adjustment.

Since the implementation of the IRF PPS, a claim meets the high-cost outlier policy under § 412.624(e)(5), as revised in the FY 2007 IRF PPS final rule (71 FR 48354, 48382 through 48383), if the estimated cost of the case exceeds the adjusted outlier threshold. For a case that qualifies, we make an outlier payment equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold. Since the implementation of the IRF PPS, we have provided an additional high-cost outlier payment to both transfer cases and full CMG cases when applicable. We proposed to clarify the regulations text to articulate the transfer policy more clearly. Specifically, we proposed to add the phrase ''subject to paragraph (e)(5)'' at the end of the paragraph under § 412.624(f)(2)(v). We proposed to revise § 412.624(f)(2)(v) to read, ''[B]y applying the adjustment described in paragraphs (e)(1), (e)(2), (e)(3), (e)(4), and (e)(7) of this section to the unadjusted payment amount determined in paragraph (f)(2)(iv) of this section to equal the adjusted transfer payment amount, subject to paragraph (e)(5).''

We received a couple comments on the proposed clarification to the regulation text for special payment provisions for patients that are transferred, which are summarized below.

Comment: We received a comment supporting the revisions to the clarification to the regulation text for special payment provisions for patients that are transferred described above. Another commenter requested additional clarification to better understand the intent of the revision to the regulation text.

Response: In the past, we have received questions from the public about whether an outlier payment applies to cases that are transferred to another site of care as defined in § 412.602. As discussed in detail above in this section, we have provided an additional high-cost outlier payment to both transfer cases and full CMG cases when applicable. We reviewed § 412.624(f) and believe that a minor revision to the regulation text would clarify the existing policy. As we emphasized in the proposed rule, the revision to the regulation text will not change our current methodology for determining whether a high-cost outlier payment applies to transfer cases. Based on the comment, we believe the regulations text should be revised to make more clear that we will apply a high-cost outlier payment to a transfer case based on the methodology set forth in § 412.624(e)(5), which we use to determine whether a high-cost outlier payment. Therefore, we will add the phrase to the end of § 412.624(f)(2)(v) to read, ''and making an outlier payment in accordance with (e)(5), if applicable.''

Final Decision: We are finalizing our change to the regulations text at § 412.624(f)(2)(v) by revising the paragraph to read, ''[B]y applying the adjustment described in paragraphs (e)(1), (e)(2), (e)(3), (e)(4), and (e)(7) of this section to the unadjusted payment amount determined in paragraph (f)(2)(iv) of this section to equal the adjusted transfer payment amount and making an outlier payment in accordance with (e)(5), if applicable.''

IX. Miscellaneous Comments

Comment: One commenter requested that CMS work to define more precisely the requirements for other post acute care providers, such as skilled nursing facilities and long-term care hospitals that also provide rehabilitation services.

Response: Because this comment concerns the establishment of regulations for other Medicare post-acute care settings, the comment is outside the scope of this final rule. However, in the IRF PPS final rule for FY 2007 (71 FR 48354), we described our plans to explore refinements to the existing provider-oriented ''silos'' to create a more seamless system for payment and delivery of post-acute care (PAC) under Medicare. We expect that this new model will be characterized by more consistent payments for the same type of care across different sites of service, quality driven pay-for-performance incentives, and collection of uniform clinical assessment information to support quality and discharge planning functions. In the IRF PPS final rule for FY 2007 (71 FR 48354), we described how section 5008 of the DRA provides for a demonstration on uniform assessment and data collection across different sites of service. We are developing a standard, comprehensive assessment instrument to be completed at hospital discharge for use in the demonstration, which we expect to begin in 2008. We expect that the demonstration will enable us to test the usefulness of this instrument, and analyze cost and outcomes across different PAC sites.

Comment: A few commenters recommended that CMS implement additional refinements to the IRF PPS using more recent data that reflect changes in IRF case mix and volume occurring in response to the 75 percent rule compliance criteria and medical necessity reviews. Specifically, one commenter recommended changes to the IRF facility-level adjustments, including suggested revisions to CMS's methodology for determining the amount of the adjustments. A few commenters also suggested that CMS work with the IRF industry and researchers to develop an analytical framework for analyzing future payment adjustments to account for coding changes that do not reflect real changes in IRFs' case mix.

Response: Since we did not propose any additional refinements to the IRF PPS for FY 2008, these comments are outside the scope of this final rule. However, we are currently analyzing the

FY 2006 data to determine whether any future revisions to the IRF PPS, including revisions to the facility-level adjustments and coding adjustments, would be appropriate. In conducting our analyses, we will carefully consider the suggestions offered by the commenters and will explore any new analytical frameworks that may be useful for developing future refinements.

X. Provisions of the Final Regulations

In this final rule we are adopting the provisions as set forth in the May 8, 2007 proposed rule (72 FR 26230) except as noted elsewhere in the preamble with the following revisions:

- We will update the pre-reclassified and pre-floor wage indexes based on the CBSA changes published in the most recent OMB bulletins that apply to the hospital wage data used to determine the current IRF PPS wage index, as discussed in section VI.B.
- We will revise the wage index policy for rural areas without hospital wage data by imputing an average wage index from all contiguous CBSAs to represent a reasonable proxy for the rural area within a State, as discussed in section VI.B of this final rule.
- We are updating the FY 2008 IRF PPS payment rates by the market basket (3.2 percent), as discussed in section VI.A of this final rule.
- We are updating the FY 2008 IRF PPS payment rates by the labor-related share (75.818 percent), the wage indexes, and the final year of the hold harmless policy in a budget neutral manner, as discussed in sections VI of this final rule.
- We are updating the outlier threshold amount for FY 2008 to $7,362, as discussed in section VII.A in this final rule.
- We are updating the urban and rural national cost-to-charge ratio ceilings for purposes of determining outlier payments under the IRF PPS, as discussed in section VII.B in this final rule.
- We are maintaining the comorbidity policy specified in § 412.23(b)(2). Therefore, for cost reporting periods beginning on or after July 1, 2007, and before July 1, 2008, the compliance threshold remains 65 percent and we will continue to include comorbidities when calculating the compliance percentage. However, for cost reporting periods beginning on or after July 1, 2008, the compliance threshold will increase to 75 percent, but the comorbidities will not be used to determine if a provider met the 75 percent of the compliance threshold.
- We are revising the regulation text at § 412.624(f)(2)(v) to clarify that we determine whether a high-cost outlier payment would be applicable for transfer cases.

XI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

XII. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA, September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (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 one year). This final rule is 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, will be more than $100 million. We estimate that the total impact of these changes for estimated FY 2008 payments compared to estimated FY 2007 payments will be an increase of approximately $150 million (this reflects a $195 million increase from the update to the payment rates and a $45 million decrease due to the update to the outlier threshold amount to decrease estimated outlier payments from approximately 3.7 percent in FY 2007 to 3 percent in FY 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 government jurisdictions. Most IRFs and most other providers and suppliers are considered small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any one year. (For details, see the Small Business Administration's final rule that set forth size standards for health care industries, at 65 FR 69432, November 17, 2000.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IRFs or the proportion of IRFs' revenue that is derived from Medicare payments. Therefore, we assume that all IRFs (an approximate total of 1,200 IRFs, of which approximately 60 percent are nonprofit facilities) are considered small entities and that Medicare payment constitutes the majority of their revenues. The Department of Health and Human Services generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. As shown in Table 6, we estimate that the net revenue impact of this final rule on all IRFs is to increase estimated payments by about 2.4 percent, with an estimated increase in payments of 3 percent or higher for some categories of IRFs (such as urban IRFs in the Mountain region and rural IRFs in the Middle Atlantic and East South Central regions). Thus, we anticipate that this final rule may have a significant impact on a substantial number of small entities. However, the estimated impact of this final rule is a net increase in revenues across all categories of IRFs, so we believe that this final rule will not impose a significant burden on small entities. Medicare fiscal intermediaries and carriers 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. 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. As discussed in detail below, the rates and policies set forth in this final rule will not have an adverse impact on rural hospitals based on the data of the 198 rural units and 20 rural hospitals in our database of 1,220 IRFs for which data were available.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995, updated annually

for inflation. That threshold level is currently approximately $120 million. This final rule will not mandate any requirements for State, local, or tribal governments, nor will 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. As stated above, this final rule will not have a substantial effect on State and local governments.

B. Anticipated Effects of the Final Rule

We discuss below the impacts of this final rule on the budget and on IRFs.

1. Basis and Methodology of Estimates

This final rule sets forth updates of the IRF PPS rates contained in the FY 2007 final rule, updates the outlier threshold for high-cost cases, and establishes an adjustment to the wage index methodology.

Based on the above, we estimate that the FY 2008 impact will be a net increase of $150 million in payments to IRF providers (this reflects a $195 million estimated increase from the update to the payment rates and a $45 million estimated decrease due to the update to the outlier threshold amount to decrease the estimated outlier payments from approximately 3.7 percent in FY 2007 to 3 percent in FY 2008). The impact analysis in Table 6 of this final rule represents the projected effects of the policy changes in the IRF PPS for FY 2008 compared with estimated IRF PPS payments in FY 2007 without the policy changes. 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 number of discharges 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, susceptible to forecasting errors because of other changes in the forecasted impact time period. Some examples could be legislative changes made by the Congress to the Medicare program that will impact program funding, or changes specifically related to IRFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the BIPA, the MMA, the DRA, or new statutory provisions. Although these changes may not be specific to the IRF 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 IRFs.

In updating the rates for FY 2008, we are implementing a number of standard annual revisions and clarifications mentioned elsewhere in this final rule (for example, the update to the wage and market basket indexes used to adjust the Federal rates). We estimate that these revisions will increase payments to IRFs by approximately $195 million.

The aggregate change in estimated payments associated with this final rule is estimated to be an increase in payments to IRFs of $150 million for FY 2008. The market basket increase of $195 million and the $45 million decrease due to the update to the outlier threshold amount to decrease estimated outlier payments from approximately 3.7 percent in FY 2007 to 3.0 percent in FY 2008 will result in a net change in estimated payments from FY 2007 to FY 2008 of $150 million.

The effects of the changes that affect IRF PPS payment rates are shown in Table 6. The following changes that affect the IRF PPS payment rates are discussed separately below:

- The effects of the update to the outlier threshold amount to decrease total estimated outlier payments from approximately 3.7 to 3 percent of total estimated payments for FY 2008, consistent with section 1886(j)(4) of the Act.
- The effects of the annual market basket update (using the RPL market basket) to IRF PPS payment rates, as required by sections 1886(j)(3)(A)(i) and 1886(j)(3)(C) of the Act.
- The effects of applying the budget neutral labor-related share and wage index adjustment, including revisions to our methodology for determining a proxy for rural areas without hospital wage data (as described in section VI of this final rule), as required under section 1886(j)(6) of the Act.
- The effects of the final year of the 3-year budget neutral hold-harmless policy for IRFs that were rural under § 412.602 during FY 2005, but are urban under § 412.602 beginning in FY 2006 and lose the rural adjustment, resulting in a decrease in the estimated IRF PPS payments if not for the hold harmless policy.
- The total change in estimated payments based on the FY 2008 policies relative to estimated FY 2007 payments without the policies.

2. Description of Table 6

The table below categorizes IRFs by geographic location, including urban or rural location, and location with respect to CMS's nine census divisions (as defined on the cost report) of the country. In addition, the table divides IRFs into those that are separate rehabilitation hospitals (otherwise called freestanding hospitals in this section), those that are rehabilitation units of a hospital (otherwise called hospital units in this section), rural or urban facilities, ownership (otherwise called for-profit, non-profit, and government), and by teaching status. The top row of the table shows the overall impact on the 1,220 IRFs included in the analysis.

The next 12 rows of Table 6 contain IRFs categorized according to their geographic location, designation as either a freestanding hospital or a unit of a hospital, and by type of ownership; all urban, which is further divided into urban units of a hospital, urban freestanding hospitals, and by type of ownership; and all rural, which is further divided into rural units of a hospital, rural freestanding hospitals, and by type of ownership. There are 1,002 IRFs located in urban areas included in our analysis. Among these, there are 806 IRF units of hospitals located in urban areas and 196 freestanding IRF hospitals located in urban areas. There are 218 IRFs located in rural areas included in our analysis. Among these, there are 198 IRF units of hospitals located in rural areas and 20 freestanding IRF hospitals located in rural areas. There are 406 for-profit IRFs. Among these, there are 328 IRFs in urban areas and 78 IRFs in rural areas. There are 745 non-profit IRFs. Among these, there are 622 urban IRFs and 123 rural IRFs. There are 69 government-owned IRFs. Among these, there are 52 urban IRFs and 17 rural IRFs.

The remaining three parts of Table 6 show IRFs grouped by their geographic location within a region, and the last part groups IRFs by teaching status. First, IRFs located in urban areas are categorized with respect to their location within a particular one of the nine CMS geographic regions. Second, IRFs located in rural areas are categorized with respect to their location within a particular one of the nine CMS geographic regions. In some cases, especially for rural IRFs located in the New England, Mountain, and Pacific regions, the number of IRFs represented is small. Finally, IRFs are grouped by teaching status, including non-teaching IRFs, IRFs with an intern

and resident to average daily census (ADC) ratio less than 10 percent, IRFs with an intern and resident to ADC ratio greater than or equal to 10 percent and less than or equal to 19 percent, and IRFs with an intern and resident to ADC ratio greater than 19 percent.

The estimated impact of each change to the facility categories listed above are shown in the columns of Table 6. The description of each column is as follows:

Column (1) shows the facility classification categories described above.

Column (2) shows the number of IRFs in each category in our FY 2006 analysis file.

Column (3) shows the number of cases in each category in our FY 2006 analysis file.

Column (4) shows the estimated effect of the adjustment to the outlier threshold amount so that estimated outlier payments decrease from approximately 3.7 percent in FY 2007 to 3 percent of total estimated payments for FY 2008.

Column (5) shows the estimated effect of the market basket update to the IRF PPS payment rates.

Column (6) shows the estimated effect of the update to the IRF labor-related share, wage index, and the final year of the hold harmless policy, in a budget neutral manner.

Column (7) compares our estimates of the payments per discharge, incorporating all of the changes reflected in this final rule for FY 2008, to our estimates of payments per discharge in FY 2007 (without these changes).

The average estimated increase for all IRFs is approximately 2.4 percent. This estimated increase includes the effects of the 3.2 percent market basket update. It also includes the 0.7 percent overall estimated decrease in estimated IRF outlier payments from the update to the outlier threshold amount. Because we are making the remainder of the changes outlined in this final rule in a budget neutral manner, they will not affect total estimated IRF payments in the aggregate. However, as described in more detail in each section, they will affect the estimated distribution of payments among providers.

TABLE 6.—PROJECTED IMPACT ON THE IRF PPS FOR FY 2008

Facility classification (1)	Number of IRFs in FY 2006 (2)	Number of cases in FY 2006 (3)	Outlier (4) (percent)	Market basket (5) (percent)	FY08 CBSA wage index, labor-related share, and hold harmless (6) (percent)	Total change (7) (percent)
Total	1,220	404,331	−0.7	3.2	0	2.4
Urban unit	806	225,170	−1.0	3.2	0.2	2.4
Rural unit	198	35,612	−0.8	3.2	0.2	2.7
Urban hospital	196	137,865	−0.4	3.2	−0.3	2.5
Rural hospital	20	5,684	−0.4	3.2	0.1	2.9
Urban For-Profit	328	137,349	−0.6	3.2	−0.2	2.4
Rural For-Profit	78	14,824	−0.6	3.2	0.1	2.7
Urban Non-Profit	622	210,708	−0.8	3.2	0.1	2.5
Rural Non-Profit	123	23,686	−0.7	3.2	0.3	2.7
Urban Government	52	14,978	−0.9	3.2	−0.2	2.0
Rural Government	17	2,786	−1.2	3.2	0.3	2.3
Urban	1,002	363,035	−0.7	3.2	0.0	2.4
Rural	218	41,296	−0.7	3.2	0.2	2.7
Urban by region:						
Urban New England	32	15,634	−0.7	3.2	−0.4	2.0
Urban Middle Atlantic	155	63,821	−0.5	3.2	0.1	2.8
Urban South Atlantic	134	61,794	−0.7	3.2	−0.6	1.8
Urban East North Central	195	62,561	−0.9	3.2	0.6	2.8
Urban East South Central	53	26,084	−0.5	3.2	−0.8	1.9
Urban West North Central	72	19,076	−0.9	3.2	0.2	2.4
Urban West South Central	180	64,823	−0.7	3.2	−0.4	2.1
Urban Mountain	75	22,942	−0.9	3.2	0.7	3.0
Urban Pacific	106	26,300	−1.0	3.2	0.5	2.6
Rural by region:						
Rural New England	5	1,078	−1.4	3.2	−0.8	1.0
Rural Middle Atlantic	19	3,706	−0.4	3.2	0.7	3.4
Rural South Atlantic	26	6,175	−0.5	3.2	−0.1	2.6
Rural East North Central	36	6,804	−0.7	3.2	0.3	2.7
Rural East South Central	22	4,357	−0.6	3.2	0.5	3.1
Rural West North Central	37	6,334	−1.0	3.2	0.5	2.7
Rural West South Central	58	11,392	−0.6	3.2	0.1	2.7
Rural Mountain	9	946	−1.8	3.2	−0.2	1.1
Rural Pacific	6	504	−1.2	3.2	0.3	2.3
Teaching Status:						
Non-teaching	1,103	352,896	−0.8	3.2	0.0	2.4
Resident to ADC less than 10%	59	32,718	−0.6	3.2	0.1	2.9
Resident to ADC 10%–19%	41	15,597	−0.6	3.2	0.1	2.7
Resident to ADC greater than 19%	17	3,120	−0.7	3.2	0.1	2.8

3. Impact of the Update to the Outlier Threshold Amount (Column 4, Table 6)

In the FY 2007 IRF PPS final rule (71 FR 48354), we used FY 2004 patient-level claims data (the best, most complete data available at that time) to set the outlier threshold amount for FY 2007 so that estimated outlier payments would equal 3 percent of total estimated payments for FY 2007. For this final rule, we are updating our analysis using FY 2006 data. Using the updated FY 2006 data, we now estimate that IRF outlier payments as a percentage of total estimated payments for FY 2007 increased from 3 percent using the FY 2004 data to approximately 3.7 percent using the updated FY 2006 data. Thus, we are adjusting the outlier threshold amount for FY 2008 to $7,362 to set total estimated outlier payments equal to 3 percent of total estimated payments in FY 2008. The estimated change in total payments between FY 2007 and FY 2008, therefore, includes a 0.7 percent overall estimated decrease in payments because the estimated outlier portion of total payments is estimated to decrease from approximately 3.7 percent to 3 percent.

The impact of this update (as shown in column 4 of Table 6) is to decrease estimated overall payments to IRFs by 0.7 percent. We do not estimate that any group of IRFs would experience an increase in payments from this update. We estimate the largest decrease in payments to be a 1.8 percent decrease in estimated payments to rural IRFs in the Mountain region.

4. Impact of the Market Basket Update to the IRF PPS Payment Rates (Column 5, Table 6)

In column 5 of Table 6, we present the estimated effects of the market basket update to the IRF PPS payment rates. In the aggregate, and across all hospital groups, the update will result in a 3.2 percent increase in overall estimated payments to IRFs.

5. Impact of the CBSA Wage Index, Labor-Related Share, and the Hold Harmless Policy for FY 2008 (Column 6, Table 6)

In column 6 of Table 6, we present the effects of the budget neutral update of the wage index, labor-related share, and the final year of the hold harmless policy. In FY 2006, we provided a 1-year blended wage index and a 3-year phase out of the rural adjustment for IRFs that changed designation because of the change from MSAs to CBSAs (referenced as the hold harmless policy). We applied the blended wage index to all IRFs and the hold harmless policy to those IRFs that qualify, as described in § 412.624(e)(7), in order to mitigate the impact of the change from the MSA-based labor area definitions to the CBSA-based labor area definitions for IRFs.

As discussed in the FY 2007 IRF PPS final rule (71 FR 48345), the blended wage index expired in FY 2007 and will not be applied for discharges occurring on or after October 1, 2006. In addition, FY 2008 is the third and final year of the hold harmless policy, and we are continuing to apply this policy as described in the FY 2006 final rule in a budget neutral manner.

As discussed in this final rule, we are revising our methodology to impute a rural wage index value for rural areas without hospital wage data and update the wage index based on the CBSA-based labor market area definitions in a budget neutral manner. We are also applying the third and final year of the hold harmless policy in a budget neutral manner. Thus, in the aggregate, the estimated impact of the update to the wage index and labor-related share is zero percent.

In the aggregate and for all urban IRFs, we do not estimate that these changes will affect overall estimated payments to IRFs. However, we estimate that these changes will have small distributional effects. We estimate a 0.2 percent increase in estimated payments to rural IRFs. We estimate the largest increase in payments to be a 0.7 percent increase for urban IRFs in the Mountain region and for rural IRFs in the Middle Atlantic region. We estimate the largest decrease in payments to be a 0.8 percent decrease for urban IRFs in the East South Central region and for rural IRFs in the New England region.

C. Anticipated Effects of the 75 Percent Rule Policy

The existing policy for classifying a facility as an IRF, on the basis of its meeting the compliance threshold, which is described in § 412.23(b)(2), allows the inclusion of comorbidities meeting certain requirements in the calculations used to determine the compliance percentage for cost reporting periods beginning on or after July 1, 2004, and before July 1, 2008. However, for cost reporting periods beginning on or after July 1, 2008, the existing regulations indicate that comorbidities will not be eligible for inclusion in the calculations used to determine whether the provider meets the 75 percent compliance threshold. As discussed in section IV of this final rule, we are not changing the existing policy. On or after July 1, 2008, we anticipate that IRFs will make adjustments to their admission and coding practices to continue to meet the compliance threshold. Data limitations and two important sources of uncertainty prevent a precise estimate of the effect of this policy at this time. One source of uncertainty is what proportion of patients who would no longer be treated in IRFs would instead be treated by other, lower-cost post-acute care settings such as skilled nursing facilities or home health agencies. Another source of uncertainty is determining how providers will make adjustments on or after July 1, 2008. While we cannot make a precise estimate at this time, we anticipate modest decreases in Medicare payments beginning on or after July 1, 2008.

D. Alternatives Considered

Because we have determined that this final rule will have a significant economic impact on IRFs and on a substantial number of small entities, we will discuss alternative changes to the IRF PPS that we considered.

Section 1886(j)(3)(C) of the Act requires the Secretary to update the IRF PPS payment rates by an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered IRF services. As discussed above, we estimate the RPL market basket increase factor for FY 2008 to be 3.2 percent. This increase factor represents the majority of the impact on IRF providers shown in Table 6. Thus, we believe this estimated net increase in payments across all categories of IRFs represents a benefit to IRF providers and, thus, to IRFs that are small entities.

We considered maintaining the existing outlier threshold amount for FY 2008 because updating the outlier threshold amount has an estimated negative impact on IRF providers and, therefore, on small entities. If we were to maintain the FY 2007 outlier threshold amount, more outlier cases would have qualified for the additional outlier payments in FY 2008. However, analysis of updated FY 2006 data indicates that estimated outlier payments would not equal 3 percent of total estimated payments for FY 2008 unless we updated the outlier threshold amount. Also, we estimate that the overall effect of this policy on estimated payments to IRFs is small (less than 1 percent).

We considered two other options regarding the use of comorbidities in determining compliance with the 75 percent rule, in addition to the one that we are finalizing to maintain the existing policy regarding use of the comorbidities. First, we considered

retaining the use of the comorbidities for one additional year, for cost reporting periods beginning before July 1, 2009. We considered this option in order to extend the phase in of the 75 percent rule for one additional year and to separate the increase in the compliance percentage (to 75 percent) from the expiration of the use of comorbidities. However, providers have already had 4 years to adjust their case-mixes and adapt their operations in order to comply with the 75 percent rule.

The second alternative option that we considered was to continue the use of the comorbidities in determining compliance with the 75 percent rule on a permanent basis. However, we believe that, in the absence of sound clinical data, it would be premature to convert a temporary transition policy into a permanent part of the compliance requirements. Thus, we believe that continuing the existing policy, which expires the use of comorbidities in determining compliance with the 75 percent rule for cost reporting periods beginning on or after July 1, 2008, is the best approach.

E. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf)*, in Table 7 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final rule. This table provides our best estimate of the increase in Medicare payments under the IRF PPS as a result of the changes presented in this final rule based on the data for 1,220 IRFs in our database. All estimated expenditures are classified as transfers to Medicare providers (that is, IRFs).

TABLE 7.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2007 IRF PPS RATE YEAR TO THE 2008 IRF PPS RATE YEAR

[In millions]

Category	Transfers
Annualized Monetized Transfers.	$150 million.
From Whom To Whom?	Federal Government to IRF Medicare Providers.

F. Conclusion (Column 7, Table 6)

Overall, the estimated payments per discharge for IRFs in FY 2008 are projected to increase by 2.4 percent, compared with those in FY 2007, as reflected in column 7 of Table 6. We estimate that IRFs in urban areas will experience a 2.4 percent increase in estimated payments per discharge compared with FY 2007. We estimate that IRFs in rural areas will experience a 2.7 percent increase in estimated payments per discharge compared with FY 2007. We estimate that rehabilitation units in urban areas will experience a 2.4 percent increase in estimated payments per discharge and that freestanding rehabilitation hospitals in urban areas will experience a 2.5 percent increase in estimated payments per discharge. We estimate that rehabilitation units in rural areas will experience a 2.7 percent increase in estimated payments per discharge, while freestanding rehabilitation hospitals in rural areas will experience a 2.9 percent increase in estimated payments per discharge.

Overall, we estimate that the largest payment increase will be 3.4 percent among rural IRFs in the Middle Atlantic region. We do not estimate that any group of IRFs will experience an overall decrease in payments from the changes in this final rule.

Comment: One commenter expressed concerns about the total number of IRFs (Column 2, Table 6) and the total number of IRF discharges (Column 3, Table 6) reflected in table 6 of the proposed rule. The commenter noted that a recent report released by CMS on June 8, 2007 projected an estimated number of IRF discharges of approximately 412,000 in 2006, whereas table 6 of the proposed rule shows 427,419 IRF discharges in the FY 2005 claims data. The commenter questioned why CMS based its impact analysis on the higher number of discharges rather than the more recent, lower number.

Response: For the proposed rule, we analyzed the most current and complete IRF claims data available at that time, FY 2005, to estimate the impact of the proposed policies. The FY 2005 claims data show that there were 427,419 Medicare discharges from IRFs in that year. However, we have updated our analysis for this final rule using FY 2006 IRF claims data. This data show that there were 404,331 Medicare discharges from IRFs in FY 2006. Note that both of these numbers were calculated on a FY basis, whereas the 412,000 Medicare discharges reported in the June 8, 2007 report were estimated on a calendar year basis.

As discussed above, we use the best data available in estimating the impact of the policies contained in this final rule, 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 number of discharges or case-mix. Thus, the number of Medicare discharges reflected in table 6 represents the actual number of discharges for which we have IRF claims in the FY 2006 data, and we have not attempted to predict how many discharges would be expected to occur in FY 2008.

We are confident that the impact analysis, based on FY 2006 data, provides our best estimate of the payment impact of the policies contained in this final rule.

Comment: One commenter requested that CMS provide additional information, including detailed payment information, to allow interested parties to recreate CMS's impact table, make projections on a facility-level basis, and review the proposed policies in more detail.

Response: We will carefully consider the commenter's suggestions in updating the IRF PPS rate setting files that we post in conjunction with each IRF PPS proposed and final rule. These files are available for download from the IRF PPS Web site at *http://www.cms.hhs.gov/InpatientRehabFacPPS/07_DataFiles.asp.* Some of the payment information that the commenter requested is already contained in these files, and we will consider the possibility of adding additional information to the file.

We believe the public should have as much information as possible to be able to review our proposed policies and evaluate the impacts of these policies. However, to recreate the detailed payment simulations used in preparing the impact analysis, the public would need detailed patient-level data, such as claims and IRF–PAI data. Some of these data files are available to the public through CMS's standard data distribution systems. More information on CMS's data distribution policies is available on CMS's Web site at *http://www.cms.hhs.gov/researchers/statsdata.asp.*

We will continue to work with researchers and with industry groups to determine the best ways of providing data that will be useful in reviewing and analyzing our IRF PPS payment policies.

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 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

■ 1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart P—Prospective Payment for Inpatient Rehabilitation Hospitals and Rehabilitation Units

■ 2. Section 412.624 is amended by revising paragraph (f)(2)(v) to read as follows:

§ 412.624 Methodology for calculating the Federal prospective payment rates.

* * * * *

(f) * * *

(2) * * *

(v) By applying the adjustment described in paragraphs (e)(1), (e)(2), (e)(3), (e)(4), and (e)(7) of this section to the unadjusted payment amount determined in paragraph (f)(2)(iv) of this section to equal the adjusted transfer payment amount and making a payment in accordance with paragraph (e)(5) of this section, if applicable.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplemental Medical Insurance Program)

Dated: July 18, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: July 24, 2007.

Michael O. Leavitt,

Secretary.

The following addendum will not appear in the Code of Federal Regulations.

Addendum

This addendum contains the tables referred to throughout the preamble of this final rule. The tables presented below are as follows:

Table 1.—Inpatient Rehabilitation Facility Wage Index for Urban Areas for Discharges Occurring From October 1, 2007 Through September 30, 2008

Table 2.—Inpatient Rehabilitation Facility Wage Index for Rural Areas for Discharges Occurring From October 1, 2007 Through September 30, 2008

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008

CBSA code	Urban area (constituent counties)	Wage index
10180	Abilene, TX	0.8000
	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.	
10900	Allentown-Bethlehem-Easton, PA-NJ	0.9947
	Warren County, NJ.	
	Carbon County, PA.	
	Lehigh County, PA.	
	Northampton County, PA.	

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
11020	Altoona, PA	0.8812
	Blair County, PA.	
11100	Amarillo, TX	0.9169
	Armstrong County, TX.	
	Carson County, TX.	
	Potter County, TX.	
	Randall County, TX.	
11180	Ames, IA	0.9760
	Story County, IA.	
11260	Anchorage, AK	1.2023
	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	0.9216
	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
	Lee County, AL.	
12260	Augusta-Richmond County, GA-SC	0.9667
	Burke County, GA.	
	Columbia County, GA.	
	McDuffie County, GA.	

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	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	1.0725
	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	0.9711
	Penobscot County, ME.	
12700	Barnstable Town, MA	1.2539
	Barnstable County, MA.	
12940	Baton Rouge, LA	0.8084
	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	0.9762
	Calhoun County, MI.	
13020	Bay City, MI	0.9251
	Bay County, MI.	
13140	Beaumont-Port Arthur, TX	0.8595
	Hardin County, TX.	
	Jefferson County, TX.	
	Orange County, TX.	
13380	Bellingham, WA	1.1104
	Whatcom County, WA.	
13460	Bend, OR	1.0743
	Deschutes County, OR.	
13644	Bethesda-Frederick-Gaithersburg, MD	1.0903
	Frederick County, MD.	
	Montgomery County, MD.	
13740	Billings, MT	0.8712
	Carbon County, MT.	
	Yellowstone County, MT.	
13780	Binghamton, NY	0.8786
	Broome County, NY.	
	Tioga County, NY.	
13820	Birmingham-Hoover, AL	0.8894
	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.	
13980	Blacksburg-Christiansburg-Radford, VA	0.8213
	Giles County, VA.	
	Montgomery County, VA.	
	Pulaski County, VA.	
	Radford City, VA.	

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
14020	Bloomington, IN	0.8533
	Greene County, IN.	
	Monroe County, IN.	
	Owen County, IN.	
14060	Bloomington-Normal, IL	0.8944
	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	1.0913
	Kitsap County, WA.	
14860	Fairfield County, CT	1.2659
	Bridgeport-Stamford-Norwalk, CT.	
15180	Brownsville-Harlingen, TX	0.9430
	Cameron County, TX.	
15260	Brunswick, GA	1.0164
	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	0.9474
	Chittenden County, VT.	
	Franklin County, VT.	
	Grand Isle County, VT.	
15764	Cambridge-Newton-Framingham, MA	1.0970
	Middlesex County, MA.	
15804	Camden, NJ	1.0392
	Burlington County, NJ.	
	Camden County, NJ.	
	Gloucester County, NJ.	
15940	Canton-Massillon, OH	0.9031
	Carroll County, OH.	
	Stark County, OH.	
15980	Cape Coral-Fort Myers, FL	0.9342
	Lee County, FL.	
16180	Carson City, NV	1.0025
	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	0.9644
	Champaign County, IL.	
	Ford County, IL.	
	Piatt County, IL.	
16620	Charleston, WV	0.8542
	Boone County, WV.	
	Clay County, WV.	
	Kanawha County, WV.	
	Lincoln County, WV.	
	Putnam County, WV.	
16700	Charleston-North Charleston, SC	0.9145

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Berkeley County, SC.	
	Charleston County, SC.	
	Dorchester County, SC.	
16740	Charlotte-Gastonia-Concord, NC-SC	0.9554
	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	1.0751
	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	1.1053
	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	0.8109
	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.	
	Medina County, OH.	
17660	Coeur d'Alene, ID	0.9344
	Kootenai County, ID.	
17780	College Station-Bryan, TX	0.9045
	Brazos County, TX.	

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Burleson County, TX.	
	Robertson County, TX.	
17820	Colorado Springs, CO	0.9701
	El Paso County, CO.	
	Teller County, CO.	
17860	Columbia, MO	0.8542
	Boone County, MO.	
	Howard County, MO.	
17900	Columbia, SC	0.8933
	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	0.8446
	Allegany County, MD.	
	Mineral County, WV.	
19124	Dallas-Plano-Irving, TX	1.0075
	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	0.9266
	Vermilion County, IL.	
19260	Danville, VA	0.8451
	Pittsylvania County, VA.	
	Danville City, VA.	
19340	Davenport-Moline-Rock Island, IA-IL	0.8846
	Henry County, IL.	
	Mercer County, IL.	
	Rock Island County, IL.	
	Scott County, IA.	
19380	Dayton, OH	0.9037
	Greene County, OH.	
	Miami County, OH.	
	Montgomery County, OH.	
	Preble County, OH.	
19460	Decatur, AL	0.8159
	Lawrence County, AL.	

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Morgan County, AL.	
19500	Decatur, IL	0.8172
	Macon County, IL.	
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.9263
	Volusia County, FL.	
19740	Denver-Aurora, CO	1.0930
	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-West 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	1.0281
	Wayne County, MI.	
20020	Dothan, AL	0.7381
	Geneva County, AL.	
	Henry County, AL.	
	Houston County, AL.	
20100	Dover, DE	0.9847
	Kent County, DE.	
20220	Dubuque, IA	0.9133
	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	0.8697
	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	0.8827
	Erie County, PA.	
21604	Essex County, MA	1.0418
	Essex County, MA.	
21660	Eugene-Springfield, OR	1.0876
	Lane County, OR.	
21780	Evansville, IN-KY	0.9071
	Gibson County, IN.	
	Posey County, IN.	
	Vanderburgh County, IN.	

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Warrick County, IN.	
	Henderson County, KY.	
	Webster County, KY.	
21820	Fairbanks, AK	1.1059
	Fairbanks North Star Borough, AK.	
21940	Fajardo, PR	0.4036
	Ceiba Municipio, PR.	
	Fajardo Municipio, PR.	
	Luquillo Municipio, PR.	
22020	Fargo, ND-MN	0.8250
	Cass County, ND.	
	Clay County, MN.	
22140	Farmington, NM	0.8589
	San Juan County, NM.	
22180	Fayetteville, NC	0.8945
	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	0.7843
	Colbert County, AL.	
	Lauderdale County, AL.	
22540	Fond du Lac, WI	1.0063
	Fond du Lac County, WI.	
22660	Fort Collins-Loveland, CO	0.9544
	Larimer County, CO.	
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	1.0133
	Broward County, FL.	
22900	Fort Smith, AR-OK	0.7731
	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	0.9569
	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	0.8958
	Hall County, GA.	
23844	Gary, IN	0.9334
	Jasper County, IN.	
	Lake County, IN.	
	Newton County, IN.	
	Porter County, IN.	
24020	Glens Falls, NY	0.8324

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	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	0.9668
	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	0.9038
	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	0.9073
	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.	
	Burke County, NC.	
	Caldwell County, NC.	
	Catawba County, NC.	
25980	Hinesville-Fort Stewart, GA1	0.9178
	Liberty County, GA.	

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	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-Sugar Land-Baytown, TX	1.0008
	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	0.8997
	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-Carmel, IN	0.9895
	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	0.9165
	Baker County, FL.	
	Clay County, FL.	
	Duval County, FL.	
	Nassau County, FL.	
	St. Johns County, FL.	
27340	Jacksonville, NC	0.8231
	Onslow County, NC.	
27500	Janesville, WI	0.9655
	Rock County, WI.	

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
27620	Jefferson City, MO	0.8332
	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	0.8605
	Jasper County, MO.	
	Newton County, MO.	
28020	Kalamazoo-Portage, MI	1.0704
	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	0.8901
	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.	
29140	Lafayette, IN	0.8931
	Benton County, IN.	
	Carroll County, IN.	
	Tippecanoe County, IN.	
29180	Lafayette, LA	0.8289

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	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	1.0570
	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	0.7811
	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	0.8365
	Douglas County, KS.	
30020	Lawton, OK	0.8065
	Comanche County, OK.	
30140	Lebanon, PA	0.8679
	Lebanon County, PA.	
30300	Lewiston, ID-WA	0.9853
	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	0.9118
	Clark County, IN.	
	Floyd County, IN.	
	Harrison County, IN.	
	Washington County, IN.	
	Bullitt County, KY.	
	Henry County, KY.	

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	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	0.9519
	Bibb County, GA.	
	Crawford County, GA.	
	Jones County, GA.	
	Monroe County, GA.	
	Twiggs County, GA.	
31460	Madera, CA	0.8154
	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	0.9812
	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.	
	Carver County, MN.	
	Chisago County, MN.	
	Dakota County, MN.	
	Hennepin County, MN.	
	Isanti County, MN.	

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	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	0.8928
	Missoula County, MT.	
33660	Mobile, AL	0.7913
	Mobile County, AL.	
33700	Modesto, CA	1.1729
	Stanislaus County, CA.	
33740	Monroe, LA	0.7997
	Ouachita Parish, LA.	
	Union Parish, LA.	
33780	Monroe, MI	0.9707
	Monroe County, MI.	
33860	Montgomery, AL	0.8009
	Autauga County, AL.	
	Elmore County, AL.	
	Lowndes County, AL.	
	Montgomery County, AL.	
34060	Morgantown, WV	0.8423
	Monongalia County, WV.	
	Preston County, WV.	
34100	Morristown, TN	0.7933
	Grainger County, TN.	
	Hamblen County, TN.	
	Jefferson County, TN.	
34580	Mount Vernon-Anacortes, WA	1.0517
	Skagit County, WA.	
34620	Muncie, IN	0.8562
	Delaware County, IN.	
34740	Muskegon-Norton Shores, MI	0.9941
	Muskegon County, MI.	
34820	Myrtle Beach-Conway-North Myrtle Beach, SC	0.8810
	Horry County, SC.	
34900	Napa, CA	1.3374
	Napa County, CA.	
34940	Naples-Marco Island, FL	0.9941
	Collier County, FL.	
34980	Nashville-Davidson-Murfreesboro, TN	0.9847
	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.	
35004	Nassau-Suffolk, NY	1.2662
	Nassau County, NY.	
	Suffolk County, NY.	
35084	Newark-Union, NJ-PA	1.1892
	Essex County, NJ.	
	Hunterdon County, NJ.	
	Morris County, NJ.	
	Sussex County, NJ.	
	Union County, NJ.	
	Pike County, PA.	
35300	New Haven-Milford, CT	1.1953
	New Haven County, CT.	
35380	New Orleans-Metairie-Kenner, LA	0.8831
	Jefferson Parish, LA.	

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	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	1.0073
	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.	
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

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Bay County, FL.	
37620	Parkersburg-Marietta, WV-OH	0.7977
	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	1.0996
	Bucks County, PA.	
	Chester County, PA.	
	Delaware County, PA.	
	Montgomery County, PA.	
	Philadelphia County, PA.	
38060	Phoenix-Mesa-Scottsdale, AZ	1.0287
	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	0.9400
	Bannock County, ID.	
	Power County, ID.	
38660	Ponce, PR	0.4842
	Juana Díaz Municipio, PR.	
	Ponce Municipio, PR.	
	Villalba Municipio, PR.	
38860	Portland-South Portland-Biddeford, ME	0.9908
	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	0.9833
	Martin County, FL.	
	St. Lucie County, FL.	
39100	Poughkeepsie-Newburgh-Middletown, NY	1.0911
	Dutchess County, NY.	
	Orange County, NY.	
39140	Prescott, AZ	0.9836
	Yavapai County, AZ.	
39300	Providence-New Bedford-Fall River, RI-MA	1.0783
	Bristol County, MA.	

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Bristol County, RI.	
	Kent County, RI.	
	Newport County, RI.	
	Providence County, RI.	
	Washington County, RI.	
39340	Provo-Orem, UT	0.9537
	Juab County, UT.	
	Utah County, UT.	
39380	Pueblo, CO	0.8753
	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	0.9622
	Berks County, PA.	
39820	Redding, CA	1.3198
	Shasta County, CA.	
39900	Reno-Sparks, NV	1.1963
	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.	
	Monroe County, NY.	
	Ontario County, NY.	
	Orleans County, NY.	
	Wayne County, NY.	
40420	Rockford, IL	0.9989

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	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	0.9193
	Floyd County, GA.	
40900	Sacramento-Arden-Arcade-Roseville, CA	1.3372
	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	0.9005
	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	1.0438
	Marion County, OR.	
	Polk County, OR.	
41500	Salinas, CA	1.4337
	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	0.8844
	Atascosa County, TX.	
	Bandera County, TX.	
	Bexar County, TX.	
	Comal County, TX.	
	Guadalupe County, TX.	
	Kendall County, TX.	
	Medina County, TX.	
	Wilson County, TX.	
41740	San Diego-Carlsbad-San Marcos, CA	1.1354

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	San Diego County, CA.	
41780	Sandusky, OH	0.9302
	Erie County, OH.	
41884	San Francisco-San Mateo-Redwood City, CA	1.5165
	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	1.1598
	San Luis Obispo County, CA.	
42044	Santa Ana-Anaheim-Irvine, CA	1.1473
	Orange County, CA.	
42060	Santa Barbara-Santa Maria-Goleta, CA	1.1091
	Santa Barbara County, CA.	
42100	Santa Cruz-Watsonville, CA	1.5457
	Santa Cruz County, CA.	
42140	Santa Fe, NM	1.0824
	Santa Fe County, NM.	
42220	Santa Rosa-Petaluma, CA	1.4464
	Sonoma County, CA.	
42260	Sarasota-Bradenton-Venice, FL	0.9868

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Manatee County, FL.	
	Sarasota County, FL.	
42340	Savannah, GA	0.9351
	Bryan County, GA.	
	Chatham County, GA.	
	Effingham County, GA.	
42540	Scranton–Wilkes-Barre, PA	0.8347
	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
	Indian River County, FL.	
43100	Sheboygan, WI	0.9026
	Sheboygan County, WI.	
43300	Sherman-Denison, TX	0.8502
	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	0.9200
	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	1.1442
	San Joaquin County, CA.	
44940	Sumter, SC	0.8083
	Sumter County, SC.	
45060	Syracuse, NY	0.9691
	Madison County, NY.	
	Onondaga County, NY.	
	Oswego County, NY.	
45104	Tacoma, WA	1.0789
	Pierce County, WA.	
45220	Tallahassee, FL	0.8942
	Gadsden County, FL.	
	Jefferson County, FL.	

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	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	1.0835
	Mercer County, NJ.	
46060	Tucson, AZ	0.9202
	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	0.8811
	Smith County, TX.	
46540	Utica-Rome, NY	0.8396
	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	1.5137
	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.	
	Mathews County, VA.	
	Surry County, VA.	
	York County, VA.	
	Chesapeake City, VA.	
	Hampton City, VA.	

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	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-Troy-Farmington Hills, 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	0.9722
	Marathon County, WI.	
48260	Weirton-Steubenville, WV-OH	0.8063
	Jefferson County, OH.	
	Brooke County, WV.	
	Hancock County, WV.	
48300	Wenatchee, WA	1.0346
	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.	
48660	Wichita Falls, TX	0.8311
	Archer County, TX.	
	Clay County, TX.	
	Wichita County, TX.	
48700	Williamsport, PA	0.8139
	Lycoming County, PA.	

TABLE 1.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
48864	Wilmington, DE-MD-NJ	1.0684
	New Castle County, DE.	
	Cecil County, MD.	
	Salem County, NJ.	
48900	Wilmington, NC	0.9835
	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	1.0722
	Worcester County, MA.	
49420	Yakima, WA	0.9847
	Yakima County, WA.	
49500	Yauco, PR	0.3854
	Guánica Municipio, PR.	
	Guayanilla Municipio, PR.	
	Peñuelas Municipio, PR.	
	Yauco Municipio, PR.	
49620	York-Hanover, PA	0.9397
	York County, PA.	
49660	Youngstown-Warren-Boardman, OH-PA	0.8802
	Mahoning County, OH.	
	Trumbull County, OH.	
	Mercer County, PA.	
49700	Yuba City, CA	1.0730
	Sutter County, CA.	
	Yuba County, CA.	
49740	Yuma, AZ	0.9109
	Yuma County, AZ.	

[1] At this time, there are no hospitals located in this CBSA-based urban area on which to base a wage index. Therefore, the wage index value is based on the methodology described in the August 15, 2005 final rule (70 FR 47880). The wage index value for this area is the average wage index for all urban areas within the state.

TABLE 2.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008

CBSA code	Nonurban area	Wage index
01	Alabama	0.7591
02	Alaska	1.0661
03	Arizona	0.8908
04	Arkansas	0.7307
05	California	1.1454
06	Colorado	0.9325
07	Connecticut	1.1709
08	Delaware	0.9705
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

TABLE 2.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Nonurban area	Wage index
20	Maine	0.8443
21	Maryland	0.8926
22	Massachusetts[2]	1.1661
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

TABLE 2.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Nonurban area	Wage index
37	Oklahoma	0.7629
38	Oregon	0.9753
39	Pennsylvania	0.8320
40	Puerto Rico[3]	0.4047
41	Rhode Island[1]	
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

TABLE 2.—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Nonurban area	Wage index
65	Guam	0.9611

[1] All counties within the State are classified as urban.

[2] Massachusetts has areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2008. As discussed in the preamble in Section VI.B, we will impute a wage index value for rural Massachusetts based on the average wage index from all contiguous CBSAs.

[3] Puerto Rico has areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2008. As discussed in the preamble in Section VI.B, we will continue to use the most recent wage index previously available for Puerto Rico as discussed in the FY 2006 IRF PPS final rule (70 FR 47880).

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Federal Register

Tuesday,
August 7, 2007

Part IV

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1, 301 and 602
Corporate Estimated Tax; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 9347]

RIN 1545–AY22

Corporate Estimated Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance to corporations with respect to estimated tax requirements. These final regulations generally affect corporate taxpayers who are required to make estimated tax payments. These final regulations reflect changes to the law since 1984. This document also removes the section 6154 regulations.

DATES: *Effective date:* These regulations are effective on August 7, 2007.

Applicability date: These regulations apply to tax years beginning after September 6, 2007.

FOR FURTHER INFORMATION CONTACT: Timothy Sheppard, at (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1), the Procedure and Administration Regulations (26 CFR part 301), and the OMB Control Numbers under the Paperwork Reduction Act Regulations (26 CFR part 602) relating to corporate estimated taxes under section 6425 and section 6655 of the Internal Revenue Code (Code). This document also removes §§ 1.6154–1, 1.6154–2, 1.6154–3, 1.6154–4, 1.6154–5, and 301.6154–1. The IRS is removing the section 6154 regulations because Congress repealed section 6154 in 1987.

These regulations reflect changes to the law made by the Deficit Reduction Act of 1984, Public Law 98–369 (98 Stat. 494); the Superfund Amendments and Reauthorization Act of 1986, Public Law 99–499 (100 Stat. 1613); the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085); the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203 (101 Stat. 1330); the Revenue Act of 1987, Public Law 100–203 (101 Stat. 1330–382); the Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418 (102 Stat. 1107); the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647 (102 Stat. 3342); the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239 (103 Stat. 2106); the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 (104 Stat. 1388); the Tax Extension Act of 1991, Public Law 102–227 (105 Stat. 1686); the Act of Feb. 7, 1992, Public Law 102–244 (106 Stat. 3); the Unemployment Compensation Amendments of 1992, Public Law 102–318 (106 Stat. 290); the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66 (107 Stat. 312); the Uruguay Round Agreements Act of 1994, Public Law 103–465 (108 Stat. 4809); the Small Business Job Protection Act of 1996, Public Law 104–188 (110 Stat. 1755); the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788); the Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106–170 (113 Stat. 1860); the Community Renewal Tax Relief Act of 2000, Public Law 106–554 (114 Stat. 2763); the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16 (115 Stat. 38); the Jobs and Growth Tax Relief Reconciliation Act of 2003, Public Law 108–27 (117 Stat. 752); and the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418).

These regulations do not reflect changes made by the Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109–222 (120 Stat. 345) (TIPRA), as amended by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Act of 2007, Public Law 110–28 (121 Stat. 112), because TIPRA made temporary, targeted changes to the time and amount of any required installment otherwise due in September 2010 and September 2011. TIPRA also changed the amount of required installments in 2006, 2012, and 2013 for corporations with assets of not less than $1 billion. Although these changes are not reflected in these regulations, these and any further changes made in the Code supersede the rules in these regulations.

A notice of proposed rulemaking under section 6655 (REG–107722–00) was published in the **Federal Register** (70 FR 73393) on December 12, 2005. The proposed regulations provide guidance on how to determine the amount of a corporation's estimated tax due with each quarterly installment. No requests for a public hearing were received, so the public hearing on the proposed regulations, scheduled for March 15, 2006, was cancelled. The IRS received written and electronic comments responding to the notice of proposed rulemaking. After consideration of all comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions and Summary of Comments

Section 6655 generally requires corporations to make quarterly estimated tax payments or be assessed an addition to tax for any underpayment. As a general rule, payments are due on the fifteenth day of the fourth, sixth, ninth, and twelfth months. Each quarterly payment must be at least twenty-five percent of the required annual payment in order to avoid an underpayment penalty. Generally, the required annual payment equals one hundred percent of the tax shown on the return for the current year tax, or for certain small taxpayers, the lesser of one hundred percent of the tax shown on the return for the current year tax or one hundred percent of the tax shown on the return for the preceding taxable year. Alternatively, corporations may elect to use an annualized income installment or an adjusted seasonal installment if less than the amount computed under the general rules.

1. Comments Concerning § 1.6655–1 (Addition to Tax in the Case of a Corporation) of the Proposed Regulations

A. Recapture of a Tax Credit Not Included in the Definition of ''Tax''

One commentator requested that the final regulations clarify that the recapture of a tax credit under Chapter 1 is not a section 11 tax and not included within the definition of tax for purposes of section 6655 unless there is authority that provides that the recaptured credit is treated as a tax imposed by section 11.

Revenue Ruling 78–257 (1978–1 CB 440) provides that the term *tax*, as defined in section 6655, includes the amount of tax resulting from the recomputation of a prior year's investment credit at the applicable rate for the current year. However, *Berkshire Hathaway, Inc.* v. *United States*, 802 F.2d 429 (Fed. Cir. 1986), held that, for purposes of the definition of tax under section 6655, the recapture tax under former section 47 was not a tax imposed by section 11. The Court concluded that because the taxpayer paid no tax imposed by section 11 in the preceding taxable year, that taxpayer was not subject to an addition to tax for failing to pay estimated tax in the current year under the former provision in section 6655(d)(2) that allowed a taxpayer to pay estimated tax in the current year based on the law applicable to (other than the rates), and the known facts of,

the prior year's return. Based on the holding in *Berkshire Hathaway*, § 1.6655–1(g)(1)(iii) of the final regulations provides that, unless otherwise provided in the Internal Revenue Code, for purposes of the definition of tax as used in section 6655, a recapture of tax, such as a recapture provided by section 50(a)(1)(A) and any other similar provision, is not considered to be a tax imposed by section 11. Therefore, Rev. Rul. 78–257 is removed. See § 601.601(d)(2)(ii)(*b*).

B. Tax Rate Changes for Preceding Year Safe Harbor

Section 6655(d)(1)(B)(ii) allows taxpayers to determine their required annual payment based on 100 percent of the tax shown on the preceding year's return. Commentators suggested that the rule provided in § 1.6655–1(g)(3) of the proposed regulations, which requires taxpayers to recompute the tax determined for the preceding taxable year based on the current year tax rates if the tax rates for the current year and the preceding year differ, is not authorized by section 6655. The commentators suggested that, prior to the effective date of its amendment in 1987, section 6655 allowed estimated tax payments to be based on the facts shown on the return for the preceding taxable year and the law applicable to that year but using the tax rates for the current taxable year. The commentators requested that the final regulations not adopt the rule provided in § 1.6655–1(g)(3) of the proposed regulations.

Section 6655 no longer provides specific statutory authority to recompute tax determined for the preceding taxable year using the rates applicable to the current taxable year. Therefore, the final regulations do not adopt the rule provided in § 1.6655–1(g)(3) of the proposed regulations.

C. Return for the Preceding Taxable Year

One commentator requested that the final regulations clarify that the regulations adopt the holding in *Mendes* v. *Commissioner*, 121 T.C. 308 (2003). In *Mendes*, the Tax Court held that a tax return that is filed after the IRS issues a notice of deficiency is not a return for purposes of section 6654(d)(1)(B)(i). Id. at 324–325. *Mendes* cited *Evans Cooperage Co., Inc.* v. *United States*, 712 F.2d 199 (5th Cir. 1983), for the proposition that the purpose of the preceding year safe harbor is ''to provide a predictable escape from any possible penalty liability [and this purpose] would be defeated if penalties for underpayment of estimated taxes during the year were based, not on the easily determinable amount reflected on the preceding year's return, but instead upon the ultimate tax liability, possibly determined by adverse tax audit, a year or so after the tax year for * * * which the estimated tax installments were paid.'' *Mendes*, 121 T.C. at 326 (quoting *Evans Cooperage*, 712 F.2d at 204). *Evans Cooperage* held that the statutory reference to ''tax shown on the return of the corporation for the preceding taxable year'' refers to the timely filed return for the preceding year, not to any later-filed amended return. *Evans Cooperage*, 712 F.2d at 204.

Section 1.6655–1(g)(2) of the proposed regulations provides that the reference in section 6655(d)(1)(B)(ii) to ''return of the corporation of the preceding taxable year'' includes the Federal income tax return as amended, only if an amended Federal income tax return has been filed before the due date for an installment. As long as a taxpayer has remaining estimated tax installment payments to make during the tax year and is basing the payments on the preceding year return, the remaining payments should be made based on the most recent information the IRS has on the preceding year return. This includes the information on an amended return for the preceding year filed before an installment due date. Section 1.6655–1(g)(2) of the final regulations retains this rule but clarifies that the term ''return for the preceding taxable year'' includes the Federal income tax return as amended only if filed before the applicable installment due date if an amended Federal income tax return is filed for the preceding taxable year. If an amended Federal income tax return is filed on or after an installment due date, then the term ''return for the preceding taxable year'' does not include that amended Federal income tax return with respect to the installments due prior to the time the amended Federal income tax return is filed. This rule applies regardless of whether the IRS issues a notice of deficiency prior to the filing of the amended Federal income tax return.

2. Comments Concerning § 1.6655–2 (Annualized Income Installment Method) of the Proposed Regulations

As a general comment to the proposed regulations, one commentator noted that the estimated tax payment rules should strive to provide the most accurate picture of annualized taxable income based on facts known as of the end of an annualization period. The IRS and Treasury Department agree with this comment and recognize that treating an annualization period as a short taxable year does not necessarily result in an accurate estimate of annualized taxable income. The final regulations make it clear that taxpayers may not determine taxable income for an annualization period or an adjusted seasonal installment period as though the period is a short taxable year.

Consistent with the general rejection of a short taxable year approach, the final regulations recognize that certain types of items that are generally incurred once (or otherwise infrequently) during the taxable year or that are subject to special exceptions, should not be annualized because doing so would create a distortion in the estimate of annualized taxable income. This approach also recognizes that although distortions may occur in the annualization process due to general fluctuations in the timing of items of income and deductions incurred throughout the year, taxpayers should generally be permitted to rely on such annualized estimates to the extent the estimate is based upon information available to the taxpayer as of the end of the annualization period.

A commentator expressed concern that the rules provided in the proposed regulations were too mechanical and created traps for the unwary. In response to this comment, the final regulations provide rules which are intended to produce a reasonably accurate estimate of annualized taxable income for estimated tax purposes without imposing an undue compliance burden on taxpayers. Specifically, the final regulations address this general concern by allowing taxpayers to make a reasonably accurate allocation of certain items of income or expense. However, a taxpayer's annualized taxable income for estimated tax purposes is primarily based on items of income and expense recognized during the annualization period. Therefore, the annualization method is as inherently complex as computing taxable income.

A. Reasonably Accurate Allocation

Commentators noted that many of the rules provided in the proposed regulations with respect to economic performance and recurring expenses would create significant administrative burdens, result in similarly situated taxpayers being treated differently, and did not further the underlying goal of providing an accurate picture of annualized taxable income.

The final regulations do not retain the recurring expense rules provided in the proposed regulations. The final regulations provide special rules for specific items of deduction that are routinely incurred on an annual basis or for which a special exception to the

general accounting rules exists. Given the nature of these items, applying the general annualization rules to these items could result in a significant distortion in the estimate of annualized taxable income. These items include real property tax deductions; employee and independent contractor bonus compensation deductions (including the employer's share of employment taxes related to such compensation); deductions under sections 404 (deferred compensation) and 419 (welfare benefit funds); items allowed as a deduction for the taxable year by reason of section 170(a)(2) and § 1.170A–11(b) (certain charitable contributions by accrual method corporations), § 1.461–5 (recurring item exception) or § 1.263(a)–4(f) (12-month rule); and items of deduction designated by the Secretary by publication in the Internal Revenue Bulletin (IRB) (see § 601.601(d)(2)(ii)(b)).

The final regulations require that these specified items of deduction be allocated in a reasonably accurate manner. The item of deduction that must be allocated in a reasonably accurate manner includes the total amount of the item of deduction recognized by the taxpayer during the taxable year regardless of whether the item is deemed to be paid or incurred during the taxable year as a result of events that occurred during the taxable year, after the taxable year, or both. While a reasonably accurate allocation may permit certain items to be recognized in an annualization period prior to being paid or incurred, an amount may only be taken into account to the extent the item of deduction is properly recognized by the taxpayer during the taxable year. Therefore, taxpayers will be subject to a section 6655 addition to tax for an underpayment of estimated tax if an underpayment results from a deduction the taxpayer expected to be incurred but was not ultimately recognized as a deduction by the taxpayer in the computation of taxable income for that year.

The final regulations provide that an allocation will be considered to be made in a reasonably accurate manner if the item is allocated ratably throughout the tax year. In addition, an allocation will be considered to be made in a reasonably accurate manner to the extent it provides a reasonable estimate of taxable income for the taxable year based upon the facts known as of the end of the annualization period. The final regulations provide a list of some relevant factors to be taken into consideration in determining whether an allocation provides a reasonable estimate of taxable income based upon facts known as of the end of the annualization period. The IRS and Treasury Department recognize that various allocations may be considered to be done in a reasonably accurate manner and intend for taxpayers to have flexibility in determining which allocation to use, particularly when use of a specific allocation reduces administrative burdens on the taxpayer. In general, allocations that are made with the intent to distort will not be considered to have been made in a reasonably accurate manner.

Many of the items of deduction which are required to be allocated in a reasonably accurate manner include items that may not have otherwise been allowed to be taken into account by taxpayers (for example, year-end bonus liabilities, items paid after year end) under the general annualization rules to the extent they were deemed to be incurred in the last quarter of the year. In this regard, the final regulations provide a measure of relief to taxpayers with respect to such items. The final regulations provide that the Secretary may designate in future IRB guidance additional items of deduction that are required to be allocated in a reasonably accurate manner. Taxpayers are encouraged to bring items to the attention of the IRS and Treasury Department that they believe should be allocated in a reasonably accurate manner rather than applying the general annualization rules.

Commentators requested that taxpayers be permitted to take the exceptions provided in section 170(a)(2) and § 1.170A–11(b) (certain charitable contributions by accrual method corporations), § 1.461–5 (recurring item exception) or § 1.263(a)–4(f) (12-month rule) into account for purposes of determining items of expense incurred during an annualization period. As noted above, these exceptions frequently apply either to expenses paid annually or to expenses paid after the end of the taxable year. The specific rules and underlying intent of these exceptions do not easily translate to the concept of an annualization period. The final regulations provide that items of expense that utilize these exceptions will be considered to be properly taken into account if they are allocated among annualization periods in a reasonably accurate manner. Therefore, the final regulations permit taxpayers for estimated tax payment purposes to allocate throughout the tax year items of deduction recognized in the taxable year as a result of these exceptions to the extent the allocation is made in a reasonably accurate manner. The final regulations adopt this approach in order to reduce the complexity and burden associated with the computation of estimate taxes by allowing taxpayers to allocate these specific items of expense in a reasonably accurate manner while also preventing unintended distortions under the annualization method.

B. Net Operating Loss Deductions

Several commentators addressed provisions in the proposed regulations requiring a net operating loss (NOL) deduction to be taken into account in computing an annualized installment after annualizing the taxable income for the annualization period. One commentator argued that economic performance with respect to an NOL carryover has already occurred and therefore, the NOL deduction should be taken into account in computing an annualized installment before annualizing the taxable income for the annualization period. Another commentator suggested that special rules be provided for extraordinary items such as NOL deductions noting the unique nature of such items. Comments were also received suggesting that NOL deductions should be treated the same as any other deduction.

NOL deductions are different from other items of deduction occurring throughout the year in that there is no anticipation that similar deductions will recur throughout the year or in future years. In this regard, NOL deductions are more like extraordinary items. Treating NOL deductions in the same manner as other recurring deductions would be inconsistent with attempting to provide a reasonably accurate picture of annualized taxable income and could result in a distorted estimate of annualized taxable income similar to the distortions created by the various techniques the regulations are intended to prevent. The final regulations treat a NOL deduction as an extraordinary item that is treated as occurring on the first day of the taxable year and is taken into account after annualization. As a result of the final regulations, Rev. Rul. 67–93 (1967–1 CB 366) is removed. See § 601.601(d)(2)(ii)(*b*).

C. Credit Carryovers

One commentator suggested that a credit carryover should be taken into account in computing an annualized installment before annualizing the taxable income for the annualization period because economic performance has occurred for the credit carryover. In general, taxpayers annualize components of a credit for the current taxable year to determine the amount of a credit because the credit is based on

components for the current year. However, credit carryovers are generally based on the components for the entire year in which the credit arose. Therefore, the credit carryover already is computed based on annualized components for the year in which the credit arose. Because a credit carryover is based on annualized components, the final regulations provide that a credit carryover must be taken into account after determining the annualized tax and before taking into account the applicable percentage for the annualization period.

D. Credits Incurred in an Annualization Period and Recaptured Credits

One commentator suggested that the final regulations provide that credits incurred in an annualization period are not annualized. The commentator suggested that annualization should be based on the underlying basis for the credit. The commentator also suggested that if a credit is based on an item that is annualized in computing the required installment for the annualization period, the amounts should be annualized in determining the amount of the credit. Finally, the commentator suggested that similar rules should apply to the recapture of credits that are included within the definition of tax.

Section 1.6655–2(f)(3)(iii) of the final regulations provides that the items upon which the credit is computed are annualized pursuant to the provisions of § 1.6655–2(f)(1) and the amount of the credit is computed based on the annualized items. The amount of the credit is then deducted from the annualized tax. For example, for an annualization period consisting of three months in a full 12-month taxable year, the items upon which the credit is based that are taken into account for the three-month period are multiplied by four, the credit is determined, and the credit reduces the annualized tax. Reducing the annualized tax by a credit before taking into account the applicable percentage is consistent with the statutory definition of tax provided in section 6655(g)(1) and the annualized income installment method provided in section 6655(e). In order to clarify this rule, § 1.6655–2(b)(1) of the final regulations provides that tax means tax after taking into account credits and before applying the applicable percentage. These rules generally do not apply to a credit recapture because, as discussed in heading 1A of the preamble, a credit recapture, such as a recapture provided by section 50(a)(1)(A), is not taken into account when determining the tax for an annualized income installment for purposes of section 6655.

E. Depreciation and Amortization Expense

One commentator requested clarification on the alternative method in § 1.6655–2(f)(2)(v)(A) of the proposed regulations. The proposed regulations provide that a taxpayer may claim for an annualization period at least a proportionate amount of 50 percent of the taxpayer's estimated depreciation and amortization (depreciation) expense for the current taxable year attributable to assets that a taxpayer had in service on the last day of the preceding taxable year, that remain in service on the first day of the current taxable year, and that are subject to the half-year convention. Several commentators suggested that the regulations were not clear on how a taxpayer determines how much more than 50 percent may be used and requested that the final regulations provide criteria for making this determination.

Another commentator suggested that the general rule in § 1.6655–2(f)(2)(v)(A) of the proposed regulations for taking into account depreciation was impractical for many taxpayers because of the administrative burdens associated with the computation of actual and expected depreciation expense. The commentator also suggested that the rule does not provide an alternative calculation methodology for assets subject to a convention other than the half-year convention or for intangible assets. The commentator requested that the final regulations provide alternative computation methodologies for all depreciable and amortizable assets and allow taxpayers to take into account section 179 deductions. The commentator also requested that the final regulations eliminate the alternative rule in § 1.6655–2(f)(2)(v)(A) of the proposed regulations that allows taxpayers to take into account a proportionate amount of 50 percent of taxpayers' current year estimated depreciation expense. The commentator requested that instead the final regulations provide a safe harbor that allows taxpayers to claim a proportionate amount of 90 percent of the prior year depreciation expense for all assets placed in service in an earlier year.

By including the alternative rule in § 1.6655–2(f)(2)(v)(A) of the proposed regulations, the IRS and Treasury Department intended to illustrate the minimum amount of depreciation a taxpayer is entitled to take for a taxable year. In response to the comments referenced above, the final regulations do not include the alternative method in § 1.6655–2(f)(2)(v)(A) of the proposed regulations. The final regulations provide a general rule that permits taxpayers to estimate their annual depreciation expense and include a proportionate amount of such expense for annualization purposes. The final regulations also provide that, in determining the estimated annual depreciation expense, a taxpayer may take into account purchases, sales or other dispositions, changes in use, additional first-year depreciation deductions, and other similar events and provisions that, based on all the relevant information available as of the last day of the annualization period (such as capital spending budgets, financial statement data and projections, or similar reports that provide evidence of the taxpayer's capital spending plans for the current taxable year), are reasonably expected to occur or apply during the taxable year. The IRS and Treasury Department believe that prescribing special rules for depreciation is appropriate because unlike many other deductions, depreciation generally accrues ratably throughout the taxable year. Therefore, in contrast to the general annualization rules, the final regulations require depreciation expense to be taken into account ratably throughout the taxable year.

As an alternative to the general rule for depreciation expense, the final regulations provide two safe harbors. The first safe harbor requires taxpayers to take into account for an annualization period a proportionate amount of depreciation expense allowed for the taxable year from: (1) Assets that were in service on the last day of the prior taxable year, are in service on the first day of the current taxable year, and have not been disposed of during the annualization period; (2) assets that were placed in service during the annualization period and have not been disposed of during that period; and (3) assets that were in service on the last day of the prior taxable year and that are disposed of during the annualization period. For purposes of additional first-year depreciation deductions, the final regulations provide that only a proportionate amount of the current year's additional first-year depreciation deduction to be taken into account in determining a taxpayer's taxable income for the taxable year is taken into account in computing taxable income for an annualization period. In addition, the final regulations provide that amounts that the taxpayer deducts under section 179 or any similar provision, are treated

the same as additional first-year depreciation.

The second safe harbor included in the final regulations provides that a taxpayer may take into account a proportionate amount of 90 percent of its preceding year's depreciation that is taken on its Federal income tax return for the preceding taxable year. However, if the taxpayer's preceding taxable year is less than 12 months (a short taxable year), the amount of depreciation expense taken into account for the preceding taxable year must be put on an annualized basis. In addition, a taxpayer must use whatever depreciation safe harbor method it selects under § 1.6655–2(f)(3)(iv)(B) of the final regulations for all depreciation deductions within the annualization period for the annualized income installment but may use a different depreciation method provided in § 1.6655–2(f)(3)(iv) for each annualized income installment during the taxable year.

F. Events Arising After the Installment Due Date

One commentator requested that the final regulations include examples of events that would arise after the installment due date that would be considered reasonably unforeseeable to illustrate the rule provided in § 1.6655–2(h) of the proposed regulations. In considering the request for more specific guidance as to what constitutes an unforeseeable event, the IRS and Treasury Department determined that providing relief for certain unforeseeable events would more appropriately be addressed through contemporaneous guidance. Furthermore, the unforeseeable event exception provided in the proposed regulations was inherently subjective and retaining such a rule would be difficult to administer. In addition, certain provisions in the final regulations allow events that occur after the end of an annualization period to be taken into account but only to the extent the anticipated events actually occur. Therefore, the final regulations do not retain the unforeseeable event exception as provided in § 1.6655–2(h) of the proposed regulations.

The final regulations do permit taxpayers in specific circumstances to take into account transactions that are properly reflected in the taxpayer's return for a particular year to be taken into account for annualization purposes regardless of when the underlying event giving rise to the item occurs. For example, the final regulations permit taxpayers to defer income related to a transaction to which sections 1031 or 1033 may apply even if the replacement of property required under sections 1031 or 1033 has not occurred as of the end of an annualization period to the extent the taxpayer has a reasonable belief that qualifying replacement property will be acquired.

G. Items That Substantially Affect Taxable Income But Cannot Be Determined Accurately by the Installment Due Date

Section 1.6655–2(g) of the proposed regulations provides that in determining the applicability of the annualized income installment method or the adjusted seasonal installment method, reasonable estimates may be made from existing data for items that substantially affect income if the amount of such items cannot be determined with reasonable accuracy by the installment due date. Examples of these items are the inflation index for taxpayers using the dollar-value LIFO (last-in, first-out) inventory method, intercompany adjustments for taxpayers that file consolidated returns, and the liquidation of a LIFO layer at the installment date that the taxpayer reasonably believes will be replaced at the end of the year.

The IRS and Treasury Department believe that the language in § 1.6655–2(g) of the proposed regulations could be misinterpreted and broadly applied to items to which the rule was not intended. The final regulations provide that § 1.6655–2(g) applies only to the items specifically listed. These items include the inflation index for taxpayers using the dollar-value LIFO inventory method, adjustments required under section 263A, intercompany adjustments for taxpayers that file consolidated returns, the liquidation of a LIFO layer at the installment date that the taxpayer reasonably believes will be replaced at the end of the year, section 199 computations, deferred gain under sections 1031 and 1033 that the taxpayer reasonably believes will be replaced with qualifying property, and to any other item specifically designated in guidance published in the Internal Revenue Bulletin.

H. Taking Into Account a Section 199 Deduction

Commentators requested clarification on how taxpayers using the annualized income installment method (or the adjusted seasonal installment method) should take into account a section 199 deduction. One commentator suggested that because the section 199 deduction is calculated based on income and expense items incurred during the taxable year and has some characteristics of a credit, the final regulations should treat a section 199 deduction as a credit. Commentators also suggested that the final regulations require taxpayers to annualize income and compute the section 199 deduction based on the annualized amount. Another commentator requested that the final regulations treat a section 199 deduction as an item that substantially affects taxable income but cannot be accurately determined by the installment due date. The commentator requested that the final regulations allow taxpayers to make a reasonable estimate of the section 199 deduction for purposes of determining the proportionate amount that should be taken into account in determining annualized taxable income.

Although the section 199 deduction is calculated based on income and expense items incurred during the taxable year, the section 199 deduction is a deduction and not a credit. Therefore, a section 199 deduction must be taken into account to reduce taxable income, not to reduce tax. Under the final regulations, a section 199 deduction is computed prior to annualizing the taxable income for the annualization period. However, in recognition that qualification for the section 199 deduction is restricted by various annual limitations that may not be known as of the end any specific annualization period, the final regulations provide that a section 199 deduction should be treated as an item that substantially affects taxable income but cannot be accurately determined by the installment due date. Therefore, the final regulations permit taxpayers to make a reasonable estimate of the section 199 deduction for purposes of determining the amount to be taken into account in determining annualized taxable income.

I. Section 263A Expenses

One commentator suggested that the proposed regulations do not provide rules on how taxpayers should account for section 263A adjustments to compute annualized taxable income. The commentator requested that the final regulations not require taxpayers to compute an actual section 263A adjustment for an installment period because this computation would create a significant administrative burden for taxpayers. The commentator also requested that the final regulations provide simplifying rules that allow taxpayers to compute the section 263A adjustment for an installment period by multiplying the prior year's absorption ratio by the inventory on hand at the end of the annualization period or by

estimating the annual adjustment and prorating it to each annualization period.

Section 263A expenses are added to the items covered by the rules provided in § 1.6655–2(g) of the final regulations for items that substantially affect taxable income but cannot be accurately determined by the installment due date. Therefore, taxpayers may use reasonable estimates from existing data with respect to the amount of adjustments required under section 263A if that amount cannot be determined with reasonable accuracy by the installment due date.

J. LIFO

One commentator noted that although the proposed regulations provide simplifying rules to determine the internal inflation index for taxpayers using internal dollar-value LIFO inventory methods, the proposed regulations do not provide rules for taxpayers to determine an external inflation index under the inventory price index computation (IPIC) LIFO method. The commentator requested that the final regulations include a rule that allows taxpayers to determine an estimated external inflation index by multiplying the prior year inventory mix by the applicable inflation index for the annualization period. The commentator also requested that the final regulations include a rule that allows a taxpayer that elected to use final indices to use preliminary indices if the final indices for the appropriate month have not been published. The dollar-value LIFO inventory method includes the use of external indexes, such as the IPIC LIFO method, as well as internal indexes. Therefore, the IRS and Treasury Department do not believe that a separate rule is necessary for the use of external inflation indexes.

K. Advance Payment

One commentator noted that the proposed regulations do not address how a taxpayer who defers revenue either under § 1.451–5(c) or Rev. Proc. 2004–34 (2004–1 CB 991) should account for an advance payment to determine annualized taxable income. Section 1.451–5(c) and Rev. Proc. 2004–34 generally allow a taxpayer to defer recognition of a qualifying advance payment for a limited time but only to the extent that financial statements also defer recognition of the income. The commentator requested that the final regulations include a rule that allows a taxpayer using the deferral method under § 1.451–5(c) or Rev. Proc. 2004–34 to not recognize an advance payment as income in the annualization period until the advance payment is recognized in the taxpayer's applicable financial statements for the annualization period. The commentator also requested that the final regulations allow a taxpayer using a deferral method to recognize any portion of an advance payment on the last day of the taxable year in which the advance payment is required to be recognized under § 1.451–5(c) or Rev. Proc. 2004–34, if that portion of the advance payment is not recognized in the taxpayer's financial statements for any of the annualization periods arising within the limited time provided in § 1.451–5(c) or Rev. Proc. 2004–34. See § 601.601(d)(2)(ii)(*b*).

The IRS and Treasury Department agree with the commentator that the final regulations should specifically address advance payments and that the rule should be consistent with § 1.451–5 and Rev. Proc. 2004–34. Pursuant to § 1.6655–2(f)(3)(i)(A) of the final regulations, if the taxpayer uses the method of accounting provided in § 1.451–5(b)(1)(ii) for an advance payment, the advance payment is includible in computing taxable income under that method of accounting except that, if § 1.451–5(c) applies, any amount not included in computing taxable income by the end of the second taxable year following the year in which a substantial advance payment is received, and not previously included in accordance with the taxpayer's accrual method of accounting, is includible in computing taxable income on the last day of such second taxable year. In addition, § 1.6655–2(f)(3)(i)(B) of the final regulations provides that if the taxpayer uses the deferral method provided in section 5.02 of Rev. Proc. 2004–34 for an advance payment, the advance payment is includible in computing taxable income under that method of accounting for annualization purposes. But any amount not included in computing taxable income by the end of the taxable year succeeding the taxable year of receipt is includible in computing taxable income on the last day of such succeeding taxable year. The final regulations provide an example involving an advance payment.

L. Extraordinary Items

One commentator suggested that the final regulations provide special treatment for extraordinary items for purposes of computing annualized taxable income and suggested that the regulations consider the extraordinary items listed in § 1.1502–76(b)(2)(ii)(C). The commentator requested that the final regulations not require taxpayers to take into account extraordinary items under the general rules of § 1.6655–2(f) of the proposed regulations because doing so would result in a distortion of annualized taxable income. The commentator requested that extraordinary items be taken into account after annualizing taxable income. The commentator requested that the final regulations provide that taxpayers begin to account for extraordinary items in the annualization period in which the extraordinary event occurs or, alternatively, in the annualization period in which it becomes reasonably foreseeable that the extraordinary event will occur. The commentator also requested that the final regulations provide an exclusive list of extraordinary items by referring to the list of extraordinary items in § 1.1502–76(b)(2)(ii)(C) with certain modifications.

The IRS and Treasury Department agree with the commentator that the annualization of extraordinary items could result in a distortion of annualized taxable income. The final regulations include a list of extraordinary items similar to the items in § 1.1502–76(b)(2)(ii)(C). Included in the list of extraordinary items in the final regulations are NOL deductions and section 481(a) adjustments. In addition, the final regulations also provide a *de minimis* rule wherein only extraordinary items in excess of $1,000,0000 will be required to be accounted for after annualizing taxable income. However, this *de minimis* rule does not apply to NOL deductions and section 481(a) adjustments.

M. Section 481(a) Adjustments

The rule in § 1.6655–2(f)(2)(iv) of the proposed regulations provides that a taxpayer takes into account a section 481(a) adjustment related to an automatic accounting method change during an annualization period only if a copy of the Form 3115, ''Application for Change in Accounting Method'', has been mailed to the IRS National Office on or before the last day of the annualization period. One commentator suggested that the rule provided by § 1.6655–2(f)(2)(iv) of the proposed regulations creates administrative burdens for taxpayers, is inconsistent with the depreciation and amortization rules provided in § 1.6655–2(f)(2)(v) of the proposed regulations, and could result in the filing of incomplete Forms 3115. The commentator suggested that the rule in § 1.6655–2(f)(2)(iv)(B)(*1*) of the proposed regulations causes an administrative burden by requiring taxpayers to recompute taxable income using a different method of accounting than would be used to calculate taxpayers' tax provision for financial

accounting purposes, which generally allows taxpayers to take into account section 481(a) adjustments for an automatic accounting method change if they anticipate that the change will be timely filed. The commentator also suggested that if the final regulations adopt the rule in § 1.6655–2(f)(2)(v) of the proposed regulations that allows taxpayers to anticipate capital expenditures to estimate depreciation expense for an annualization period, the final regulations should provide a similar rule for automatic accounting method changes by allowing taxpayers to take into account section 481(a) adjustments resulting from anticipated filings for automatic accounting method changes.

The final regulations provide that, in general, any section 481(a) adjustment that results from a change in accounting method that is approved by the Commissioner and properly reflected in the taxpayer's return for the tax year is taken into account as an extraordinary item deemed to occur on the first day of the tax year for annualization purposes. The final regulations provide that a section 481(a) adjustment may be taken into account in this manner notwithstanding (i) the annualization period in which the Form 3115 is filed (including requests filed after year-end), (ii) whether the requested change in accounting method is considered an automatic or non-automatic accounting method change request, (iii) whether the section 481(a) adjustment is positive or negative, and (iv) the date on which the taxpayer receives the approval of the Commissioner. In allowing for a section 481(a) adjustment to be taken into account in this manner, taxpayers should be aware that they will be subject to a section 6655 addition to tax for an underpayment of estimated tax in an installment period caused from taking into account a section 481(a) adjustment the taxpayer expected to be incurred but for which the taxpayer does not receive the consent of the Commissioner to change its method of accounting for that particular tax year. The final regulations also provide an exception to the general rule. Under the exception a taxpayer may choose to treat the filing of a Form 3115 as the date on which the extraordinary item is deemed to occur rather than the first day of the tax year but only with respect to the section 481(a) adjustment (or a portion thereof) that is recognized in the year of change. Use of this exception will impact the period in which the taxpayer will be required to take into account the new method of accounting as provided in § 1.6655–6.

N. Simplify the 52/53 Week Taxable Year Rules

One commentator suggested that the 52/53 week taxable year rules provided by § 1.6655–2(e) of the proposed regulations are too complex and administratively burdensome. The commentator suggested that the final regulations not include the 52/53 week taxable year rules in § 1.6655–2(e) of the proposed regulations and rely on the general concept of annualization. The commentator suggested that taxpayers with 52/53 week taxable years under section 441(f) know how to annualize their applicable annualization period without the rules provided by § 1.6655–2(e) of the proposed regulations.

The purpose of the annualized income installment method is to give taxpayers a method of determining annualized income based on the actual facts that occur in the annualization period. Therefore, with limited exceptions, the IRS and Treasury Department drafted the proposed regulations and these final regulations to provide rules that only allow taxpayers to take into account items of income and expense that arise in the applicable annualization period. The IRS and Treasury Department recognize that the 52/53 week taxable year rules provided by § 1.6655–2(e) of the proposed regulations are complex. Although the final regulations retain the 52/53 week taxable year rules provided by § 1.6655–2(e) of the proposed regulations, the final regulations also provide a safe harbor that allows a taxpayer with a 52/53 week taxable year to determine its annualization period on the month that ends closest to the end of its applicable thirteen-week period or four-week period that ends within the applicable annualization period. However, an eligible taxpayer may only use this safe harbor if it is used for determining annualization periods for all required installments for the taxable year.

O. Controlled Foreign Corporations, Partnerships, and Other Pass-Through Entities

One commentator suggested that the final regulations provide rules on how taxpayers should take into account distributions from a section 936 corporation or a controlled foreign corporation to determine annualized taxable income for an installment period. The commentator also suggested that the final regulations provide rules on how taxpayers should take into account a distributive share of income from passthrough entities other than partnerships, such as trusts, S corporations, and real estate investment trusts (REITs), to determine annualized taxable income for an installment period. The commentator requested that the final regulations expand the scope of § 1.6655–2(f)(2)(vi) of the proposed regulations to incorporate the statutory provisions for section 936(h), section 951(a), and closely held REITs, and also provide rules to take into account the distributive share of income received from other types of passthrough entities.

Section 1.6655–2(f)(3)(v) of the final regulations expands the rule in § 1.6655–2(f)(2)(vi) of the proposed regulations to provide for the statutory rules in section 6655(e)(4) and section 6655(e)(5) for taking into account subpart F income, income under section 936(h), and dividends received by closely held REITs when computing any annualized income installment. In addition, § 1.6655–2(f)(3)(v)(D) adds a rule that requires items from passthrough entities other than partnerships and closely held REITs to be taken into account in computing any annualized income installment in a manner similar to the manner under which partnership items are taken into account under § 1.6655–2(f)(3)(v)(A) of the final regulations.

3. Comments Concerning § 1.6655–3 (Adjusted Seasonal Installment Method) of the Proposed Regulations

A. Adjusted Seasonal Installment Method and Alternative Minimum Tax

One commentator suggested that the determination of whether a corporation qualifies for the adjusted seasonal installment method under section 6655(e)(3), and the amount of the required installment under this method, is based only on the corporation's taxable income and tax on that taxable income. The commentator requested that the final regulations clarify that a corporation using the adjusted seasonal installment method is only required to make estimated tax payments with respect to taxable income and tax on that taxable income, and not on the alternative minimum tax (AMT) or any other tax. Any required installment must include AMT because AMT is included in the definition of tax in section 6655(g)(1) and § 1.6655–1(g)(1) of the final regulations. Including AMT in the determination of tax is consistent with the general annualization method and adjusted seasonal installment method and recognizes the overall separate and parallel nature of the AMT. Therefore, § 1.6655–3(d)(4) of the final regulations provides that the amount of an installment determined using the adjusted seasonal installment method

must properly take into account the amount of any AMT under section 55 that would apply for the period of the computation. For this purpose, the amount of any AMT that would apply is determined by applying to alternative minimum taxable income, tentative minimum tax, and AMT, the rules provided in § 1.6655–3(c) of the final regulations for determining the amount of an installment using the adjusted seasonal installment method.

B. Adjusted Seasonal Installment Method Base Period Percentage

Section 6655(e)(3)(D)(i) provides that the base period percentage for any period of months is the average percent that the taxable income for the corresponding months in each of the 3 preceding taxable years bears to the taxable income for the 3 preceding taxable years. One commentator requested that the final regulations clarify whether the base period percentage provided in § 1.6655–3(d)(1) of the proposed regulations can be negative.

The rule provided in section 6655(e)(3)(D)(i) requires that the base period percentage be computed based on taxable income. The rule does not provide that taxpayers take into account a loss. Therefore, a taxpayer can never have a negative base period percentage. The lowest number the base period percentage can equal is zero. Section 1.6655–3(d)(1) of the final regulations provides that the base period percentage is computed based on taxable income, which the IRS and Treasury Department believe provides a clear rule that an overall loss for the applicable period of months used to calculate the base period percentage cannot be used to compute the base period percentage. If a taxpayer has an overall loss for an applicable period of months used in the computation of the base period percentage, the taxpayer must use zero in place of the loss.

4. Comments Concerning § 1.6655–4 (Large Corporations) of the Proposed Regulations

A. Section 381 Transactions to Determine Large Corporation Status

One commentator requested that the final regulations modify the rules in § 1.6655–4(c)(2) of the proposed regulations to clarify that, when computing taxable income for a year in which there is a section 381 transaction to determine if a corporation is a large corporation, the adjustment for the section 381 transaction relates only to the portion of taxable income applicable to the transferred assets.

Generally, for a transaction to qualify under section 381, an acquiring corporation must acquire a majority of the assets of the acquired corporation. Section 1.6655–4(c)(2) of the proposed regulations provides that when determining if a corporation is a large corporation for a taxable year in which a section 381 transaction occurs, an acquiring corporation must include in its income the distributor or transferor corporation's income for the taxable year up to and including the date of distribution or transfer. This rule requires the acquiring corporation to include 100 percent of the distributor or transferor corporation's taxable income (or loss) in the acquiring corporation's income even if the acquiring corporation acquires less than 100 percent of the assets of the distributor or transferor corporation as long as section 381 applies to the transaction. The final regulations do not include a rule providing that the adjustment for a section 381 transaction relates only to the portion of taxable income applicable to the transferred assets when computing taxable income for a year in which there is a section 381 transaction to determine if a corporation is a large corporation. The IRS and Treasury Department believe that such a rule would be unnecessarily complex considering that the rule in the proposed regulations is both taxpayer favorable (if there are losses of the distributor or transferor corporation) and taxpayer unfavorable (if there is taxable income of the distributor or transferor corporation) and considering that in these transactions, the acquiring corporation generally acquires a majority of the distributor or transferor corporation's assets. However, § 1.6655–4(c)(2)(i)(B) of the final regulations amends § 1.6655–4(c)(2)(i)(B) of the proposed regulations to clarify that an acquiring corporation takes into account the distributor or transferor corporation's taxable income or loss for purposes of determining whether a corporation is a large corporation for a taxable year in which a section 381 transaction occurs.

B. Aggregation

One commentator suggested that the rule provided by § 1.6655–4(d)(2) of the proposed regulations, which does not allow taxpayers to take into account a taxable loss of a member of a controlled group of corporations for a taxable year during the testing period, results in a distorted view of the taxable income of the controlled group of corporations. The commentator requested that the final regulations modify the rule in § 1.6655–4(d)(2) of the proposed regulations to allow taxpayers to take into account losses of a member of a controlled group of corporations when determining whether a corporation is considered a large taxpayer because this is consistent with the principles for the computation of consolidated taxable income.

Section 6655(g)(2)(B)(ii) requires that the $1,000,000 exemption be divided among members of a controlled group under rules similar to the rules of section 1561. The purpose of the statute is to limit members of a controlled group, as an aggregate, to $1,000,000 of exemption from large corporation treatment. The aggregation rule in § 1.6655–4(d)(2) is intended to allow a controlled group to quickly determine whether the controlled group must allocate the $1,000,000 limitation among the members of the group. It is not intended to treat the controlled group as a single taxpayer, in which all members of the group will be treated as a large corporation, if the taxable income of the controlled group, as an aggregate, is over $1,000,000. Thus, for example, if member A of a controlled group had taxable income of $900,000 and member B of the group had taxable income greater than $1,000,000, the controlled group could choose to allocate $900,000 to member A so that member A will not be treated as a large corporation, but member B would be treated as a large corporation no matter how much of the $1,000,000 limitation is allocated to member B. This is consistent with the rules under section 1561.

5. Comments Concerning § 1.6655–5 (Short Taxable Years) of the Proposed Regulations

A. Taxpayer's Initial Taxable Year

One commentator noted that a taxpayer is not required to choose its taxable year until it files a tax return on its chosen basis in accordance with § 1.441–1(c)(1). The commentator requested that the final regulations modify the rule in § 1.6655–5(c)(1)(ii) of the proposed regulations to provide that a taxpayer will not be penalized if, in its initial taxable year, it makes estimated tax payments based on a presumption that the taxpayer will have a taxable year that is a calendar year even if the taxpayer subsequently chooses a fiscal year.

Because a taxpayer has until the date it files its initial tax return to choose its taxable year, the final regulations modify the rule in § 1.6655–5(c)(1)(ii) of the proposed regulations to allow a taxpayer with an initial short taxable year to make estimated tax payments as

though it chose to be a calendar year taxpayer until the taxpayer files its return for its initial short taxable year. Pursuant to this modified rule, a taxpayer with an initial short taxable year may make estimated tax payments as though it were a calendar year taxpayer until it files its tax return for its initial taxable year.

B. Taxpayer's Final Taxable Year

One commentator suggested that §§ 1.6655–5(d)(1), 1.6655–5(d)(2), and 1.6655–5(d)(3) of the proposed regulations provide rules that may require taxpayers with short taxable years to make installment payments based on an applicable percentage that is more than the standard 25 percent per installment period. The commentator suggested that these rules may result in a section 6655 addition to tax being imposed on a taxpayer who makes annualization payments based on 25 percent of its annualized tax and later in the year discovers that, due to an unforeseen termination of its tax year, it should have made its annualization payments based on a higher applicable percentage because it will have fewer than four installment payments. The commentator also suggested that the rule in § 1.6655–2(h) of the proposed regulations, which addresses events arising after an installment due date that were not reasonably foreseeable, does not appear to protect a taxpayer that makes an installment payment based on 25 percent of its annualized tax and later discovers that it should have based its installment payment on a higher applicable percentage because it had an unforeseen termination of its tax year resulting in a short taxable year. The commentator requested that the final regulations revise the rules in §§ 1.6655–5(d)(1), 1.6655–5(d)(2), and 1.6655–5(d)(3) of the proposed regulations so that payments made for an installment period in a short taxable year do not exceed 25 percent. As an alternative, the commentator requested that the final regulations revise the rules in § 1.6655–2(h) of the proposed regulations to allow a taxpayer with an unexpected termination of its tax year to make a payment with its final required installment equal to the remaining portion of 100 percent of its required annual payment to avoid a penalty on its earlier required installments.

A taxpayer should not be penalized for making payments based on the applicable percentage of 25 percent for each installment period when it does not know that it will have an early termination year that will result in it making less than four installment payments. Therefore, § 1.6655–5(d)(4) of the final regulations provides a rule addressing the applicable percentage for an installment period in which the taxpayer does not reasonably expect that the taxable year will be an early termination year. In the case of any required installment determined under section 6655(e) in which the taxpayer does not know that the taxable year will be an early termination year, the applicable percentage under section 6655(e)(2)(B)(ii) and § 1.6655–5(d)(3)(i) of the final regulations is the applicable percentage for each installment period with the remaining balance of the estimated tax payment for the year due with the final installment.

C. Internal Revenue Manual Provisions and Annualizing Taxable Income in an Initial or Final Taxable Year

One commentator noted that Internal Revenue Manual Part 20.1.3.6.3(2) provides that a corporation filing a short period return that is either an initial or final return is not required to annualize its taxable income to compute the penalty. The commentator requested that the final regulations clarify this rule.

The rule in IRM 20.1.3.6.3(2) provides that if a taxpayer has a short taxable year that is either an initial or final year, the taxpayer should not annualize its taxable income based on a full 12 month period. Instead, the taxpayer should annualize its taxable income based on the number of months in the short taxable year. This rule was intended to be provided in § 1.6655–5(g)(2) of the proposed regulations. However, the computational rule in § 1.6655–5(g)(2) of the proposed regulations is incorrect and does not result in the computation of the correct amount for every installment payment during a short taxable year. The final regulations revise the rule in § 1.6655–5(g)(2) of the proposed regulations to provide that a taxpayer computes its annualized income installment by determining the tax on the basis of the annualized income for the annualization period, dividing the resulting tax by 12, multiplying that result by the number of months in the short taxable year, and finally multiplying that result by the applicable percentage for the annualized income installment. The final regulations also revise an example to reflect the new computational rule.

D. Preceding Taxable Year Rule for Large Corporations When the Preceding Taxable Year Is a Short Year

One commentator suggested that the rule provided in § 1.6655–5(h) of the proposed regulations, which requires taxpayers to compute the preceding year tax on an annual basis if the preceding taxable year was a short taxable year when using section 6655(d)(2) to determine their first installment, is not authorized by section 6655. Consistent with § 1.6655–1(g)(3), the final regulations do not adopt the rule provided in § 1.6655–5(h) of the proposed regulations.

6. Change in Method of Accounting

The rule in § 1.6655–6(b) of the proposed regulations provides that if a taxpayer is making a change in method of accounting for the current taxable year that is permitted to be made with the automatic consent of the Commissioner, the new method is used in determining any required installment if, and only if, a copy of the Form 3115 has been mailed to the IRS National Office on or before the last day of the annualization period. One commentator suggested that the rule provided by § 1.6655–6(b) of the proposed regulations creates administrative burdens for taxpayers, is inconsistent with the depreciation and amortization rules provided in § 1.6655–2(f)(2)(v) of the proposed regulations, and could result in the filing of incomplete Forms 3115. The commentator suggested that the rule in § 1.6655–6(b) of the proposed regulations causes an administrative burden by requiring taxpayers to recompute taxable income using a different method of accounting than would be used to calculate taxpayers' tax provision for financial accounting purposes, which generally allows taxpayers to take into account an automatic accounting method change if they anticipate that the change will be timely filed.

Consistent with the rules for section 481(a) adjustments as discussed in heading (2)(M) above, the final regulations require a taxpayer to take into account any change in method of accounting for which the taxpayer has received the consent of the Commissioner in the same manner the taxpayer chooses to treat the section 481(a) adjustment resulting from such a change (for example, as of the first day of the taxable year or as of the date the Form 3115 was filed). For a change in accounting method that does not result in a section 481(a) adjustment, the final regulations provide that in the year of change the taxpayer will have the choice for annualization purposes to either use the new method as of the first day of the taxable year or as of the date the Form 3115 was filed.

Effect on Other Documents

The following publications are obsolete for tax years beginning after September 6, 2007:

Revenue Ruling 67–93 (1967–1 CB 366).

Revenue Ruling 76–450 (1976–2 CB 444).

Revenue Ruling 78–257 (1978–1 CB 440).

Revenue Ruling 67–93 (1967–1 CB 366) provides that the entire amount of a net operating loss carryover should be deducted from income prior to annualization under the annualized income installment method. The rational underlying the conclusion in Rev. Rul. 67–93 was based on the position that each annualization period should be treated as a short taxable year. The final regulations specifically provide that an annualization period is not treated as a short taxable year. Therefore, Rev. Rul. 67–93 will be removed when the final regulations are effective.

Revenue Ruling 76–450 (1976–2 CB 444) provides that state property tax and franchise tax are deductible from the income for an annualization period on the date the taxpayer accrues the taxes under the taxpayer's method of accounting. Revenue Ruling 76–450 was issued prior to the enactment of section 461(h) and does not take into account the application of the economic performance requirements of section 461(h) for purposes of computing an estimated tax payment using the annualized income installment method. The final regulations provide specific rules related to address the application of section 461(h) and real property taxes for purposes of the annualized income installment method. As a result of the rules provided in the final regulations, Rev. Rul. 76–450 is no longer applicable and will be removed when the final regulations are effective. See § 601.601(d)(2)(ii)(*b*).

Revenue Ruling 78–257 (1978–1 CB 440) provides that the term tax, as defined in section 6655, includes the amount of tax resulting from the recomputation of a prior year's investment credit at the applicable rate for the current year. In Rev. Rul. 78–257, a corporation incurred a net operating loss in 1975 but showed an amount of tax from the recomputation of the prior year's investment credit. For 1976 the corporation had a liability for income tax but made no deposits of estimated tax, relying on the former provision in section 6655 that allowed a taxpayer to base its estimated tax payments on an amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year. The revenue ruling concludes that the corporation was subject to an addition to tax for the underpayment of estimated tax because it failed to pay on or before the prescribed installment due dates an amount equal to the tax resulting from the recomputation of the prior year's investment credit. However, as discussed in heading (1)(A) of the preamble, based on the holding in *Berkshire Hathaway, Inc.* v. *United States,* 802 F.2d 429 (Fed. Cir. 1986), § 1.6655–1(g)(1)(iii) of the final regulations provides that, unless otherwise provided, for purposes of the definition of *tax* as used in section 6655, a recapture of tax, such as a recapture provided by section 50(a)(1)(A) and any other similar provision, is not considered to be a tax imposed by section 11. Therefore, Rev. Rul. 78–257 is no longer applicable and will be removed when the final regulations are effective. See § 601.601(d)(2)(ii)(*b*).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Except with respect to § 1.6655–5, which deals with the rules applicable to a short taxable year, it has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these provisions do not impose a collection of information on small businesses, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. With respect to § 1.6655–5, it is hereby certified that this provision of the regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that not many small businesses are going to be subject to the short taxable year rules because: (1) Existing small businesses generally are not targets of mergers and acquisitions, which result in a short taxable year; (2) start-up small businesses with a short taxable year of less than four months do not have to pay estimated taxes; and (3) start-up small businesses with a short taxable year of four months or more are not likely to have taxable income that would be subject to the corporate estimated tax rules. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal authors of these regulations are Joseph P. Dewald, formerly of the Office of Associate Chief Counsel (Procedure and Administration), and Timothy S. Sheppard, Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6655–5 also issued under 26 U.S.C. 6655(i)(2). * * *

■ **Par. 2.** In § 1.56–0, the heading for paragraph (e)(5) is added to read as follows:

§ 1.56–0 Table of contents to § 1.56–1, adjustment for book income of corporations.

* * * * *

(e) * * *

(5) Effective/applicability date.

■ **Par. 3.** Section 1.56–1(e)(4) is revised and paragraph (e)(5) is added to read as follows:

§ 1.56–1 Adjustment for the book income of corporations.

* * * * *

(e) * * *

(4) *Estimating the book income adjustment for purposes of the estimated tax liability.* See § 1.6655–7, as contained in 26 CFR part 1 revised as of April 1, 2007, for special rules for estimating the corporate alternative

minimum tax book income adjustment under the annualization exception.

(5) *Effective/applicability date.* Paragraph (e)(4) of this section is applicable for taxable years beginning after September 6, 2007.

§§ 1.6154–1, 1.6154–2, 1.6154–3, 1.6154–4, and 1.6154–5 [Removed].

■ **Par. 4.** Sections 1.6154–1, 1.6154–2, 1.6154–3, 1.6154–4, and 1.6154–5 are removed.

■ **Par. 5.** Section 1.6425–2(a) is revised and paragraph (c) is added to read as follows:

§ 1.6425–2 Computation of adjustment of overpayment of estimated tax.

(a) *Income tax liability defined.* For purposes of § 1.6425–1, this section, §§ 1.6425–3 and 1.6655–7, relating to excessive adjustment, the term *income tax liability* means the excess of—

(1) The sum of—

(i) The tax imposed by section 11 or 1201(a), or subchapter L of chapter 1 of the Internal Revenue Code, whichever is applicable; plus

(ii) The tax imposed by section 55; over

(2) The credits against tax provided by part IV of subchapter A of chapter 1 of the Internal Revenue Code.

* * * * *

(c) *Effective/applicability date.* Paragraph (a) of this section is applicable to applications for adjustments of overpayments of estimated income tax that are filed in taxable years beginning after September 6, 2007.

■ **Par. 6.** Section 1.6425–3 is amended by revising paragraph (f) to read as follows:

§ 1.6425–3 Allowance of adjustments.

* * * * *

(f) *Effect of adjustment.* (1) For purposes of all sections of the Internal Revenue Code except section 6655, relating to additions to tax for failure to pay estimated income tax, any adjustment under section 6425 is to be treated as a reduction of prior estimated tax payments as of the date the credit is allowed or the refund is paid. For the purpose of sections 6655(a) through (g), (i), and (j), credit or refund of an adjustment is to be treated as if not made in determining whether there has been any underpayment of estimated income tax and, if there is an underpayment, the period during which the underpayment existed. However, an excessive adjustment under section 6425 is taken into account in applying the addition to tax under section 6655(h).

(2) For the effect of an excessive adjustment under section 6425, see § 1.6655–7.

(3) *Effective/applicability date:* This paragraph (f) is applicable to applications for adjustments of overpayments of estimated income tax that are filed in taxable years beginning after September 6, 2007.

■ **Par. 7.** Section 1.6655–0 is added to read as follows:

§ 1.6655–0 Table of contents.

This section lists the table of contents for §§ 1.6655–1 through 1.6655–7.

§ 1.6655–1 Addition to the tax in the case of a corporation.
(a) In general.
(b) Amount of underpayment.
(c) Period of the underpayment.
(d) Amount of required installment.
(1) In general.
(2) Exception.
(e) Large corporation required to pay 100 percent of current year tax.
(1) In general.
(2) May use last year's tax for first installment.
(f) Required installment due dates.
(1) Number of required installments.
(2) Time for payment of installments.
(i) Calendar year.
(ii) Fiscal year.
(iii) Short taxable year.
(iv) Partial month.
(g) Definitions.
(h) Special rules for consolidated returns.
(i) Overpayments applied to subsequent taxable year's estimated tax.
(1) In general.
(2) Subsequent examinations.
(j) Examples.
(k) Effective/applicability date.

§ 1.6655–2 Annualized income installment method.
(a) In general.
(b) Determination of annualized income installment—in general.
(c) Special rules.
(1) Applicable percentage.
(2) Partial month.
(3) Annualization period not a short taxable year.
(d) Election of different annualization periods.
(e) 52–53 week taxable year.
(f) Determination of taxable income for an annualization period.
(1) In general.
(i) Items of income.
(ii) Items of deduction.
(iii) Losses.
(2) Certain deductions required to be allocated in a reasonably accurate manner.
(i) In general.
(ii) Application of the reasonably accurate manner requirement to certain charitable contributions, recurring items, and 12-month rule items.
(iii) Reasonably accurate manner defined.
(iv) Special rule for certain real property tax liabilities.
(v) Examples.
(3) Special rules.
(i) Advance payments.
(A) Advance payments under § 1.451–5(b)(1)(ii).
(B) Advance payments under Rev. Proc. 2004–34.
(ii) Extraordinary items.
(A) In general.
(B) De minimis extraordinary items.
(C) Special rules for net operating loss deductions and section 481(a) adjustments.
(iii) Credits.
(A) Current year credits.
(B) Credit carryovers.
(iv) Depreciation and amortization.
(A) Estimated annual depreciation and amortization.
(B) Safe harbors.
(*1*) Proportionate depreciation allowance.
(*2*) 90 percent of preceding year's depreciation.
(*3*) Safe harbor operational rules.
(C) Short taxable years.
(v) Distributive share of items
(A) Member of partnership.
(B) Treatment of subpart F income and income under section 936(h).
(*1*) General rule.
(*2*) Prior year safe harbor.
(*i*) General rule.
(*ii*) Special rule for noncontrolling shareholder.
(C) Dividends from closely held real estate investment trust.
(*1*) General rule.
(*2*) Closely held real estate investment trust.
(D) Other passthrough entities.
(vi) Alternative minimum taxable income exemption amount.
(vii) Examples.
(g) Items that substantially affect taxable income but cannot be determined accurately by the installment due date.
(1) In general.
(2) Example.
(h) Effective/applicability date.

§ 1.6655–3 Adjusted seasonal installment method.
(a) In general.
(b) Limitation on application of section.
(c) Determination of amount.
(d) Special rules.
(1) Base period percentage.
(2) Filing month.
(3) Application of the rules related to the annualized income installment method to the adjusted seasonal installment method.
(4) Alternative minimum tax.
(e) Example.
(f) Effective/applicability date.

§ 1.6655–4 Large corporations.
(a) Large corporation defined.
(b) Testing period.
(c) Computation of taxable income during testing period.
(1) Short taxable year.
(2) Computation of taxable income in taxable year when there occurs a transaction to which section 381 applies.
(d) Members of controlled group.
(1) In general.
(2) Aggregation.
(3) Allocation rule.

(4) Controlled group members.
(e) Effect on a corporation's taxable income of items that may be carried back or carried over from any other taxable year.
(f) Consolidated returns. [Reserved]
(g) Example.
(h) Effective/applicability date.
§ 1.6655–5 Short taxable year.
(a) In general.
(b) Exception to payment of estimated tax.
(c) Installment due dates.
(1) In general.
(i) Taxable year of at least four months but less than twelve months.
(ii) Exceptions.
(2) Early termination of taxable year.
(i) In general.
(ii) Exception.
(d) Amount due for required installment.
(1) In general.
(2) Tax shown on the return for the preceding taxable year.
(3) Applicable percentage.
(4) Applicable percentage for installment period in which taxpayer does not reasonably expect that the taxable year will be an early termination year.
(e) Examples.
(f) 52 or 53 week taxable year.
(g) Use of annualized income or seasonal installment method.
(1) In general.
(2) Computation of annualized income installment.
(3) Annualization period for final required installment.
(4) Examples.
(h) Effective/applicability date.
§ 1.6655–6 Methods of accounting.
(a) In general.
(b) Accounting method changes.
(c) Examples.
(d) Effective/applicability date.
§ 1.6655–7 Addition to tax on account of excessive adjustment under section 6425.

■ **Par. 8**. Sections 1.6655–1 and 1.6655–2 are revised to read as follows:

§ 1.6655–1 Addition to the tax in the case of a corporation.

(a) *In general.* Section 6655 imposes an addition to the tax under chapter 1 of the Internal Revenue Code in the case of any underpayment of estimated tax by a corporation. An addition to tax due to the underpayment of estimated taxes is determined by applying the underpayment rate established under section 6621 to the amount of the underpayment, for the period of the underpayment. This addition to the tax is in addition to any applicable criminal penalties and is imposed whether or not there was reasonable cause for the underpayment.

(b) *Amount of underpayment.* The amount of the underpayment for any required installment is the excess of—

(1) The required installment; over

(2) The amount, if any, of the installment paid on or before the last date prescribed for such payment.

(c) *Period of the underpayment.* The period of the underpayment of any required installment runs from the date the installment was required to be paid to the 15th day of the 3rd month following the close of the taxable year, or to the date such underpayment is paid, whichever is earlier. For purposes of determining the period of the underpayment a payment of estimated tax will be credited against unpaid required installments in the order in which such installments are required to be paid.

(d) *Amount of required installment*—(1) *In general.* Except as otherwise provided in this section and §§ 1.6655–2 through 1.6655–7, the amount of any required installment is 25 percent of the lesser of—

(i) 100 percent of the tax shown on the return for the taxable year (or, if no return is filed, 100 percent of the tax for such year); or

(ii) 100 percent of the tax shown on the return for the preceding taxable year.

(2) *Exception.* This paragraph (d)(1)(ii) does not apply if the preceding taxable year was not a taxable year of 12 months or the corporation did not file a return for the preceding taxable year showing a liability for tax.

(e) *Large corporation required to pay 100 percent of current year tax*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, paragraph (d)(1)(ii) of this section does not apply in the case of a large corporation (as defined in § 1.6655–4).

(2) *May use last year's tax for first installment.* Paragraph (e)(1) of this section does not apply for purposes of determining the amount of the 1st required installment for any taxable year. Any reduction in such 1st installment by reason of the preceding sentence is recaptured by increasing the amount of the next required installment determined under paragraph (d)(1)(i) of this section by the amount of such reduction and, if the next required installment is reduced by use of the annualized income installment method under § 1.6655–2 or the adjusted seasonal installment method under § 1.6655–3, by increasing subsequent required installments determined under paragraph (d)(1)(i) of this section to the extent that the reduction has not previously been recaptured.

(f) *Required installment due dates*—(1) *Number of required installments.* Unless otherwise provided, corporations must make 4 required installments for each taxable year.

(2) *Time for payment of installments*—(i) *Calendar year.* Unless otherwise provided, in the case of a calendar year taxpayer, the due dates of the required installments are as follows:

1st April 15
2nd June 15
3rd September 15
4th December 15

(ii) *Fiscal year.* In the case of a taxpayer other than a calendar year taxpayer, the due dates of the required installments are as follows:

1st 15th day of 4th month of the taxable year
2nd 15th day of 6th month of the taxable year
3rd 15th day of 9th month of the taxable year
4th 15th day of 12th month of the taxable year

(iii) *Short taxable year.* See § 1.6655–5 for rules regarding required installments for corporations with a short taxable year.

(iv) *Partial month.* Except as otherwise provided, for purposes of determining the due date of any required installment, a partial month is treated as a full month.

(g) *Definitions.* (1) The term *tax* as used in this section and §§ 1.6655–2 through 1.6655–7 means the excess of—

(i) The sum of—

(A) The tax imposed by section 11, section 1201(a), or subchapter L of chapter 1 of the Internal Revenue Code, whichever is applicable;

(B) The tax imposed by section 55; plus

(C) The tax imposed by section 887; over

(ii) The credits against tax provided by part IV of subchapter A of chapter 1 of the Internal Revenue Code.

(2)(i) In the case of a foreign corporation subject to taxation under section 11, section 1201(a), or subchapter L of chapter 1 of the Internal Revenue Code, the tax imposed by section 881 is treated as a tax imposed by section 11.

(ii) In the case of a partnership that is treated, pursuant to regulations issued under section 1446(f)(2), as a corporation for purposes of this section, the tax imposed by section 1446 is treated as a tax imposed by section 11.

(iii) Unless otherwise provided in the Internal Revenue Code or Treasury regulations, for purposes of the definition of ''tax'' as used in this section, a recapture of tax, such as a recapture provided by section 50(a)(1)(A), and any other similar provision, is not considered to be a tax imposed by section 11.

(iv) For the purposes of paragraph (d) of this section, the return for the preceding taxable year is the Federal income tax return for such taxable year

that is required by section 6012(a)(2). However, if an amended Federal income tax return has been filed before the due date of an installment, then the return for the preceding taxable year is the Federal income tax return as amended. If an amended Federal income tax return has been filed on or after the due date for an installment, then the return for the preceding taxable year does not include for such installment period the Federal income tax return as amended subsequent to the due date for such installment. Paragraph (d) of this section will apply without regard to whether the taxpayer's Federal income tax return for the preceding taxable year is filed in a timely manner.

(h) *Special rules for consolidated returns* For special rules relating to the determination of the amount of the underpayment in the case of a corporation whose income is included in a consolidated return, see § 1.1502–5(b).

(i) *Overpayments applied to subsequent taxable year's estimated tax*—(1) *In general.* If a taxpayer elects under the provisions of sections 6402(b) and 6513(d) and the regulations to apply an overpayment in year one against the estimated tax liability for year two, the overpayment will be applied to the required installment payments for year two in the order due and to the extent necessary to satisfy such installments, similar to the manner in which an actual overpayment of one installment is carried forward to the next installment. No interest is accrued or paid on an overpayment if the election to apply the overpayment against estimated tax is made.

(2) *Subsequent examinations.* If a deficiency is determined in an examination of a return for a taxable year that originally reflected an overpayment that was applied against estimated tax for the succeeding taxable year, interest on the deficiency will not begin to accrue on an amount applied until that amount is used to satisfy a required estimated tax payment in such taxable year. Regardless of whether the taxpayer anticipated the application of such overpayment from the prior taxable year in calculating and paying its required estimated tax installment liabilities for the current taxable year, the subsequently determined underpayment and interest computation thereon will not change the taxpayer's original election to apply the overpayment against the estimated tax liability of the succeeding taxable year. Any changes to the usage of the original overpayment from the prior taxable year are hypothetical only and solely for the purpose of computing deficiency interest. Overpayment interest will not be impacted. For further guidance, see Rev. Rul. 99–40 (1999–2 CB 441), (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(j) *Examples.* The method prescribed in paragraphs (d) through (g) of this section is illustrated by the following examples:

Example 1. (i) X, a calendar year corporation, estimates its tax liability for its taxable year ending December 31, 2009, will be $85,000. X is not a large corporation as defined in section 6655(g)(2) and § 1.6655–4. X reported a liability of $74,900 on its return for the taxable year ended December 31, 2008, with no credits against tax. X paid four installments of estimated tax, each in the amount of $18,725 (25 percent of $74,900), on April 15, 2009, June 15, 2009, September 15, 2009, and December 15, 2009, respectively. X reported a tax liability of $88,900 on its return due March 15, 2010. X had a $5,000 credit against tax for tax year 2009 as provided by part IV of subchapter A of chapter 1 of the Internal Revenue Code. X did not underpay its estimated tax for tax year 2009 for any of the four installments, determined as follows:

(A) Tax as defined in paragraph (g) of this section for 2009 ($88,900-$5,000) = $83,900

(B) Tax as defined in paragraph (g) of this section for 2008 = $74,900

(C) 100% of the lesser of this paragraph (j), *Example 1* (i)(A) or (i)(B) = $74,900

(D) Amount of estimated tax required to be paid on or before each installment date (25% of $74,900) = $18,725

(E) Deduct amount paid on or before each installment date = $18,725

(F) Amount of underpayment for each installment date = $0

(ii) [Reserved].

Example 2. (i) *Facts.* Y, a calendar year corporation, estimates its tax liability for its taxable year ending December 31, 2009, will be $70,000. Y is not a large corporation as defined in section 6655(g)(2) and § 1.6655–4. Y reported a Federal income tax liability of $90,000 for its taxable year ending December 31, 2008. Y paid no installment of estimated tax on or before April 15, 2009, June 15, 2009, or September 15, 2009, but made a payment of $63,000 on December 15, 2009. On March 15, 2010, Y filed its income tax return showing a tax of $70,000. Y had no credits against tax for tax year 2009. Of the $63,000 paid by Y on December 15, 2009, $17,500 is applied to each of the first three installments due on April 15, June 15, and September 15, 2009, and the remaining $10,500 is applied to the fourth installment. Y has an underpayment of estimated tax for each of the first three installments of $17,500 and for the fourth installment of $7,000. The addition to tax under section 6655(a) is computed as follows:

(A) Tax as defined in paragraph (g) of this section for 2009 = $70,000

(B) Tax as defined in paragraph (g) of this section for 2008 = $90,000

(C) 100% of the lesser of this paragraph (j), *Example 2* (i)(A) or (i)(B) = $70,000

(D) Amount of estimated tax required to be paid on or before each installment date (25% of $70,000) = $17,500

(E) Amount paid on or before the first, second, and third installment dates = $0

(F) Amount paid on or before the fourth installment date = $63,000

(G) Amount of underpayment for each of the first, second, and third installment dates = $17,500

(H) Amount of underpayment for the fourth installment date = $7,000

(ii) *Addition to tax.* Assuming that neither the annualized income installment method nor the adjusted seasonal installment method described in §§ 1.6655–2 and 1.6655–3 would result in a lower payment for any installment period, and the addition to tax is computed under section 6621(a)(2) at the rate of 8 percent per annum for the applicable periods of underpayment, the addition to tax is determined as follows:

(A) First installment (underpayment period 4–16–09 through 12–15–09), computed as $244/365 \times \$17{,}500 \times 8\% = \$936$

(B) Second installment (underpayment period 6–16–09 through 12–15–09), computed as $183/365 \times \$17{,}500 \times 8\% = \$702$

(C) Third installment (underpayment period 9–16–09 through 12–15–09), computed as $91/365 \times \$17{,}500 \times 8\% = \$349$

(D) Fourth installment (underpayment period 12–16–09 through 3–15–10), computed as $90/365 \times \$7{,}000 \times 8\% = \$138$

(E) Total of this paragraph (j), *Example 2* (ii)(A) through (D) = $2,125

(k) *Effective/applicability date.* This section applies to taxable years beginning after September 6, 2007.

§ 1.6655–2 Annualized income installment method.

(a) *In general.* In the case of any required installment, if the corporation establishes that the annualized income installment determined under this section, or the adjusted seasonal installment determined under § 1.6655–3, is less than the amount determined under § 1.6655–1—

(1) The amount of such required installment is the annualized income installment (or, if less, the adjusted seasonal installment); and

(2) Any reduction in a required installment resulting from the application of this section will be recaptured by increasing the amount of the next required installment determined under § 1.6655–1 by the amount of such reduction (and, if the next required installment is similarly reduced, by increasing subsequent required installments to the extent that the reduction has not previously been recaptured).

(b) *Determination of annualized income installment—in general.* In the case of any required installment, the annualized income installment is the excess (if any) of—

(1) The product of the applicable percentage and the tax (after reducing the annualized tax by the amount of any allowable credits) for the taxable year

computed by annualizing the taxable income and alternative minimum taxable income—

(i) For the first 3 months of the taxable year, in the case of the first required installment;

(ii) For the first 3 months of the taxable year, in the case of the second required installment;

(iii) For the first 6 months of the taxable year, in the case of the third required installment; and

(iv) For the first 9 months of the taxable year, in the case of the fourth required installment; over

(2) The aggregate amount of any prior required installments for the taxable year.

(c) *Special rules*—(1) *Applicable percentage.* Except as otherwise provided in § 1.6655–5(d) with respect to short taxable years—

In the case of the following required installments	The applicable percentage is
1st	25
2nd	50
3rd	75
4th	100

(2) *Partial month.* Except as otherwise provided, for purposes of paragraph (b) of this section a partial month is treated as a month.

(3) *Annualization period not a short taxable year.* An annualization period is not treated as a short taxable year for purposes of determining the taxable income of an annualization period.

(d) *Election of different annualization periods.* (1) If the taxpayer timely files Form 8842, ''Election to Use Different Annualization Periods for Corporate Estimated Tax,'' in accordance with section 6655(e)(2)(C)(iii), and elects Option 1—

(i) Paragraph (b)(1)(i) of this section will be applied by using the language ''2 months'' instead of ''3 months'';

(ii) Paragraph (b)(1)(ii) of this section will be applied by using the language ''4 months'' instead of ''3 months'';

(iii) Paragraph (b)(1)(iii) of this section will be applied by using the language ''7 months'' instead of ''6 months''; and

(iv) Paragraph (b)(1)(iv) of this section will be applied by using the language ''10 months'' instead of ''9 months''.

(2) If the taxpayer timely files Form 8842, in accordance with section 6655(e)(2)(C)(iii), and elects Option 2—

(i) Paragraph (b)(1)(ii) of this section will be applied by using the language ''5 months'' instead of ''3 months'';

(ii) Paragraph (b)(1)(iii) of this section will be applied by using the language ''8 months'' instead of ''6 months''; and

(iii) Paragraph (b)(1)(iv) of this section will be applied by using the language ''11 months'' instead of ''9 months''.

(3) The application of the annualized income installment method is illustrated by the following example:

Example. (i) ABC, a calendar year corporation, had a taxable year of less than twelve months for tax year 2008 and no credits against tax for tax year 2009. ABC made an estimated tax payment of $15,000 on the installment dates of April 15, 2009, June 15, 2009, September 15, 2009, and December 15, 2009, respectively. Assume that, under paragraph (d)(1) of this section, ABC elected Option 1 by timely filing Form 8842, in accordance with section 6655(e)(2)(C)(iii), and determined that its taxable income for the first 2, 4, 7 and 10 months was $25,000, $64,000, $125,000, and $175,000 respectively. The income for each period is annualized as follows:
$25,000 × 12/2 = $150,000
$64,000 × 12/4 = $192,000
$125,000 × 12/7 = $214,286
$175,000 × 12/10 = $210,000

(ii)(A) To determine whether the installment payment made on April 15, 2009, equals or exceeds the amount that would have been required to have been paid if the estimated tax were equal to 100 percent of the tax computed on the annualized income for the 2-month period, the following computation is necessary:

(*1*) Annualized income for the 2 month period = $150,000

(*2*) Tax on this paragraph (d)(3), *Example* (ii)(A)(*1*) = $41,750

(*3*) 100% of this paragraph (d)(3), *Example* (ii)(A)(*2*) = $41,750

(*4*) 25% of this paragraph (d)(3), *Example* (ii)(A)(*3*) = $10,438

(B) Because the total amount of estimated tax that was timely paid on or before the first installment date ($15,000) exceeds the amount required to be paid on or before this date if the estimated tax were 100 percent of the tax determined by placing on an annualized basis the taxable income for the first 2-month period ($10,438), the exception described in paragraphs (a) and (b) of this section applies, and no addition to tax will be imposed for the installment due on April 15, 2009.

(iii)(A) To determine whether the installment payments made on or before June 15, 2009, equal or exceed the amount that would have been required to have been paid if the estimated tax were equal to 100 percent of the tax computed on the annualized income for the 4-month period, the following computation is necessary:

(*1*) Annualized income for the 4 month period = $192,000

(*2*) Tax on this paragraph (d)(3), *Example* (iii)(A)(*1*) = $58,130

(*3*) 100% of this paragraph (d)(3), *Example* (iii)(A)(*2*) = $58,130

(*4*) 50% of this paragraph (d)(3), *Example* (iii)(A)(*3*) less $10,438 (amount due with the first installment) = $18,627

(B) Because the total amount of estimated tax actually paid on or before the second installment date ($19,562 ($15,000 second required installment payment plus $4,562 overpayment of first required installment)) exceeds the amount required to be paid on or before this date if the estimated tax were 100 percent of the tax determined by placing on an annualized basis the taxable income for the first 4-month period ($18,627), the exception described in paragraphs (a) and (b) of this section applies, and no addition to tax will be imposed for the installment due on June 15, 2009.

(iv)(A) To determine whether the installment payments made on or before September 15, 2009, equal or exceed the amount that would have been required to have been paid if the estimated tax were equal to 100 percent of the tax computed on the annualized income for the 7-month period, the following computation is necessary:

(*1*) Annualized income for the 7 month period = $214,286

(*2*) Tax on this paragraph (d)(3), *Example* (iv)(A)(*1*) = $66,821

(*3*) 100% of this paragraph (d)(3), *Example* (iv)(A)(*2*) = $66,821

(*4*) 75% of this paragraph (d)(3), *Example* (iv)(A)(*3*) less $29,065 (amount due with the first and second installment) = $21,051

(B) Because the total amount of estimated tax actually paid on or before the third installment date ($15,935 ($15,000 third required installment payment plus $935 overpayment of second required installment)) does not equal or exceed the amount required to be paid on or before this date if the estimated tax were 100 percent of the tax determined by placing on an annualized basis the taxable income for the first 7-month period ($21,051), the exception described in paragraphs (a) and (b) of this section does not apply, and an addition to tax will be imposed with respect to the underpayment of the September 15, 2009, installment unless another exception applies to this installment payment.

(v)(A) To determine whether the installment payments made on or before December 15, 2009, equal or exceed the amount that would have been required to have been paid if the estimated tax were equal to 100 percent of the tax computed on the annualized income for the 10-month period, the following computation is necessary:

(*1*) Annualized income for the 10 month period = $210,000

(*2*) Tax on this paragraph (d)(3), *Example* (v)(A)(*1*) = $65,150

(*3*) 100% of this paragraph (d)(3), *Example* (v)(A)(*2*) = $65,150

(*4*) 100% of this paragraph (d)(3), *Example* (v)(A)(*3*) less $50,116 (amount due with the first, second and third installment) = $15,034

(B) Because the total amount of estimated tax payments made on or before the fourth installment date that is available to be applied to the estimated tax due for the fourth installment ($9,884 ($15,000 fourth required installment payment less $5,116 underpayment for the third installment of estimated tax ($21,051 third installment of estimated tax due less $15,935 payments available to be applied to the third installment of estimated tax))) does not equal or exceed the amount required to be paid on or before this date if the estimated tax were

100 percent of the tax determined by placing on an annualized basis the taxable income for the first 10-month period ($15,034), the exception described in paragraphs (a) and (b) of this section does not apply, and an addition to tax will be imposed with respect to the underpayment of the December 15, 2009, installment unless another exception applies to this installment payment.

(vi) Assuming that no other exceptions apply and the addition to tax is computed under section 6621(a)(2) at the rate of 8 percent per annum for the applicable periods of underpayment, the amount of the addition to tax is as follows:

(A) First installment (no underpayment) = $0

(B) Second installment (no underpayment) = $0

(C) Third installment (underpayment period 9–16–09 through 12–15–09), computed as $^{91}/_{365} \times \$5{,}116 \times 8\% = \$102$

(D) Fourth installment (underpayment period 12–16–09 through 3–15–10), computed as $^{90}/_{365} \times \$5{,}150 \times 8\% = \$102$

(E) Total of this paragraph (d)(3), *Example* (vi)(A) through (D) = $204

(e) *52–53 week taxable year.* (1) Generally, except as provided in the alternative rule in paragraph (e)(4) of this section, in the case of a taxpayer whose taxable year constitutes 52 or 53 weeks in accordance with section 441(f), the rules prescribed by § 1.441–2 are applicable in determining—

(i) Whether a taxable year is a taxable year of 12 months; and

(ii) When the 2-, 3-, 4-, 5-, 6-, 7-, 8-, 9-, 10-, or 11-month period (whichever is applicable) commences and ends for purposes of paragraphs (b)(1), (d)(1) and (d)(2) of this section.

(2) If a taxpayer employs four 13-week periods or thirteen 4-week accounting periods and the end of any accounting period employed by the taxpayer does not correspond to the end of the 2-, 3-, 4-, 5-, 6-, 7-, 8-, 9-, 10-, or 11-month period (whichever is applicable), then, provided the taxpayer has at least one full 4-week or 13-week accounting period, as appropriate, within the applicable period, annualized taxable income for the applicable period is—

(i) [(x/(y*13))*z], in the case of a taxpayer using four 13-week periods, if—

(A) x = Taxable income for the number of full 13-week periods in the applicable period;

(B) y = The number of full 13-week periods in the applicable period; and

(C) z = The number of weeks in the taxable year; or

(ii) [(x/(y*4))*z], in the case of a taxpayer using thirteen 4-week periods, if—

(A) x = Taxable income for the number of full 4-week periods in the applicable period;

(B) y = The number of full 4-week periods in the applicable period; and

(C) z = The number of weeks in the taxable year.

(3) If a taxpayer employs four 13-week periods and the taxpayer does not have at least one 13-week period within the applicable 2-, 3-, 4-, 5-, 6-, 7-, 8-, 9-, 10-, or 11-month period, the taxpayer is permitted to determine annualized taxable income for the applicable period based upon—

(i) The taxable income for the number of weeks in the applicable period; or

(ii) The taxable income for the full 13-week periods that end before the due date of the required installment.

(4) As an alternative to using the 52/53 week taxable year rules provided in paragraphs (e)(1), (e)(2), and (e)(3) of this section, a taxpayer whose taxable year constitutes 52 or 53 weeks in accordance with section 441(f) may base its annualization period on the month that ends closest to the end of its applicable 4-week period or 13-week period that ends within the applicable annualization period. This alternative may only be used if it is used for determining annualization periods for all required installments for the taxable year.

(5) The following examples illustrate the rules of this paragraph (e):

Example 1. Corporation ABC, an accrual method taxpayer, uses a 52/53 week year-end ending on the last Friday in December and uses four thirteen-week periods. For its year beginning December 28, 2007, ABC uses the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installments. For purposes of computing its first and second required installments, the first 3 months of A's taxable year under paragraph (b)(1)(i) of this section will end on March 28th, the thirteenth Friday of ABC's taxable year. For purposes of its third required installment, the first 6 months of ABC's taxable year will end on June 27th, the twenty-sixth Friday of ABC's taxable year. For purposes of its fourth required installment, the first 9 months of ABC's taxable year will end on September 26th, the thirty-ninth Friday of ABC's taxable year.

Example 2. Same facts as *Example 1* except that ABC uses thirteen four-week periods and there are 52 weeks during ABC's taxable year beginning December 28, 2007, and ending December 26, 2008. For purposes of computing ABC's first and second required installments, ABC's annualized taxable income for the first three months will be the taxable income for the first three four-week periods of ABC's taxable year (December 28, 2007, through March 21, 2008) divided by 12 (number of full four-week periods in the first three months (3) multiplied by 4) and multiplied by 52 (the number of weeks in the taxable year). For purposes of computing ABC's third required installment, ABC's annualized taxable income for the first six months will be the taxable income for the first six four-week periods of ABC's taxable year (December 28, 2007, through June 13, 2008) divided by 24 and multiplied by 52. For purposes of computing ABC's fourth required installment, ABC's annualized taxable income for the first nine months will be the taxable income for the first nine four-week periods of ABC's taxable year (December 28, 2007, through September 5, 2008) divided by 36 and multiplied by 52.

Example 3. Same facts as *Example 1* except that ABC uses the alternative method under paragraph (e)(4) of this section for computing its required installments for 2008. For purposes of computing its first and second required installments, the first three months of ABC's taxable year under paragraph (b)(1)(i) of this section will end on March 31, 2008, the month that ends closest to the end of ABC's applicable thirteen-week period for the first and second required installments. For purposes of ABC's third required installment, the first six months of ABC's taxable year will end on June 30, 2008, the month that ends closest to the end of ABC's applicable thirteen-week period for the third required installment. For purposes of ABC's fourth required installment, the first nine months of ABC's taxable year will end on September 30, 2008, the month that ends closest to the end of ABC's applicable thirteen-week period for the fourth required installment.

(f) *Determination of taxable income for an annualization period*—(1) *In general.* This paragraph (f) applies for purposes of determining the applicability of the exception described in paragraphs (a) and (b) of this section (relating to the annualization of income) and the exception described in § 1.6655–3 (relating to annualization of income for corporations with seasonal income). An item of income, deduction, gain or loss is to be taken into account in determining the taxable income and alternative minimum taxable income (and applicable tax and alternative minimum tax) for an annualization period in the manner provided in this paragraph (f). An item may not be taken into account in determining taxable income for any annualization period unless the item is properly taken into account by the last day of that annualization period and the item is properly taken into account in determining the taxpayer's taxable income and alternative minimum taxable income (and applicable tax and alternative minimum tax) for the taxable year that includes the annualization period.

(i) *Items of income.* An item of income is taken into account in the annualization period in which the item is properly includible under the method of accounting employed by the taxpayer with respect to the item and in accordance with the appropriate provision of the Internal Revenue Code (for example, section 451 for accrual method taxpayers, section 453 for

installment sales or section 460 for long-term contracts).

(ii) *Items of deduction.* An item of deduction is taken into account in the annualization period in which the item is properly deductible under the method of accounting employed by the taxpayer with respect to the item and in accordance with the appropriate provision of the Internal Revenue Code (for example, under the cash receipts and disbursements method of accounting, the deduction must be paid under § 1.461–1(a)(1) and be otherwise deductible in computing taxable income; under an accrual method of accounting, the deduction must be incurred under § 1.461–1(a)(2) and be otherwise deductible in computing taxable income). Section 170(a)(2) and § 1.170A–11(b) (charitable contributions by accrual method corporations) and § 1.461–5 (recurring item exception) may not be taken into consideration by an accrual method taxpayer in any annualization period in determining whether an item of deduction has been incurred under § 1.461–1(a)(2) during that annualization period.

(iii) *Losses.* An item of loss is to be taken into account during the annualization period in which events have occurred that permit the loss to be taken into account under the appropriate provision of the Internal Revenue Code.

(2) *Certain deductions required to be allocated in a reasonably accurate manner*—(i) *In general.* The following deductions allowed for a taxable year must be allocated throughout the taxable year in a reasonably accurate manner (as defined in paragraph (f)(2)(iii) of this section), regardless of the annualization period in which the item is paid or incurred:

(A) Real property tax deductions.

(B) Employee and independent contractor bonus compensation deductions (including the employer's share of employment taxes related to such compensation).

(C) Deductions under sections 404 (deferred compensation) and 419 (welfare benefit funds).

(D) Items allowed as a deduction for the taxable year by reason of section 170(a)(2) and § 1.170A–11(b) (certain charitable contributions by accrual method corporations), § 1.461–5 (recurring item exception) or § 1.263(a)-4(f) (12-month rule).

(E) Items of deduction designated by the Secretary by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(ii) *Application of the reasonably accurate manner requirement to certain charitable contributions, recurring items, and 12-month rule items.* For purposes of paragraph (f)(2)(i)(D) of this section, the total amount of the item deducted in the computation of taxable income for the taxable year must be allocated in a reasonably accurate manner, notwithstanding the fact that section 170(a)(2) and § 1.170A–11(b), § 1.461–5, or § 1.263(a)–4(f) applies to only a portion of the total amount of the item deducted for the taxable year. For example, if a portion of a taxpayer's rebate liabilities are deducted in the computation of taxable income under the recurring item exception, all rebate liabilities deducted in the computation of taxable income for the taxable year must be allocated in a reasonably accurate manner.

(iii) *Reasonably accurate manner defined.* (A) An item is allocated throughout the taxable year in a reasonably accurate manner if the item is allocated ratably throughout the taxable year or if the allocation provides a reasonably accurate estimate of taxable income for the taxable year based upon the facts known as of the end of the annualization period. In determining that an allocation of an item provides a reasonably accurate estimate of taxable income for the taxable year, relevant considerations include—

(*1*) The extent to which the allocation is consistent with the taxpayer's accounting for the item on its non-tax books and records;

(*2*) The extent to which the allocable portion of the item becomes fixed and determinable (under § 1.461–1(a)(2)) during the applicable annualization period; and

(*3*) The extent to which the allocation, if compared to the ratable allocation of the item, results in a better matching of the item of deduction to revenue, earnings, the use of property or the provision of services occurring during the annualization period.

(B) None of the relevant considerations above override the general requirement that the allocation must be done in a reasonably accurate manner based upon the facts known as of the end of the annualization period. For example, the fact that a liability for an annual expense becomes fixed and determinable during an annualization period will not establish that allocating all of the expense to that annualization period has been done in a reasonably accurate manner if the facts known as of the end of the annualization period indicate otherwise.

(iv) *Special rule for certain real property tax liabilities.* Notwithstanding paragraph (f)(2)(iii) of this section, real property tax liabilities for which an election under section 461(c) is in effect must be allocated ratably throughout the taxable year for purposes of this section.

(v) *Examples.* Unless otherwise stated, the following examples assume that the taxpayer uses the 3–3–6–9 annualization period:

Example 1. (i) Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. ABC has adopted a plan under which ABC pays an annual bonus to its employees. As of March 31, 2008, ABC estimates that it will pay a year-end bonus of $500,000 to its employees if earnings remain constant throughout the tax year. ABC does not pay any of the estimated bonus liability as of March 31, 2008. On October 31, 2008, ABC declares a $600,000 bonus to its employees which is paid out on November 15, 2008, and properly deducted in ABC's December 31, 2008, tax year. No other bonus liabilities are incurred by ABC during the tax year.

(ii) Under the general rule provided in paragraph (f)(2)(i) of this section, ABC is required to allocate its employee bonus liability in a reasonably accurate manner for annualization purposes. Under paragraph (f)(2)(iii) of this section, ABC's employee bonus liability will be deemed to be allocated in a reasonably accurate manner if the item is allocated ratably throughout the taxable year. Therefore, ABC is permitted to recognize a $150,000 bonus deduction (one quarter of the $600,000 bonus liability properly recognized by ABC in the tax year ending December 31, 2008) in the first annualization period ending March 31, 2008.

Example 2. (i) Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. ABC has adopted a plan under which ABC pays an annual bonus to its employees. ABC's employee bonus plan generally calls for an annual bonus equal to 2% of earnings. A bonus reserve for this amount is reported each quarter in ABC's non-tax books and records. ABC's quarterly revenues throughout the year are $10,000,000; $6,000,000; $7,000,000; and $7,000,000 respectively. As of March 31, 2008, ABC estimates that it will pay a year-end bonus of $800,000 ($10,000,000 × 4 × 2%) to its employees if earnings remain constant throughout the year. ABC does not pay any of the estimated bonus payment as of March 31, 2008. On December 31, 2008, ABC declares a $600,000 bonus to its employees which is paid out on January 15, 2009, and properly deducted in ABC's December 31, 2008, tax year.

(ii) Under the general rule provided in paragraph (f)(2)(i) of this section, ABC must allocate its employee bonus liability in a reasonably accurate manner for annualization purposes. Under paragraph (f)(2)(iii) of this section, ABC's employee bonus liability will be deemed to be allocated in a reasonably accurate manner if the allocation provides a reasonable estimate of taxable income based upon the facts known as of the end of the

annualization period. Based upon its earnings activities and other information available as of March 31, 2008, ABC estimated that its total deduction for employee bonuses for the taxable year ending December 31, 2008, would be $800,000 ($10,000,000 first quarter earnings × 4 × 2%). Allocating $200,000 ($10,000,000 × 2%) of ABC's annual bonus liability of $600,000 to ABC's first quarter based upon earnings during the quarter represents a better matching of ABC's bonus expense to earnings in the quarter as compared to allocating $150,000 to ABC's first quarter under a ratable accrual method and is consistent with the allocation provided in ABC's non-tax books and records. Accordingly, allocating ABC's employee bonus deductions based upon ABC's earnings will be considered allocated in a reasonably accurate manner.

Example 3. (i) Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. ABC has adopted a plan under which ABC pays a bonus to its employees each quarter based upon earnings for that quarter. On March 31, 2008, ABC pays out $2,000,000 to its employees as a quarterly bonus based upon the earnings of ABC for the period January 1, 2008, through March 31, 2008. The $2,000,000 bonus is recognized as an expense on ABC's audited financial statements in the quarter ending March 31, 2008. As of March 31, 2008, ABC anticipates that its earnings will continue throughout the year resulting in future quarterly bonus payments in 2008 similar to the $2,000,000 first quarter payment.

(ii) Under the general rule provided in paragraph (f)(2)(i) of this section, ABC is required to allocate its employee bonus liability in a reasonably accurate manner for annualization purposes. Under paragraph (f)(2)(iii) of this section , ABC's employee bonus liability will be deemed to be allocated in a reasonably accurate manner if the item is allocated ratably throughout the taxable year. Therefore, ABC may recognize a $500,000 bonus deduction (one quarter of the $2,000,000 bonus liability properly recognized by ABC in the tax year ending December 31, 2008) in the first annualization period ending March 31, 2008 (as well as one quarter of any additional bonus liability properly recognized by ABC in the tax year ending December 31, 2008).

(iii) In addition, paragraph (f)(2)(iii) of this section provides that an allocation will be considered reasonable if the allocation provides an accurate estimate of taxable income for the taxable year based upon the facts known as of the end of the annualization period. Based upon its earnings activities and other information available as of March 31, 2008, ABC estimates that its total deduction for employee bonuses for the taxable year ending December 31, 2008, would be $8,000,000. In addition, the $2,000,000 bonus liability became fixed and determinable during the first quarter. Allocating $2,000,000 to ABC's first quarter earnings is also consistent with ABC's non-tax books and records and represents a better matching of ABC's bonus expense to earnings in the quarter as compared to a ratable accrual. Accordingly, allocating ABC's bonus liability based upon earnings will be considered a reasonably accurate manner for estimated tax purposes.

Example 4. (i) Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting with the recurring item exception and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2009 taxable year. ABC regularly incurs rebate obligations related to the sale of its products. Rebate coupons that are received and validated by ABC are generally paid in the following month. During the tax year ending December 31, 2009, ABC received, validated and paid $400,000 in rebates. In addition, as of the end of December 31, 2009, ABC had received and validated $100,000 in rebate claims that were paid in January of 2010 and deducted in ABC's December 31, 2009, tax year under the recurring item exception. Therefore, ABC properly recognized a $500,000 rebate liability deduction on ABC's December 31, 2009, tax return.

(ii) Under the rule provided in paragraph (f)(2)(ii) of this section, an item must be allocated in a reasonably accurate manner if any portion of the item is deducted under the recurring item exception. Therefore, ABC will be required to allocate its entire $500,000 rebate liability deduction in a reasonably accurate manner as defined in paragraph (f)(2)(iii) of this section.

(3) *Special rules*—(i) *Advance payments*—(A) *Advance payments under § 1.451–5(b)(1)(ii).* An advance payment for which the taxpayer uses the method of accounting provided in § 1.451–5(b)(1)(ii) is includible in computing taxable income for an annualization period in accordance with that method of accounting except that, if § 1.451–5(c) applies, any amount not included in computing taxable income by the end of the second taxable year following the year in which substantial advance payments are received, and not previously included in accordance with the taxpayer's accrual method of accounting, is includible in computing taxable income on the last day of such second taxable year.

(B) *Advance payments under Rev. Proc. 2004–34.* An advance payment for which the taxpayer uses the Deferral Method provided in section 5.02 of Rev. Proc. 2004–34 (2004–1 CB 991), (see § 601.601(d)(2)(ii)(*b*) of this chapter) is includible in computing taxable income for an annualization period in accordance with that method of accounting, except that any amount not included in computing taxable income by the end of the taxable year succeeding the taxable year of receipt is includible in computing taxable income on the last day of such succeeding taxable year.

(ii) *Extraordinary items*—(A) *In general.* In general, extraordinary items must be taken into account after annualizing the taxable income for the annualization period. For purposes of the preceding sentence an extraordinary item is any item identified in § 1.1502–76(b)(2)(ii)(C)(1), (2), (3), (4), (7), and (8), a net operating loss carryover, a section 481(a) adjustment, net gain or loss from the disposition of 25 percent or more of the fair market value of a taxpayer's business assets during a taxable year, and any other item designated by the Secretary by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(B) *De minimis extraordinary items.* A taxpayer may treat any *de minimis* extraordinary item, other than a net operating loss carryover or section 481(a) adjustment, as an item under the general rule of paragraph (f)(1) of this section rather than an extraordinary item as provided for in paragraph (f)(3)(ii) of this section. A *de minimis* extraordinary item is any item identified in paragraph (f)(3)(ii)(A) of this section resulting from a transaction in which the total extraordinary items resulting from such transaction is less than $1,000,000.

(C) *Special rule for net operating loss deductions and section 481(a) adjustments.* For purposes of paragraph (f)(3)(ii) of this section, a taxpayer must treat a net operating loss deduction and section 481(a) adjustment as extraordinary items arising on the first day of the tax year in which the item is taken into account in determining taxable income. Notwithstanding the preceding sentence, a taxpayer may choose to treat the portion of a section 481(a) adjustment recognized during the tax year of the accounting method change as an extraordinary item arising on the date the Form 3115, ''Application for Change in Accounting Method,'' requesting the change was filed with the national office of the Internal Revenue Service.

(iii) *Credits*—(A) *Current year credits.* With respect to a current year credit, the items upon which the credit is computed are annualized, the amount of the credit is computed based on the annualized items, and the amount of the credit is deducted from the annualized tax. For example, for an annualization period consisting of three months in a full 12-month taxable year, the items upon which the credit is based that are taken into account for the three month period are multiplied by four, the credit is determined based on the annualized amount of the items, and the credit reduces the annualized tax.

(B) *Credit carryovers.* Any credit carryover to the current taxable year is taken into account in computing an annualized income installment only after annualizing the taxable income for the annualization period and computing the applicable tax, and before applying the applicable percentage.

(iv) *Depreciation and amortization*—(A) *Estimated annual depreciation and amortization.* In general, in determining taxable income for any annualization period, a proportionate amount of the taxpayer's estimated annual depreciation and amortization (depreciation) expense may be taken into account. For purposes of the preceding sentence, estimated annual depreciation expense is the estimated depreciation expense to be properly taken into account in determining the taxpayer's taxable income for the taxable year. In determining the estimated annual depreciation expense, a taxpayer may take into account purchases, sales or other dispositions, changes in use, additional first-year depreciation and expense deductions and section 179 or any similar provision, and other events that, based on all the relevant information available as of the last day of the annualization period (such as capital spending budgets, financial statement data and projections, or similar reports that provide evidence of the taxpayer's capital spending plans for the current taxable year), are reasonably expected to occur or apply during the taxable year.

(B) *Safe harbors*—(*1*) *Proportionate depreciation allowance.* In determining taxable income for any annualization period, in lieu of the rule provided in paragraph (f)(3)(iv)(A) of this section a taxpayer may take into account a proportionate amount of the depreciation and amortization (depreciation) expense, including special depreciation and expense deductions such as those provided for in section 168(k) and section 179 or any similar provision, allowed for the taxable year from—

(*i*) Assets that were in service on the last day of the prior taxable year, are in service on the first day of the current taxable year, and that have not been disposed of during the annualization period;

(*ii*) Assets placed in service during the annualization period and have not been disposed of during that period; and

(*iii*) Assets that were in service on the last day of the prior taxable year and that are disposed of during the annualization period.

(*2*) *90 percent of preceding year's depreciation.* In determining taxable income for any annualization period, in lieu of the general rule provided in paragraph (f)(3)(iv)(A) of this section, a proportionate amount of 90 percent of the amount of depreciation and amortization (depreciation) expense taken on the taxpayer's Federal income tax return for the preceding taxable year may be taken into account. If the taxpayer's preceding taxable year is less than 12 months (a short taxable year), the amount of depreciation expense taken into account is annualized by multiplying the depreciation and amortization for the short taxable year by 12, and dividing the result by the number of months in the short taxable year.

(*3*) *Safe harbor operational rules.* If a taxpayer selects one of the two safe harbors provided in paragraph (f)(3)(iv)(B)(*1*) or paragraph (f)(3)(iv)(B)(*2*) of this section, the taxpayer must use that safe harbor for all depreciation expenses within the annualization period for the annualized income installment. However, a taxpayer may use either the method provided for in paragraph (f)(3)(iv)(A) of this section or a method provided for in this paragraph (f)(3)(iv)(B) of this section for each annualized income installment during the taxable year. For example, a taxpayer may use the safe harbor provided in paragraph (f)(3)(iv)(B)(*1*) of this section for its first annualized income installment and may use the general rule provided in paragraph (f)(3)(iv)(A) of this section for its second annualized income installment.

(C) *Short taxable years.* If the taxable year is, or will be, a short taxable year (based on all relevant information available as of the last day of the annualization period), annual depreciation expense is computed using the rules applicable for computing depreciation during a short taxable year for purposes of determining the annual depreciation expense to be allocated to an annualization period. For this purpose, the rules applicable for computing depreciation during a short taxable year are applied on the basis of the date the taxable year is expected to end based on all relevant information available as of the last day of the annualization period. See Rev. Proc. 89–15 (1989–1 CB 816) for computing depreciation expense under section 168 (see § 601.601(d)(2)(ii)(*b*) of this chapter). An annualization period is not treated as a short taxable year for purposes of determining the depreciation expense for an annualization period. See paragraph (c)(3) of this section.

(v) *Distributive share of items*—(A) *Member of partnership.* In determining a partner's distributive share of partnership items that must be taken into account during an annualization period, the rules set forth in § 1.6654–2(d)(2) are applicable.

(B) *Treatment of subpart F income and income under section 936(h)*—(*1*) *General rule.* Any amounts required to be included in gross income under section 936(h) or section 951(a), and credits properly allocable thereto, are taken into account in computing any annualized income installment in a manner similar to the manner under which partnership inclusions, and credits properly allocable thereto, are taken into account in accordance with paragraph (f)(3)(v)(A) of this section.

(*2*) *Prior year safe harbor*—(i) *General rule.* If a taxpayer elects to have the safe harbor in this paragraph (f)(3)(v)(B)(2) apply for any taxable year, then paragraph (f)(3)(v)(B)(*1*) of this section does not apply; and, for purposes of computing any annualized income installment for the taxable year, the taxpayer is treated as having received ratably during the taxable year items of income and credit described in paragraph (f)(3)(v)(B)(*1*) of this section in an amount equal to 115 percent of the amount of such items shown on the return of the taxpayer for the preceding taxable year (the second preceding taxable year in the case of the first and second required installments for such taxable year).

(ii) *Special rule for noncontrolling shareholder.* If a taxpayer making the election under paragraph (f)(3)(v)(B)(*2*)(*i*) of this section is a noncontrolling shareholder of a corporation, paragraph (f)(3)(v)(B)(*2*)(*i*) of this section is applied with respect to items of such corporation by substituting ''100 percent'' for ''115 percent''. For purposes of paragraph (f)(3)(v)(B)(*2*)(*ii*) of this section, the term *noncontrolling shareholder* means, with respect to any corporation, a shareholder that, as of the beginning of the taxable year for which the installment is being made, does not own within the meaning of section 958(a), and is not treated as owning within the meaning of section 958(b), more than 50 percent by vote or value of the stock in the corporation.

(C) *Dividends from closely held real estate investment trust*—(*1*) *General rule.* Any dividend received from a closely held real estate investment trust by any person that owns, after the application of section 856(d)(5), 10 percent or more by vote or value of the stock or beneficial interests in the trust is taken into account in computing annualized income installments in a manner similar to the manner under

which partnership income inclusions are taken into account.

(*2*) *Closely held real estate investment trust.* For purposes of paragraph (f)(3)(v)(C)(*1*) of this section, the term *closely held real estate investment trust* means a real estate investment trust with respect to which 5 or fewer persons own, after the application of section 856(d)(5), 50 percent or more by vote or value of the stock or beneficial interests in the trust.

(D) *Other passthrough entities.* A taxpayer's distributive share of items from a passthrough entity, other than those described in paragraphs (f)(3)(v)(A) and (f)(3)(v)(C) of this section, is taken into account in computing any annualized income installment in a manner similar to the manner under which partnership items are taken into account under paragraph (f)(3)(v)(A) of this section.

(vi) *Alternative minimum taxable income exemption amount.* The alternative minimum taxable income exemption amount provided by section 55(d)(2) is applied after the alternative minimum taxable income for the annualization period is annualized.

(vii) *Examples.* The provisions of this paragraph (f) are illustrated by the following examples. Unless otherwise stated, the following examples assume that the taxpayer uses the 3–3–6–9 annualization period.

Example 1. Expense paid or incurred in the installment period. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. ABC has licensed technology from Corporation XYZ. Pursuant to the license agreement, ABC pays a license fee to XYZ equal to $.01 for every dollar of gross receipts earned by ABC. For 2008, ABC projects gross receipts of $200,000,000, of which $100,000,000 is earned by March 31, 2008. Pursuant to paragraph (f)(1) of this section, a license fee expense of $1,000,000 ($100,000,000 × $.01) is incurred by March 31, 2008, and may be taken into account for purposes of determining the taxable income to be annualized in computing ABC's first annualized income installment.

Example 2. Expense not paid or incurred in the installment period. Same facts as *Example 1* except that ABC does not earn any gross receipts by March 31, 2008. In accordance with paragraph (f)(1) of this section, because the license fee expense was not incurred under § 1.461–1(a)(2) by the last day of the annualization period, no license fee expense is taken into account for purposes of determining the taxable income to be annualized in computing ABC's first annualized income installment, which is based on the income and deductions from the first three months of the taxable year.

Example 3. Bad debt expense. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. As of December 31, 2007, ABC had a $100,000 account receivable due from XYZ related to the sale of goods from ABC to XYZ during 2007. On March 30, 2008, ABC determined that its receivable from XYZ was worthless under section 166 and the regulations. No other receivables were determined to be worthless between January 1, 2008, and March 31, 2008. In accordance with paragraph (f)(1) of this section, a $100,000 bad debt write-off is taken into account for purposes of determining the taxable income to be annualized in computing ABC's first annualized income installment.

Example 4. Bad debt expense. Same facts as *Example 3* except that ABC determines that the receivable from XYZ was worthless under section 166 and the regulations on April 10, 2008. As of March 31, 2008, ABC had not determined that any receivables were worthless under section 166 and the regulations. In accordance with paragraph (f)(1) of this section, the $100,000 bad debt expense attributable to the receivable from XYZ is not taken into account for purposes of determining the taxable income to be annualized in computing ABC's first annualized income installment, which is based on the income and deductions from the first three months of the taxable year, because the receivable from XYZ became worthless after the last day of the annualization period.

Example 5. Employer deductions under section 404 and 419. (i) Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and uses the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. On March 1, 2008, the board of directors of ABC makes a binding, irrevocable commitment to fund a minimum contribution of $10,000,000 to ABC's qualified retirement plan by March 14, 2009. ABC remits a $1,000,000 payment to the retirement plan on March 1, 2008, and a $9,000,000 payment on March 3, 2009. ABC does not incur any other related retirement plan deductions during its 2008 taxable year.

(ii) Under the rule provided in paragraph (f)(2)(i) of this section, ABC's employer deduction for payment made to the qualified plan must be allocated throughout the tax year for estimated tax purposes in a reasonably accurate manner. Therefore, ABC will not be permitted to allocate the $10,000,000 deduction to its first installment period. Under paragraph (f)(2)(iii) of this section, ABC's qualified plan deduction will be deemed to be allocated in a reasonably accurate manner if the item is allocated ratably throughout the taxable year. Therefore, ABC will be permitted to allocate $2,500,000 of its qualified plan deduction in its first installment period.

Example 6. Prepaid expense. (i) Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and does not capitalize qualifying costs under the exception provided for in § 1.263(a)–4(f). ABC uses the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. On July 1, 2008, ABC purchases an annual business license from State X which permits ABC to operate its business in State X from July 1, 2008, through June 30, 2009. An annual payment of $12,000 is due on July 1, 2008, and ABC pays the fee on this date. ABC has not elected out of the 12-month rule provided by § 1.263(a)–4(f) and therefore ABC is not required to capitalize any amount paid for the license and will recognize a $12,000 deduction for the tax year ending December 31, 2008, with respect to this license.

(ii) Under the rule provided in paragraph (f)(2)(ii) of this section, ABC's $12,000 business license expense must be allocated in a reasonably accurate manner because ABC utilizes the 12-month rule exception provided for in the § 1.263(a)–4(f). Under paragraph (f)(2)(iii) of this section, ABC's deduction will be deemed to be allocated in a reasonably accurate manner if the item is allocated ratably throughout the taxable year. Therefore, ABC will be permitted to allocate $3,000 of its business license deduction in its first installment period.

Example 7. Real property tax liability. (i) Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. ABC owns real property in State Y and uses the real property in its trade or business. ABC incurs a $400,000 deduction for State Y real estate taxes during ABC's December 31, 2008, taxable year. ABC has elected to recognize its real property taxes ratably under section 461(c).

(ii) Under the rule provided in paragraph (f)(2)(i) of this section, ABC's $400,000 real property tax liabilities must be allocated in a reasonably accurate manner. However, paragraph (f)(2)(iv) of this section provides that with respect to real property taxes for which an election has been made under section 461(c), ratable accrual is the only method which will be considered a reasonably accurate method. Therefore, ABC will be required to allocate its $400,000 real property taxes ratably for estimated tax purposes and thus $100,000 will be allocated to the ABC's first annualized income installment.

Example 8. NOL (Net Operating Loss) deduction. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. ABC has a net operating loss carryover to 2008 of $2,000,000. ABC's taxable income from January 1, 2008, through March 31, 2008, without regard to any net operating loss deduction, is $1,500,000 (pre-NOL taxable income). Under the special rule for net operating loss deductions provided in paragraph (f)(3)(ii) of this section, the NOL deduction is treated as an extraordinary item incurred on the first day of ABC's December 31, 2008, tax year. Therefore, the NOL

deduction is taken into account after annualization for purposes of determining ABC's first annualized income installment.

Example 9. Advance payment. (i) Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 and 2009 taxable years. ABC is in the business of giving dancing lessons and receives advance payments. For Federal income tax purposes, ABC uses the Deferral Method provided in section 5.02 of Rev. Proc. 2004–34 for the advance payments it receives for dance lessons. On November 1, 2008, ABC receives an advance payment of $2,400 for a 2-year contract commencing on November 1, 2008, and providing for up to 24 individual, 1-hour lessons. ABC provides 2 lessons in 2008, 12 lessons in 2009, and 10 lessons in 2010. ABC recognizes $200 in revenues in its financial statements for the last quarter of 2008. ABC recognizes $300 in revenues in its financial statements for each quarter of 2009 for a total of $1,200 in 2009. ABC recognizes the remaining $1,000 in revenues in its financial statements during 2010. For tax purposes, ABC recognizes $200 into revenue in 2008 and $2,200 into revenue in 2009 under Rev. Proc. 2004–34. See § 601.601(d)(2)(ii)(*b*).

(ii) Pursuant to paragraph (f)(3)(i)(B) of this section, ABC is not required to take into account any of the advance payment for purposes of computing any required installment payment for ABC's 2008 taxable year because no part of the $2,400 advance payment was recognized as income in ABC's financial statements during the first nine months of ABC's 2008 taxable year. In 2009, ABC must take into account $300 of revenue for purposes of computing its first and second required installment payments, $600 of revenue for purposes of computing its third required installment payment and $900 for purposes of computing its fourth required installment payment. Pursuant to paragraph (f)(3)(i)(B) of this section, the remaining deferred revenue is recognized on December 31, 2009, for purposes of computing ABC's annualized income installments for 2009.

Example 10. Section 481(a) adjustment. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. On December 20, 2008, ABC files a Form 3115 requesting permission to change its method of accounting. The requested change results in a negative section 481(a) adjustment of $80,000. ABC subsequently receives the consent of the Commissioner to make the change and therefore, the negative $80,000 section 481(a) adjustment is properly recognized in ABC's tax return for the year ending December 31, 2008. Under paragraph (f)(3)(ii) of this section ABC is permitted to recognize the negative $80,000 section 481(a) adjustment as an extraordinary item occurring on January 1, 2008 (the first day of ABC's December 31, 2008, tax year), or December 20, 2008 (the date ABC filed the Form 3115). ABC chooses to recognize the negative $80,000 section 481(a) adjustment as an extraordinary item occurring in January 1, 2008. Accordingly, $80,000 of the negative section 481(a) adjustment is taken into account after annualization for purposes of determining ABC's first annualized income installment. In addition, under § 1.6655–6(b), ABC is required to use its new method of accounting as of January 1, 2008 for estimated tax purposes, consistent with the recognition of the section 481(a) adjustment for estimated tax purposes. Therefore, ABC will be required to use the new method of accounting in determining taxable income to be annualized in computing ABC's first annualized income installment.

Example 11. Section 481(a) adjustment. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and uses the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. On June 15, 2008, ABC files a Form 3115 requesting permission to change its method of accounting. The requested change results in a positive section 481(a) adjustment of $240,000. ABC subsequently receives the consent of the Commissioner to make the change and therefore, $60,000 of the section 481(a) adjustment (one quarter of the positive $240,000 section 481(a) adjustment) is properly recognized in ABC's tax return for the year ending December 31, 2008. Under paragraph (f)(3)(ii) of this section, ABC is permitted to recognize the positive $60,000 section 481(a) adjustment as an extraordinary item occurring on January 1, 2008 (the first day of ABC's December 31, 2008, tax year), or June 15, 2008 (the date ABC filed the Form 3115). ABC chooses to recognize the positive $60,000 section 481(a) adjustment as an extraordinary item occurring on June 15, 2008. Accordingly, the $60,000 positive section 481(a) adjustment is not taken into account for purposes of determining ABC's first annualized income installment. However, in all futures years any portion of the section 481(a) adjustment related to this change in method of accounting will be treated as an extraordinary item occurring on the first day of the tax year under paragraph (f)(3)(ii) of this section. In addition, under § 1.6655–6(b), ABC is required to use its new method of accounting as of June 15, 2008 for estimated tax purposes, consistent with the recognition of the section 481(a) adjustment for estimated tax purposes. Therefore, ABC will be required to use the new method of accounting (as of the beginning of the tax year) for purposes of determining taxable income to be annualized in computing ABC's third and fourth annualized income installments (which are based upon annualization periods that include June 15, 2008.)

Example 12. Extraordinary item. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. On May 10, 2008, ABC reaches a settlement agreement with XYZ over a tort action filed by ABC. As a result, ABC receives a payment of $10,000,000 on June 15, 2006, that is recognized as income by ABC. The settlement of a tort action is an extraordinary item defined in paragraph (f)(3)(ii)(A) of this section. Accordingly, the $10,000,000 of income will be taken into account by ABC on May 10, 2008, for purposes of computing ABC's annualized income installments for 2008. Therefore, the $10,000,000 settlement will only be taken into account in computing ABC's third and fourth annualized income installments (which are based upon annualization periods that include May 10, 2008). In addition, the $10,000,000 settlement income will be taken into account as an extraordinary item of income after annualization for purposes of determining ABC's third and fourth annualized installment payments.

Example 13. Credit carryover. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. ABC projects its annualized tax for its 2008 taxable year, based on annualizing ABC's taxable income for its first annualization period from January 1, 2008, through March 31, 2008, to be $1,500,000 before reduction for any credits. ABC has an unused section 38 credit from 2007 for increasing research activities from 2007 of $500,000 that is carried over to 2008. For purposes of determining ABC's first annualized income installment, ABC's annualized tax for 2008 is $1,000,000, determined as the tax for the taxable year computed by placing on an annualized basis ABC's taxable income from its first annualization period from January 1, 2008, through March 31, 2008 ($1,500,000) reduced by the $500,000 credit carryover from 2007. Therefore, ABC's first required installment payment for 2008 is $250,000 ($1,000,000 × 25%).

Example 14. Current year credit. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. ABC projects its annualized tax for its 2008 taxable year, based on annualizing ABC's taxable income for its first annualization period from January 1, 2008, through March 31, 2008, to be $2,000,000 before reduction for any credits. ABC has historically earned a section 41 credit for increasing research activities and, for 2008, ABC estimates that it will earn a credit for increasing research activities under section 41 of $1,200,000. However, pursuant to paragraph (f)(3)(iii) of this section, if ABC were to annualize all components involved in computing the current year credit based on ABC's activity from January 1, 2008, through March 31, 2008, ABC would generate a credit of $1,600,000 for 2008. For purposes of determining ABC's first annualized income installment, ABC's annualized tax for 2008 is $400,000, determined as the tax for the 2008 taxable year ($2,000,000) computed by placing on an annualized basis ABC's taxable income from its first annualization period January 1, 2008, through March 31, 2008, reduced by a $1,600,000 current year section

41 credit from increasing research activities. Therefore, ABC's first required installment payment for 2008 is $100,000 ($400,000 × 25%).

Example 15. Current year credit. Same facts as *Example 14* except that ABC does not begin any research activities until April 3, 2008, and will not incur any research expenses described in paragraph (f)(1)(ii) of this section. As a result, if ABC were to annualize all components involved in computing the current year credit based on ABC's activity from January 1, 2008, through March 31, 2008, ABC would generate no section 41 research credit for purposes of determining its first annualized income installment. Pursuant to paragraph (f)(3)(iii) of this section, ABC cannot take into account any credit for its first annualization period because ABC did not incur any qualified research expenses by the last day of the first annualization period. Accordingly, for purposes of determining ABC's first annualized income installment, ABC's annualized tax for its first annualization period January 1, 2008, through March 31, 2008, is $2,000,000. Therefore, ABC's first required installment payment for 2008 is $500,000 ($2,000,000 × 25%).

Example 16. Depreciation and amortization expense. Corporation ABC, a calendar year taxpayer that began business on January 2, 2007, adopted an accrual method of accounting and will use the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. On January 2, 2007, ABC purchased and placed in service a tangible depreciable asset that costs $50,000 and is 5-year property under section 168(e). ABC depreciates its 5-year property placed in service in 2007 under the general depreciation system using the 200-percent declining balance method, a 5-year recovery period, and the half year convention. On January 2, 2008, ABC purchased and placed in service qualified Gulf Opportunity Zone property (GO Zone property) that costs $30,000 and is 5-year property under section 168(e). ABC will depreciate its 5-year property placed in service in 2008 under the general depreciation system using the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. ABC will deduct the 50% additional first year depreciation deduction under section 1400N(d) with respect to the GO Zone property. For tax year 2007, ABC takes a depreciation deduction under section 168 of $10,000 ($50,000 × 20% = $10,000). ABC does not anticipate being subject to the mid-quarter convention for the 2008 taxable year, does not anticipate making any depreciation elections for any class of property, does not anticipate making a section 179 election, does not anticipate any sales or other dispositions of depreciable property, and no events have occurred, nor does ABC know, based on all relevant information available as of the due date of ABC's first required installment for 2008, of any event that will occur to cause ABC's 2008 taxable year to be a short taxable year. The optional amounts of depreciation expense ABC may take into account for its first annualized income installment for its 2008 taxable year are determined as follows:

(i) *General rule—Estimated annual depreciation.* In accordance with the general rule provided in paragraph (f)(3)(iv)(A) of this section, ABC may take a depreciation expense of $8,500 ($34,000 × 3/12 = $8,500) into account in computing ABC's January 1, 2008, through March 31, 2008, taxable income. ABC's estimated annual depreciation expense for 2008 of $34,000 is computed as follows: $15,000 for the 50% additional first year depreciation deduction under section 1400N(d) ($30,000 × 50% = $15,000) plus annual depreciation of $16,000 ($40,000 × 40% = $16,000) and $3,000 ($15,000 × 20% = $3,000). Under paragraphs (c)(3) and (f)(3)(iv)(C) of this section, ABC may not consider its first annualization period to be a short taxable year for purposes of determining the depreciation allowance for such annualization period.

(ii) *Safe Harbor—Proportionate depreciation allowance.* In accordance with the safe harbor provided in paragraph (f)(3)(iv)(B)(1) of this section, ABC may take a depreciation expense of $8,500 ($34,000 × 3/12 = $8,500) into account in computing ABC's January 1, 2008, through March 31, 2008, taxable income based on annual depreciation expense for 2008 of $34,000, computed as follows: $15,000 for the 50% additional first year depreciation deduction under section 1400N(d) ($30,000 × 50% = $15,000) plus annual depreciation of $16,000 ($40,000 × 40% = $16,000) and $3,000 ($15,000 × 20% = $3,000). Under paragraphs (c)(3) and (f)(3)(iv)(C) of this section, ABC may not consider its first annualization period to be a short taxable year for purposes of determining the depreciation allowance for such annualization period.

(iii) *Safe Harbor—90 percent of preceding year's depreciation.* In accordance with the safe harbor in paragraph (f)(3)(iv)(B)(*2*) of this section, ABC may take a depreciation expense of $2,250 ($10,000 prior year's depreciation × 90% = $9,000 × 3/12 = $2,250) into account in computing ABC's January 1, 2008, through March 31, 2008, taxable income. Under paragraphs (c)(3) and (f)(3)(iv)(C) of this section, ABC may not consider its first annualization period to be a short taxable year for purposes of determining the depreciation allowance for such annualization period.

(g) *Items that substantially affect taxable income but cannot be determined accurately by the installment due date*—(1) *In general.* In determining the applicability of the annualization exceptions described in paragraphs (a) and (b) of this section and § 1.6655–3, reasonable estimates may be made from existing data for items that substantially affect income if the amount of such items cannot be determined accurately by the installment due date. This paragraph (g) applies only to the inflation index for taxpayers using the dollar-value LIFO (last-in, first-out) inventory method, adjustments required under section 263A, the computation of a taxpayer's section 199 deduction, intercompany adjustments for taxpayers that file consolidated returns, the liquidation of a LIFO layer at the installment date that the taxpayer reasonably believes will be replaced at the end of the year, deferred gain on a qualifying conversion or exchange of property under sections 1031 and 1033 that the taxpayer reasonably believes will be replaced with qualifying replacement property, and any other item designated by the Secretary by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(2) *Example.* The following example illustrates the rules of this paragraph (g):

Example. Section 199 deduction. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2008 taxable year. ABC engages in production activities that generate qualified production activities income (QPAI), as defined in § 1.199–1(c), and projects taxable income of $50,000 for its first annualization period from January 1, 2008, through March 31, 2008, without taking into account the section 199 deduction. During its first annualization period from January 1, 2008, through March 31, 2008, ABC incurs W–2 wages allocable to domestic production gross receipts pursuant to section 199(b)(2) of $10,000. Pursuant to paragraph (g)(1) of this section, ABC is permitted to take into account its estimated section 199 deduction before annualizing taxable income based on the lesser of its estimated QPAI or taxable income and W–2 wages for its first installment period for 2008. For the first installment period in 2008, ABC's is permitted to recognize a deduction under section 199 of $3,000 ($50,000 × .06 = $3,000) subject to the wage limitation of $5,000 (50 percent of $10,000 of W–2 wages incurred during the first installment period). Accordingly, ABC's annualized income for the first installment for 2008 is $188,000 (($50,000–$3,000) × 1⅔ = $188,000). The tax on $188,000 is $56,570 and ABC's first required installment for 2008 is $14,143 ($56,570 × .25 = $14,143).

(h) *Effective/applicability date.* This section applies to taxable years beginning after September 6, 2007.

■ **Par. 8A.** Section 1.6655–3 is revised to read as follows:

§ 1.6655–3 Adjusted seasonal installment method.

(a) *In general.* In the case of any required installment, the amount of the adjusted seasonal installment is the excess (if any) of—

(1) 100 percent of the amount determined under paragraph (c) of this section; over

(2) The aggregate amount of all prior required installments for the taxable year.

(b) *Limitation on application of section.* This section applies only if the base period percentage (as defined in section 6655(e)(3)(D)(i) and paragraph (d)(1) of this section) for any six consecutive months of the taxable year equals or exceeds seventy percent.

(c) *Determination of amount.* The amount determined under this paragraph (c) for any installment will be determined in the following manner—

(1) Take the taxable income for all months during the taxable year preceding the filing month;

(2) Divide such amount by the base period percentage for all months during the taxable year preceding the filing month;

(3) Determine the tax on the amount determined under paragraph (c)(2) of this section; and

(4) Multiply the tax computed under paragraph (c)(3) of this section by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(d) *Special rules*—(1) *Base period percentage.* The base period percentage for any period of months is the average percent that the taxable income for the corresponding months in each of the three preceding taxable years bears to the taxable income for the three preceding taxable years. If there is no taxable income for the corresponding months, taxable income for this purpose is zero.

(2) *Filing month.* The term *filing month* means the month in which the installment is required to be paid.

(3) *Application of the rules related to the annualized income installment method to the adjusted seasonal installment method.* The rules governing the computation of taxable income (and resulting tax) for purposes of determining any required installment payment of estimated tax under the annualized income installment method under § 1.6655–2 apply to the computation of taxable income (and resulting tax) for purposes of determining any required installment payment of estimated tax under the adjusted seasonal installment method.

(4) *Alternative minimum tax.* The amount determined under paragraph (c) of this section must properly take into account the amount of any alternative minimum tax under section 55 that would apply for the period of the computation. The amount of any alternative minimum tax that would apply is determined by applying to alternative minimum taxable income, tentative minimum tax, and alternative minimum tax, the rules described in paragraph (c) of this section for taxable income and tax.

(e) *Example.* The provisions of this section may be illustrated by the following example:

Example. (i) X, a corporation that reports on a calendar year basis, expects to have an estimated tax liability of $1,200,000 for its taxable year ending December 31, 2009. On its 2008 tax return, X reports a tax liability of $652,800. X pays four installments of estimated tax, each in the amount of $250,000, $250,000, $250,000, and $450,000 on April 15, 2009, June 15, 2009, September 15, 2009, and December 15, 2009, respectively. X reports a tax liability of $1,152,600 on its return due March 15, 2010, with no credits against tax. Under the general provision of section 6655(b) and section 6655(d), there was an underpayment in the amount of $76,300 for the second installment through September 15, 2009, and $114,450 for the third installment through December 15, 2009, determined as follows:

(A) Tax as defined in section 6655(g) = $1,152,600

(B) 100% of this paragraph (e), Example (i)(A) = $1,152,600

(C) Amount of estimated tax required to be paid on or before the first installment (25% of $652,800) = $163,200

(D) Deduction of amount timely paid on or before the first installment due date under the general rule of section 6655(b) = $250,000

(E) Amount of overpaid estimated tax for the first installment date = $86,800

(F) Amount of estimated tax required to be paid on or before the second installment (25% of $1,152,600 plus the recapture amount under section 6655(d)(2)(B) of $124,950 (25% of $1,152,600 less $163,200)) = $413,100

(G) Deduction of amount paid on or before the due date of the second installment less amount applied towards the first installment under the general rule of section 6655(b) ($250,000 paid in each of the first and second installments less this paragraph (e), Example (i)(C)) = $336,800

(H) Amount of underpayment for the second installment date = $76,300

(I) Amount of estimated tax required to be paid on or before the third installment (25% of $1,152,600) = $288,150

(J) Deduction of amount paid on or before the due date of the third installment less amount applied towards the first and second installments under the general rule of section 6655(b) ($250,000 paid in each of the first, second, and third installments less this paragraph (e), *Example* (i)(C) less this paragraph (e), *Example* (i)(F)) = $173,700

(K) Amount of underpayment for the third installment date = $114,450

(L) Amount of estimated tax required to be paid on or before the fourth installment (25% of $1,152,600) = $288,150

(M) Deduction of amount paid on or before the due date of the fourth installment less amount applied towards the first, second, and third installments under the general rule of section 6655(b) ($250,000 paid in each of the first, second, and third installments plus $450,000 paid in the fourth installment less this paragraph (e), *Example* (i)(C) less this paragraph (e), *Example* (i)(F) less this paragraph (e), *Example* (i)(I)) = $335,550

(N) Amount of overpaid estimated tax for the fourth installment date = $47,400

(ii) X wants to determine if it qualifies for the adjusted seasonal installment method. X determines that its monthly taxable income for the preceding three taxable years and for the current taxable year 2009 is as follows:

January	February	March	April	May	June	July	August	September	October	November	December
2006:											
$100,000	$90,000	$80,000	$70,000	$60,000	$20,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000
2007:											
200,000	170,000	170,000	130,000	125,000	45,000	21,000	19,000	20,000	20,000	20,000	20,000
2008:											
410,000	350,000	330,000	270,000	240,000	80,000	40,000	40,000	40,000	40,000	40,000	40,000
2009:											
600,000	680,000	650,000	560,000	460,000	170,000	70,000	60,000	50,000	40,000	30,000	20,000

(iii) X must initially determine if its base period percentage for the same 6 consecutive months of the 3 preceding taxable years equals or exceeds 70 percent (see section 6655(e)(3) and paragraphs (b) and (c) of this section). By using its taxable income for the first 6 months of 2006, 2007, and 2008, X qualifies for the adjusted seasonal installment method because its base period percentage is 87.5 percent (which exceeds 70 percent) computed as follows:

(A) Taxable income for first 6 months of 2006 = $420,000

(B) Total taxable income for 2006 = $480,000

(C) Divide this paragraph (e), *Example* (iii)(A) by this paragraph (e), *Example* (iii)(B) = .875

(D) Taxable income for first 6 months of 2007 = $840,000

(E) Total taxable income for 2007 = $960,000

(F) Divide this paragraph (e), *Example* (iii)(D) by this paragraph (e), *Example* (iii)(E) = .875

(G) Taxable income for first 6 months of 2008 = $1,680,000

(H) Total taxable income for 2008 = $1,920,000

(I) Divide this paragraph (e), *Example* (iii)(G) by this paragraph (e), *Example* (iii)(H) = .875

(J) Add this paragraph (e), *Example* (iii)(C), (F), and (I) = $2.625

(K) Divide this paragraph (e), *Example* (iii)(J) by 3 = .875

(iv) To determine the amount of the first installment under the rules of section 6655(e)(3) and paragraph (a) of this section, the following computation is necessary:

(A) Taxable income for first 3 months of 2009 = $1,930,000

(B) Taxable income for first 3 months of 2006 ($270,000) divided by total taxable income for 2006 ($480,000) = .5625

(C) Taxable income for first 3 months of 2007 ($540,000) divided by total taxable income for 2007 ($960,000) = .5625

(D) Taxable income for first 3 months of 2008 ($1,090,000) divided by total taxable income for 2008 ($1,920,000) = .5677

(E) Add this paragraph (e), *Example* (iv)(B), (C), and (D) and divide by 3 = .5642

(F) Divide this paragraph (e), *Example* (iv)(A) by this paragraph (e), *Example* (iv)(E) = $3,420,773

(G) Determine the tax on this paragraph (e), *Example* (iv)(F) = $1,163,049

(H) Taxable income for first 4 months of 2006 ($340,000) divided by total taxable income for 2006 ($480,000) = .7083

(I) Taxable income for first 4 months of 2007 ($670,000) divided by total taxable income for 2007 ($960,000) = .6979

(J) Taxable income for first 4 months of 2008 ($1,360,000) divided by total taxable income for 2008 (1,920,000) = .7083

(K) Add this paragraph (e), *Example* (iv)(H), (I), and (J) and divide by 3 = .7048

(L) Multiply this paragraph (e), *Example* (iv)(G) by this paragraph (e), *Example* (iv)(K) = $819,717

(M) 100% of this paragraph (e), *Example* (iv)(L) = $819,717

(N) Amount of all prior required installments for 2009 = $0

(O) Amount of adjusted seasonal installment for the first installment payment (this paragraph (e), *Example* (iv)(M) less this paragraph (e), *Example* (iv)(N)) = $819,717

(v) To determine the amount of the second installment under the rules of section 6655(e)(3) and paragraph (a) of this section, the following computation is necessary:

(A) Taxable income for first 5 months of 2009 = $2,950,000

(B) Taxable income for first 5 months of 2006 ($400,000) divided by total taxable income for 2006 ($480,000) = .8333

(C) Taxable income for first 5 months of 2007 ($795,000) divided by total taxable income for 2007 ($960,000) = .8281

(D) Taxable income for first 5 months of 2008 ($1,600,000) divided by total taxable income for 2008 ($1,920,000) = .8333

(E) Add this paragraph (e), *Example* (v)(B), (C), and (D) and divide by 3 = .8316

(F) Divide this paragraph (e), *Example* (v)(A) by this paragraph (e), *Example* (v)(E) = $3,547,379

(G) Determine the tax on this paragraph (e), *Example* (v)(F) = $1,206,109

(H) Taxable income for first 6 months of 2006 ($420,000) divided by total taxable income for 2006 ($480,000) = .875

(I) Taxable income for first 6 months of 2007 ($840,000) divided by total taxable income for 2007 ($960,000) = .875

(J) Taxable income for first 6 months of 2008 ($1,680,000) divided by total taxable income for 2008 ($1,920,000) = .875

(K) Add this paragraph (e), *Example* (v)(H), (I), and (J) and divide by 3 = .875

(L) Multiply this paragraph (e), *Example* (v)(G) by this paragraph (e), *Example* (v)(K) = $1,055,345

(M) 100% of this paragraph (e), *Example* (v)(L) = $1,055,345

(N) Amount of all prior required installments for 2009 = $163,200

(O) Amount of adjusted seasonal installment for the second installment payment (this paragraph (e), *Example* (v)(M) less this paragraph (e), *Example* (v)(N)) = $892,145

(vi) To determine the amount of the third installment under the rules of section 6655(e)(3) and paragraph (a) of this section, the following computation is necessary:

(A) Taxable income for first 8 months of 2009 = $3,250,000

(B) Taxable income for first 8 months of 2006 ($440,000) divided by total taxable income for 2006 ($480,000) = .9167

(C) Taxable income for first 8 months of 2007 ($880,000) divided by total taxable income for 2007 ($960,000) = .9167

(D) Taxable income for first 8 months of 2008 ($1,760,000) divided by total taxable income for 2008 ($1,920,000) = .9167

(E) Add this paragraph (e), *Example* (vi)(B), (C), and (D) and divide by 3 = .9167

(F) Divide this paragraph (e), *Example* (vi)(A) by this paragraph (e), *Example* (vi)(E) = $3,545,326

(G) Determine the tax on this paragraph (e), *Example* (vi)(F) = $1,205,411

(H) Taxable income for first 9 months of 2006 ($450,000) divided by total taxable income for 2006 ($480,000) = .9375

(I) Taxable income for first 9 months of 2007 ($900,000) divided by total taxable income for 2007 ($960,000) = .9375

(J) Taxable income for first 9 months of 2008 ($1,800,000) divided by total taxable income for 2008 ($1,920,000) = .9375

(K) Add this paragraph (e), *Example* (vi)(H), (I), and (J) and divide by 3 = .9375

(L) Multiply this paragraph (e), *Example* (vi)(G) by this paragraph (e), *Example* (vi)(K) = $1,130,073

(M) 100% of this paragraph (e), *Example* (vi)(L) = $1,130,073

(N) Amount of all prior required installments for 2009 = $576,300

(O) Amount of adjusted seasonal installment for the third installment payment (this paragraph (e), *Example* (vi)(M) less this paragraph (e), *Example* (vi)(N)) = $553,773

(vii) To determine the amount of the fourth installment under the rules of section 6655(e)(3) and paragraph (a) of this section, the following computation is necessary:

(A) Taxable income for first 11 months of 2009 = $3,370,000

(B) Taxable income for first 11 months of 2006 ($470,000) divided by total taxable income for 2006 ($480,000) = .9792

(C) Taxable income for first 11 months of 2007 ($940,000) divided by total taxable income for 2007 ($960,000) = .9792

(D) Taxable income for first 11 months of 2008 ($1,880,000) divided by total taxable income for 2008 ($1,920,000) = .9792

(E) Add this paragraph (e), *Example* (vii)(B), (C), and (D) and divide by 3 = .9792

(F) Divide this paragraph (e), *Example* (vii)(A) by this paragraph (e), *Example* (vii)(E) = $3,441,585

(G) Determine the tax on this paragraph (e), *Example* (vii)(F) = $1,170,139

(H) Taxable income for first 12 months of 2006 ($480,000) divided by total taxable income for 2006 ($480,000) = 1.0000

(I) Taxable income for first 12 months of 2007 ($960,000) divided by total taxable income for 2007 ($960,000) = 1.0000

(J) Taxable income for first 12 months of 2008 ($1,920,000) divided by total taxable income for 2008 ($1,920,000) = 1.0000

(K) Add this paragraph (e), *Example* (vii)(H), (I), and (J) and divide by 3 = 1.0000

(L) Multiply this paragraph (e), *Example* (vii)(G) by this paragraph (e), *Example* (vi)(K) = $1,170,139

(M) 100% of this paragraph (e), *Example* (vii)(L) = $1,170,139

(N) Amount of all prior required installments for 2009 = $864,450

(O) Amount of adjusted seasonal installment for the fourth installment payment (this paragraph (e), *Example* (vii)(M) less this paragraph (e), *Example* (vii)(N)) = $305,689

(viii) Because the total amount of each required estimated tax payment determined under section 6655(e)(3) and paragraph (a) of this section exceeds the amount of each required estimated tax payment determined under section 6655(d) and § 1.6655–1(d) and (e), the exception described in section 6655(e) and this section does not apply and the addition to the tax with respect to the underpayment for the June 15, 2009, and September 15, 2009, installments will be imposed unless another exception (for example, see section 6655(e)(2)) applies with respect to these installments.

(f) *Effective/applicability date.* This section applies to taxable years beginning after September 6, 2007.

■ **Par. 9.** Section 1.6655–4 is added to read as follows:

§ 1.6655–4 Large corporations.

(a) *Large corporation defined.* The term *large corporation* means any corporation (or a predecessor corporation) that had taxable income of at least $1,000,000 for any taxable year during the testing period. For purposes of this section, a predecessor corporation is the distributor or transferor corporation in a transaction to which section 381 (relating to carryovers in certain corporate acquisitions) applies.

(b) *Testing period.* For purposes of paragraph (a) of this section, the term *testing period* means the 3 taxable years immediately preceding the taxable year

for which estimated tax is being determined (the current taxable year) or, if less, the number of taxable years the taxpayer has been in existence.

(c) *Computation of taxable income during testing period*—(1) *Short taxable year.* In the case of a corporation (or predecessor corporation) that had a short taxable year during the testing period, for purposes of determining whether the $1,000,000 amount referred to in paragraph (a) of this section is equaled or exceeded, the taxable income for the short taxable year is computed by—

(i) Multiplying the taxable income for the short taxable year by 12; and

(ii) Dividing the resulting amount by the number of months in the short taxable year.

(2) *Computation of taxable income in taxable year when there occurs a transaction to which section 381 applies.* (i) For purposes of determining whether an acquiring corporation had taxable income of $1,000,000 or more for a taxable year in which a section 381 transaction occurs, the acquiring corporation's taxable income will be the sum of—

(A) The taxable income of the acquiring corporation for its taxable year; plus

(B) The taxable income (or loss) of the distributor or transferor corporation for that portion of its taxable year corresponding to the acquiring corporation's taxable year up to and including the date of distribution or transfer (as defined in § 1.381(b)–1(b)).

(ii) For purposes of determining whether a transferor or distributor corporation had taxable income of $1,000,000 or more for a taxable year in which a section 381 transaction occurs, the distributor or transferor corporation's taxable income (or loss) is reduced by the amount of taxable income (or loss) that is included in the acquiring corporation's taxable income for the taxable year in which the distribution or transfer (as defined in § 1.381(b)–1(b)) occurs, as described in paragraph (c)(2)(i)(B) of this section.

(d) *Members of controlled group*—(1) *In general.* For purposes of applying paragraph (a) of this section, the taxable income of members of a controlled group of corporations (as defined in section 1563(a)) must be aggregated for each year of the testing period. The provisions of this section do not apply to a controlled group for any taxable year in which the aggregate taxable income of the members of the controlled group is less than $1,000,000.

(2) *Aggregation.* For purposes of paragraph (d)(1) of this section, a taxable loss of any member of the controlled group for a taxable year during the testing period is not taken into account.

(3) *Allocation rule.* If the aggregate taxable income of members of a controlled group computed pursuant to paragraph (d)(1) of this section exceeds $1,000,000 during the testing period, the $1,000,000 amount that is relevant for purposes of determining, under paragraph (a)(1) of this section, whether a corporation is a large corporation is divided equally among the component members of such group (including component members excluded pursuant to paragraph (d)(2) of this section) unless all of such component members consent to an apportionment plan providing for an alternative allocation of such amount. The procedure for making and filing this plan will be the same as the procedure used for making and filing an apportionment plan under section 1561. See section 1561 and the regulations.

(4) *Controlled group members.* (i) In the case of any corporation that was a member of a controlled group of corporations at any time during the testing period but is not a member of such group during the taxable year involved, the taxable income of the former member for the testing period is determined as if such corporation were not a member of a group at any time during that period. With respect to the controlled group, the taxable income of its former member will not be taken into account in determining such group's taxable income for any taxable year during the testing period for purposes of applying paragraph (a)(1) of this section.

(ii) For purposes of paragraph (d)(4)(i) of this section, the determination of whether a corporation is a member of a controlled group during the testing period is based on whether the corporation was a member of the controlled group on the last day of the month preceding the due date of the required installment.

(e) *Effect on a corporation's taxable income of items that may be carried back or carried over from any other taxable year.* In determining whether a corporation (or predecessor corporation) is a large corporation for its current taxable year, items that could offset taxable income during a taxable year included in the testing period (for example, those described in sections 172 and 1212) are not to be taken into account and the taxable income of a corporation for any taxable year during the testing period is determined without regard to items carried back or carried over from any other taxable year.

(f) *Consolidated returns.* [Reserved].

(g) *Example.* The provisions of this section may be illustrated by the following example:

Example. Y Corporation and Z Corporation are calendar year taxpayers. In 2008, Z acquires all of the assets of Y in a transaction to which section 381 applies. Z's taxable income for both 2006 and 2007 was less than $1,000,000. Y's taxable income for 2008 is determined under paragraph (c)(2) of this section to be $300,000 for that portion of Y's taxable year corresponding to Z's taxable year up to and including the date of transfer. Z's taxable income for 2008 is $800,000. Under the provisions of paragraph (c)(2) of this section, Z's 2008 taxable income for purposes of determining whether it is a large corporation for taxable year 2009 is $1,100,000 ($800,000 + $300,000). Thus, Z is a large corporation for the 2009 taxable year. In addition, if Z's 2008 taxable income, as determined under paragraph (c)(2) of this section, had been less than $1,000,000 but Y's taxable income in 2006 or 2007 had been $1,000,000 or more, Z would be a large corporation for taxable year 2009 because Y is a predecessor corporation.

(h) *Effective/applicability date.* This section applies to taxable years beginning after September 6, 2007.

§ 1.6655–7 [Removed].

■ **Par. 10.** Section 1.6655–7 is removed.

§ 1.6655–5 [Redesignated as § 1.6655–7].

■ **Par. 11.** Section 1.6655–5 is redesignated as § 1.6655–7.

■ **Par. 12.** Sections 1.6655–5 and 1.6655–6 are added to read as follows:

§ 1.6655–5 Short taxable year.

(a) *In general.* Except as otherwise provided in this section, the provisions of section 6655 and these regulations are applicable in the case of a short taxable year (including an initial taxable year) for which a payment of estimated tax is required to be made.

(b) *Exception to payment of estimated tax.* In the case of a short taxable year, no payment of estimated tax is required if—

(1) The short taxable year is a period of less than 4 full calendar months; or

(2) The tax shown on the return for such taxable year (or, if no return is filed, the tax) is less than $500.

(c) *Installment due dates*—(1) *In general*—(i) *Taxable year of at least four months but less than twelve months.* Except as otherwise provided, in the case of a short taxable year, if such year results in a taxable year of four or more full calendar months but less than twelve full calendar months, the due dates prescribed in § 1.6655–1(f)(2) apply.

(ii) *Exceptions.* (A) If the date determined under paragraph (c)(1)(i) of this section for the first required

installment due during the taxpayer's short taxable year is earlier than the 15th day of the fourth month of the taxpayer's short taxable year, the taxpayer's first required installment is due on the first due date otherwise determined under paragraph (c)(1)(i) of this section that is on or after the 15th day of the fourth month of the short taxable year.

(B) A taxpayer with an initial short taxable year may make estimated tax payments as though it were a calendar year taxpayer until it files its tax return for its initial taxable year and will not be subject to an addition to tax under section 6655 for making estimated tax payments as though it were a calendar year taxpayer for the period beginning with its initial short taxable year to the time it files its tax return for its initial short taxable year if, when filing its tax return for its initial short taxable year, the taxpayer chooses to be a fiscal year taxpayer.

(2) *Early termination of taxable year*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, if a taxable year ends early (for example, as a result of an acquisition or a change in taxable year), the due date for the final required installment is the date that would have been the due date of the next required installment if the event that gave rise to the short taxable year had not occurred.

(ii) *Exception.* If the date determined under paragraph (c)(2)(i) of this section is within thirty days of the last day of the short taxable year, the due date for the final required installment is the fifteenth day of the second month following the month that includes the last day of the short taxable year.

(d) *Amount due for required installment*—(1) *In general.* The amount due for any required installment determined under section 6655(d)(1)(B)(i) for a short taxable year is 100% of the required annual payment for the short taxable year divided by the number of required installments due (as determined under this section) for the short taxable year.

(2) *Tax shown on the return for the preceding taxable year.* If the current taxable year is a short taxable year, the amount due for any required installment determined under section 6655(d)(1)(B)(ii) is determined in the following manner—

(i) Take 100% of the tax shown on the return of the corporation for the preceding taxable year;

(ii) Multiply such amount by the number of full calendar months in the current short taxable year and divide by 12; and

(iii) Divide the amount determined under paragraph (d)(2)(ii) of this section by the number of required installments due (as determined under this section) for the current short taxable year.

(3) *Applicable percentage.* In the case of any required installment determined under section 6655(e), the applicable percentage under section 6655(e)(2)(B)(ii) is—

(i) 25%, 50%, 75%, and 100% for the first, second, third, and fourth (last) required installments, respectively, if the taxpayer will have four required installments due for the short taxable year;

(ii) 33.33%, 66.67%, and 100% for the first, second, and third (last) required installments, respectively, if the taxpayer will have three required installments due for the short taxable year;

(iii) 50% and 100% for the first and second (last) required installments, respectively, if the taxpayer will have two required installments due for the short taxable year; or

(iv) 100% for the first (and last) required installment if the taxpayer will have one required installment for the short taxable year.

(4) *Applicable percentage for installment period in which taxpayer does not reasonably expect that the taxable year will be an early termination year.* In the case of any required installment determined under section 6655(e) in which the taxpayer does not reasonably expect that the taxable year will be an early termination year, the applicable percentage under section 6655(e)(2)(B)(ii) is the applicable percentage provided by paragraph (d)(3)(i) of this section with the remaining balance of the estimated tax payment for the year due with the final installment.

(e) *Examples.* The following examples illustrate the rules of this section:

Example 1. Short year of less than 4 months. Corporation A is a calendar year taxpayer that was acquired by corporation B, a member of a consolidated group (as defined in § 1.1502–1(h)) on April 16, 2009, resulting in A having a short taxable year from January 1, 2009, through April 16, 2009. Because A has a taxable year of less than four full calendar months, no estimated tax payments are required by A for the short taxable year.

Example 2. Initial short year with four required installments. Corporation B began business on January 9, 2009, and adopted a calendar year as its taxable year. B computes its required installments based on 100 percent of the tax shown on the return for the taxable year in accordance with section 6655(d)(1)(B)(i). Pursuant to § 1.6655–1(f)(2)(i), the due dates of B's required installments for B's initial taxable year from January 9, 2009, through December 31, 2009, are April 15, 2009, June 15, 2009, September 15, 2009, and December 15, 2009. Pursuant to paragraph (d)(1) of this section, the amount due with each required installment is 25% of the required annual payment for B's first required installment, 50% of the required annual payment for B's second required installment, 75% of the required annual payment for B's third required installment, and 100% of the required annual payment for B's fourth required installment.

Example 3. Initial short year with three required installments. Corporation C began business on February 12, 2009, and adopted a calendar year as its taxable year. C computes its required installments based on 100 percent of the tax shown on the return for the taxable year in accordance with section 6655(d)(1)(B)(i). Pursuant to § 1.6655–1(f)(2)(i), the due dates of C's required installments for C's initial taxable year from February 12, 2009, through December 31, 2009, are April 15, 2009, June 15, 2009, September 15, 2009, and December 15, 2009. However, in accordance with paragraph (c)(1)(ii)(A) of this section, C's first required installment is due June 15, 2009, because April 15, 2009, is earlier than the fifteenth day of the fourth month of C's taxable year. As a result, C's second required installment is due September 15, 2009, and C's third (and last) installment is due December 15, 2009. Pursuant to paragraph (d)(1) of this section, the amount due with each required installment is 33.33% of the required annual payment for C's first required installment, 66.67% of the required annual payment for C's second required installment, and 100% of the required annual payment for C's third (and last) required installment.

Example 4. Initial short year with two required installments. Same facts as *Example 3* except C began business on April 10, 2009. In accordance with paragraph (c)(1)(ii)(A) of this section, C's first required installment is due September 15, 2009, because April 15, 2009, and June 15, 2009, are earlier than the fifteenth day of the fourth month of C's taxable year. As a result, C's second (and last) required installment is due December 15, 2009. Pursuant to paragraph (d)(1) of this section, the amount due with each required installment is 50% of the required annual payment for C's first required installment, and 100% of the required annual payment for C's second (and last) required installment.

Example 5. Initial short year for fiscal year taxpayer with two required installments. Corporation D began business on February 12, 2009, and adopted a fiscal year ending October 31 as its taxable year. D computes its required installments based on 100 percent of the tax shown on the return for the taxable year in accordance with section 6655(d)(1)(B)(i). Pursuant to § 1.6655–1(f)(2)(ii), the due dates of D's required installments for D's initial taxable year from February 12, 2009, through October 31, 2009, are February 15, 2009, April 15, 2009, July 15, 2009, and October 15, 2009. However, in accordance with paragraph (c)(1)(ii)(A) of this section, D's first required installment is due July 15, 2009, because February 15, 2009, and April 15, 2009, are earlier than the fifteenth day of the fourth month of D's

taxable year. As a result, D's second (and last) installment is due October 15, 2009. Pursuant to paragraph (d)(1) of this section, the amount due with each required installment is 50% of the required annual payment for D's first required installment, and 100% of the required annual payment for D's second (and last) required installment.

Example 6. Initial short year for fiscal year taxpayer with one required installment. Same facts as *Example 5* except D corporation began business on May 11, 2009. In accordance with paragraph (c)(1)(ii)(A) of this section, D's first (and last) installment is due October 15, 2009, because July 15, 2009, is earlier than the fifteenth day of the fourth month of D's taxable year. Pursuant to paragraph (d)(1) of this section, the amount due with D's required installment is 100% of the required annual payment, computed as 100% divided by the number of required installments due for the short taxable year.

Example 7. Short termination year with three required installments. Corporation E is a calendar year taxpayer that computes its required installments based on 100 percent of the tax shown on the return for the taxable year in accordance with section 6655(d)(1)(B)(i). E computes its 2009 required installments based on a projected 2009 total tax liability of $600,000. On July 31, 2009, E is acquired by corporation F, a member of a consolidated group (as defined in § 1.1502–1(h)), resulting in E having a short taxable year from January 1, 2009, through July 31, 2009. E determines that its total tax liability for the short period is $350,000. The due dates for E's first and second required installments are April 15, 2009, and June 15, 2009, respectively. Pursuant to section 6655(d)(1)(A), E paid $150,000 with each required installment. Pursuant to paragraph (c)(2) of this section, E's third (and last) required installment of estimated tax is due on September 15, 2009, and the percentage of the required annual payment due with such installment is 100% pursuant to paragraph (d)(1) of this section. Accordingly, E is required to pay $50,000 with its final required installment on September 15, 2009 ($350,000 total tax liability for the short taxable year less prior installment payments of $300,000).

Example 8. Unexpected short termination year with three required installments using the annualization method. Same facts as *Example 7* except that E uses the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2009 taxable year. In addition, E does not reasonably expect until July 28, 2009, that it will have a short termination year caused by E being acquired by F on July 31, 2009. Had E known about its acquisition by F in the first quarter of 2009, E's applicable percentages for computing the amount of its three required installments would be 33.33%, 66.67%, and 100% for the first, second, and third (last) required installments, respectively, pursuant to paragraph (d)(3)(ii) of this section. However, because E had an unexpected short termination year that E was not aware of until after its second required installment payment, E's applicable percentages for computing the amount of its three required installment are 25%, 50%, and 100% for the first, second, and third (last) required installments, respectively, pursuant to paragraph (d)(4) of this section.

Example 9. Short termination year ending within 30 days of the regular final installment due date. Same facts as *Example 7* except that E is acquired by F on August 31, 2009. Pursuant to paragraph (c)(2)(ii) of this section, E's third (and last) required installment of estimated tax is due on October 15, 2009, because September 15, 2009, the date that would have been the due date of E's next required installment if F's acquisition of E had not occurred, is within thirty days of the last day of E's short taxable year, and 100% of the required annual payment is due with such installment.

Example 10. Short termination year ending within 30 days of the regular final installment due date. Corporation F is a calendar year taxpayer that computes its required installments based on 100 percent of the tax shown on the return for the taxable year in accordance with section 6655(d)(1)(B)(i). F computes its 2009 estimated tax payments based on a projected 2009 total tax liability of $900,000. On December 3, 2009, F is acquired by corporation G, a member of a consolidated group (as defined in § 1.1502–2(h)), resulting in F having a short taxable year from January 1, 2009, through December 3, 2009. F determined its total tax liability for the short period to be $800,000. The due dates for F's first, second, and third required installments are April 15, 2009, June 15, 2009, and September 15, 2009, respectively. Pursuant to section 6655(d)(1)(A), F paid $225,000 with each required installment. Pursuant to paragraph (c)(2)(ii) of this section, F's fourth (and last) required installment of estimated tax is due on February 15, 2010, and the percentage of the required annual payment due with such installment is 100% pursuant to paragraph (d)(1) of this section. However, because the due date for the fourth required installment falls on a legal holiday, F's required installment payment will be timely if paid on or before the first business day following the actual due date of the fourth required installment, that is, February 16, 2010. Accordingly, F is required to pay $125,000 with its final required installment on February 16, 2010 ($800,000 total tax liability for the short taxable year less prior installment payments of $675,000).

Example 11. Short termination year using the tax shown on the return for the preceding taxable year. Corporation G, a calendar year taxpayer, reported a tax liability of $75,000 on its return for the taxable year ending December 31, 2008, and is not a large corporation as defined in section 6655(g). On July 31, 2009, G makes a final distribution of its assets, in connection with a plan of complete liquidation, resulting in a short taxable year from January 1, 2009, through July 31, 2009. To satisfy the requirements of the exception described in section 6655(d)(1)(B)(ii) for payments determined by reference to the tax shown on the return of the corporation for the preceding taxable year, pursuant to paragraph (d)(2) of this section, G must pay in a proportionate amount of its 2008 tax liability based on the number of months in the current taxable year. Accordingly, G must pay $43,750 ($75,000 × 7/12) through payments of estimated tax payments in 2009, with $14,583 due on April 15, 2009, June 15, 2009, and September 15, 2009.

Example 12. Short termination year using the tax shown on the return for the preceding taxable year. Same facts as *Example 11* except that G makes a final distribution of its assets, in connection with a plan of complete liquidation, on October 1, 2009, resulting in a short taxable year from January 1, 2009, through October 1, 2009. To satisfy the requirements of the exception described in section 6655(d)(1)(B)(ii), G must pay $56,250 ($75,000 × 9/12) through payments of estimated tax in 2009, with $14,063 due on April 15, 2009, June 15, 2009, September 15, 2009, and December 15, 2009, respectively.

Example 13. Short initial year with three required installments resulting in an underpayment. (i) Corporation H began business on February 17, 2009, and adopted a calendar year. H computes its required installments based on 100 percent of the tax shown on the return for the taxable year in accordance with section 6655(d)(1)(B)(i). H estimated at the beginning of its short taxable year that its estimated tax liability for short taxable year February 17, 2009, through December 31, 2009, would be $180,000. H paid its first required installment of estimated tax of $60,000 on June 15, 2009, its second required installment of estimated tax of $60,000 on September 15, 2009, and its third (and last) required installment of estimated tax of $60,000 on December 15, 2009 ($180,000 total estimated tax liability for the short taxable year less prior installment payments of $120,000). H reported a tax liability of $240,000 on its return for the short period February 17, 2009, through December 31, 2009, with no credits against tax. There was an underpayment in the amount of $20,000 on the first installment date through September 15, 2009, $40,000 on the second installment date through December 15, 2009, and $60,000 on the third (and last) installment date through March 15, 2010, determined as follows:

(A) Tax as defined in section 6655(d)(1)(B)(i) = $240,000

(B) 100% of this paragraph (e), *Example 13* (A) = $240,000

(C) Amount of estimated tax required to be paid by the first installment date (33.33% of $240,000) = $80,000

(D) Amount of estimated tax required to be paid by the second installment date (66.67% of $240,000 less $80,000 (amount due with first installment)) = $80,000

(E) Amount of estimated tax required to be paid by the third installment date (100% of $240,000 less $160,000 (amount due with first and second installment)) = $80,000

(F) Deduction of amount paid on or before the first installment date = $60,000

(G) Amount of underpayment for the first installment date (this paragraph (e), *Example 13* (i)(C) minus this paragraph (e), *Example 13* (i)(F)) = $20,000

(H) Deduction of amount available for the second installment date ($60,000 second installment payment less this paragraph (e), *Example 13* (i)(G) applied towards the first installment underpayment) = $40,000

(I) Amount of underpayment for the second installment date (this paragraph (e), *Example 13* (i)(D) minus this paragraph (e), *Example 13* (i)(H)) = $40,000

(J) Deduction of amount available for the third installment date ($60,000 third installment payment less this paragraph (e), *Example 13* (i)(I) applied towards the second installment underpayment) = $20,000

(K) Amount of underpayment for the third installment date (this paragraph (e), *Example 1* (i)(E) minus this paragraph (e), *Example 13* (i)(J)) = $60,000

(ii) [Reserved].

(f) *52 or 53 week taxable year.* For purposes of this section a taxable year of 52 or 53 weeks is deemed a period of 12 months in the case of a corporation that computes its taxable income in accordance with the election permitted by section 441(f).

(g) *Use of annualized income or seasonal installment method*—(1) *In general.* Regardless of the annual accounting period used by a corporation (for example, calendar year, fiscal year) the taxpayer may use the method described in § 1.6655–2 (annualized income installment method) or § 1.6655–3 (adjusted seasonal installment method) to compute its required installments of estimated tax when the current taxable year is a short taxable year.

(2) *Computation of annualized income installment.* To the extent a short taxable year includes an annualization period elected by the taxpayer, the taxpayer computes its annualized income installment by determining the tax on the basis of such annualized income for the annualization period, divided by 12, multiplied by the number of months in the short taxable year, and multiplied by the applicable percentage for the required installment.

(3) *Annualization period for final required installment.* For purposes of determining the final required installment (as described in paragraph (c)(2) of this section) for a short taxable year, annualized taxable income is determined by placing on an annualized basis the taxable income for the last complete annualization period that occurs within the short taxable year.

(4) *Examples.* The provisions of paragraph (g) of this section may be illustrated by the following examples:

Example 1. Corporation X began business on February 12, 2009, and adopted a calendar year as its taxable year. X adopts an accrual method of accounting and uses the annualized income installment method under section 6655(e)(2)(A)(i) to calculate all of its required installment payments for its 2009 taxable year. Pursuant to § 1.6655–1(f)(2)(i), the due dates of X's required installments for X's initial taxable year from February 12, 2009, through December 31, 2009, are April 15, 2009, June 15, 2009, September 15, 2009, and December 15, 2009. However, in accordance with paragraph (c)(1)(ii)(A) of this section, X's first required installment is due June 15, 2009. As a result, X's second required installment is due September 15, 2009, and X's third (and last) required installment is due December 15, 2009. The amount of X's first and second required installments are each based on annualizing X's taxable income from February 12, 2009, through April 30, 2009, (the first three months of X's taxable year) and X's third (and last) required installment is based on annualizing X's taxable income from February 12, 2009, through July 31, 2009 (the first six months of X's taxable year). Because X will have three required installments due for its short taxable year, pursuant to paragraph (d)(3)(ii) of this section, the applicable percentage is 33.33% for X's first required installment, 66.67% for X's second required installment, and 100% for X's third (and last) required installment.

Example 2. (i) Y, a calendar year corporation, made a final distribution of its assets, in connection with a plan of complete liquidation, on August 3, 2009. Y filed a timely election to use the alternative annualization periods described under section 6655(e)(2)(C)(i) and determined that its taxable income for the first 2, 4 and 7 months of the taxable year was $25,000, $50,000 and $140,000. The due dates for Y's required installments for its short taxable year January 1, 2009, through August 3, 2009, are April 15, 2009, June 15, 2009, and September 15, 2009. Y made installment payments of $10,000, $10,000, and $20,000, respectively, on April 15, 2009, June 15, 2009, and September 15, 2009. The taxable income for each period is annualized as follows:

$25,000 × 12/2 = $150,000
$50,000 × 12/4 = $150,000
$140,000 × 12/7 = $240,000

(ii)(A) To determine whether the first required installment equals or exceeds the amount that would have been required to have been paid if the estimated tax were equal to one hundred percent of the tax computed on the annualized income for the 2-month period taking into account the number of months in the short taxable year, the following computation is necessary:

(*1*) Annualized income for the 2 month period = $150,000

(*2*) Tax on this paragraph (g)(4), *Example 2* (ii)(A)(*1*) = $41,750

(*3*) Tax determined under this paragraph (g)(4), *Example 2* (ii)(A)(*2*) divided by 12 multiplied by 7 (the number of months in the short taxable year) = $24,354

(*4*) 100% of this paragraph (g)(4), *Example 2* (ii)(A)(*3*) = $24,354

(*5*) 33.33% of this paragraph (g)(4), *Example 2* (ii)(A)(*4*) = $ 8,117

(B) Because the total amount of estimated tax that is timely paid on or before the first installment date ($10,000) exceeds the amount required to be paid on or before this date if the estimated tax were one hundred percent of the tax determined by placing on an annualized basis the taxable income for the first 2-month period taking into account the number of months in the short taxable year, the exception described in § 1.6655–2(a) applies and no addition to tax will be imposed for the installment due on April 15, 2009.

(iii)(A) To determine whether the required installments made on or before June 15, 2009, equal or exceed the amount that would have been required to have been paid if the estimated tax were equal to one hundred percent of the tax computed on the annualized income for the 4-month period taking into account the number of months in the short taxable year, the following computation is necessary:

(*1*) Annualized income for the 4 month period = $150,000

(*2*) Tax on this paragraph (g)(4), *Example 2* (iii)(A)(*1*) = $41,750

(*3*) Tax determined under this paragraph (g)(4), *Example 2* (iii)(A)(*2*) divided by 12 multiplied by 7 (the number of months in the short taxable year) = $24,354

(*4*) 100% of this paragraph (g)(4), *Example 2* (iii)(A)(*3*) = $24,354

(*5*) 66.67% of this paragraph (g)(4), *Example 2* (iii)(A)(*4*) less $8,117 (amount due with first installment) = $8,120

(B) Because the total amount of estimated tax available to apply towards the amount due for the second installment ($11,883 ($10,000 paid on the second installment date plus $1,883 overpayment of the first installment)) exceeds the amount required to be paid on or before this date if the estimated tax were one hundred percent of the tax determined by placing on an annualized basis the taxable income for the first 4-month period for the taxable year taking into account the number of months in the short taxable year, the exception described in § 1.6655–2(a) applies and no addition to tax will be imposed for the installment due on June 15, 2009.

(iv)(A) Pursuant to paragraph (c) and (d) of this section, the final required installment is due by September 15, 2009, and the applicable percentage due for the final required installment is 100%. To determine whether the installment payments made on or before September 15, 2009, equal or exceed the amount that would have been required to have been paid if the estimated tax were equal to one hundred percent of the tax computed on the annualized income for the 7-month period taking into account the number of months in the short taxable year, the following computation is necessary:

(*1*) Annualized income for the 7 month period = $240,000

(*2*) Tax on this paragraph (g)(4), *Example 2* (iv)(A)(*1*) = $76,850

(*3*) Tax determined under this paragraph (g)(4), *Example 2* (iv)(A)(*2*) divided by 12 multiplied by 7 (the number of months in the short taxable year) = $44,829

(*4*) 100% of this paragraph (g)(4), *Example 2* (iv)(A)(*3*) = $44,829

(*5*) 100% of this paragraph (g)(4), *Example 2* (iv)(A)(*4*) less $16,237 (amount due with first and second installment) = $28,592

(B) Because the total amount of estimated tax available to apply towards the amount due for the final installment ($23,763 ($20,000 that is timely paid on the third installment date plus $3,763 overpayment of the second installment)) does not exceed the

amount required to be paid on or before this date if the estimated tax were one hundred percent of the tax determined by placing on an annualized basis the taxable income for the first 7-month period for the taxable year taking into account the number of months in the short taxable year, the exception described in § 1.6655–2(a) does not apply and an addition to tax will be imposed for the final installment due on September 15, 2009, unless another exception (for example, see section 6655(e)(3)) applies with respect to these installments.

(h) *Effective/applicability date.* This section applies to taxable years beginning after September 6, 2007.

§ 1.6655–6 Methods of accounting.

(a) *In general.* In computing any required installment, a corporation must use the methods of accounting used in computing taxable income for the taxable year for which estimated tax is being determined (the current taxable year).

(b) *Accounting method changes.* A taxpayer that changes its method of accounting with the consent of the Commissioner for the current taxable year must use the new method of accounting (as of the beginning of the taxable year) in the determination of taxable income for annualization periods ending on or after the date the related section 481(a) adjustment is treated as arising. See § 1.6655–2(f)(3)(ii)(C) for the date a section 481(a) adjustment is treated as arising. If the change in method of accounting does not result in a section 481(a) adjustment, the taxpayer may choose to use the new method of accounting (as of the beginning of the taxable year) in the determination of taxable income for all annualization periods during the year of change or only those annualization periods ending on or after the date the Form 3115 ''Application for Change in Accounting Method'' was filed with the national office of the Internal Revenue Service. This paragraph (b) only applies to the extent a taxpayer changes a method of accounting for the taxable year with the consent of the Commissioner. Therefore, a taxpayer may be subject to a section 6655 addition to tax for an underpayment of estimated tax if an underpayment results from a change in a method of accounting the taxpayer anticipates making for the taxable year but for which the consent of the Commissioner is not subsequently received.

(c) *Examples.* The following examples illustrate the rules of this section:

Example 1. Accounting method used in computing taxable income for the taxable year. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualization method under section 6655(e)(2)(A)(i) to calculate all of its 2008 required installments. ABC receives advance payments each taxable year with respect to agreements for the sale of goods properly includible in ABC's inventory. The advance payments received by ABC qualify for deferral under § 1.451–5(c). Although ABC is eligible to defer the advance payments in accordance with § 1.451–5(c), ABC's method of accounting with respect to the advance payments is to include the advance payments in income when received and ABC does not change its accounting method for advance payments for the 2008 taxable year. ABC must use its current method of recognizing advance payments as income in the year received for purposes of computing its 2008 required installments.

Example 2. Change of accounting method. Corporation ABC, a calendar year taxpayer, uses an accrual method of accounting and the annualization method under section 6655(e)(2)(A)(i) to calculate all of its 2008 required installments. On June 15, 2008, ABC files a Form 3115 requesting permission to change its method of accounting for future litigation reserves for the tax year ending December 31, 2008. On February 15, 2009, ABC receives consent from the Commissioner to make the change for the tax year ending December 31, 2008. The change results in a positive section 481(a) adjustment of $100,000. Under the provisions of § 1.6655–2(f)(3)(ii) ABC chooses to treat the section 481(a) adjustment as arising on the date the Form 3115 is filed with the national office of the Internal Revenue Service. Therefore, ABC is required to use the new method of accounting (as of the beginning of the year) in the determination of taxable income for annualization periods ending on or after June 15, 2008.

(d) *Effective/applicability date.* This section applies to taxable years beginning after September 6, 2007.

■ **Par. 13.** Newly-designated § 1.6655–7 is revised to read as follows:

§ 1.6655–7 Addition to tax on account of excessive adjustment under section 6425.

(a) Section 6655(h) imposes an addition to the tax under chapter 1 of the Internal Revenue Code in the case of any excessive amount (as defined in paragraph (c) of this section) of an adjustment under section 6425 that is made before the 15th day of the third month following the close of a taxable year beginning after December 31, 1967. This addition to tax is imposed whether or not there was reasonable cause for an excessive adjustment.

(b) If the amount of an adjustment under section 6425 is excessive, there shall be added to the tax under chapter 1 of the Internal Revenue Code for the taxable year an amount determined at the annual rate referred to in the regulations under section 6621 upon the excessive amount from the date on which the credit is allowed or refund paid to the 15th day of the third month following the close of the taxable year. A refund is paid on the date it is allowed under section 6407.

(c) The excessive amount is equal to the lesser of the amount of the adjustment or the amount by which—

(1) The income tax liability (as defined in section 6425(c)) for the taxable year, as shown on the return for the taxable year; exceeds

(2) The estimated income tax paid during the taxable year, reduced by the amount of the adjustment.

(d) The computation of the addition to the tax imposed by section 6425 is made independent of, and does not affect the computation of, any addition to the tax that a corporation may otherwise owe for an underpayment of an installment of estimated tax.

(e) The following example illustrates the rules of this section:

Example. (i) Corporation X, a calendar year taxpayer, had an underpayment as defined in section 6655(b), for its fourth installment of estimated tax that was due on December 15, 2009, in the amount of $10,000. On January 4, 2010, X filed an application for adjustment of overpayment of estimated income tax for 2009 in the amount of $20,000.

(ii) On February 16, 2010, the Internal Revenue Service, in response to the application, refunded $20,000 to X. On March 15, 2010, X filed its 2009 tax return and made a payment in settlement of its total tax liability. Assuming that the addition to tax is computed under section 6621(a)(2) at a rate of 8% per annum for the applicable periods of underpayment, under section 6655(a), X is subject to an addition to tax in the amount of $197 (90/365 X $10,000 X 8%) on account of X's December 15, 2009, underpayment. Under section 6655(h), X is subject to an addition to tax in the amount of $118 (27/365 X $20,000 X 8%) on account of X's excessive adjustment under section 6425. In determining the amount of the addition to tax under section 6655(a) for failure to pay estimated income tax, the excessive adjustment under section 6425 is not taken into account.

(f) An adjustment is generally to be treated as a reduction of estimated income tax paid as of the date of the adjustment. However, for purposes of §§ 1.6655–1 through 1.6655–6, the adjustment is to be treated as if not made in determining whether there has been any underpayment of estimated income tax and, if there is an underpayment, the period during which the underpayment existed.

(g) *Effective/applicability date:* This section applies to taxable years beginning after September 6, 2007.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 14.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 301.6154–1 [Removed].

■ **Par. 15.** Section 301.6154–1 is removed.

■ **Par. 16.** Section 301.6655–1 is revised to read as follows:

§ 301.6655–1 Failure by corporation to pay estimated income tax.

(a) For regulations under section 6655, see §§ 1.6655–1 through 1.6655–7 of this chapter.

(b) *Effective/applicability date:* This section applies to taxable years beginning after September 6, 2007.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 17.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended].

■ **Par. 18.** Section 602.101, paragraph (b) is amended by removing the entries for §§ 1.6154–2, 1.6154–3, 1.6154–5, 1.6655–1, 1.6655–2, 1.6655–3 and 1.6655–7.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: July 17, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

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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 ''PLUS'' (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. 1 / Public Law 110-53
Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266; 285 pages)

H.R. 2429 / Public Law 110-54
To amend title XVIII of the Social Security Act to provide an exception tothe 60-day limit on Medicare reciprocal billing arrangements between two physicians during the period in which one of the physicians is ordered to active duty as a member of a reserve component of the Armed Forces. (Aug. 3, 2007; 121 Stat. 551; 1 page)

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