AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

8–29–07 Wednesday
Vol. 72 No. 167 Aug. 29, 2007

Pages 49639–50034

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

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

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

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

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

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

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

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

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

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

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, September 11, 2007
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 72, No. 167

Wednesday, August 29, 2007

Agricultural Marketing Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49693–49694
Grants and cooperative agreements; availability, etc.:
Organic Certification Cost Share Program, 49694–49695

Agriculture Department
See Agricultural Marketing Service
See Forest Service
See Rural Utilities Service

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Meetings:
National Center for Health Statistics—Scientific Counselors Board, 49722

Centers for Medicare & Medicaid Services
RULES
Medicare:
Home health prospective payment system; 2008 CY refinement and rate update, 49762–49945

Coast Guard
RULES
Vessel documentation and measurement:
Coastwise trade vessels; lease financing; reporting and recordkeeping requirements, 49666

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
See Navy Department

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49705–49706
Grants and cooperative agreements; availability, etc.:
Postsecondary education—Jacob K. Javits Fellowship Program, 49706–49708

Employee Benefits Security Administration
NOTICES
Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council, 49734–49735

Employment and Training Administration
NOTICES
Adjustment assistance; applications, determinations, etc.:
Hershey Co., 49736
Hoover Precision Products, Inc., et al., 49735–49736
Intel Corp., 49736
Kimberly-Clark Corp. Global Sales, 49736
Maxair, 49737
Rockwell Automation, 49737

Employment Standards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49737–49738

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Flusilazole, 49654–49660
Flutriafol, 49660–49666
Propylene oxide, 49646–49651
Spinosad, 49651–49654
PROPOSED RULES
Air quality implementation plans:
Preparation, adoption, and submittal—Increment modeling procedures refinement; prevention of significant deterioration new source review, 49678–49679
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Georgia, 49679–49689
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Dibasic esters, 49689–49692
NOTICES
Meetings:
Local Government Advisory Committee et al., 49709
Scientific Counselors Board, 49709–49710
Pesticide registration, cancellation, etc.:
Fenoxaprop-p-ethyl and etofenprox, 49710–49712
Sodium carbonate; weak mineral bases, 49712–49714
Reports and guidance documents; availability, etc.:
Coal combustion wastes disposal in landfills and surface impoundments; data availability, 49714–49719

Executive Office of the President
See Trade Representative, Office of United States

Federal Aviation Administration
PROPOSED RULES
Class E airspace, 49676–49678
NOTICES
Advisory circulars; availability, etc.:
Electronic propeller control systems; policy statement, 49755–49756
Meetings:
Government/Industry Aeronautical Charting Forum, 49756
National Parks Overflights Advisory Group Aviation Rulemaking Committee, 49756–49757

Federal Communications Commission
RULES
Common carrier services:
Satellite communications—
Broadcasting-satellite service; policies and service rules, 50000–50033
Radio stations; table of assignments:
Colorado, 49666–49667
PROPOSED RULES
Radio stations; table of assignments:
Arizona, 49692
NOTICES
Applications, hearings, determinations, etc.:
Able Radio Corp., et al., 49719–49720

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49720–49721

Federal Emergency Management Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49726–49727

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation combined filings, 49708–49709

Federal Highway Administration
NOTICES
Federal agency actions on proposed highways; judicial review claims:
Contra Costa County, CA; highway project, 49757–49758

Federal Maritime Commission
NOTICES
Agreements filed, etc., 49721
Ocean transportation intermediary licenses:
Access Freight Forwarders, Inc. et al., 49721–49722
Jeepney Express et al., 49722

Federal Trade Commission
RULES
Appliances, consumer; energy consumption and water use information in labeling and advertising:
Energy efficiency labeling requirements, 49948–49997

Fish and Wildlife Service
RULES
Migratory bird hunting:
Alaska; 2007 subsistence harvest regulations; correction, 49667

Food and Drug Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49722
Reports and guidance documents; availability, etc.:
Pharmacogenomic data submission; industry guidance, 49722–49723
Scientific evaluation of health claims; evidence-based review system; correction, 49723–49724

Foreign Claims Settlement Commission
NOTICES
Privacy Act; systems of records, 49731–49732

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Iowa
SACMI USA, Ltd.; packaging and food-processing equipment manufacturing facility, 49699

Forest Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49695–49696
Environmental statements; notice of intent:
Ashley National Forest, UT, 49696–49697

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Reports and guidance documents; availability, etc.:
Federally-funded health centers; HRSA draft policy documents; Internet availability, 49724

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49727–49729
Homeless assistance; excess and surplus Federal properties, 49729

Industry and Security Bureau
NOTICES
Export privileges, actions affecting:
Norsal Export Ltd., 49699–49700
Spector, Norman, 49701–49702

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
NOTICES
Meetings:
Invasive Species Advisory Committee, 49729

International Trade Administration
NOTICES
Antidumping:
Oil country tubular goods from—
Mexico, 49702–49703

International Trade Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49730–49731
Import investigations:
Sucralose, sweeteners containing sucralose, and related intermediate compounds, 49731

Justice Department
See Foreign Claims Settlement Commission
See Justice Programs Office

Justice Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49732–49733

Labor Department
See Employee Benefits Security Administration
See Employment and Training Administration
See Employment Standards Administration
NOTICES
Meetings:
Job Corps Advisory Committee, 49733–49734

Land Management Bureau
NOTICES
Alaska native claims selection:
Port Graham Corp., 49729–49730
Resource management plans, etc.:
Pocatello Resource Area, ID, 49730

National Credit Union Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49738–49741

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities Panel, 49741–49742

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 49724–49726

National Oceanic and Atmospheric Administration
NOTICES
Marine mammal permit applications, determinations, etc., 49703
Meetings:
New England Fishery Management Council, 49703–49704
North Pacific Fishery Management Council, 49704
Pacific Fishery Management Council, 49704–49705

Navy Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Tessarae Inc., 49705

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
Nevada, 49668–49669
NOTICES
Meetings:
Medical Uses of Isotopes Advisory Committee, 49744
Reactor Safeguards Advisory Committee, 49744
Meetings; Sunshine Act, 49744–49745
Applications, hearings, determinations, etc.:
Carolina Power & Light Co., 49742–49744

Office of United States Trade Representative
See Trade Representative, Office of United States

Postal Regulatory Commission
NOTICES
Meetings; Sunshine Act, 49746

Rural Utilities Service
NOTICES
Environmental statements; availability, etc.:
Dry Fork Station and Hughes Transmission Project, WY, 49697–49698

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49746–49747
Consolidated Tape Association Plan; amendments, 49747–49748
Investment Company Act of 1940:
Allianz RCM Global EcoTrends Fund, et al., 49748–49750
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 49750–49752
Chicago Board Options Exchange, Inc., 49752–49753
International Securities Exchange, LLC, 49753–49755

Small Business Administration
RULES
Small business size standards:
North American Industry Classification System; adoption, 49639–49646
PROPOSED RULES
Small business size standards:
North American Industry Classification System; adoption, 49669–49676
NOTICES
Meetings:
Regulatory Fairness Boards—
Region VII; hearing, 49755
Veterans Business Affairs Advisory Committee, 49755

State Department
NOTICES
Grants and cooperative agreements; availability, etc.:
U.S.-Egypt collaborative projects in science and technology; correction, 49755
U.S.-Egypt junior scientists development visits; correction, 49755

Surface Transportation Board
NOTICES
Railroad services abandonment:
BNSF Railway Co., 49758

Trade Representative, Office of United States
NOTICES
Reports and guidance documents; availability, etc.:
Foreign Trade Barriers; National Trade Estimate Report, 49745–49746

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Surface Transportation Board

Veterans Affairs Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49758–49760
Meetings:
Veteran's Disability Benefits Commission, 49760
Veterans' Readjustment Advisory Committee, 49760

Separate Parts In This Issue

Part II
Health and Human Services Department, Centers for Medicare & Medicaid Services, 49762–49945

Part III
Federal Trade Commission, 49948–49997

Part IV
Federal Communications Commission, 50000–50033

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

10 CFR

Proposed Rules:

2 49668

13 CFR

121 49639

Proposed Rules:

121 49669

14 CFR

Proposed Rules:

71 49676

16 CFR

305 49948

40 CFR

180 (4 documents) 49646, 49651, 49654, 49660

Proposed Rules:

49 49678
51 49678
52 49679
81 49679
180 49689

42 CFR

484 49762

46 CFR

67 49666
68 49666

47 CFR

2 50000
25 50000
73 49666

Proposed Rules:

73 49692

50 CFR

92 49667

Rules and Regulations

Federal Register
Vol. 72, No. 167
Wednesday, August 29, 2007

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

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

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF66

Small Business Size Standards; Adoption of 2007 North American Industry Classification System for Size Standards

AGENCY: Small Business Administration.

ACTION: Direct final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its Small Business Size Regulations by incorporating the Office of Management and Budget's (OMB) 2007 modifications of the North American Industry Classification System (NAICS) in its table of small business size standards. These modifications are few in number and result in revisions to size standards for three industries and four activities within other industries.

SBA believes that this rule is routine and non-controversial, and the Agency anticipates no significant adverse comment. If SBA receives a significant adverse comment, it will withdraw the rule. SBA is publishing concurrently in this issue of the **Federal Register** a proposed rule to achieve the same result, that is, to modify its Small Business Size Regulations as contemplated in this direct final rule.

DATES: This rule is effective October 1, 2007, without further action, unless SBA receives a significant adverse comment by September 28, 2007. If SBA receives any significant adverse comments, the Agency will publish a timely withdrawal of this rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by RIN: 3245–AF66, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail, for paper, disk, or CD/ROM submissions:* Gary M. Jackson, Division Chief for Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.
- *Hand Delivery/Courier:* Gary M. Jackson, Division Chief for Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.

SBA will post all comments on *www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.Regulations.gov*, please submit the information to Carl J. Jordan, Office of Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416, or send an e-mail to *sizestandards@sba.gov*. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination of whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618 or *sizestandards@sba.gov*.

SUPPLEMENTARY INFORMATION: SBA adopted the NAICS industry definitions as a basis for its table of small business size standards effective October 1, 2000, as a replacement to the discontinued Standard Industrial Classification (SIC) System (65 FR 30836, May 15, 2000). Since that time, OMB has issued two updates modifying the NAICS. SBA incorporated OMB's first updated modifications, termed NAICS 2002 (66 FR 3825, January 16, 2001), in its table of size standards effective October 1, 2002 (67 FR 52597, August 13, 2002). OMB published its most recent updates, termed NAICS 2007, on May 16, 2006 (71 FR 28532). SBA is adopting those updated modifications in its table of small business size standards, as explained below.

For complete information on the relationship between NAICS 2002 and NAICS 2007, please see the U.S. Bureau of the Census (Census Bureau) Web site at *http://www.census.gov/epcd/www/naicsdoc.htm#fedreg*. That Census Bureau Web site provides complete information on its establishment and implementation of NAICS 2007, including its notice of final action in the March 16, 2006 **Federal Register**. The Census Bureau also provides the following correspondence tables: (1) 2007 NAICS–US matched to 2002 NAICS–US; and (2) 2002 NAICS–US matched to 2007 NAICS–US.

How SBA Arrived at the Size Standards for NAICS 2007 Industries

On October 22, 1999, SBA published in the **Federal Register** (64 FR 57188) a proposed rule to establish a new table of small business size standards based on the NAICS. SBA developed guidelines to transition from the SIC System to NAICS. The guidelines were intended to minimize the impact of a new industry classification system on SBA's small business size standards. Table 1, below, lists those guidelines. SBA received no negative comments to the guidelines specified in the proposed rule. Because the guidelines produced the desired results and received public acceptance, SBA published a final rule on May 5, 2000 (65 FR 3825) (corrected on September 5, 2000, 65 FR 53533) establishing a new table of size standards based on NAICS without change from its proposed rule. For purposes of adopting NAICS 2007, SBA is applying the same guidelines in this direct final rule.

TABLE 1

If the NAICS 2007 industry is composed of:	The Size standard for the NAICS industry will be:
1. One NAICS 2002 industry or part of one NAICS 2002 industry	The same size standard as for the NAICS 2002 industry or part.
2. More than one NAICS 2002 industry; parts of more than one NAICS 2002 industry; or one or more NAICS 2002 industry and part(s) of one or more NAICS 2002 industry, *and* they all have the same size standard.	The same size standard as for those NAICS 2002 industries or parts of NAICS 2002 industries.

TABLE 1—Continued

If the NAICS 2007 industry is composed of:	The Size standard for the NAICS industry will be:
3. More than one NAICS 2002 industry; parts of more than one NAICS 2002 industry; or one or more NAICS 2002 industry and part(s) of one or more NAICS 2002 industry, *and* they do not all have the same size standard.	The same size standard as for the NAICS 2002 industry or NAICS 2002 industry part(s) that most closely matches the economic activity described by the NAICS 2007 industry.
4. One or more parts of an NAICS 2002 industry for which SBA has established specific size standards (i.e., further segmented).	The same size standard as for that specific NAICS 2002 industry part.
5. One or more NAICS 2002 industries and/or parts of NAICS 2002 industries that were categorized broadly under the NAICS system as Services, Retail Trade, Wholesale Trade or Manufacturing, but are now categorized differently under NAICS.	SBA will (a) apply a size standard measure (*e.g.*, number of employees, annual receipts) typical of the NAICS Sector; and (b) apply the corresponding ''anchor'' size standard. The ''anchor'' size standards are $6.5 million (effective December 6, 2005) for Services and Retail Trade, 500 employees for Manufacturing and 100 employees for Wholesale Trade (except for Federal procurement programs, where the standard is 500 employees under the non-manufacturer rule).

Additions to and Deletions From NAICS 2002 for NAICS 2007

It is important to note the following:

1. NAICS 2007 changes affect 59 NAICS 2002 industries.

2. One NAICS 2002 Subsector and 12 NAICS 2002 industries were eliminated and their activities reclassified in other more appropriate or new NAICS 2007 industries as listed in Table 2:

TABLE 2

NAICS 2002 code	NAICS 2002 industry description
NAICS 339111	Laboratory Apparatus and Furniture Manufacturing.
Subsector 516	Internet Publishing and Broadcasting.
NAICS 516110	Internet Publishing and Broadcasting.
NAICS 517211	Paging.
NAICS 517212	Cellular and Other Wireless Telecommunications.
NAICS 517310	Telecommunications Resellers.
NAICS 517510	Cable and Other Program Distribution.
NAICS 517910	Other Telecommunications.
NAICS 518111	Internet Service Providers.
NAICS 518112	Web Search Portals.
NAICS 525930	Real Estate Investment Trusts.
NAICS 541710	Research and Development in the Physical, Engineering, and Life Sciences.
NAICS 561310	Employment Placement Agencies.

3. The following eight industries listed in Table 3 are new in NAICS 2007:

TABLE 3

NAICS 2007 code	NAICS 2007 industry description
NAICS 517210	Wireless Telecommunications Carriers (except Satellite).
NAICS 517911	Telecommunications Resellers.
NAICS 517919	All Other Telecommunications.
NAICS 519130	Internet Publishing and Broadcasting and Web Search Portals.
NAICS 541711	Research and Development in Biotechnology.
NAICS 541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology).
NAICS 561311	Employment Placement Agencies.
NAICS 561312	Executive Search Services.

Changes in Size Standards Resulting From SBA's Adoption of NAICS 2007

Most of the industries in NAICS 2002 remain unchanged under NAICS 2007. This direct final rule adopting NAICS 2007 will change size standards for only three industries and four activities from parts of industries. Other changes in NAICS 2007 consist of revised industry descriptions or the reclassification of industry activities in other industries having the same size standard.

Table 4 lists all of OMB's modifications to the NAICS 2002 industries. The first three columns show the modified NAICS 2002 industry's six-digit code, its current size standard, and its industry description. The last three columns show the NAICS 2007 industry (new, existing and revised) that incorporates the modified NAICS 2002 industry, its industry description, and new size standard. By comparing the modified NAICS 2002 industry and size standard with the related NAICS 2007 industry and size standard, a user can identify the size standard SBA is adopting for the applicable NAICS 2007 industries. Following Table 4, SBA explains the basis for the limited number of cases that do result in a change to the size standard.

TABLE 4

[This Table Includes Only Those NAICS Codes Where Size Standards are Affected. They Are Arranged According to the Order of Their NAICS 2007 Industry Codes]

2002 NAICS code	Current size standards	2002 NAICS U.S. description	2007 NAICS code	2007 NAICS U.S. description	New size standards
111211	$0.75 million	Potato Farming	111211	Potato Farming	$0.75 million.
111219*	$0.75 million	Other Vegetable (except Potato) and Melon Farming—*sweet potato and yam farming*.			
111219*	$0.75 million	Other Vegetable (except Potato) and Melon Farming—*except sweet potato and yam farming*.	111219	Other Vegetable (except Potato) and Melon Farming.	$0.75 million.
111998*	$0.75 million	All Other Miscellaneous Crop Farming—*except algae, seaweed, and other plant aquaculture*.	111998	All Other Miscellaneous Crop Farming.	$0.75 million.
112519	$0.75 million	Other Animal Aquaculture	112519	Other Aquaculture	$0.75 million.
111998*	$0.75 million	All Other Miscellaneous Crop Farming—*algae, seaweed, and other plant aquaculture*.			
314999	500 employees	All Other Miscellaneous Textile Product Mills	314999	All Other Miscellaneous Textile Product Mills.	500 employees.
315211*	500 employees	Men's and Boys' Cut and Sew Apparel Contractors—*embroidery contractors*.			
315212*	500 employees	Women's, Girls' and Infants' Cut and Sew Apparel Contractors—*embroidery contractors*.			
315211*	500 employees	Men's and Boys' Cut and Sew Apparel Contractors—*except embroidery contractors*.	315211	Men's and Boys' Cut and Sew Apparel Contractors.	500 employees.
315212*	500 employees	Women's, Girls' and Infants' Cut and Sew Apparel Contractors—*except embroidery contractors*.	315212	Women's, Girls' and Infants' Cut and Sew Apparel Contractors.	500 employees.
326199*	500 employees	All Other Plastics Product Manufacturing—*except inflatable plastics boats*.	326199	All Other Plastics Product Manufacturing.	500 employees.
326291*	500 employees	Rubber Product Manufacturing for Mechanical Use—*except rubber tubing for mechanical use*.	326291	Rubber Product Manufacturing for Mechanical Use.	500 employees.
326299*	500 employees	All Other Rubber Product Manufacturing—*except inflatable rubber boats*.	326299	All Other Rubber Product Manufacturing.	500 employees.
326291*	500 employees	Rubber Product Manufacturing for Mechanical Use—*rubber tubing for mechanical use*.			
333298	500 employees	All Other Industrial Machinery Manufacturing	333298	All Other Industrial Machinery Manufacturing.	500 employees.
339111*	500 employees	Laboratory Apparatus and Furniture Manufacturing—*laboratory distilling equipment*.			
333415	750 employees	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.	333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.	750 employees.
339111*	500 employees	Laboratory Apparatus and Furniture Manufacturing—*laboratory freezers*.			
333994	500 employees	Industrial Process Furnace and Oven Manufacturing.	333994	Industrial Process Furnace and Oven Manufacturing.	500 employees.
339111*	500 employees	Laboratory Apparatus and Furniture Manufacturing—*laboratory furnaces and ovens*.			
333997	500 employees	Scale and Balance (except Laboratory) Manufacturing.	333997	Scale and Balance Manufacturing.	500 employees.
339111*	500 employees	Laboratory Apparatus and Furniture Manufacturing—*laboratory scales and balances*.			
333999	500 employees	All Other Miscellaneous General Purpose Machinery Manufacturing.	333999	All Other Miscellaneous General Purpose Machinery Manufacturing.	500 employees.
339111*	500 employees	Laboratory Apparatus and Furniture Manufacturing—*laboratory centrifuges*.			
334220*	750 employees	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing—*except communications signal testing and evaluation equipment*.	334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.	750 employees.
334515	500 employees	Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals.	334515	Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals.	500 employees.

TABLE 4—Continued

[This Table Includes Only Those NAICS Codes Where Size Standards are Affected. They Are Arranged According to the Order of Their NAICS 2007 Industry Codes]

2002 NAICS code	Current size standards	2002 NAICS U.S. description	2007 NAICS code	2007 NAICS U.S. description	New size standards
334220*	750 employees	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing—*communications signal testing and evaluation equipment*.			
336612	500 employees	Boat Building	336612	Boat Building	500 employees.
326199*	500 employees	All Other Plastics Product Manufacturing—*inflatable plastics boats*.			
326299*	500 employees	All Other Rubber Product Manufacturing—*inflatable rubber boats*.			
337127	500 employees	Institutional Furniture Manufacturing	337127	Institutional Furniture Manufacturing.	500 employees.
339111*	500 employees	Laboratory Apparatus and Furniture Manufacturing—*laboratory furniture (e.g., stools, tables, benches)*.			
339113	500 employees	Surgical Appliance and Supplies Manufacturing	339113	Surgical Appliance and Supplies Manufacturing.	500 employees.
339111*	500 employees	Laboratory Apparatus and Furniture Manufacturing—*except laboratory furniture, scales, balances, furnaces, ovens, centrifuges, distilling equipment, and freezers*.			
517110	1500 employees	Wired Telecommunications Carriers	517110	Wired Telecommunications Carriers.	1,500 employees.
517510	$13.5 million	Cable and Other Program Distribution..			
518111*	$23.0 million	Internet Service Providers—*broadband Internet service providers (e.g., cable, DSL)*.			
517211	1500 employees	Paging	517210	Wireless Telecommunications Carriers (except Satellite).	1,500 employees.
517212	1500 employees	Cellular and Other Wireless Telecommunications..			
517310	1500 employees	Telecommunications Resellers	517911	Telecommunications Resellers.	1,500 employees.
517910	$13.5 million	Other Telecommunications	517919	All Other Telecommunications.	$23.0 million.
518111*	$23.0 million	Internet Service Providers—*ISPs providing services via client-supplied telecommunications connections*..			
516110	500 employees	Internet Publishing and Broadcasting	519130	Internet Publishing and Broadcasting and Web Search Portals.	500 employees.
518112	$6.5 million	Web Search Portals.			
519190	$6.5 million	All Other Information Services	519190	All Other Information Services.	$6.5 million.
525990	$6.5 million	Other Financial Vehicles	525990	Other Financial Vehicles	$6.5 million.
525930*	$6.5 million	Real Estate Investment Trusts—*hybrid or mortgage REITs primarily in underwriting or investing in mortgages*..			
531110	$6.5 million	Lessors of Residential Buildings and Dwellings	531110	Lessors of Residential Buildings and Dwellings.	$6.5 million.
525930*	$6.5 million	Real Estate Investment Trusts—*hybrid or equity REITs primarily leasing residential Buildings and Dwellings*.			
531120	$6.5 million	Lessors of Nonresidential Buildings (except Miniwarehouses).	531120	Lessors of Nonresidential Buildings (except Miniwarehouses).	$6.5 million.
525930*	$6.5 million	Real Estate Investment Trusts—*hybrid or equity REITs primarily leasing nonresidential buildings*.			
531130	$23.5 million	Lessors of Miniwarehouses and Self-Storage Units	531130	Lessors of Miniwarehouses and Self-Storage Units.	$23.5 million.
525930*	$6.5 million	Real Estate Investment Trusts—*hybrid or equity REITs primarily leasing miniwarehouses and self-storage units*.			
531190	$6.5 million	Lessors of Other Real Estate Property	531190	Lessors of Other Real Estate Property.	$6.5 million.

TABLE 4—Continued

[This Table Includes Only Those NAICS Codes Where Size Standards are Affected. They Are Arranged According to the Order of Their NAICS 2007 Industry Codes]

2002 NAICS code	Current size standards	2002 NAICS U.S. description	2007 NAICS code	2007 NAICS U.S. description	New size standards
525930*	$6.5 million	Real Estate Investment Trusts—*hybrid or equity REITs primarily leasing other real estate property.*			
541612*	$6.5 million	Human Resources and Executive Search Consulting Services—*except executive search consulting services.*	541612	Human Resources Consulting Services.	$6.5 million.
541710*	500 employees	Research and Development in the Physical, Engineering, and Life Sciences—*biotechnology research and development.*	541711	Research and Development in Biotechnology.	500 employees.
541710*	500 employees	Research and Development in the Physical, Engineering, and Life Sciences—*except biotechnology research and development.*	541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology).	500 employees.
561310	$6.5 million	Employment Placement Agencies	561311	Employment Placement Agencies.	$6.5 million.
541612*	$6.5 million	Human Resources and Executive Search Consulting Services—*executive search consulting services.*	561312	Executive Search Services.	$6.5 million.

* Indicates that this activity within the identified NAICS 2002 code is now an activity within the related NAICS 2007 industry.

As shown in Table 4, the NAICS 2007 modifications lead to a revision in the current size standard for a limited number of industries or activities. The basis for the revisions to seven size standards are discussed below:

1. NAICS 339111, ''Laboratory Apparatus and Furniture Manufacturing,'' (part) *laboratory freezers.* NAICS 2007 eliminated NAICS 339111. The various activities of NAICS 339111 are reclassified in other NAICS 2007 codes having the same 500 employee size standard, except for laboratory freezer manufacturing. Laboratory freezer manufacturing is reclassified in NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing,'' having a size standard of 750 employees. SBA is adopting the 750 employee size standard for NAICS 333415 because laboratory freezer manufacturing represents a small part of that industry (Rule #3).

2. NAICS 334220, ''Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,'' (part) *communications signal testing and evaluation equipment.* The current size standard for NAICS 334220 is 750 employees. The activity of ''communications signal testing and evaluation equipment manufacturing'' in NAICS 2007 is reclassified in NAICS 334515, ''Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals,'' having a size standard of 500 employees. SBA is adopting the 500 employee size standard for NAICS 334515 because ''communications signal testing and evaluation equipment manufacturing'' represents a small part of that industry (Rule #3).

3. NAICS 518111, ''Internet Service Providers,'' (part) *broadband Internet service providers (e.g., cable, DSL).* The current size standard for NAICS 518111 is $23.0 million in average annual receipts. The activity, ''broadband Internet services providers (*e.g.,* cable, DSL),'' in NAICS 2007 is reclassified in NAICS 517110, ''Wired Telecommunications Carriers,'' having a 1,500 employee size standard. SBA is adopting the 1,500 employee size standard for NAICS 517110 because broadband Internet services providers represent a small part of that industry (Rule #3).

4. NAICS 517510, ''Cable and Other Program Distribution.'' NAICS 2007 eliminated NAICS 517510. The current size standard for NAICS 517510 is $13.5 million in average annual receipts. In NAICS 2007, all activities of NAICS 517510 are reclassified in 517110, ''Wired Telecommunications Carriers,'' having a 1,500 employee size standard. SBA is adopting the 1,500 employee size standard for NAICS 517110 because the Cable and Other Program Distribution industry is much smaller than the Wired Telecommunications Carriers industry (Rule #3).

5. NAICS 517910, ''Other Telecommunications.'' NAICS 2007 eliminated NAICS 517910. NAICS 2007 establishes a new industry titled ''All Other Telecommunications,'' NAICS 517919, comprising all activities of NAICS 517910 having a size standard of $13.5 million and most activities from NAICS 518111, ''Internet Service Providers (ISP),'' having a size standard of $23 million. As discussed in # 3 above, the activity of ''broadband Internet services providers'' in NAICS 518111 is reclassified in NAICS 517110. SBA is adopting the $23 million size standard for that industry because ISP establishments providing services via client-supplied telecommunications connections represent the larger component of the new NAICS 517919 (Rule #3).

6. NAICS 518112, ''Web Search Portals.'' NAICS 2007 eliminated NAICS 518112 and NAICS 516110, ''Internet Publishing and Broadcasting,'' having size standards of $6.5 million and 500 employees, respectively. NAICS 2007 combines these two industries to form a new six-digit industry—NAICS 519130, ''Internet Publishing and Broadcasting and Web Search Portals.'' SBA is adopting the 500 employee size standard for NAICS 519130 because the Internet Publishing and Broadcasting industry is much larger than the Web Search Portals industry (Rule #3).

7. NAICS 525930, ''Real Estate Investment Trusts,'' (part) *hybrid or equity REITs primarily leasing miniwarehouses and self-storage units.* NAICS 2007 eliminated NAICS 525930. The various activities of NAICS 525930 are reclassified in NAICS 2007 codes having the same $6.5 million size standard, except for the activity of

hybrid or equity REITs primarily leasing miniwarehouses and self-storage units. That activity is reclassified in NAICS 531130, ''Lessors of Miniwarehouses and Self-Storage Units,'' having a $23.5 million size standard. SBA is adopting the $23.5 million size standard for NAICS 531130 because hybrid or equity REITs primarily leasing miniwarehouses and self-storage units represent a small part of that industry (Rule #3).

Justification for October 1, 2007 Effective Date

If adopted in final form, SBA's table of small business size standards matched to NAICS 2007 will be effective on and will apply to all solicitations issued on or after October 1, 2007, because:

1. Federal Government recordkeeping and statistics would be more consistent and more comparable with other data for analyzing small business activity. October 1, 2007 is the start of the first Federal Government fiscal year after the NAICS 2007 January 1, 2007 effective date.

2. SBA and other users of size standards could collect data on their small business programs using the more recent NAICS format and can compare those data with future Federal statistics that will be based on NAICS 2007 industry classifications. The availability of such comparable data would ensure the credibility of analyses comparing program and industry data.

3. Federal agencies that use NAICS and SBA's small business size standards for their programs, as most of them do, will need time to implement the new size standards and to develop training tools necessary to do so. SBA believes that publishing this direct final rule now provides sufficient time for agencies to determine its impact on their programs and to convert and update their databases and tracking systems for implementation by the beginning of FY 2008.

4. To evaluate and establish small business size standards, SBA uses data that the U.S. Bureau of the Census (Census Bureau) compiles for the Agency from its quinquennial Economic Census of U. S. industry and businesses. SBA acquires this special compilation from the Census Bureau every five years, after each Economic Census. To evaluate and establish meaningful small business size standards, SBA requires the same data and on the same basis as the Census Bureau collects them. Because the next compilation that SBA will obtain from the Census Bureau will be based on NAICS 2007, SBA needs to use NAICS 2007 as the basis for its table of small business size standards.

Alternatives To Adopting NAICS 2007 That SBA Considered

SBA considered retaining the NAICS 2002 codes as the basis for small business size standards. However, SBA believes that doing so will lead to inconsistency among Federal agencies that adopt NAICS 2007 for their programs. More importantly, if SBA does not adopt NAICS 2007 it will not be able to analyze and evaluate small business size standards adequately because available Census Bureau data based on NAICS 2007 industries will not be comparable with NAICS 2002 industry data. Without useful data, SBA cannot properly analyze size standards and their effects on businesses.

SBA considered segmenting the modified NAICS 2002 size standard for cases where the size standard changes instead of applying the guidelines used in previous NAICS revisions. SBA believes this alternative is impractical because it would complicate size standards for minor reasons. Furthermore, the application of the guidelines for NAICS 2007 results in the loss of eligibility for currently-defined small businesses in only one minor industry activity. That occurs for ''communications signal testing and evaluation equipment manufacturing,'' a part of NAICS 334220, ''Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.'' The size standard for that activity decreases from 750 employees to 500 employees. A search of the Dynamic Small Business Search (DSBS) reveals that there are 38 small businesses out of 2,200 small businesses registered in NAICS 334220 having more than 500 employees. However, it is unlikely that many of these businesses, if any, will be affected given the limited activity of ''communications signal testing and evaluation equipment manufacturing.'' All other activities in NAICS 334220 will continue to have a size standard of 750 employees.

Consideration of Comments

This is a direct final rule, but SBA will consider comments. SBA believes that this rule is routine and non-controversial, and SBA anticipates no significant adverse comments to this action. If SBA receives significant any adverse comments, it will withdraw this direct final rule. SBA is publishing concurrently in this issue of the **Federal Register** a proposed rule to modify its Small Business Size Regulations as contemplated in this direct final rule. If SBA does receive significant adverse comments, it will consider the comment(s) before making a final decision. If SBA decides to adopt NAICS 2007 as proposed, or with limited modifications, it will publish a final rule that addresses the comments and explains the basis for its final decision.

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

OMB has determined that this direct final rule is not a ''significant'' regulatory action for purposes of Executive Order (E.O.) 12866. This direct final rule incorporates the latest revisions of the NAICS, which SBA uses to identify industries in the United States economy for purposes of establishing small business size standards. As discussed in the preamble, the size standard of a limited number of activities would change because of the NAICS revisions. Almost all businesses currently defined as small under the NAICS 2002 industries would continue to be small under the NAICS 2007 industries, if adopted for size standards. The rule also affects Federal Government programs that provide a benefit for small businesses. SBA welcomes comments describing the impact on small businesses of the size standard changes resulting from this rule.

For purposes of E.O. 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

For purposes of E.O. 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule does not impose any new reporting or recordkeeping requirements.

When an agency promulgates a rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) requires the agency to prepare an initial regulatory flexibility analysis (IRFA) describing the potential economic impact of the rule on small entities and alternatives that may minimize that impact. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. SBA has determined that this direct final rule as drafted, including the alternatives discussed in the supplementary information above,

would not have a significant impact on a substantial number of small entities.

OMB's NAICS 2007 modifications will result in size standards changes to a minimal number of activities within certain NAICS industries detailed above in the supplementary information, with little, if any, affect on small businesses. Those activities are now part of other, more appropriate or new NAICS codes and their industry descriptions. There will be no changes to the size standards for most NAICS industries and their economic activities. For those that would change, they would create a larger number of enterprises that can qualify for Federal government programs reserved for small businesses.

As stated above, a search of the Dynamic Small Business Search (DSBS) reveals that there are 38 small businesses out of 2,200 small businesses registered in NAICS 334220 having more than 500 employees. However, it is unlikely that many of these businesses, if any, will be affected given the limited activity of ''communications signal testing and evaluation equipment manufacturing.'' All other activities in NAICS 334220 will continue to have a size standard of 750 employees. Therefore, SBA believes that the impact on small businesses will be minimal because these activities represent relatively minor components of the NAICS 2002 industries.

When SBA published a direct final rule to replace the table of small business size standards based on NAICS 1997 with a new one based on NAICS 2002, it certified that for purposes of the Regulatory Flexibility Act, the rule would affect a significant number of small businesses, but that the impact on each business would not be substantial. (67 FR 52597 to 52606, 62292, 67253 and 67102) SBA received no comments to the contrary. No changes have occurred since then. Adopting NAICS 2007 to replace NAICS 2002 as the basis for its table of size standards would have, SBA believes, an even smaller impact.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

■ For the reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, and 662(5); and Pub. L. 105–135, Sec. 401, *et seq.,* 111 Stat, 2592.

§ 121.201 [Amended]

■ 2. Amend § 121.201, in the table ''Small Business Size Standards by NAICS Industry,'' as follows:

■ a. Revise the industry description of NAICS code 112519 ''Other Animal Aquaculture'' to read ''Other Aquaculture.''

■ b. Revise the heading ''Sector 21—Mining'' to read ''Sector 21—Mining, Quarrying, and Oil and Gas Extraction.''

■ c. Revise the industry description of NAICS code 238210, ''Electrical Contractors,'' to read ''Electrical Contractors and other Wiring Installation Contractors.''

■ d. Revise the industry description of NAICS code 316999, ''All Other Leather Good Manufacturing,'' to read ''All Other Leather Good and Allied Product Manufacturing.''

■ e. Revise the industry description of NAICS code 322221, ''Coated and Laminated Packaging Paper and Plastics Film Manufacturing,'' to read ''Coated and Laminated Packaging Paper Manufacturing.''

■ f. Revise the industry description of NAICS code 326111, ''Unsupported Plastics Bag Manufacturing,'' to read ''Plastics Bag and Pouch Manufacturing.''

■ g. Revise the industry description of NAICS code 333997, ''Scale and Balance (except Laboratory) Manufacturing,'' to read ''Scale and Balance Manufacturing.''

■ h. Remove the entry NAICS code 339111, ''Laboratory Apparatus and Furniture Manufacturing.''

■ i. Revise the industry description of NAICS code 441221, ''Motorcycle Dealers,'' to read ''Motorcycle, ATV, and Personal Watercraft Dealers.''

■ j. Revise the heading ''Sectors 48–49—Transportation'' to read ''Sectors 48–49—Transportation and Warehousing.''

■ k. Revise the industry description of NAICS code 492110, ''Couriers,'' to read ''Couriers and Express Delivery Services.''

■ l. Remove the heading ''Subsector 516—Internet Publishing and Broadcasting'' and the entry for NAICS code 516110, ''Internet Publishing and Broadcasting.''

■ m. Remove the entries for NAICS codes 517211, ''Paging;'' 517212, ''Cellular and Wireless Telecommunications;'' and 517310, ''Telecommunications Resellers'' and add in their place the following:

517210	Wireless Telecommunications Carriers (except Satellite)	.....	1,500

■ n. Remove the entries for NAICS codes 517510, ''Cable and Other Program Distribution,'' and 517910, ''Other Telecommunications,'' and add in their place the following:

517911	Telecommunications Resellers	.....	1,500
517919	All Other Telecommunications	$23.5	.....

■ o. Revise the heading ''Subsector 518—Internet Service Providers, Web Search Portals, and Data Processing Services'' to read ''Subsector 518—Data Processing, Hosting, and Related Services.''

■ p. Remove the entries for NAICS codes 518111, ''Internet Service Providers,'' and 518112, ''Web Search Portals.''

■ q. Add immediately after entry for NAICS code 519120, '' Libraries and Archives'' the following:

519130	Internet Publishing and Broadcasting and Web Search Portals	.....	500

■ r. Revise the heading ''Subsector 523—Financial Investments and Related Activities'' to read ''Subsector 523—Securities, Commodity Contracts, and Other Financial Investments and Related Activities.''

■ s. Revise the industry description of NAICS code 541612, ''Human Resources and Executive Search Consulting Services,'' to read ''Human Resources Consulting Services.''

■ t. Remove the entry NAICS code 541710, ''Research and Development in the Physical, Engineering, and Life Sciences,'' and add in its place the following:

541711	Research and Development in Biotechnology.[11]	.....	[11]500
541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology).[11]	.....	[11]500
Except, ...	Aircraft	.....	1,500
Except, ...	Aircraft Parts, and Auxiliary Equipment, and Aircraft Engine Parts	.....	1,000
Except, ...	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts.	.....	1,000

■ u. Remove the entry for NAICS code 561310, ''Employment Placement Agencies,'' and add in its place the following:

561311	Employment Placement Agencies	$6.5	.....
561312	Executive Search Services	$6.5	.....

■ v. Revise the industry description of NAICS code 561422, ''Telemarketing Bureaus,'' to read ''Telemarketing Bureaus and Other Contact Centers.''

■ w. Revise the industry description of NAICS code 722212, ''Cafeterias,'' to read ''Cafeterias, Grill Buffets, and Buffets.''

■ x. Revise the heading ''Sector 81—Other Services'' to read ''Sector 81—Other Services (except Public Administration).''

■ y. Amend footnote 11 by removing *''NAICS code 541710''* and adding in its place *''NAICS codes 541711 and 541712.''*

Dated: August 23, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–17151 Filed 8–28–07; 8:45 am]

BILLING CODE 8025–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0157; FRL–8143–9]

Propylene Oxide; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of propylene oxide and for the reaction product, propylene chlorohydrin, in or on fig; grape, raisin; and plum, prune, dried, when used as a post-harvest fumigant. This rule additionally removes all directions for use currently listed in 40 CFR 180.491. Aberco, Incorporated requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 29, 2007. Objections and requests for hearings must be received on or before October 29, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0157. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Tony Kish, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9443; e-mail address: *kish.tony@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to

certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e–CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0157 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before October 29, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2005–0157, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of June 27, 2007 (72 FR 35242) (FRL–8133–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F6904) by Aberco, Incorporated, 9430 Lanham-Severn Road, Seabrook, MD 20706. The petition requested that 40 CFR 180.491 be amended by establishing a tolerance for residues of the post-harvest fumigant propylene oxide, in or on fig; grape, raisin; and plum, prune, dried at 3.0; 1.0; and 2.0; respectively parts per million (ppm); and that the directions for use currently listed in 40 CFR 180.491 under paragraphs (a)(2) and (a)(4) be deleted. The petition also identified propylene chlorohydrin as a metabolite and included an enforcement method for determination of residues of propylene oxide, propylene chlorohydrin, and propylene bromohydrin in nutmeats, cocoa, and dried spices. That notice referenced a summary of the petition prepared by Aberco, Incorporated, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

The current propylene oxide tolerances include some specific directions for use regarding fumigation frequency, duration and temperature. These directions are currently on affected labels. Because these directions are already on the label, they do not need to be duplicated as part of the tolerance. Furthermore, the propylene oxide Reregistration Eligibility Document (RED) of August 2006 found that these directions should be modified on the label to exactly match the conditions under which residue trials were conducted. Therefore, all directions in 40 CFR 180.491, paragraphs (a)(2) and (a)(4) are no longer needed and can be removed. Similarly, the use directions and other information in paragraphs (a)(1), and (a)(5) can also be removed. As noted in the petition and the RED, use of propylene oxide can result in residues of propylene oxide as well as the reaction product propylene chlorohydrin. Commodities that contain salts that are treated with propylene oxide can react with chloride ion to form the propylene chlorohydrin. Propylene oxide and propylene chlorohydrin are considered separately as residues of concern for risk assessment and tolerance assessment. Based on the differences in physical-chemical properties and toxicological effects, propylene oxide and propylene chlorohydrin were assessed separately, and, EPA is establishing separate tolerances for these chemicals within different paragraphs of tolerance regulation for propylene oxide.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' These provisions were added to the FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for residues of propylene oxide in or on fig; grape, raisin; and plum, prune, dried at 3.0; 1.0; and 2.0 ppm, respectively; and in addition, for residues of the reaction product propylene chlorohydrin at 3.0; 4.0; and 2.0, ppm, respectively. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable

subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by propylene oxide and propylene chlorohydrin, as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov under the docket number for this rule*.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UF) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable uncertainty/safety factors. Short-, intermediate, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable uncertainty/safety factors is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see: *http://www.epa.gov/oppfead1/trac/science. http://www.epa.gov/pesticides/factsheets/riskassess.htm. http://www.epa.gov/pesticides/trac/science/aggregate.pdf*.

A summary of the toxicological endpoints for propylene oxide and propylene chlorohydrin used for human risk assessment can be found at www.regulations.gov in the risk assessment document ''Propylene Oxide–Revised HED Risk Assessment for Reregistration Eligibility Decision Document, July 31, 2006'' at Table 4.4.10 on page 49/95 in Docket ID EPA–HQ–OPP–2005–0157. This identical table can also be found in the Propylene oxide RED document at the following website address: *http://www.epa.gov/oppsrrd1/REDs/propylene_oxide_red.pdf.*

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to propylene oxide and propylene chlorohydrin, EPA considered exposure under the petitioned-for tolerances as well as all existing propylene oxide tolerances in (40 CFR 180.491). EPA assessed dietary exposures from propylene oxide and propylene chlorohydrin in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In estimating acute dietary exposure for propylene oxide and propylene chlorohydrin, EPA used food consumption information from the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA relied upon average field trial residue data and percent crop treated information for all commodities covered by existing tolerances.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Nationwide (CSFII). As to residue levels in food, EPA relied upon average field trial residue data for propylene oxide, tolerance level residues for propylene chlorohydrin, and percent crop treated information for all commodities covered by existing propylene oxide tolerances.

iii. *Cancer*. The cancer assessment for propylene oxide incorporated new residue and percent crop treated data for nutmeats and omitted guar (edible gums) as a fumigated commodity. No cancer exposure assessment is needed for propylene chlorohydrin because the cancer data which were negative for both rats and mice, showed no cancer risk to humans.

iv. *Anticipated residue and percent crop treated (PCT) information*. Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data Call-Ins as are required by FFDCA section 408(b)(2)(E) and authorized under section 408(f)(1) of FFDCA. Data will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

a. The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue;

b. The exposure estimate does not underestimate exposure for any significant subpopulation group; and

c. Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

The percent crop treated values used were as follows: Herbs, spices, and bulb vegetables at 1%; tree nuts at 2%; cocoa bean at 1.3%; and 100% for the new proposed uses — fig grape; raisin; and plum, prune, dried.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no

regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which propylene oxide may be applied in a particular area.

2. *Dietary exposure from drinking water*. For propylene oxide fumigations, residues of propylene oxide and propylene chlorohydrin from drinking water are expected to be negligible because

i. Fumigations are either in closed chambers with emission reduction technology, or in temporary/intermittent outdoor field locations (tents, tarps, rail cars, etc.) at a use rate 53 times lower than that used in closed chambers, both of which result in minimal emissions, and

ii. Due to atmospheric dilution and the physical-chemical characteristics of propylene oxide, negligible residues are expected to be able to enter soil and any nearby water. Therefore, water exposures were not included in the risk assessment.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Propylene oxide and propylene chlorohydrin are not registered for use on any residential sites. However, exposure could occur to people residing near fumigation facilities. Propylene oxide and propylene chlorohydrin emissions monitoring data necessary to quantitatively estimate exposures and risks from sterilization/fumigation facilities are unavailable. Therefore, a qualitative assessment was conducted comparing the risks associated with fugitive emissions from the use of a similar chemical, ethylene oxide, in similar commercial fumigation scenarios. With the use of required buffer zones at designated distances to be added to labels, the assessment found that propylene oxide and propylene chlorohydrin residential exposure risks are not expected to be of concern.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to propylene oxide or propylene chlorohydrin and any other substances and propylene oxide or propylene chlorohydrin do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that propylene oxide or propylene chlorohydrin have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional (''10X'') tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional uncertainty/safety factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. For propylene oxide, there is no quantitative susceptibility between the rat fetuses and the dams from the rat developmental study. The study indicated a possible qualitative susceptibility since the skeletal variations (increased litter incidence for the accessory 7th cervical rib) were observed at the same dose which produced maternal toxic effects (ie. decreased body weight gain, food consumption and food efficiency). The effects in the rat fetuses are being treated as only possible evidence of qualitative sensitivity because it is questionable as to whether an accessory 7th cervical rib, which is a developmental variation, is properly characterized as a more severe effect than decreased body weight gain. Although further analysis, including consideration of historical control information on this effect, might resolve this question, in the absence of this analysis, EPA is taking the conservative position that this particular skeletal variation is possible evidence of qualitative sensitivity.

Susceptibility in rabbits could not be adequately ascertained due to the absence of an acceptable rabbit developmental study. In the 2–generation reproduction study, there is no evidence for quantitative or qualitative susceptibility in pups exposed to propylene oxide since no offspring effects were seen at doses which produced significant systemic toxicity in parents. The degree of concern for the possible qualitative susceptibility effects seen after *in utero* exposures in rats was low because the effects (ie. increased incidence of the 7th cervical rib) are:

i. Skeletal variations and not malformations,

ii. Were seen in the presence of maternal toxicity,

iii. A clear NOAEL was identified, and

iv. This endpoint is used for assessing potential acute dietary risk to the population of concern (Females 13-49). For propylene chlorohydrin, in the reproduction study, quantitative susceptibility effects were evident because decreased pup weights were observed at a dose which had no systemic toxicity in the dams. However, the degree of concern is low for the quantitative susceptibility seen in the reproduction study because a clear NOAEL was identified, and that dose and the endpoint of this study is used for assessing chronic dietary risk in conjunction with the retaining of a 10X database uncertainty factor.

3. *Conclusion*. For both propylene oxide and propylene chlorohydrin, EPA has determined it is necessary to retain the additional 10X safety factor for the protection of infants and children due to the absence of a propylene oxide developmental toxicity study in rabbits, and a chronic study in non-rodents by the oral route; and for propylene chlorohydrin, due to the absence of a developmental toxicity study in rats and rabbits, a chronic toxicity study in nonrodents, and a chronic carcinogenicity study in rats and mice (because the doses used in the existing studies found in the literature are inadequate). Because no acute endpoint has been identified for propylene chlorohydrin, EPA has applied the additional 10X safety factor to the chronic endpoint in assessing acute risk for propylene chlorohydrin. This is a very conservative approach to assessing

acute risk because repeated exposure to a pesticide would typically result in lower NOAELs than an acute exposure. For propylene oxide, there is no evidence for quantitative or qualitative susceptibility in pups exposed to the chemical. For propylene chlorohydrin, the degree of concern is also low for the quantitative susceptibility seen in the reproduction study since the dose and the endpoint of this study is used for assessing chronic dietary risk in conjunction with the retaining of the 10X database uncertainty factor. No additional FQPA factor above 10X is required for either propylene oxide or propylene chlorohydrin. Propylene oxide is missing an adequate rabbit developmental study and a chronic study in a non-rodent species, but an existing developmental study in rabbits indicates effects occur at high doses and a chronic study in rodents is available, therefore a factor of 10X is sufficient. For propylene chlorohydrin, although there are data gaps, there are acceptable longer term studies including chronic studies in rats and mice and a reproduction study in rats. Given these chronic data, an additional safety factor of 10X should be sufficient for the protection of infants and children, as well as the general population and other major identifiable subgroups, from chronic exposure to propylene chlorohydrin. Further, use of the chronic endpoint and the additional 10X safety factor to assess acute risk is such a conservative approach to assessing acute risk that no further safety factor for this risk assessment. Other relevant factors here are that:

i. There is no indication that propylene oxide or propylene chlorohydrin are neurotoxic chemicals and there is no need for developmental neurotoxicity studies or additional uncertainty factors to account for neurotoxicity; and

ii. The exposure databases is unlikely to underestimate exposure because it is based on reliable data on anticipated residues and percent crop treated information.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable uncertainty/safety factors. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-, intermediate, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable uncertainty/safety factors is not exceeded. As discussed prior, because propylene oxide and propylene chlorohydrin residues which could enter water are expected to be negligible, water exposures were not included in the aggregate risk assessments.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from only food to propylene oxide will occupy 7% of the aPAD for the population group (females 13-49 years old) receiving the greatest exposure. Because no acute endpoint has been identified for propylene chlorohydrin, EPA has assessed acute risk for propylene chlorohydrin using the cPAD for propylene chlorohydrin. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from only food to propylene chlorohydrin will occupy 90% of the cPAD for the population group receiving the greatest exposure (infants less than one year old).

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to propylene oxide from only food will utilize 14% of the cPAD for the population group (children 3-5 years). Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to propylene chlorohydrin from only food will utilize 29% of the cPAD for the population group (children 1-2 years). There are no residential uses for propylene oxide or propylene chlorohydrin, but residential bystanders may be exposed to air emissions from fumigation facilities or structures. However, dietary and bystander exposure for either propylene oxide or propylene chlorohydrin cannot be combined for this assessment because the endpoints selected for these exposures are not based on a common effect. Therefore, risk from dietary and inhalation routes were not aggregated.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Though residential exposure could occur with the use of propylene oxide, the potential short-term exposures to propylene oxide and propylene chlorohydrin were not aggregated with chronic dietary food and water exposures for the same because the toxic effects are different.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Though residential exposure could occur with the use of propylene oxide, the potential intermediate-term exposures propylene oxide and propylene chlorohydrin were not aggregated with chronic dietary food and water exposures for the same because the toxic effects are different.

5. *Aggregate cancer risk for U.S. population*. The cancer dietary risk estimates for propylene oxide are below EPA's level of concern; the cancer dietary excess lifetime risk estimate for the U.S. general population is $4x10^{-7}$. EPA considers risks in the range of 1×10^{-6} (such as the cancer risk for propylene oxide) to be negligible and thus pose a reasonable certainty of no harm. There is no cancer risk for propylene chlorohydrin as evidenced by the cancer data which were negative for both rats and mice.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to propylene oxide and propylene chlorohydrin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. An acceptable method was submitted (ABC.METHOD 46306-PPO/Hydrins Rev 1.0; MRID 45301902) which is able to quantify propylene oxide and propylene chlorohydrin residues in various commodities using headspace gas chromatography with flame ionization detection. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex Maximum Residue Levels (MRLs) for residues of propylene oxide and propylene chlorohydrin in any commodity. No Canadian or Mexican MRLs have been established.

V. Conclusion

Therefore, tolerances are established for residues of propylene oxide when used as a post harvest fumigant, in or on fig; grape, raisin; and plum, prune, dried, at 3.0; 1.0; and 2.0; respectively

ppm, and separate tolerances are established for the reaction product, propylene chlorohydrin, in or on fig; grape, raisin; and plum, prune, dried, at 3.0, 4.0, and 2.0 ppm, respectively. The use directions currently listed in 40 CFR 180.491 paragraphs (a)(1), (a)(2), (a)(4) and (a)(5) are also being removed.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 17, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.491 is amended by revising paragraph (a) to read as follows:

§ 180.491 Propylene oxide; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of propylene oxide when used as a postharvest fumigant in or on the following food commodities:

Commodity	Parts per million
Cocoa bean, bean	300
Fig	3.0
Grape, raisin	1.0
Gum, edible	300
Nutmeat, processed, except peanuts	300
Plum, prune, dried	2.0
Spices, processed	300

(2) Tolerances are established for the reaction product, propylene chlorohydrin, from use of propylene oxide as a postharverst fumigant, in or on the following food commodities:

Commodity	Parts per million
Fig	3.0
Grape, raisin	4.0
Plum, prune, dried	2.0

* * * * *

[FR Doc. E7–17010 Filed 8–28–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0349; FRL–8142–1]

Spinosad; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of spinosad in or on fish; fish-shellfish, mollusc; and fish-shellfish, crustacean. Dow AgroSciences LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 29, 2007. Objections and requests for hearings must be received on or before October 29, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0349. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in

the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Barbara Madden, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: *madden.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0349 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before October 29, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0349, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of May 9, 2007 (72 FR 26375) (FRL–8128–1), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F7191) by Dow AgroSciences LLC, 9330 Zionsville Rd., Indianapolis, IN 46268–1053. The petition requested that 40 CFR 180.495 be amended by establishing tolerances for residues of the insecticide spinosad in or on fish; fish-shellfish, molluscs and fish-shellfish crustaceans at 4.0 parts per million (ppm). Spinosad is a fermentation product of *Saccharopolyspora spinosa*, consisting of two related active ingredients: Spinosyn A (Factor A; CAS #131929–60–7) or 2-[(6-deoxy-2,3,4-tri-*O* -methyl-α-*L*-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-14-methyl-1*H*-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione; and Spinosyn D (Factor D; CAS #131929–63–0) or 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-*L*-manno-pyranosyl)oxy]-13-[[5-(dimethyl-amino)-tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-methyl-1*H*-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione. That notice referenced a summary of the petition prepared by Dow AgroSciences LLC, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the

pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' These provisions were added to the FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of spinosad on fish; fish-shellfish, crustacean; and fish-shellfish, mollusc at 4.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

On March 21, 2007 the Agency published a final rule (72 FR 13168 FRL–8114–4) establishing tolerances for residues of spinosad in or on hop, dried cones at 22 ppm and amaranth, grain, stover at 10 ppm; cattle, meat at 2.0 ppm; sheep, meat at 2.0 ppm; goat, meat at 2.0 ppm; horse, meat at 2.0 ppm; poultry, meat at 0.10 ppm; cattle, fat at 50 ppm; sheep, fat at 50 ppm; goat, fat at 50 ppm; horse, fat at 50 ppm; poultry, fat at 1.3 ppm; milk at 7.0 ppm; milk, fat at 85 ppm; egg at 0.30 ppm; cattle, meat byproducts, except liver at 5.0 ppm; sheep, meat byproducts, except liver at 5.0 ppm; goat, meat byproducts, except liver at 5.0 ppm; horse, meat byproducts, except liver at 5.0 ppm; poultry meat byproducts at 0.10 ppm; cattle, liver at 10 ppm; sheep, liver at 10 ppm; goat, liver at 10 ppm; and horse, liver at 10 ppm. When the Agency conducted the risk assessments in support of this tolerance action it assumed that spinosad residues would be present on fish and shellfish (crustacean and mollusc) as well as on all foods covered by the proposed and established tolerances. Residues on fish and shellfish were included because there was a pending application under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, to register spinosad for aquatic use as a mosquito larvacide, a use the Agency determined could result in residues in fish and shellfish. Therefore, establishing the fish and shellfish tolerances will not change the most recent estimated aggregate risks resulting from use of spinosad, as discussed in the **Federal Register** of March 21, 2007. Refer to the March 21, 2007 (72 FR 13168) **Federal Register** document, available at *http://www.regulations.gov*, for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action.

Based on the risk assessments discussed in the final rule published in the **Federal Register** of March 21, 2007 (72 FR 13168), EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to spinosad residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (Liquid Chromatography/Mass Spectroscopy - Accelerated Climate Prediction Initiative) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no established or proposed CODEX Maximum Residue Limits (MRLs) or Canadian or Mexican MRLs for residues of spinosad in or on fish or shellfish.

V. Conclusion

Therefore, tolerances are established for residues of spinosad, consisting of the related active ingredients Spinosyn A, 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-*L*-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-14-methyl-1*H*-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione; and Spinosyn D, 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-*L*-manno-pyranosyl)oxy]-13-[[5-(dimethyl-amino)-tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-methyl-1*H*-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione, in or on fish; fish-shellfish, crustacean; and fish-shellfish, mollusc at 4.0 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the National government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 17, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.495 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.495 Spinosad; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/Revocation Date
* * * *		*
Fish	4.0	None
Fish-shellfish, crustacean	4.0	None
Fish-shellfish, mollusc	4.0	None
* * * *		*

* * * * *

[FR Doc. E7–16897 Filed 8–28–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0428; FRL–8138–6]

Flusilazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of flusilazole in or on soybean seed, soybean aspirated grain fractions, and soybean oil. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on soybeans. This regulation establishes maximum permissible levels for residues of flusilazole in these food commodities. The tolerances expire and are revoked on December 31, 2010.

DATES: This regulation is effective August 29, 2007. Objections and requests for hearings must be received on or before October 29, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0428. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Andrea Conrath, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9356; e-mail address: *conrath.andrea@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may

also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0428 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 29, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2007–0428, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the fungicide flusilazole, (1-[[bis(4-fluorophenyl)methylsilyl]methyl]-1H-1,2,4-triazole), in or on soybean seed at 0.04 parts per million (ppm), soybean aspirated grain fractions at 2.6 ppm, and soybean oil at 0.10 ppm. These tolerances expire and are revoked on December 31, 2010. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR).

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Flusilazole on Soybeans and FFDCA Tolerances

Australasian soybean rust (SBR) is a plant disease caused by 2 fungal species, *Phakopsora pachyrhizi* and *P. meibomiae*, and is spread primarily by windborne spores that can be transported over long distances. SBR models suggest that most of the soybean acreage in the U.S. could be compromised by an SBR epidemic. In accordance with the 2002 Agricultural Bioterrorism Protection Act, SBR was identified by the United Stated Department of Agriculture (USDA) as a select biological agent with the potential to pose a severe threat to the soybean industry and livestock production, in general. As such, USDA has invested in extensive readiness and outreach activities among soybean producers. EPA has authorized under FIFRA section 18 the use of flusilazole on soybeans for control of Australasian Soybean Rust in Minnesota and South Dakota. After having reviewed the states' submissions, EPA concurs that emergency conditions exist for these States.

As part of its assessment of these emergency exemptions, EPA assessed the potential risks presented by residues of flusilazole in or on soybean seed, aspirated grain fractions, and oil. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerances under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although these tolerances expire and are revoked on December 31, 2010, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on soybean seed, aspirated grain fractions, and oil after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed levels that were authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether flusilazole meets EPA's registration requirements for use on soybean or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as the basis for registration of flusilazole by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for use of this pesticide on this crop under section 18 of FIFRA by any State other than those following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for flusilazole, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of flusilazole and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for time-limited tolerances for residues of flusilazole in or on soybean seed at 0.04 ppm, soybean aspirated grain fractions at 2.6 ppm, and soybean oil at 0.10 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is applied in order to protect infants and children, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^6 or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

A summary of the toxicological endpoints for flusilazole used for human risk assessment is discussed in Table 2.3 on page 15 of the human health risk assessment found at *http://www.regulations.gov* Docket No. EPA–HQ–OPP–2007–0428–0001.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* There are currently no tolerances established for this chemical, and it is not registered in the US. Risk assessments were conducted by EPA to assess dietary exposures from flusilazole in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. EPA used the Dietary Exposure Evaluation Model (DEEM™) and data on individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) to estimate exposure to the chemical for each commodity. This acute risk assessment used conservative and high end assumptions to estimate acute exposure and risk, as follows: It was assumed that flusilazole residues in soybean commodities would be at proposed tolerance levels or higher; default processing factors were applied to account for effects that may occur on flusilazole residues from processing into soybean oil; an additional factor was incorporated to account for potential residues of the metabolite of flusilazole, which may occur in soybean commodities; and it was assumed that 100% of the soybean crop grown in the US would be treated. No refinements such as incorporating anticipated residue values or percent of crop treated (PCT) assumptions were used. A high-end estimate for contribution to dietary exposure from residues occurring in drinking water, was incorporated directly into the dietary assessment using the 30–year average annual concentration for surface water generated by the Agency's computer simulation, the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM-EXAMS).

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment EPA used the DEEM™ and data on individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide CSFII to estimate exposure to the chemical for each commodity. The chronic risk assessment also used the same conservative and high-end assumptions as described above in Unit IV.B.1.i., for calculation of the acute exposure estimates and risk.

iii. *Cancer.* The cancer risk assessment incorporated the same dietary exposure estimates as used for the chronic assessment, and used conservative and high-end assumptions to calculate cancer risk estimates over a lifetime of exposure, as described above in Unit IV.B.1.i.

2. *Dietary exposure from drinking water.* Since this exemption is the only use of a new pesticide in the US, there

are no residues in drinking water, and thus there are no monitoring exposure data to use for a comprehensive dietary exposure analysis and risk assessment for flusilazole in drinking water. Because of this, the Agency calculated drinking water concentration estimates which may occur from this use, by reliance on simulation or modeling taking into account data on the physical characteristics of flusilazole.

None of the models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health LOC.

Based on available data, and for this section 18 use only, the Agency determined that the residue of concern for drinking water is flusilazole *per se*. Some surface and ground water contamination may occur based on the proposed application rates and the environmental fate properties of flusilazole, although mobility in soil is expected to be low.

Based on Tier II screening-level surface water modeling for drinking water, the Agency estimated concentrations in surface water to be used for acute, chronic non-cancer, and cancer exposure assessment. Tier II surface water concentrations for parent flusilazole were calculated using PRZM-EXAMS. PRZM/EXAMS incorporates an index reservoir environment and includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin. EPA used the Screening Concentration Ground Water (SCI-GROW2) model to estimate ground water concentrations. These results for both surface and ground water are consistent with the fate and transport properties of flusilazole.

Modeled estimates of drinking water concentrations were incorporated directly into the dietary assessments using the estimated drinking water concentrations (EDWC) for surface water generated by the PRZM-EXAMS model. For the acute assessment, the peak concentration of 1.81 parts per billion (ppb) was used to assess the contribution to surface drinking water; for the chronic assessment, the annual mean value of 0.92 ppb was used to assess the contribution to surface drinking water. The EDWC for groundwater was estimated by SCI-GROW2 at 0.05 ppb. Since the EDWC estimated by SCI-GROW2 for groundwater was lower, at 0.05 ppb, the higher, more conservative, surface water estimate of 1.81 ppb was used for assessing contribution to dietary exposures.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Flusilazole is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and'' other substances that have a common mechanism of toxicity.''

Flusilazole is a member of the triazole-containing class of pesticides. Although triazole pesticides act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between this pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same sequence of major biochemical events (EPA, 2002). In triazoles a variable pattern of toxicological responses is found. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the triazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that triazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the triazole pesticides. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

Flusilazole is a triazole-derived pesticide. This class of compounds can form the common metabolites 1,2,4-triazole conjugates (triazole alanine and triazole acetic acid). To support existing tolerances and to establish new tolerances for triazole-derived pesticides, EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazole alanine, and triazole acetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high end estimates of both dietary and non-dietary exposures). In addition, on the assessment involving the 1,2,4-triazole metabolites, the Agency retained the additional 10X FQPA safety factor for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment may be found at *http://www.epa.gov/opprd001/factsheets/tetraHHRA.pdf*.

In that risk assessment, EPA concluded that, based upon the available information and on conservative estimates of hazard and exposure, there are no human health risk issues associated with 1,2,4-triazole or its metabolites that would preclude re-registration of the triazole-derivative fungicides registered to date or conditional registrations of the triazole-derivative fungicides that have been proposed as of September 1, 2005, which included the use of flusilazole on soybean.

C. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental and Reproductive toxicity studies*. There are several developmental and 2-generation reproduction studies in rats and rabbits that provide evidence of increased susceptibility to in utero and/or pre-, postnatal exposure to flusilazole.

Developmental effects such as cleft palate, resorption and skeletal malformations were observed in rats. In rabbits, increased resorptions were observed. In both species, these effects occurred either in the absence of maternal toxicity and/or at a dose that caused only marginal maternal toxicity (decreased food consumption, body weight gain). In a multi-generation reproduction study in rats a decrease in pup viability at birth and decreased post-natal survival were observed either in the absence of maternal toxicity and/or at a dose that caused only marginal maternal toxicity.

3. *Prenatal and postnatal sensitivity*. The evidence of increased susceptibility observed in rats and rabbits is off-set because EPA has set the acute (0.02 milligrams/kilograms (mg/kg) and chronic (0.002 mg/kg) RfDs below the dose at which these developmental effects were observed, and these are therefore protective with respect to these effects. Although NOAELs were not identified in some developmental and 2-generation reproduction studies, there are well established NOAELs in most of the developmental and 2-generation reproduction studies, and the RfDs are below these NOAELs. Because EPA has set the RfDs well below the levels at which developmental effects are observed, the increased susceptibility seen in these studies does not warrant retaining the 10X FQPA safety factor (i.e., it is 1X).

4. *Conclusion*. For the purpose of this emergency quarantine exemption, EPA relied on studies reviewed by the European Union as well as some preliminary internal study reviews. Therefore, the stated toxicological endpoints are applicable for this emergency section 18 use only, since upon detailed review of the new and existing data, the final conclusions may change. EPA determined that, in terms of hazard, there are low concerns and no residual uncertainties with regard to pre-and/or post-natal toxicity. EPA determined that the FQPA 10X safety factor to protect infants and children should be removed (reduced to 1X) based on the following:

i. The toxicity database for flusilazole is complete.

ii.The dietary food exposure assessment utilizes proposed tolerance-level or higher residues and 100% CT information for all commodities. By using these screening-level assessments, acute and chronic exposures/risks will not be underestimated.

iii.The dietary drinking water assessment (Tier 2 estimates) utilizes values generated by model and associated modeling parameters which are designed to provide conservative, health-protective, high-end estimates of water concentrations.

iv.There are no residential uses of flusilazole.

D. Aggregate Risks and Determination of Safety

The Agency currently has two ways to estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses. First, a screening assessment can be used, in which the Agency calculates drinking water levels of comparison (DWLOCs), which are used as a point of comparison against estimated drinking water concentrations (EDWCs). The DWLOC values are not regulatory standards for drinking water, but are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. More information on the use of DWLOCs in dietary aggregate risk assessments can be found at *http://www.epa.gov/oppfead1/trac/science/screeningsop.pdf*.

More recently, the Agency has used another approach to estimate aggregate exposure through food, residential and drinking water pathways. In this approach, modeled surface water and ground water EDWCs are directly incorporated into the dietary exposure analysis, along with food. This approach provides a more realistic estimate of exposure because actual body weights and water exposures are then added to estimates and water consumption from the CSFII are used. The combined food and water exposures are then added to estimated exposure from residential sources to calculate aggregate risks. The resulting exposure and risk estimates are still considered to be high end, due to the assumptions used in developing drinking water modeling inputs. The risk assessment for flusilazole used in this tolerance document uses this approach of incorporating water exposure directly in to the dietary exposure analysis.

There are no registered or proposed uses of flusilazole, which result in residential exposures, so the aggregate exposure assessment required by FFDCA section 408(b)(2)(D)(vi) consists solely of dietary (food + drinking water) exposures.

Aggregate exposure risk assessments were conducted by incorporating the drinking water concentrations directly into the dietary exposure assessment for the acute and chronic aggregate exposures (food + drinking water). These aggregate exposures do not exceed the Agency's LOC since they were less than 100% of the acute and chronic population adjusted doses (PADs).

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and drinking water to flusilazole is estimated at 0.000326 mg/kg/day, and occupies 1.6% of the aPAD for females 13–49 years, the population subgroup of concern. There were no acute toxicity concerns for other population subgroups noted, based upon the available toxicology studies, and therefore, no acute toxicology endpoints assigned. Therefore, EPA does not expect aggregate dietary exposure for this population subgroup of concern to exceed the LOC of 100% of the aPAD.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to flusilazole from food and water will utilize 8.1% of the cPAD for the U.S. population, 21% of the cPAD for All Infants <1 year old (the most highly exposed subpopulation), and 17% of the cPAD for Children 1–2 years old, and Children 3–5 years old (both subgroups). Flusilazole is unregistered, and therefore there are no residential uses or exposures. EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table of this unit:

AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) DIETARY (FOOD + WATER) EXPOSURE TO FLUSILAZOLE

Population Subgroup	Dietary exposure (mg/kg/day)	% cPAD utilized
General U.S. Population	0.000162	8.1
All Infants (< 1 year old)	0.000429	21
Children 1–2 years old	0.000334	17

AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) DIETARY (FOOD + WATER) EXPOSURE TO FLUSILAZOLE—Continued

Population Subgroup	Dietary exposure (mg/kg/day)	% cPAD utilized
Children 3–5 years old	0.000338	17
Children 6–12 years old	0.000243	12
Youth 13–19 years old	0.000161	8.0
Adults 20–49 years old	0.000143	6.7
Adults 50+ years old	0.000110	5.5
Females 13–49 years old	0.000128	6.4

3. *Short-term and intermediate risks*. Short-term and intermediate aggregate exposures take into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Flusilazole is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Aggregate cancer risk for U.S. population*. In its cancer analysis, EPA assumed 100% of the soybean crop in the US would be treated with flusilazole. EPA used the DEEM 7.81 default processing factors to estimate residues that might occur in processed commodities (i.e. soybean oil) and assumed that flusilazole residues in or on soybean commodities would be equal to the proposed tolerance levels. Drinking water was incorporated directly into the dietary assessment using the 30–year average annual concentration for surface water generated by the PRZM-EXAMS model as a high-end estimate. The resulting cancer risk estimate for the general U.S. population (4.5×10^{-7}) was less than EPA's LOC (generally 1×10^{-6}).

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to flusilazole residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodologies (gas chromatography/nitrogen-phosphorus detector; and gas chromatography/mass-selective detector) are available to enforce the tolerance expression. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits (MRLs) for the residues of flusilazole on soybean commodities. Therefore, there are no international harmonization concerns at this time.

VI. Conclusion

Therefore, the tolerances are established for residues of flusilazole, (1-[[bis(4-fluorophenyl)methylsilyl]methyl]-1H-1,2,4-triazole), in or on soybean seed at 0.04 parts per million (ppm), soybean aspirated grain fractions at 2.6 ppm, and soybean oil at 0.10 ppm.

VII. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 22, 2007.

Martha Monell,

Acting Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.630 is added to read as follows:

§ 180.630 Flusilazole; tolerances for residues.

(a) *General.* [Reserved]

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the fungicide, flusilazole, (1-[[bis(4-fluorophenyl)methylsilyl]methyl]-1H-1,2,4-triazole) in connection with use of the pesticide under Section 18 emergency exemptions granted by EPA. The tolerances expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/revocation date
Soybean, aspirated grain fractions	2.6	12/31/2010
Soybean, seed	0.04	12/31/2010
Soybean, oil	0.10	12/31/2010

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertant residues.* [Reserved]

[FR Doc. E7–17110 Filed 8–28–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0327; FRL–8135–6]

Flutriafol; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of flutriafol *per se* in or on soybean. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) authorizing use of the pesticide on soybean. This regulation establishes a maximum permissible level for residues of flutriafol *per se* in this food commodity. The tolerance will expire and is revoked on December 31, 2010.

DATES: This regulation is effective August 29, 2007. Objections and requests for hearings must be received on or before October 29, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0327. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Public Docket, in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Princess Campbell, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8033; e-mail address:*campbell.princess@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at

http://www.epa.gov/fedrgstr. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0327 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 29, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2007–0327, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408 (e) and 408 (l)(6) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a 21 U.S.C. 346a, is establishing a time-limited tolerance for residues of the fungicide flutriafol *per se* in or on soybean at 0.10 parts per million (ppm). The tolerance will expire and is revoked on December 31, 2010.

Section 408(l)(6) of the FFDCA allows EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408 (b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance or exemption from the requirement for a tolerance for pesticide (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

III. Emergency Exemption for Flutriafol on Soybeans and FFDCA Tolerances

EPA has authorized under section 18 of FIFRA the use of flutriafol on soybeans for control of Australasian soybean rust initially in Minnesota and South Dakota and subsequently in multiple states. After having reviewed the submissions, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of flutriafol *per se* in or on soybean seed. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with section 18 of FIFRA. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance will expire and is revoked on December 31, 2010, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on soybean after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicates that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether flutriafol meets EPA's registration requirements for use on soybeans or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of flutriafol by a State for special local needs under section 24(c) of FIFRA. Nor does this tolerance serve as the basis for any States other than those following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for flutriafol, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the

available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of flutriafol *per se* on soybean at 0.10 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by flutriafol as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found in the docket at *http://www.regulations.gov*, docket ID number EPA–HQ–OPP–2007–0327 (see memo from Tyler, *et al.* dated March 30, 2006).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, and estimates risk in terms of the probability of occurrence of additional cancer cases. Under certain specific circumstances, margin of exposure (MOE) calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for flutriafol used for human risk assessment is shown as follows:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FLUTRIAFOL FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose used in risk assessment, UF	FQPA SF* and level of concern for risk assessment	Study and toxicological effects
Acute dietary (Females 13–50 years of age)	NOAEL = <10.0 millgrams/kilogram/day (mg/kg/day) UF = 1,000X Acute RfD = 0.01 mg/kg/day	FQPA SF = 10X acute population adjusted dose (aPAD) = acute Reference Dose (RfD)	Developmental toxicity - rat LOAEL = 10.0 mg/kg/day based on increased number of unossified odontoids, variations in occipitals and calcanea of hindlimbs and increased scores of m,anus and pes
Acute dietary (General population including infants and children)	NOAEL = Not applicable	FQPA SF = Not applicable	An endpoint of concern attributable to a single dose for general population was not identified
Chronic dietary (All populations)	NOAEL = <10.0 mg/kg/day UF = 1,000X Chronic RfD = 0.01 mg/kg/day	FQPA SF = 10X cPAD = chronic RfD	Developmental toxicity-rat LOAEL = 10.0 mg/kg/day based on increased number of unossified odontoids, variations in occipitals and calcanea of hindlimbs and increased scores of m,anus and pes
Short-term dermal (1 to 7 days) (Residential)	Dermal (or oral) study NOAEL = <10.0 mg/kg/day (Dermal absorption rate = 11.0%)	LOC for MOE = 1,000 (residential)	Developmental toxicity -rat LOAEL = 10.0 mg/kg/day based on increased number of unossified odontoids, variations in occipitals and calcanea of hindlimbs and increased scores of m,anus and pes
Intermediate-term dermal (1 week to several months) (Residential)	Dermal (or oral) study NOAEL = <10.0 mg/kg/day (Dermal absorption rate = 11.0%	LOC for MOE = 1,000 (residential)	Developmental toxicity -rat LOAEL = 10.0 mg/kg/day based on increased number of unossified odontoids, variations in occipitals and calcanea of hindlimbs and increased scores of m,anus and pes
Long-term dermal (Several months to lifetime) (Residential)	Dermal (or oral) study NOAEL = <10.0 mg/kg/day (Dermal absorption rate = 11.0% when appropriate)	LOC for MOE = 1,000 (residential)	Developmental toxicity -rat LOAEL = 10.0 mg/kg/day based on increased number of unossified odontoids, variations in occipitals and calcanea of hindlimbs and increased scores of m,anus and pes
Short-term inhalation (1 to 7 days) (Residential)	Inhalation (or oral) study NOAEL = <10.0 mg/kg/day (Inhalation absorption rate = 100%)	LOC for MOE = 1,000 (residential)	Developmental toxicity -rat LOAEL = 10.0 mg/kg/day based on increased number of unossified odontoids, variations in occipitals and calcanea of hindlimbs and increased scores of m,anus and pes

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FLUTRIAFOL FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure/Scenario	Dose used in risk assessment, UF	FQPA SF* and level of concern for risk assessment	Study and toxicological effects
Intermediate-term inhalation (1 week to several months) (Residential)	Inhalation (or oral) study NOAEL = <10.0 mg/kg/day (Inhalation absorption rate = 100%)	LOC for MOE = 1,000 (residential)	Developmental toxicity - rat LOAEL = 10.0 mg/kg/day based on increased number of unossified odontoids, variations in occipitals and calcanea of hindlimbs and increased scores of m,anus and pes
Long-term inhalation (several months to lifetime) (Residential)	Inhalation (or oral) study NOAEL = <10.0 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 1,000 (residential)	Developmental toxicity -rat LOAEL = 10.0 mg/kg/day based on increased number of unossified odontoids, variations in occipitals and calcanea of hindlimbs and increased scores of m,anus and pes
Cancer (oral, dermal, inhalation)	NA. not carcinogenic to humans based on the lack of evidence for carcinogenicity in mice and rats	NA	NA

* The reference to the FQPA SF refers to any additional safety factor retained. UF = uncertainty factor; FQPA SF = Special FQPA safety factor; NOAEL = no observed adverse effect level; LOAEL = lowest observed adverse effect level; PAD = population adjusted dose (a = acute, c = chronic); RfD = reference dose; MOE = margin of exposure; and LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Flutriafol is a new pesticide ingredient for the U.S. Therefore, there are no existing tolerances for flutriafol in 40 CFR part 180. Based on the available residue data on soybeans, residues of flutriafol are not expected to exceed 0.10 ppm on soybeans that have been treated in accordance with the emergency exemption use directions. Risk assessments were conducted by EPA to assess dietary exposures from flutriafol in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the United States Department of Agriculture (USDA) Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: An acute dietary exposure assessment was performed for females 13-49 years old using tolerance level residue, and 100 per cent treated (PCT) information for all soybean commodities. Dietary Exposure and Risk Assessment, DP#322530, J. Tyler, 3/30/06.

This assessment concludes that the acute dietary exposure estimates are below the Agency's level of concern (<100% aPAD) for the general U.S. population and all population subgroups.

ii. *Chronic exposure.* In conducting this chronic dietary exposure and risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA Nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A chronic dietary exposure assessment was performed for the general U.S. population and various population subgroups using tolerance level residue, and 100% CT information for all soybean commodities.

This assessment concludes that the chronic dietary exposure estimates are below the Agency's level of concern (<100% cPAD) for the general U.S. population and all population subgroups. The most highly exposed population subgroup is all infants (<1 year old) at 2.7% cPAD

iii. *Cancer.* Preliminary analysis of tumor data indicated a significant increased trend in combined adenomas and carcinomas in male rat liver tumors. However, there were no significant differences noted in pair-wise comparison with controls in either male or female liver tumors. Thus, based on lack of evidence of carcinogenicity in both rats and mice carcinogenicity studies, the chemical was considered as ''not likely'' to be carcinogenic to humans.

2. *Dietary exposure from drinking water.* This emergency exemption use of flutriafol is the first use for this fungicide in the U.S. As such, there are no monitoring exposure data for water for this ingredient. Thus, in this risk assessment, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of flutriafol. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

The Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and (SCI-GROW) screening models were used to estimate surface water and ground water concentrations of flutriafol. Based on the PRZM/EXAMS and SCI-GROW models the estimated environmental concentrations (EECs) of flutriafol for acute exposures are estimated to be 4.0 µg/L for surface water and 2.0 µg/L for ground water. The EECs of flutriafol for chronic exposures are estimated to be 2.0 µg/L for surface water and 1.0µg/L for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 4.0 µg/L was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 2.0 µg/L was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Flutriafol is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to flutriafol and any other substances Flutriafol is a member of the triazole-containing class of pesticides commonly referred to as the conazoles. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events (EPA, 2002). In conazoles, however, a variable pattern of toxicological responses is found. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

Flutriafol is a triazole-derived pesticide. This class of compounds can form the common metabolite 1,2,4-triazole and two triazole conjugates (triazole alanine and triazole acetic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides. U.S. EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazole alanine, and triazole acetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high end estimates of both dietary and non-dietary exposures). In addition, in assessing the risks for this group of chemicals the Agency retained the additional 10X FQPA safety factor for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment for the conazole group is found in the propiconazole reregistration docket at *http://www.regulations.gov*, Docket ID Number EPA–HQ–OPP–2005–0497.

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-natal and post-natal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Pre-natal and post-natal sensitivity.* There is no evidence of increased susceptibility in the developmental study in rabbits or in the 2-generation reproduction study in the rat. Although some effects were seen in the rat developmental study, in the rat 2-generation reproduction toxicity study the effects occurred at the same dose that caused maternal toxicity indicating there was no increased susceptibility. These effects were considered to be study variations, and the Agency also retained the 10X safety factor to account for these variations due to the lack of a well defined NOAEL in the critical study. Therefore, there is no residual uncertainty for pre-natal and/or post-natal susceptibility. (See memo from Tyler, *et al.* dated March 30, 2006.

3. *Conclusion.* The Agency evaluated the quality of the hazard and exposure data and determined that based on the available hazard and exposure data, the FQPA SF should be retained.

E. Aggregate Risks and Determination of Safety

EPA conducted human-health risk assessments for acute and chronic dietary exposures (food and drinking water only). Because there are no uses of flutriafol that are expected to result in residential exposures, this aggregate risk assessment takes into consideration dietary food and drinking water exposure only. Therefore, the acute and chronic aggregate estimates would be the same as the dietary exposure results. All aggregate exposure and risk estimates are below EPA's level of concern.

1. *Acute risk.* Including the proposed use on soybeans, human-health risk assessments have been conducted for the following exposure scenarios: Acute and chronic dietary exposures (food and drinking water only). All aggregate exposure and risk estimates are below the Agency's level of concern. Because there are no uses of flutriafol that are expected to result in residential exposures, this aggregate risk assessment takes into consideration dietary food and drinking water exposure only. The acute (95th percentile) dietary exposure estimates are below HED's level of concern <100% aPAD for females 13-49 year old (10% aPAD).

2. *Chronic risk.* The chronic dietary exposures estimates are below HED's level of concern <100% chronic population adjusted dose (cPAD) for the general population and all population subgroups. The most highly-exposed population subgroup is all infants (<1 year old) at 2.7% cPAD:

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

4. *Aggregate cancer risk for U.S. population.* For this assessment, EPA has concluded that flutriafol is, ''not likely to be carcinogenic to humans.''

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to flutriafol residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (Method RAM 219/04) submitted by the registrant, (email from C. Rodia to J. Tyler, 3/23/06) is available to enforce

the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently tolerances of 0.10 ppm for soybean in Brazil and South Africa.

V. Conclusion

Therefore, the tolerance is established for residues of flutriafol, in or on soybean at 0.10 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 22, 2007.

Martha Monell,

Acting Director, Office Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.629 is added to read as follows:

§ 180.629 Flutriafol; tolerance for residues.

(a) *General*. [Reserved]

(b) *Section 18 emergency exemptions*. Time-limited tolerances specifed in the above table are established for residues of the fungicide flutriafol *per se* (2,4'-difluoro-α-(1H -1,2,4-triazol-1-yl-methyl)-benzhydryl alcohol) in or on the specified agricultural commodities, resulting from use of the pesticide pursuant to section 18 emergency exemptions. The tolerances expire and are revoked on the date specified in the following table.

	Parts per million	Expiration/revocation date
Soybean	0.10	December 31, 2010

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. E7–17112 Filed 8–28–07; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 67 and 68

[USCG–2005–20258]

RIN 1625–AA95

Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade

AGENCY: Coast Guard, DHS.

ACTION: Final rule; announcement of effective date for collection of information requirements.

SUMMARY: In the final rule with this same title published October 18, 2006, we noted that the Office of Management and Budget (OMB) had not approved a collection-of-information associated with the amendments by §§ 68.65, 68.70, 68.75, 68.100, 68.107, and 68.109, to the collection-of-information requirements for vessel owners and charterers applying to engage in the coastwise trade under the lease financing provisions of 46 U.S.C. 12119 (formerly 46 U.S.C. 12106(e)). OMB has since approved that collection-of-information and the portions of the rule with these requirements are effective August 29, 2007.

DATES: *Effective Date:* The amendments to 46 CFR 68.65, 68.70, 68.75, 68.100, 68.107, and 68.109, as published in the **Federal Register** on October 18, 2006 (71 FR 61413) are effective August 29, 2007.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call Patricia Williams, Deputy Director, National Vessel Documentation Center, U.S. Coast Guard, telephone 304–271–2506. If you have questions on viewing the docket (USCG–2005–20258), call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION: A final rule concerning applications to engage in the coastwise trade under the lease financing provisions of 46 U.S.C. 12119 became effective on November 17, 2006, with the exception of the collection of information requirements in the amendments to 46 CFR 68.65, 68.70, 68.75, 68.100, 68.107, and 68.109. Title 46 CFR 68.65 requires a vessel owner who seeks an initial, or renewal of, coastwise endorsement, to submit a certification of ownership in writing to the Director of the NVDC. 46 CFR 68.70 requires an owner of a vessel other than a barge qualified to engage in coastwise trade under the lease financing provisions of 46 U.S.C. 12119 to submit a certified application for the coastwise operation of a vessel under a demise charter. 46 CFR 68.75 requires an owner of a barge qualified to engage in coastwise trade under the lease financing provisions of 46 U.S.C. 12119 to submit certifications and documents supporting an application for the coastwise operation of a barge under a demise charter. 46 CFR 68.100 sets out applicability provisions and phase-in dates. 46 CFR 68.107 requires an owner of a vessel other than a barge qualified to engage in coastwise trade under the lease financing provisions of 46 U.S.C. 12119 to submit certifications, certain supporting documents, and a certified application for the coastwise operation of a vessel under a demise charter. 46 CFR 68.109 requires an owner of a barge qualified to engage in coastwise trade under the lease financing provisions of 46 U.S.C. 12119 to submit certifications, certain supporting documents, and a certified application for the coastwise operation of a vessel under a demise charter.

The final rule that contained the provisions for these certifications, supporting documents and applications was published in the **Federal Register** on October 18, 2006 (71 FR 61413), and is available electronically through the docket (USCG–2005–20258) at *http://dms.dot.gov/*. As required by 44 U.S.C. 3507(d), we submitted a copy of the final rule to OMB for its review. On January 10, 2007, after reviewing the rule, OMB approved the collection-of-information required in §§ 68.65, 68.70, 68.75, 68.100, 68.107, and 68.109 of the final rule under OMB control number 1625–0027.

Dated: August 22, 2007.

J.G. Lantz,

Acting Assistant Commandant for Prevention, U.S. Coast Guard.

[FR Doc. E7–17075 Filed 8–28–07; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–3556; MB Docket No. 07–79; RM–11362]

Radio Broadcasting Service; Dinosaur, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division grants a petition for rule making filed by Cumulus Licensing LLC (''Petitioner'') to allot Channel 262C0 at Dinosaur, Colorado. Channel 262C0 can be allotted at Dinosaur in compliance with the Commission's minimum distance separation requirements at 40–03–26 North Latitude and 108–39–46 West Longitude with a site restriction of 36.4 kilometers (22.6 miles) southeast of the community's reference. A filing window for Channel 262C0 at Dinosaur, Colorado will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective September 24, 2007.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 07–79, adopted August 8, 2007, and released August 10, 2007. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Dinosaur, Channel 262C0.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–17013 Filed 8–28–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

RIN 1018–AU59

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2007 Season; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: We, the Fish and Wildlife Service (Service), are correcting the **DATES** section of a final rule that appeared in the **Federal Register** of April 11, 2007 (72 FR 18317). The final rule published harvest regulations for migratory bird subsistence hunting in Alaska for the 2007 season.

DATES: This correction is effective August 29, 2007.

FOR FURTHER INFORMATION CONTACT: Fred Armstrong, (907) 786–3887, or Donna Dewhurst, (907) 786–3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION: We published a final rule in the **Federal Register** of Wednesday, April 11, 2007 (72 FR 18317) that published harvest regulations for migratory bird subsistence hunting in Alaska for the 2007 season.

In that rule, the **DATES** section incorrectly established an August 31, 2007, expiration date for amendments to subpart A of 50 CFR part 92. Subpart A of 50 CFR part 92 sets forth the general provisions for migratory bird subsistence harvest in Alaska, and we intended the amendments we made to subpart A of 50 CFR part 92 to be permanent.

Therefore, in rule FR Doc. E7–6667 published on April 11, 2007 (72 FR 18318), make the following correction. On page 18318, in the first column, revise the **DATES** section to read:

DATES: The amendments to subparts A and C of 50 CFR part 92 become effective May 11, 2007. The amendments to subpart D of 50 CFR part 92 are effective April 11, 2007, through August 31, 2007.

Dated: August 23, 2007.

Sara Prigan,

Federal Register Liaison, Fish and Wildlife Service.

[FR Doc. E7–17132 Filed 8–28–07; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 72, No. 167
Wednesday, August 29, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[Docket No. PRM–2–14]

State of Nevada; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the State of Nevada (petitioner). The petition has been docketed by the NRC and has been assigned Docket No. PRM–2–14. The petitioner asserts that NRC will conduct a ''mandatory'' formal hearing if NRC dockets a Department of Energy (DOE) application for a construction authorization for the proposed Yucca Mountain repository and requests that the NRC amend its regulations governing rules of practice in hearings by specifying the issues to be heard in this ''mandatory'' hearing. The petitioner believes an amendment is necessary because NRC's rules of practice currently only specify issues to be heard in mandatory hearings on nuclear reactor construction permits.

DATES: Submit comments by November 13, 2007. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number PRM–2–14 in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information such as name, address, phone, e-mail address, etc., will not be removed from your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address comments about our rulemaking Web site to Carol Gallagher, (301) 415–5905; (e-mail *cag@nrc.gov*). Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

For a copy of the petition, write to Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or Toll-Free: 1–800–368–5642 or E-mail: *MTL@NRC.Gov.*

SUPPLEMENTARY INFORMATION:

Background

The NRC has received a petition for rulemaking dated June 19, 2007, submitted by the State of Nevada (petitioner) entitled, ''Petition by the State of Nevada for Rulemaking to Specify Issues for the Yucca Mountain Mandatory Hearing.'' The petitioner requests that the NRC amend 10 CFR Part 2, which governs rules of practice for licensing proceedings. The petitioner notes that section 189a.(1)(A) of the Atomic Energy Act of 1954, as amended (AEA), requires a mandatory hearing for nuclear power reactor construction permits and that issues for these proceedings are specified by regulation. The petitioner asserts that in 1981 the Commission decided that there would be a ''mandatory'' formal adjudicatory hearing on any application for a construction authorization for the proposed Yucca Mountain repository but that the issues for that ''mandatory'' hearing are not specified by regulation. The petitioner states that it would be inappropriate for the Commission to delegate to the NRC staff the function of determining the issues in this hearing because the petitioner asserts the NRC staff will be an adversary party in the proceeding. The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM–2–14. The NRC is soliciting public comment on the petition for rulemaking.

Discussion of the Petition

The petitioner asserts that under section 161c. of the AEA, the NRC reserves the power to require a mandatory hearing even when the AEA does not require such a proceeding. The petitioner states that 10 CFR 2.104(a) provides for issuance of a notice of hearing when required by the AEA or the Commission's regulations, and when the NRC ''finds that a hearing is required in the public interest.'' The petitioner notes that the NRC developed procedures for licensing of a high-level waste (HLW) repository during the early 1980s and published these procedures on February 25, 1981 (46 FR 13971). The petitioner asserts that these

procedures include a requirement for a ''mandatory hearing'' at the repository construction authorization stage. The petitioner also asserts that, in 2004, when NRC revised its rules of practice, it reaffirmed the decision to hold a ''mandatory,'' formal hearing for an HLW repository. (See, 69 FR 2182, 2204; January 14, 2004.)

The petitioner states that although 10 CFR 2.101(e)(8) requires that the notice of a ''mandatory'' hearing on a repository construction authorization ''shall recite the matters specified in § 2.104(a) of this part,'' § 2.104(a) does not specify the matters of fact or law to be considered. The petitioner contrasts this provision with the notices of mandatory hearings for nuclear power reactors under § 2.104(b) that require the presiding officer to consider the evidence and make all safety and environmental findings required for issuance of the license, and to determine if the NRC staff's review of the application was adequate. The petitioner asserts this has resulted in a ''regulatory gap'' in the NRC's rules of practice.

The petitioner is concerned that the scope of issues to be considered must extend beyond admitted contentions ''because otherwise the decision to hold a mandatory hearing would be nothing more than an empty gesture.'' The petitioner states that its proposed amendment is patterned after § 2.104(b) but notes that this provision currently applies only to nuclear power reactor proceedings. The petitioner believes that the recent notices of hearing for uranium enrichment facilities such as in the USEC, Inc. (American Centrifuge Plant), CLI–04–30, 60 NRC 426 (2004) proceeding offer an easier template to follow for a hearing. The petitioner also states that because there is no reason to distinguish the ''mandatory'' hearing for Yucca Mountain from the ''mandatory'' hearing for other HLW repositories subject to 10 CFR Part 60, its suggested amendments would apply to repository facilities subject to either Part 60 or Part 63.

The Petitioner's Proposed Amendment

The petitioner requests that 10 CFR 2.101(e)(8) be amended by deleting the reference to § 2.104(a) and replacing it with a reference to § 2.104(f). The petitioner also requests that § 2.104 be amended by adding a new paragraph (f) to read as follows:

(f)(1) In the case of an application for a construction authorization for a high-level waste repository under parts 60 or 63 of this chapter, the notice of hearing will state that the matters of fact and law to be considered are whether the application complies with the Nuclear Waste Policy Act of 1982, as amended, and the standards set forth in 10 CFR 60.10, 60.21, and 60.24(a), or 10 CFR 63.10, 63.21, and 63.24(a), as applicable, and whether the requirements of 10 CFR 60.31 or 10 CFR 63.31, as applicable, have been met.

(2) Regardless of whether the proceeding is contested or uncontested, the Atomic Safety and Licensing Board will determine the following, without conducting a de novo review of the application:

(i) Whether the application and record of the proceeding contain sufficient information, and whether the NRC staff's review of the application has been adequate, to support findings to be made by the Director of the Office of Nuclear Materials Safety and Safeguards with respect to the matters set forth in paragraph (f)(1) of this section; and

(ii) Whether the review conducted by the NRC Staff under 10 CFR part 51 has been adequate.

(3) Regardless of whether the proceeding is contested or uncontested, the Atomic Safety and Licensing Board will, in its initial decision, under Subpart A of 10 CFR part 51, and the Nuclear Waste Policy Act of 1982, as amended:

(i) Determine whether the requirements of section 102(2)(A), (C), and (D) of NEPA, section 114(f) of the Nuclear Waste Policy Act of 1982, as amended, and subpart A of 10 CFR part 51 have been complied with in the proceeding;

(ii) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and

(iii) Determine whether the authorization should be issued, denied, or further conditioned to protect the environment.

(4) If the proceeding becomes a contested proceeding, the Board shall also make findings of fact and conclusions of law on admitted contentions within the scope of paragraphs (f)(1), (2), and (3) of this section. With respect to matters set forth in paragraph (f)(1) of this section but not covered by admitted contentions, the Atomic Safety and Licensing Board will make the determinations set forth in paragraph (f)(2) of this section without conducting a de novo evaluation of the application.

Lastly, the petitioner requests that 10 CFR 2.700 be amended by deleting ''2.101(f)(8)'' and replacing it with ''2.104(f).''

The petitioner states that its proposed § 2.104(f)(2) would apply to both contested and uncontested proceedings. The petitioner explains that the safety findings required by this proposed amendment focus on the adequacy of the record of the proceeding, the license application, and the NRC staff's review. The petitioner states that limiting these findings to uncontested cases, as it believes was the NRC's prior practice, implies that these findings are irrelevant in litigating contested issues. However, the petitioner states that litigation and findings on contested issues necessarily include findings on the adequacy of the record, the application, and the NRC staff's review, insofar as these are relevant to contested issues.

The petitioner also explains that proposed 2.104(f)(1) and (3) reference the Nuclear Waste Policy Act of 1982, as amended (NWPA), ''for completeness'' and because of the National Environmental Policy Act provision in section 114(f) of the NWPA. Lastly, the petitioner explains that proposed § 2.104(f)(4) includes a specific reference to paragraphs (f)(1)–(f)(3) of that section for clarity because these provisions define the scope of material issues that may be litigated. The petitioner requests that the NRC act expeditiously on these proposed amendments to 10 CFR Part 2 as detailed in this petition for rulemaking because the DOE intends to file a construction authorization license application for the Yucca Mountain facility with the NRC no later than June 30, 2008.

Dated at Rockville, Maryland, this 23rd day of August 2007.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E7–17106 Filed 8–28–07; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF68

Small Business Size Standards; Adoption of 2007 North American Industry Classification System for Size Standards

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to amend its Small Business Size Regulations by incorporating the Office of Management and Budget's (OMB) 2007 modifications to the North American Industry Classification System (NAICS) in its table of small business size standards. These modifications are few in number and result in revisions to size standards for three industries and four activities within other industries.

SBA believes that this proposal is routine and non-controversial, and the Agency anticipates no significant adverse comment. Therefore, SBA is publishing concurrently in this issue of the **Federal Register** a direct final rule to expedite modifying its Small

Business Size Regulations as described in this proposed rule. If SBA receives any significant adverse comment to the direct final rule, it will withdraw it, and consider those comments in connection with this proposed rule.

DATES: SBA must receive comments to this proposed rule on or before September 28, 2007.

ADDRESSES: You may submit comments, identified by RIN 3245–AF68, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail, for paper, disk, or CD/ROM submissions:* Gary M. Jackson, Division Chief for Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.
- *Hand Delivery/Courier:* Gary M. Jackson, Division Chief for Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please submit the information to Carl J. Jordan, Office of Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416, or send an email to *sizestandards@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination of whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA adopted the NAICS industry definitions as a basis for its table of small business size standards effective October 1, 2000, as a replacement to the discontinued Standard Industrial Classification (SIC) System (65 FR 30836, May 15, 2000). Since that time, OMB has issued two updates modifying the NAICS. SBA incorporated OMB's first updated modifications, termed NAICS 2002 (66 FR 3825, January 16, 2001), in its table of size standards effective October 1, 2002 (67 FR 52597, August 13, 2002). OMB published its most recent updates, termed NAICS 2007, on May 16, 2006 (71 FR 28532). SBA is proposing adoption of those updated modifications in its table of small business size standards, as explained below.

For complete information on the relationship between NAICS 2002 and NAICS 2007, please see the U.S. Bureau of the Census (Census Bureau) Web site at *http://www.census.gov/epcd/www/naicsdoc.htm#fedreg.* That Census Bureau Web site provides complete information on its establishment and implementation of NAICS 2007, including its notice of final action in the March 16, 2006 **Federal Register**. The Census Bureau also provides the following correspondence tables: (1) 2007 NAICS–US matched to 2002 NAICS–US; and (2) 2002 NAICS–US matched to 2007 NAICS–US.

How SBA Arrived at the Size Standards for NAICS 2007 Industries

On October 22, 1999, SBA published in the **Federal Register** (64 FR 57188) a proposed rule to establish a new table of small business size standards based on the NAICS. SBA developed guidelines to transition from the SIC System to NAICS. The guidelines were intended to minimize the impact of a new industry classification system on SBA's small business size standards. Table 1, below, lists those guidelines. SBA received no negative comments to the guidelines specified in the proposed rule. Because the guidelines produced the desired results and received public acceptance, SBA published a final rule on May 5, 2000 (65 FR 3825) (corrected on September 5, 2000, 65 FR 53533) establishing a new table of size standards based on NAICS without change from its proposed rule. For purposes of adopting NAICS 2007, SBA is proposing to apply the same guidelines in this rule.

TABLE 1

If the NAICS 2007 Industry is composed of:	The size standard for the NAICS Industry will be:
1. One NAICS 2002 industry or part of one NAICS 2002 industry	The same size standard as for the NAICS 2002 industry or part.
2. More than one NAICS 2002 industry; parts of more than one NAICS 2002 industry; or one or more NAICS 2002 industry and part(s) of one or more NAICS 2002 industry, *and* they all have the same size standard.	The same size standard as for those NAICS 2002 industries or parts of NAICS 2002 industries.
3. More than one NAICS 2002 industry; parts of more than one NAICS 2002 industry; or one or more NAICS 2002 industry and part(s) of one or more NAICS 2002 industry, *and* they do not all have the same size standard.	The same size standard as for the NAICS 2002 industry or NAICS 2002 industry part(s) that most closely matches the economic activity described by the NAICS 2007 industry.
4. One or more parts of an NAICS 2002 industry for which SBA has established specific size standards (*i.e.*, further segmented).	The same size standard as for that specific NAICS 2002 industry part.
5. One or more NAICS 2002 industries and/or parts of NAICS 2002 industries that were categorized broadly under the NAICS system as Services, Retail Trade, Wholesale Trade or Manufacturing, but are now categorized differently under NAICS.	SBA will (a) apply a size standard measure (*e.g.*, number of employees, annual receipts) typical of the NAICS Sector; and (b) apply the corresponding ''anchor'' size standard. The ''anchor'' size standards are $6.5 million (effective December 6, 2005) for Services and Retail Trade, 500 employees for Manufacturing and 100 employees for Wholesale Trade (except for Federal procurement programs, where the standard is 500 employees under the non-manufacturer rule).

Additions to and Deletions From NAICS 2002 for NAICS 2007

It is important to note the following:

1. NAICS 2007 changes affect 59 NAICS 2002 industries.

2. One NAICS 2002 Subsector and 12 NAICS 2002 industries were eliminated and their activities reclassified in other more appropriate or new NAICS 2007 industries as listed in Table 2:

TABLE 2

NAICS 2002 code	NAICS 2002 industry description
NAICS 339111	Laboratory Apparatus and Furniture Manufacturing.
Subsector 516	Internet Publishing and Broadcasting.
NAICS 516110	Internet Publishing and Broadcasting.
NAICS 517211	Paging.
NAICS 517212	Cellular and Other Wireless Telecommunications.
NAICS 517310	Telecommunications Resellers.
NAICS 517510	Cable and Other Program Distribution.
NAICS 517910	Other Telecommunications.
NAICS 518111	Internet Service Providers.
NAICS 518112	Web Search Portals.
NAICS 525930	Real Estate Investment Trusts.
NAICS 541710	Research and Development in the Physical, Engineering, and Life Sciences.
NAICS 561310	Employment Placement Agencies.

3. The following eight industries listed in Table 3 are new in NAICS 2007:

TABLE 3

NAICS 2007 code	NAICS 2007 industry description
NAICS 517210	Wireless Telecommunications Carriers (except Satellite).
NAICS 517911	Telecommunications Resellers.
NAICS 517919	All Other Telecommunications.
NAICS 519130	Internet Publishing and Broadcasting and Web Search Portals.
NAICS 541711	Research and Development in Biotechnology.
NAICS 541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology).
NAICS 561311	Employment Placement Agencies.
NAICS 561312	Executive Search Services.

Changes in Size Standards Resulting From SBA's Proposed Adoption of NAICS 2007

Most of the industries in NAICS 2002 remain unchanged under NAICS 2007. This proposal to adopt NAICS 2007 will change size standards for only three industries and four activities from parts of industries. Other changes in NAICS 2007 consist of revised industry descriptions or the reclassification of industry activities in other industries having the same size standard.

Table 4 lists all of OMB's modifications to the NAICS 2002 industries. The first three columns show the modified NAICS 2002 industry's six-digit code, its current size standard, and its industry description. The last three columns show the NAICS 2007 industry (new, existing and revised) that incorporates the modified NAICS 2002 industry, its industry description, and new size standard. By comparing the modified NAICS 2002 industry and size standard with the related NAICS 2007 industry and size standard, a user can identify the size standard SBA proposes for the applicable NAICS 2007 industries. Following Table 4, SBA explains the basis for the limited number of cases that do result in a change to the size standard.

TABLE 4.—THIS TABLE INCLUDES ONLY THOSE NAICS CODES WHERE SIZE STANDARDS ARE AFFECTED. THEY ARE ARRANGED ACCORDING TO THE ORDER OF THEIR NAICS 2007 INDUSTRY CODES

2002 NAICS code	Current size standards	2002 NAICS U.S. description	2007 NAICS code	2007 NAICS U.S. description	New size standards
111211	$0.75 million	Potato Farming.			
*111219	$0.75 million	Other Vegetable (except Potato) and Melon Farming—*sweet potato and yam farming*.	111211	Potato Farming	$0.75 million.
*111219	$0.75 million	Other Vegetable (except Potato) and Melon Farming—*except sweet potato and yam farming*.	111219	Other Vegetable (except Potato) and Melon Farming.	$0.75 million.
*111998	$0.75 million	All Other Miscellaneous Crop Farming—*except algae, seaweed, and other plant aquaculture*.	111998	All Other Miscellaneous Crop Farming.	$0.75 million.
112519	$0.75 million	Other Animal Aquaculture.			
*111998	$0.75 million	All Other Miscellaneous Crop Farming—*algae, seaweed, and other plant aquaculture*.	112519	Other Aquaculture	$0.75 million.
314999	500 employees	All Other Miscellaneous Textile Product Mills.			

TABLE 4.—THIS TABLE INCLUDES ONLY THOSE NAICS CODES WHERE SIZE STANDARDS ARE AFFECTED. THEY ARE ARRANGED ACCORDING TO THE ORDER OF THEIR NAICS 2007 INDUSTRY CODES—Continued

2002 NAICS code	Current size standards	2002 NAICS U.S. description	2007 NAICS code	2007 NAICS U.S. description	New size standards
*315211	500 employees	Men's and Boys' Cut and Sew Apparel Contractors—*embroidery contractors.*			
*315212	500 employees	Women's, Girls' and Infants' Cut and Sew Apparel Contractors—*embroidery contractors*.	314999	All Other Miscellaneous Textile Product Mills.	500 employees.
*315211	500 employees	Men's and Boys' Cut and Sew Apparel Contractors—*except embroidery contractors*.	315211	Men's and Boys' Cut and Sew Apparel Contractors.	500 employees.
*315212	500 employees	Women's, Girls' and Infants' Cut and Sew Apparel Contractors—*except embroidery contractors*.	315212	Women's, Girls' and Infants' Cut and Sew Apparel Contractors.	500 employees.
*326199	500 employees	All Other Plastics Product Manufacturing—*except inflatable plastic boats*.	326199	All Other Plastics Product Manufacturing.	500 employees.
*326291	500 employees	Rubber Product Manufacturing for Mechanical Use—*except rubber tubing for mechanical use*.	326291	Rubber Product Manufacturing for Mechanical Use.	500 employees.
*326299	500 employees	All Other Rubber Product Manufacturing—*except inflatable rubber boats.*			
*326291	500 employees	Rubber Product Manufacturing for Mechanical Use—*rubber tubing for mechanical use*.	326299	All Other Rubber Product Manufacturing.	500 employees.
333298	500 employees	All Other Industrial Machinery Manufacturing.			
*339111	500 employees	Laboratory Apparatus and Furniture Manufacturing—*laboratory distilling equipment*.	333298	All Other Industrial Machinery Manufacturing.	500 employees.
333415	750 employees	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.			
*339111	500 employees	Laboratory Apparatus and Furniture Manufacturing—*laboratory freezers*.	333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.	750 employees.
333994	500 employees	Industrial Process Furnace and Oven Manufacturing.			
*339111	500 employees	Laboratory Apparatus and Furniture Manufacturing—*laboratory furnaces and ovens*.	333994	Industrial Process Furnace and Oven Manufacturing.	500 employees.
333997	500 employees	Scale and Balance (except Laboratory) Manufacturing.			
*339111	500 employees	Laboratory Apparatus and Furniture Manufacturing—*laboratory scales and balances*.	333997	Scale and Balance Manufacturing.	500 employees.
333999	500 employees	All Other Miscellaneous General Purpose Machinery Manufacturing.			
*339111	500 employees	Laboratory Apparatus and Furniture Manufacturing—*laboratory centrifuges*.	333999	All Other Miscellaneous General Purpose Machinery Manufacturing.	500 employees.
*334220	750 employees	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing—*except communications signal testing and evaluation equipment*.	334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.	750 employees.
334515	500 employees	Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals.			
*334220	750 employees	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing—*communications signal testing and evaluation equipment*.	334515	Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals.	500 employees.
336612	500 employees	Boat Building.			
*326199	500 employees	All Other Plastics Product Manufacturing—*inflatable plastics boats.*			
*326299	500 employees	All Other Rubber Product Manufacturing—*inflatable rubber boats*.	336612	Boat Building	500 employees.
337127	500 employees	Institutional Furniture Manufacturing.			

TABLE 4.—THIS TABLE INCLUDES ONLY THOSE NAICS CODES WHERE SIZE STANDARDS ARE AFFECTED. THEY ARE ARRANGED ACCORDING TO THE ORDER OF THEIR NAICS 2007 INDUSTRY CODES—Continued

2002 NAICS code	Current size standards	2002 NAICS U.S. description	2007 NAICS code	2007 NAICS U.S. description	New size standards
*339111	500 employees	Laboratory Apparatus and Furniture Manufacturing—*laboratory furniture (e.g., stools, tables, benches)*.	337127	Institutional Furniture Manufacturing.	500 employees.
339113	500 employees	Surgical Appliance and Supplies Manufacturing.			
*339111	500 employees	Laboratory Apparatus and Furniture Manufacturing—*except laboratory furniture, scales, balances, furnaces, ovens, centrifuges, distilling equipment, and freezers*.	339113	Surgical Appliance and Supplies Manufacturing.	500 employees.
517110	1500 employees	Wired Telecommunications Carriers.			
517510	$13.5 million	Cable and Other Program Distribution.			
*518111	$23.0 million	Internet Service Providers—*broadband Internet service providers (e.g., cable, DSL)*.	517110	Wired Telecommunications Carriers.	1500 employees.
517211	1500 employees	Paging.			
517212	1500 employees	Cellular and Other Wireless Telecommunications.	517210	Wireless Telecommunications Carriers (except Satellite).	1500 employees.
517310	1500 employees	Telecommunications Resellers	517911	Telecommunications Resellers.	1500 employees.
517910	$13.5 million	Other Telecommunications	517919	All Other Telecommunications.	$23.0 million.
*518111	$23.0 million	Internet Service Providers *ISPs providing services via client-supplied telecommunications connections.*			
516110	500 employees	Internet Publishing and Broadcasting	519130	Internet Publishing and Broadcasting and Web Search Portals.	500 employees.
518112	$6.5 million	Web Search Portals.			
519190	$6.5 million	All Other Information Services	519190	All Other Information Services.	$6.5 million.
525990	$6.5 million	Other Financial Vehicles.			
*525930	$6.5 million	Real Estate Investment Trusts—*hybrid or mortgage REITs primarily in underwriting or investing in mortgages*.	525990	Other Financial Vehicles.	$6.5 million.
531110	$6.5 million	Lessors of Residential Buildings and Dwellings.			
*525930	$6.5 million	Real Estate Investment Trusts—*hybrid or equity REITs primarily leasing residential Buildings and Dwellings*.	531110	Lessors of Residential Buildings and Dwellings.	$6.5 million.
531120	$6.5 million	Lessors of Nonresidential Buildings (except Miniwarehouses).			
*525930	$6.5 million	Real Estate Investment Trusts—*hybrid or equity REITs primarily leasing nonresidential buildings*.	531120	Lessors of Nonresidential Buildings (except Miniwarehouses).	$6.5 million.
531130	$23.5 million	Lessors of Miniwarehouses and Self-Storage Units.			
*525930	$6.5 million	Real Estate Investment Trusts—*hybrid or equity REITs primarily leasing miniwarehouses and self-storage units*.	531130	Lessors of Miniwarehouses and Self-Storage Units.	$23.5 million.
531190	$6.5 million	Lessors of Other Real Estate Property..			
*525930	$6.5 million	Real Estate Investment Trusts—*hybrid or equity REITs primarily leasing other real estate property*.	531190	Lessors of Other Real Estate Property.	$6.5 million.
*541612	$6.5 million	Human Resources and Executive Search Consulting Services—*except executive search consulting services*.	541612	Human Resources Consulting Services.	$6.5 million.
*541710	500 employees	Research and Development in the Physical, Engineering, and Life Sciences—*biotechnology research and development*.	541711	Research and Development in Biotechnology.	500 employees.
*541710	500 employees	Research and Development in the Physical, Engineering, and Life Sciences—*except biotechnology research and development*.	541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology).	500 employees.
561310	$6.5 million	Employment Placement Agencies	561311	Employment Placement Agencies..	$6.5 million.

TABLE 4.—THIS TABLE INCLUDES ONLY THOSE NAICS CODES WHERE SIZE STANDARDS ARE AFFECTED. THEY ARE ARRANGED ACCORDING TO THE ORDER OF THEIR NAICS 2007 INDUSTRY CODES—Continued

2002 NAICS code	Current size standards	2002 NAICS U.S. description	2007 NAICS code	2007 NAICS U.S. description	New size standards
*541612	$6.5 million	Human Resources and Executive Search Consulting Services—*executive search consulting services*.	561312	Executive Search Services.	$6.5 million.

* Indicates that this activity within the identified NAICS 2002 code is now an activity within the related NAICS 2007 industry.

As shown in Table 4, the NAICS 2007 modifications lead to a proposed revision to the current size standard for a limited number of industries or activities. The basis for the revisions to seven size standards are discussed below:

1. NAICS 339111, ''Laboratory Apparatus and Furniture Manufacturing,'' (part) *laboratory freezers.* NAICS 2007 eliminated NAICS 339111. The various activities of NAICS 339111 are reclassified in other NAICS 2007 codes having the same 500 employee size standard, except for laboratory freezer manufacturing. Laboratory freezer manufacturing is reclassified in NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing,'' having a size standard of 750 employees. SBA proposes to retain the 750 employee size standard for NAICS 333415 because laboratory freezer manufacturing represents a small part of that industry (Rule #3).

2. NAICS 334220, ''Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,'' (part) *communications signal testing and evaluation equipment.* The current size standard for NAICS 334220 is 750 employees. The activity of ''communications signal testing and evaluation equipment manufacturing'' in NAICS 2007 is reclassified in NAICS 334515, ''Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals,'' having a size standard of 500 employees. SBA proposes to retain the 500 employee size standard for NAICS 334515 because ''communications signal testing and evaluation equipment manufacturing'' represents a small part of that industry (Rule #3).

3. NAICS 518111, ''Internet Service Providers,'' (part) *broadband Internet service providers (e.g., cable, DSL*). The current size standard for NAICS 518111 is $23.0 million in average annual receipts. The activity, ''broadband Internet services providers (*e.g.*, cable, DSL),'' in NAICS 2007 is reclassified in NAICS 517110, ''Wired Telecommunications Carriers,'' having a 1,500 employee size standard. SBA proposes to retain the 1,500 employee size standard for NAICS 517110 because broadband Internet services providers represent a small part of that industry (Rule #3).

4. NAICS 517510, ''Cable and Other Program Distribution.'' NAICS 2007 eliminated NAICS 517510. The current size standard for NAICS 517510 is $13.5 million in average annual receipts. In NAICS 2007, all activities of NAICS 517510 are reclassified in 517110, ''Wired Telecommunications Carriers,'' having a 1,500 employee size standard. SBA proposes to apply the 1,500 employee size standard for NAICS 517110 because the Cable and Other Program Distribution industry is much smaller than the Wired Telecommunications Carriers industry (Rule #3).

5. NAICS 517910, ''Other Telecommunications.'' NAICS 2007 eliminated NAICS 517910. NAICS 2007 establishes a new industry titled ''All Other Telecommunications,'' NAICS 517919, comprising all activities of NAICS 517910 having a size standard of $13.5 million and most activities from NAICS 518111, ''Internet Service Providers (ISP),'' having a size standard of $23 million. As discussed in # 3 above, the activity of ''broadband Internet services providers'' in NAICS 518111 is reclassified in NAICS 517110. SBA proposes to apply the $23 million size standard for that industry because ISP establishments providing services via client-supplied telecommunications connections represent the larger component of the new NAICS 517919 (Rule #3).

6. NAICS 518112, ''Web Search Portals.'' NAICS 2007 eliminated NAICS 518112 and NAICS 516110, ''Internet Publishing and Broadcasting,'' having size standards of $6.5 million and 500 employees, respectively. NAICS 2007 combines these two industries to form a new six-digit industry—NAICS 519130, ''Internet Publishing and Broadcasting and Web Search Portals.'' SBA proposes to apply the 500 employee size standard for NAICS 519130 because the Internet Publishing and Broadcasting industry is much larger than the Web Search Portals industry (Rule #3).

7. NAICS 525930, ''Real Estate Investment Trusts,'' (part) *hybrid or equity REITs primarily leasing miniwarehouses and self-storage units.* NAICS 2007 eliminated NAICS 525930. The various activities of NAICS 525930 are reclassified in NAICS 2007 codes having the same $6.5 million size standard, except for the activity of hybrid or equity REITs primarily leasing miniwarehouses and self-storage units. That activity is reclassified in NAICS 531130, ''Lessors of Miniwarehouses and Self-Storage Units,'' having a $23.5 million size standard. SBA proposes to retain the $23.5 million size standard for NAICS 531130 because hybrid or equity REITs primarily leasing miniwarehouses and self-storage units represent a small part of that industry (Rule #3).

Alternatives to Adopting NAICS 2007 That SBA Considered

SBA considered retaining the NAICS 2002 codes as the basis for small business size standards. However, SBA believes that doing so will lead to inconsistency among Federal agencies that adopt NAICS 2007 for their programs. More importantly, if SBA does not adopt NAICS 2007 it will not be able to analyze and evaluate small business size standards adequately because available Census Bureau data based on NAICS 2007 industries will not be comparable with NAICS 2002 industry data. Without useful data, SBA cannot properly analyze size standards and their effects on businesses.

SBA considered segmenting the modified NAICS 2002 size standard for cases where the size standard changes instead of applying the guidelines used in previous NAICS revisions. SBA believes this alternative is impractical because it would complicate size standards for minor reasons. Furthermore, the application of the guidelines for NAICS 2007 results in the loss of eligibility for currently-defined small businesses in only one minor

industry activity. That occurs for ''communications signal testing and evaluation equipment manufacturing,'' a part of NAICS 334220, ''Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.'' The size standard for that activity decreases from 750 employees to 500 employees. A search of the Dynamic Small Business Search (DSBS) reveals that there are 38 small businesses out of 2,200 small businesses registered in NAICS 334220 having more than 500 employees. However, it is unlikely that many of these businesses, if any, will be affected given the limited activity of ''communications signal testing and evaluation equipment manufacturing.'' All other activities in NAICS 334220 will continue to have a size standard of 750 employees.

Consideration of Comments

SBA will take in account all submitted comments on this proposed rule and on the alternatives it considered. SBA believes that this proposal is routine and non-controversial. Therefore, SBA is publishing concurrently in this issue of the **Federal Register** a direct final rule to expedite modifying its size standards as explained in this proposed rule. If SBA decides to adopt NAICS 2007 as proposed, or with limited modifications, it will publish a final rule that addresses the comments and explains the basis for its final decision.

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

OMB has determined that this proposed rule is not a ''significant'' regulatory action for purposes of Executive Order (E.O.) 12866. This proposed rule incorporates the latest revisions of the NAICS, which SBA uses to identify industries in the United States economy for purposes of establishing small business size standards. As discussed in the preamble, the size standard of a limited number of activities would change because of the NAICS revisions. Almost all businesses currently defined as small under the NAICS 2002 industries would continue to be small under the NAICS 2007 industries, if adopted for size standards. The rule also affects Federal Government programs that provide a benefit for small businesses. SBA welcomes comments describing the impact on small businesses of the size standard changes resulting from this rule.

For purposes of E.O. 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

For purposes of E.O. 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule does not impose any new reporting or recordkeeping requirements.

When an agency promulgates a proposed rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) requires the agency to prepare an initial regulatory flexibility analysis (IRFA) describing the potential economic impact of the rule on small entities and alternatives that may minimize that impact. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. SBA has determined that this proposed rule as drafted, including the alternatives discussed in the supplementary information above, will not have a significant impact on a substantial number of small entities.

OMB's NAICS 2007 modifications will result in size standards changes to a minimal number of activities within certain industries detailed above in the supplementary information, with little, if any, affect on small businesses. Those activities are now part of other, more appropriate or new NAICS codes and their industry descriptions. There will be no changes to the size standards for most NAICS industries and their economic activities. For those that would change, they would create a larger number of enterprises that can qualify for Federal government programs reserved for small businesses.

As stated above, a search of the Dynamic Small Business Search (DSBS) reveals that there are 38 small businesses out of 2,200 small businesses registered in NAICS 334220 having more than 500 employees. However, it is unlikely that many of these businesses, if any, will be affected given the limited activity of ''communications signal testing and evaluation equipment manufacturing.'' All other activities in NAICS 334220 will continue to have a size standard of 750 employees. Therefore, SBA believes that the impact on small businesses will be minimal because these activities represent relatively minor components of the NAICS 2002 industries.

When SBA published a direct final rule to replace the table of small business size standards based on NAICS 1997 with a new one based on NAICS 2002, it certified that for purposes of the Regulatory Flexibility Act, the rule would affect a significant number of small businesses, but that the impact on each business would not be substantial. (67 FR 52597 to 52606, 62292, 67253 and 67102) SBA received no comments to the contrary. No changes have occurred since then. Adopting NAICS 2007 to replace NAICS 2002 as the basis for its table of size standards would have, SBA believes, an even smaller impact.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, and 662(5); and Pub. L. 105–135, Sec. 401, *et seq.*, 111 Stat. 2592.

§ 121.201 [Amended]

2. Amend § 121.201, in the table ''Small Business Size Standards by NAICS Industry,'' as follows:

a. Revise the industry description of NAICS code 112519 ''Other Animal Aquaculture'' to read ''Other Aquaculture.''

b. Revise the heading ''Sector 21—Mining'' to read ''Sector 21—Mining, Quarrying, and Oil and Gas Extraction.''

c. Revise the industry description of NAICS code 238210, ''Electrical Contractors,'' to read ''Electrical Contractors and other Wiring Installation Contractors.''

d. Revise the industry description of NAICS code 316999, ''All Other Leather Good Manufacturing,'' to read ''All Other Leather Good and Allied Product Manufacturing.''

e. Revise the industry description of NAICS code 322221, ''Coated and Laminated Packaging Paper and Plastics Film Manufacturing,'' to read ''Coated and Laminated Packaging Paper Manufacturing.''

f. Revise the industry description of NAICS code 326111, ''Unsupported Plastics Bag Manufacturing,'' to read

''Plastics Bag and Pouch Manufacturing.''

g. Revise the industry description of NAICS code 333997, ''Scale and Balance (except Laboratory) Manufacturing,'' to read ''Scale and Balance Manufacturing.''

h. Remove the entry NAICS code 339111, ''Laboratory Apparatus and Furniture Manufacturing.''

i. Revise the industry description of NAICS code 441221, ''Motorcycle Dealers,'' to read ''Motorcycle, ATV, and Personal Watercraft Dealers.''

j. Revise the heading ''Sectors 48—49—Transportation'' to read ''Sectors 48—49—Transportation and Warehousing.''

k. Revise the industry description of NAICS code 492110, ''Couriers,'' to read ''Couriers and Express Delivery Services.''

l. Remove the heading ''Subsector 516—Internet Publishing and Broadcasting'' and the entry for NAICS code 516110, ''Internet Publishing and Broadcasting.''

m. Remove the entries for NAICS codes 517211, ''Paging;'' 517212, ''Cellular and Wireless Telecommunications;'' and, 517310 ''Telecommunications Resellers'' and add in their place the following:

517210	Wireless Telecommunications Carriers (except Satellite)		1,500

n. Remove the entries for NAICS codes 517510, ''Cable and Other Program Distribution,'' and 517910, ''Other Telecommunications,'' and add in their place the following:

517911	Telecommunications Resellers		1,500
517919	All Other Telecommunications	$23.5	

o. Revise the heading ''Subsector 518—Internet Service Providers, Web Search Portals, and Data Processing Services'' to read ''Subsector 518—Data Processing, Hosting, and Related Services.''

p. Remove the entries for NAICS codes 518111, ''Internet Service Providers,'' and 518112, ''Web Search Portals''.

q. Add immediately after entry for NAICS code 519120, '' Libraries and Archives'' the following:

519130	Internet Publishing and Broadcasting and Web Search Portals		500

r. Revise the heading ''Subsector 523—Financial Investments and Related Activities'' to read ''Subsector 523—Securities, Commodity Contracts, and Other Financial Investments and Related Activities.''

s. Revise the industry description of NAICS code 541612, ''Human Resources and Executive Search Consulting Services,'' to read ''Human Resources Consulting Services.''

t. Remove the entry NAICS code 541710, ''Research and Development in the Physical, Engineering, and Life Sciences,'' and add in its place the following:

541711	Research and Development in Biotechnology [11]		[11]500
541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology) [11]		[11]500
Except,	Aircraft		1,500
Except,	Aircraft Parts, and Auxiliary Equipment, and Aircraft Engine Parts		1,000
Except,	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts.		1,000

u. Remove the entry for NAICS code 561310, ''Employment Placement Agencies,'' and add in its place the following:

561311	Employment Placement Agencies	$6.5	
561312	Executive Search Services	6.5	

v. Revise the industry description of NAICS code 561422, ''Telemarketing Bureaus,'' to read ''Telemarketing Bureaus and Other Contact Centers.''

w. Revise the industry description of NAICS code 722212, ''Cafeterias,'' to read ''Cafeterias, Grill Buffets, and Buffets.''

x. Revise the heading ''Sector 81—Other Services'' to read ''Sector 81—Other Services (except Public Administration).''

y. Amend footnote 11 by removing ''*NAICS code 541710*'' and adding in its place ''*NAICS codes 541711 and 541712*.''

Dated: August 23, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–17150 Filed 8–28–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28529; Airspace Docket No. 07–ANM–12]

Proposed Modification of Class E Airspace; Tucson, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Tucson, AZ. Additional controlled airspace is necessary to encompass holding patterns and intermediate segments at Tucson International Airport. The FAA is proposing this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at Tucson International Airport, Tucson, AZ.

DATES: Comments must be received on or before October 15, 2007.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room @12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2007–28529; Airspace Docket No. 07–ANM–12, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Western Service Area, System Support Group, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 917–6728.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2007–28529 and Airspace Docket No. 07–ANM–12) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2007–28529 and Airspace Docket No. 07–ANM–12''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the **Federal Register**'s web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Area, System Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace at Tucson International Airport. Additional controlled airspace is necessary to encompass hold-in-lieu patterns at the LIPTE Initial Fix/Instrument Approach Fix (IF/IAF) at Tucson International Airport, Tucson, AZ and encompass intermediate segments from the ILEEN Distance Measuring Equipment (DME) fix to COPEY DME fix. The FAA is proposing this action to enhance the safety and management of IFR operations at Tucson International Airport, Tucson, AZ.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would 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 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Tucson, AZ [Modified]

Tucson International Airport, AZ
(Lat. 32°06′58″ N., long. 110°56′28″ W.)

Ryan Field, AZ
(Lat. 32°08′32″ N., long. 111°10′28″ W.)

That airspace extending upward from 700 feet above the surface within an 8.7-mile

radius of Tucson International Airport and within that airspace bounded by a line beginning at lat. 32°11′01″ N., long.111°05′33″ W.; to lat. 32°21′28″ N., long.111°16′33″ W.; to lat. 32°35′55″ N., long. 110°57′47″ W.; to lat. 32°01′35″ N., long. 110°21′18″ W.; to lat. 31°44′6″ N., long. 110°42′30″ W.; to lat. 31°58′20″ N., long. 110°57′51″ W., to intercept the 8.7-mile radius southwest of the Tucson International Airport; thence clockwise via the 8.7-mile radius to the point of beginning; and that airspace within a 4.3-mile radius of Ryan Field and within 3.5 miles each side of the Ryan Field localizer course extending from the 4.3-mile radius to 7 miles west of the outer marker. That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 32°33′00″ N., long. 111°45′02″ W.; to lat. 32°33′00″ N., long. 110°52′02″ W.; thence north via long.110°52′00″ W., to the south boundary of V–94, thence southeast via the south boundary of V–94; to long.110°00′02″ W., thence south to lat. 31°39′00″ N., long.110°00′02″ W.; to lat. 31°39′00″ N., long. 111°00′02″ W.; to lat. 32°00′00″ N., long. 111°45′02″ W., to the point of beginning.

* * * * *

Issued in Seattle, Washington, on August 20, 2007.

Clark Desing,

Manager, System Support Group, Western Service Center.

[FR Doc. E7–17068 Filed 8–28–07; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 51

[EPA–HQ–OAR–2006–0888, FRL–8461–9]

RIN 2060–AH37

Prevention of Significant Deterioration New Source Review: Refinement of Increment Modeling Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of reopening of comment period.

SUMMARY: The EPA is announcing a reopening of the public comment period on our proposed amendments for the Prevention of Significant Deterioration New Source Review: Refinements of Increment Modeling Procedures (June 6, 2007). The EPA is reopening the comment period that originally ended on August 6, 2007. The reopened comment period will close on September 28, 2007. The EPA is reopening the comment period because of the number of requests we received in a timely manner.

DATES: *Comments.* Comments on the proposed rule published June 6, 2007 (72 FR 31371) must be received on or before September 28, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0888, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epamail.epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Attention Docket ID No. EPA–HQ–OAR–2006–0888, U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, Northwest, Mailcode: 6102T, Washington, DC 20460. Please include a total of 2 copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room 3334, Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2006–0888. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0888. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air 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 Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Jessica Montanez, Air Quality Policy Division, U.S. EPA, Office of Air Quality Planning and Standards (C504–03), Research Triangle Park, North Carolina 27711, telephone number (919) 541–3407, facsimile number (919) 541–5509, electronic mail e-mail address: *montanez.jessica@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in

40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2006–0888.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

B. Where Can I Get a Copy of This Document and Other Related Information?

In addition to being available in the docket, an electronic copy of this proposal will also be available on the World Wide Web (WWW). Following signature by the EPA Administrator, a copy of this notice will be posted in the regulations and standards section of our NSR home page located at *http://www.epa.gov/nsr* and on the tribal air home page at *http://www.epa.gov/oar/tribal.*

Dated: August 21, 2007.

Lydia Wegman,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E7–17104 Filed 8–28–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2007–0549–200727; FRL–8461–7]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Georgia: Redesignation of the Murray County 8-Hour Ozone Nonattainment Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 15, 2007, the State of Georgia, through the Georgia Environmental Protection Division (EPD), submitted a request to redesignate the Murray County 8-hour ozone nonattainment area (Murray County Area) to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS); and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Murray County Area. The Murray County 8-hour nonattainment ozone area is a partial county area, comprised of the portion of Murray County that makes up the Chattahoochee National Forest. In this action, EPA is proposing to approve Georgia's 8-hour ozone redesignation request for the Murray County Area. Additionally, EPA is proposing to approve the 8-hour ozone maintenance plan for the Murray County Area, including the regional motor vehicle emissions budgets (MVEBs) for nitrogen oxides (NO_X) and volatile organic compounds (VOCs). This proposed approval of Georgia's redesignation request is based on EPA's determination that Georgia has demonstrated that the Murray County Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the Murray County 8-hour ozone nonattainment area has attained the 8-hour ozone standard. In this action, EPA is also describing the status of its transportation conformity adequacy determination for the new regional MVEBs for 2018 that are contained in the 8-hour ozone maintenance plan for the Murray County Area.

DATES: Comments must be received on or before September 28, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0549, by one of the following methods:

(a) *www.regulations.gov:* Follow the on-line instructions for submitting comments.

(b) *E-mail: Harder.Stacy@epa.gov.*

(c) *Fax:* (404) 562–9019.

(d) *Mail:* EPA–R04–OAR–2007–0549, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

(e) *Hand Delivery or Courier:* Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2007–0549. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Stacy Harder of the Regulatory Development Section at the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Harder's telephone number is (404) 562–9042. She can also be reached via electronic mail at *harder.stacy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Proposed Actions is EPA Taking?
II. What Is the Background for EPA's Proposed Actions?
III. What Are the Criteria for Redesignation?
IV. Why Is EPA Proposing These Actions?
V. What Is the Effect of EPA's Proposed Actions?
VI. What Is EPA's Analysis of the Request?
VII. What Are the Proposed Regional MVEBs for the Murray County Area?
VIII. What Is the Status of EPA's Adequacy Determination for MVEBs for the Year 2018 for the Murray County Area?
IX. Proposed Action on the Redesignation Request and Maintenance Plan SIP Revision Including Proposed Approval of the 2018 MVEBs
X. Statutory and Executive Order Reviews

I. What Proposed Actions Is EPA Taking?

EPA is proposing to take two related actions, which are summarized below and described in greater detail throughout this notice of proposed rulemaking: (1) to redesignate the Murray County Area to attainment for the 8-hour ozone NAAQS; and (2) to approve Georgia's 8-hour ozone maintenance plan into the Georgia SIP, including the associated MVEBs. EPA is also notifying the public of the status of EPA's adequacy determination for the Murray County Area MVEBs.

First, EPA is proposing to determine that the Murray County Area has attained the 8-hour ozone standard, and that the Murray County Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is now proposing to approve a request to change the legal designation of the Murray County Area from nonattainment to attainment for the 8-hour ozone NAAQS.

Second, EPA is proposing to approve Georgia's 8-hour ozone maintenance plan for the Murray County Area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Murray County Area in attainment with the 8-hour ozone NAAQS through 2018. Consistent with the CAA, the maintenance plan that EPA is proposing to approve today also includes 2018 regional MVEBs for NO_X and VOCs. Therefore, EPA is proposing to approve into the Georgia SIP the 2018 regional MVEBs that are included as part of Georgia's maintenance plan. These regional MVEBs apply to the Murray County Area.

In this proposed rulemaking, EPA is notifying the public of the status of EPA's adequacy process for the newly established 2018 MVEBs for the Murray County Area. The adequacy comment period for the Murray County Area's 2018 MVEBs began on June 21, 2007, with EPA's posting of the availability of this submittal on EPA's Adequacy Web Site (*http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*). The adequacy comment period for these MVEBs closed on July 23, 2007. No adverse comments were received on this submittal during the adequacy public comment period. Please see section VIII of this proposed rulemaking for further explanation of this process, and for more details on the MVEBs.

Today's notice of proposed rulemaking is in response to Georgia's June 15, 2007, SIP submittal. The June 15, 2007, submittal requests redesignation of the Murray County Area, and included a SIP revision addressing the specific issues summarized above and the necessary elements for redesignation described in section 107(d)(3)(E) of the CAA.

II. What Is the Background for EPA's Proposed Actions?

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOCs react in the presence of sunlight to form ground-level ozone. NO_X and VOCs are referred to as precursors of ozone. The CAA establishes a process for air quality management through the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). (See, 69 FR 23857 (April 30, 2004) for further information.) Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, ''Comparisons with the Primary and Secondary Ozone Standards'' states:

> The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.

The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The Murray County 8-hour ozone nonattainment area was designated using 2001–2003 ambient air quality data. The **Federal Register** document making these designations was signed on April 15, 2004, and published on April 30, 2004 (69 FR 23857).

The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for ozone nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which EPA refers to as

''basic'' nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for certain ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other 8-hour ozone nonattainment areas are also subject to the provisions of subpart 2. Under EPA's Phase 1 8-hour ozone implementation rule (69 FR 23857) (Phase 1 Rule), signed on April 15, 2004, and published April 30, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based upon their 8-hour ambient air quality design values.

On April 30, 2004, EPA designated the Murray County Area as a ''basic'' 8-hour ozone nonattainment area (see, 69 FR 23857, April 30, 2004). Thus, on June 15, 2007, when Georgia submitted its final redesignation request, the Murray County Area was classified under subpart 1 of the CAA, and was obligated to meet only the subpart 1 requirements.

Various aspects of EPA's Phase 1 8-hour ozone implementation rule were challenged in court. On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. (SCAQMD)* v. *EPA,* 472 F.3d 882 (D.C.Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the D.C. Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the Rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of title I, part D of the CAA as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8th decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8th decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS. The June 8th decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour MVEBs until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of the Murray County Area to attainment. Even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

With respect to the 8-hour standard, the Court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this Area could, during a remand to EPA, be reclassified under subpart 2. Although any future decision by EPA to classify this area under subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation of the area cannot now go forward. This belief is based upon (1) EPA's longstanding policy of evaluating redesignation requests in accordance with the requirements due at the time the request is submitted; and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the Murray County Area was classified under subpart 1 and was obligated to meet only subpart 1 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. See, September 4, 1992, Calcagni Memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division). See also, Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor, Michigan). See, *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation. See, e.g. also, 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The D.C. Circuit Court has recognized the inequity in such retroactive rulemaking (*Sierra Club* v. *Whitman,* 285 F.3d 63 (D.C. Cir. 2002)), in which the Court upheld a district court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated, ''Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly here, it would be unfair to penalize the area by applying to it for purposes of redesignation, additional SIP requirements under subpart 2 that were not in effect at the time it submitted its redesignation request.

As noted earlier, in 2004, the ambient ozone data for the Murray County Area indicated no further violations of the 8-hour ozone NAAQS, using data from the 3-year period of 2002–2004 to demonstrate attainment. As a result, on June 15, 2007, Georgia requested redesignation of the Murray County

Area to attainment for the 8-hour ozone NAAQS. The redesignation request included three years of complete, quality-assured ambient air quality data for the ozone seasons (March 1st until October 31st) of 2002–2004, indicating that the 8-hour ozone NAAQS has been achieved for the Murray County Area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;

2. ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

3. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

4. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the ''Calcagni Memorandum'');

5. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

6. ''Technical Support Documents (TSD's) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

8. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;

9. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

10. ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Proposing These Actions?

On June 15, 2007, Georgia requested redesignation of the Murray County 8-hour ozone nonattainment area to attainment for the 8-hour ozone standard. EPA's evaluation indicates that Georgia has demonstrated that the Murray County Area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of the CAA. EPA is also announcing the status of its adequacy determination for the 2018 regional MVEBs, which is relevant to the requested redesignation.

V. What Is the Effect of EPA's Proposed Actions?

EPA's proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval today. Approval of Georgia's redesignation request would change the legal designation of the Murray County Area for the 8-hour ozone NAAQS found at 40 CFR part 81. Approval of Georgia's request would also incorporate into the Georgia SIP, a plan for the Murray County Area for maintaining the 8-hour ozone NAAQS in the area through 2018. This maintenance plan includes contingency measures to remedy future violations of the 8-hour ozone NAAQS. The maintenance plan also establishes regional MVEBs for the year 2018 of 0.0117 tons per day (tpd) for VOCs and 0.0129 tpd for NO_X, for the Murray County Area. Approval of Georgia's maintenance plan would also result in approval of the regional MVEBs. Additionally, EPA is notifying the public of the status of its adequacy determination for the 2018 regional MVEBs, pursuant to 40 CFR 93.118(f)(1).

VI. What Is EPA's Analysis of the Request?

EPA is proposing to make the determination that the Murray County Area has attained the 8-hour ozone standard, and that all other redesignation criteria have been met for the Murray County Area. The basis for EPA's determination for the area is discussed in greater detail below.

Criteria (1)—The Murray County Area Has Attained the 8-Hour Ozone NAAQS

EPA is proposing to determine that the Murray County Area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS). The monitors generally

should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

EPA reviewed ozone monitoring data from the ambient ozone monitoring station in the Murray County Area for the ozone season from 2002—2004. This data has been quality assured and is recorded in AQS. The fourth high average for 2002, 2003, and 2004, and the 3-year average of these values (i.e., design values), are summarized in the following table:

TABLE 1.—ANNUAL 4TH MAX HIGH AND DESIGN VALUE CONCENTRATION FOR 8-HOUR OZONE FOR THE MURRAY COUNTY AREA (IN PARTS PER MILLION)

Site name	4th highest value (ppm)							3-year average
	2000	2001	2002	2003	2004	2005	2006	2002–2004
Fort Mountain	0.091	0.080	0.092	0.085	0.074	0.080	0.074	0.084

As discussed above, the design value for an area is the highest design value recorded at any monitor in the area. Therefore, the design value for the Murray County Area is 0.084 ppm, which meets the standard as described above. As discussed in more detail below, Georgia has committed to continue monitoring in this area in accordance with 40 CFR part 58. The data submitted by Georgia provides an adequate demonstration that the Murray County Area has attained the 8-hour ozone NAAQS. Additional data for 2005 and 2006 show continued attainment; however, the analysis for EPD's submittal was initiated prior to the certification of 2005 and 2006 data, which provides an even greater margin of compliance.

Criteria (2)—Georgia Has a Fully Approved SIP Under Section 110(k) For the Murray County Area and Criteria (5)—Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

Below is a summary of how these two criteria were met.

EPA has determined that Georgia has met all applicable SIP requirements for the Murray County Area under section 110 of the CAA (general SIP requirements). EPA has also determined that the Georgia SIP satisfies the criterion that it meet applicable SIP requirements under part D of title I of the CAA (requirements specific to subpart 1 basic 8-hour ozone nonattainment areas) in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all applicable requirements in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the area and that if applicable, they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

a. The Murray County Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

The September 4, 1992, Calcagni Memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also, Michael Shapiro Memorandum, (''SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS On or After November 15, 1992,'' September 17, 1993), and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. See, section 175A(c) of the CAA; *Sierra Club*, 375 F.3d 537; see also, 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

General SIP requirements. Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (NSR permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the transport of air pollutants (NO_X SIP Call, Clean Air Interstate Rule (CAIR)). EPA has also found, generally, that states have not submitted SIPs under section 110(a)(1) to meet the interstate transport requirements of section 110(a)(2)(D)(i). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we do not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110 elements not connected with nonattainment plan

submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (i.e., for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See, Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also, the discussion on this issue in the Cincinnati, Ohio redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania redesignation (66 FR 50399, October 19, 2001).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the part D requirements for 8-hour ozone nonattainment areas are not yet due, since, as explained below, no part D requirements for 8-hour standard became due prior to submission of the redesignation request. Therefore, as discussed above, for purposes of redesignation, they are not considered applicable requirements. Nonetheless, EPA notes it has previously approved provisions in the Georgia SIP addressing section 110 elements under the 1-hour ozone NAAQS (See, 70 FR 34660, June 15, 2005). EPA believes that the section 110 SIP approved for the 1-hour ozone NAAQS is also sufficient to meet the requirements under the 8-hour ozone NAAQS (as well as satisfying the issues raised by the D.C. Circuit Court in the *SCAQMD* case).

Part D requirements. EPA has also determined that the Georgia SIP meets applicable SIP requirements under part D of the CAA since no requirements became due prior to the submission of the Area's redesignation request. Sections 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification. Subpart 2 is not applicable to the Murray County Area.

Part D, subpart 1 applicable SIP requirements. For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of title I (57 FR 13498). No requirements applicable for purposes of redesignation under part D became due prior to the submission of the redesignation request, and therefore none are applicable to the Area for purposes of redesignation. For example, the requirements for an attainment demonstration that meets the requirements of section 172(c)(1) are not yet applicable, nor are the requirements for Reasonably Achievable Control Technology (RACT) and Reasonably Available Control Measures (RACM) (section 172(c)(1)), reasonable further progress (RFP) (section 172(c)(2)), and contingency measures (section 172(c)(9)).

In addition to the fact that no part D requirements applicable for purposes of redesignation became due prior to submission of the redesignation request and therefore are not applicable, EPA believes it is reasonable to interpret the conformity and NSR requirements as not requiring approval prior to redesignation.

Section 176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d), because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See, *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), (upholding this interpretation). See also, 60 FR 62748 (December 7, 1995, Tampa, Florida).

NSR Requirements. EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without a part D NSR program in effect since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment.'' Georgia has demonstrated that the Murray County Area will be able to maintain the standard without a part D NSR program in effect, and therefore, Georgia need not have a fully approved part D NSR program prior to approval of the redesignation request. Georgia's PSD program will become effective in the Murray County Area upon redesignation to attainment. See, rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorraine, Ohio (61 FR 20458, 20469–70, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, the Murray County Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

b. The Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Georgia SIP for the portion of Murray County affected by today's proposed redesignation, under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request, see Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall*, 265 F.3d 426, plus any additional measures it may approve in conjunction with a redesignation action. See, 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, Georgia has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 1-hour ozone standard SIP elements applicable in Murray County, Georgia (See, 70 FR 34660, June 15, 2005).

As indicated above, EPA believes that the section 110 elements not connected

with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, they also are therefore not applicable requirements for purposes of redesignation.

Criteria (3)—The Air Quality Improvement in the Murray County Area is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that Georgia has demonstrated that the observed air quality improvement in the Murray County Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures. Additionally, new emissions control programs for fuels and motor vehicles will help ensure a continued decrease in emissions throughout the region.

TABLE 2

Murray county area emission reductions programs
Onboard Refueling Vapor Recovery for Light-Duty Vehicles.
Architectural and Industrial Maintenance Coatings.
Automobile Refinishing.
The National Emission Standards for Hazardous Air Pollutants (NESHAP); the majority of which are also VOCs.
Phase II Acid Rain Program for NO_X.
Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements.
Regional NO_X SIP Call.

Although the NO_X SIP Call is stayed in Georgia, this regional program implemented in neighboring states, has resulted in measurable emissions reductions that have lowed pollution transported into Murray County.

Criteria (4)—The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

In its request to redesignate the Murray County Area to attainment, EPD submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS for at least 10 years after the effective date of redesignation to attainment.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State of Georgia must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The Calcagni Memorandum explains that an ozone maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, Georgia's maintenance plan includes all the necessary components and is approvable as part of the redesignation request.

b. Attainment Emissions Inventory

Georgia selected 2004 as ''the attainment year'' for the Murray County Area for the purposes of demonstrating attainment of the 8-hour ozone NAAQS. This attainment inventory identifies the level of emissions in the area, which is sufficient to attain the 8-hour ozone standard. Georgia began development of this attainment inventory by first developing a baseline emissions inventory for the Murray County Area. The year 2002 was chosen as the base year for developing a comprehensive ozone precursor emissions inventory for which projected emissions could be developed for 2002, 2009, and 2018. Non-road mobile emissions estimates were based on EPA's NONROAD2005 model. On-road mobile source emissions were calculated using EPA's MOBILE6.2 emission factors model. The 2004 VOCs and NO_X emissions, as well as the emissions for other years, for the Murray County Area were developed consistent with EPA guidance, and are summarized in Tables 3 and 4 in the following subsection.

c. Maintenance Demonstration

The June 15, 2007, final submittal includes a maintenance plan for the Murray County Area. This demonstration:

(i) Shows compliance and maintenance of the 8-hour ozone standard by providing information to support the demonstration that current and future emissions of VOCs and NO_X remain at or below attainment year 2004 emissions levels. The year 2004 was chosen as the attainment year because it is one of the most recent three years (i.e., 2002, 2003, and 2004) for which the Murray County Area has clean air quality data for the 8-hour ozone standard.

(ii) Uses 2004 as the attainment year and includes future emission inventory projections for 2002, 2009, and 2018.

(iii) Identifies an ''out year'' at least 10 years after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, MVEBs were established for the last year (2018) of the maintenance plan. See, section VII below.

(iv) Provides the following actual and projected emissions inventories for the Murray County Area. See, Tables 3 and 4.

TABLE 3.—MURRAY COUNTY AREA EMISSIONS OF VOCS

[Tons per summer day]

Source category	2002	2009	2018
Area*	0.0209	0.0204	0.0240
Mobile**	0.0171	0.0126	0.0075
Nonroad	0.0050	0.0033	0.0031
Total	0.0430	0.0363	0.0346
Safety Margin***	N/A	0.0067	0.0084

*Scaled according to the population of the partial county area.
** Calculated using MOBILE6.2.
*** After assigning 0.0042 TPD of the 2018 VOCs safety margin to the MVEB, the revised 2018 safety margin will be 0.0042 TPD.

TABLE 4.—MURRAY COUNTY AREA NO_X EMISSIONS

[Tons per summer day]

Source category	2002	2009	2018
Area*	0.0070	0.0072	0.0076
Mobile**	0.0156	0.0119	0.0073
Nonroad	0.0054	0.0040	0.0020
Total	0.0280	0.0231	0.0169
Safety Margin***	N/A	0.0049	0.0111

*Scaled according to the population of the partial county area.
** Calculated using MOBILE6.2.
*** After assigning 0.0056 TPD of the 2018 NO_X safety margin to the MVEB, the revised 2018 safety margin will be 0.0055 TPD.

A safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. Georgia has decided to allocate a portion of the available safety margin to the regional 2018 MVEBs for NO_X and VOCs for the Murray County Area, and has calculated the safety margin in its submittal. See, Tables 3 and 4 above. This allocation and the resulting available safety margin for the Murray County Area are discussed further in section VII of this proposed rulemaking.

d. Monitoring Network

There is currently one monitor measuring ozone in the Murray County Area. Murray County has committed in the maintenance plan to continue operation of this monitor in compliance with 40 CFR part 58, and has addressed the requirement for monitoring.

e. Verification of Continued Attainment

Georgia has the legal authority to enforce and implement the requirements of the ozone maintenance plan for the Murray County Area. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Georgia will track the progress of the maintenance plan by performing future reviews of actual emissions for the Area using the latest emissions factors, models and methodologies. For these periodic inventories Georgia will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, Georgia will re-project emissions.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the June 15, 2007, submittal, Georgia affirms that all programs instituted by the State and EPA will remain enforceable, and that sources are prohibited from reducing emissions controls following the redesignation of the Murray County Area. In the submittal, if there is a measured violation of the 8-hour ozone NAAQS in the Murray County Area, contingency measures would be adopted and implemented as expeditiously as possible, but no later than eighteen to twenty four months after the triggering event. The proposed schedule for these actions would be as follows:

- Six months to perform a comprehensive analysis;
- Three months to identify potential sources for reductions;
- Three months to identify applicable control measures;
- Three months to initiate a stakeholder process;
- Three months to draft SIP regulations; and
- Six months to initiate the rulemaking process. This step would include the time required to hold a public comment period, hearing, and board adoption, and submit the final plans to EPA. This process may be initiated simultaneously with drafting the regulations.

Georgia will consider one or more of the following contingency measures to re-attain the standard.

- RACM for all sources of NO_X

- RACT for all existing point sources of NO_X
- Expansion of RACM/RACT to area(s) of transport within the State
- Mobile Source Measures
- Additional NO_X reduction measures yet to be identified

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by Georgia for the Murray County Area meets the requirements of section 175A of the CAA and is approvable.

VII. What Are the Proposed Regional MVEBs for the Murray County Area?

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (reasonable further progress SIPs and attainment demonstration SIPs, etc.) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, an MVEB is established for the last year of the maintenance plan. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. See, 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and revise the MVEB.

Georgia, after interagency consultation with the transportation partners for the Murray County Area, has elected to develop regional MVEBs for NO_X and VOCs for this Area. Georgia is developing these MVEBs, as required, for the last year of its maintenance plan (2018). The MVEBs reflect the total on-road emissions for 2018, plus an allocation from the available VOCs and NO_X safety margin. Under 40 CFR 93.101, the term safety margin is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. These MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in model vehicle miles traveled (VMT) and new emission factor models. The regional MVEBs for the Murray County Area are defined in Table 5 below.

TABLE 5.—MURRAY COUNTY AREA MVEBS

[Tons per day]

	2018*
NO_X	0.0129
VOCs	0.0117

* Includes an allocation for the available NO_X and VOCs safety margins.

As mentioned above, Georgia has chosen to allocate a portion of the available safety margin to the 2018 MVEBs. This allocation is 0.0056 tpd for NO_X and 0.0042 tpd for VOCs. The 2018 regional MVEBs are derived as follows for NO_X: (0.0073 tpd for total mobile emissions) + (0.0056 tpd from available safety margin) = 0.0129 tpd; and for VOCs: (0.0075 tpd for total mobile emissions) + (0.0042 tpd from available safety margin) = 0.0117 tpd. Thus, the remaining safety margin in 2018 is 0.0055 tpd for NO_X and 0.0042 tpd for VOCs.

Through this rulemaking, EPA is proposing to approve the 2018 regional MVEBs for NO_X and VOCs for the Murray County Area because EPA has determined that the Area maintains the 8-hour ozone standard with the emissions at the levels of the budgets. As mentioned above, these MVEBs are regional MVEBs for the Murray County Area. Once the new regional MVEBs for the Murray County Area (the subject of this rulemaking) are approved or found adequate (whichever is done first), they must be used for future conformity determinations. As is discussed in greater detail below, EPA is also announcing the status of its adequacy determination for the proposed 2018 MVEBs for the Murray County Area pursuant to 40 CFR 93.118(f)(1).

VIII. What Is the Status of EPA's Adequacy Determination for MVEBs for the Year 2018 for the Murray County Area?

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*i.e.*, be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with a maintenance plan for that NAAQS.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB contained therein ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and Federal agencies in determining whether proposed transportation projects ''conform'' to the SIP as required by section 176(c) of the Clean Air Act.

EPA's substantive criteria for determining ''adequacy'' of an MVEB are set out in 40 CFR 93.118(e)(4). The process for determining ''adequacy'' consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

Georgia's maintenance plan submission contained new regional MVEBs for VOCs and NO_X for the Murray County Area for the year 2018. The availability of the Georgia SIP submission with the Murray County MVEBs was available for public comment on EPA's adequacy Web site on June 21, 2007, at: *http://*

www.epa.gov/otaq/stateresources/transconf/currsips.htm. The EPA public comment period on adequacy of the 2018 regional MVEBs for the Murray County Area closed on July 23, 2007. EPA did not receive any comments, or requests for the submittal.

EPA intends to make its determination of the adequacy of the 2018 MVEBs for the Murray County Area for transportation conformity purposes in the final rulemaking on the redesignation of the Murray County Area. If EPA finds the 2018 MVEBs adequate and approves these MVEBs in the final rulemaking action, the new MVEBs must be used for future transportation conformity determinations. The new 2018 MVEBs, if found adequate and approved in the final rulemaking, will be effective on the date of publication of EPA's final rulemaking in the **Federal Register**. For required regional emissions analysis years that involve the year 2017 or before, the State will use the interagency consultation group for this Area to determine the appropriate interim test to use to demonstrate conformity. For required regional emissions analysis years that involve 2018 or beyond, the applicable budgets will be the new 2018 MVEBs. The 2018 MVEBs are defined in section VII of this rulemaking.

IX. Proposed Actions on the Redesignation Request and the Maintenance Plan SIP Revision Including Proposed Approval of the 2018 MVEBs

EPA is proposing to make the determination that the Murray County Area has met the criteria for redesignation from nonattainment to attainment for the 8-hour ozone NAAQS. Further, EPA is proposing to approve Georgia's redesignation request for the Murray County Area. After evaluating Georgia's SIP submittal requesting redesignation, EPA has determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the Murray County Area has attained, and will continue to maintain the 8-hour ozone standard.

EPA is also proposing to approve the June 15, 2007, SIP revision containing Georgia's 8-hour ozone maintenance plan for the Murray County Area. The maintenance plan includes regional MVEBs for 2018, among other requirements. EPA is proposing to approve the 2018 MVEBs for the Murray County Area, because the maintenance plan demonstrates that expected emissions for all other source categories will continue to maintain the 8-hour ozone standard.

Further, as part of today's action, EPA is describing the status of its adequacy determination for the 2018 MVEBs in accordance with 40 CFR 93.118(f)(1). If transportation conformity is implemented in this Area, the transportation partners will need to use these new MVEBs pursuant to 40 CFR 93.104(e) as effectively amended by section 172(c)(2)(E) of the CAA as added by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), which was signed into law on August 10, 2005.

X. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Redesignation of an area to attainment under section 107(d)(3)(e) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources, or allow a state to avoid adopting or implementing other requirements and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

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

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: August 16, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E7–17133 Filed 8–28–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0182; FRL–8143–3]

Dibasic Esters (CAS Reg. No. 95481–62–2); Proposed Pesticide Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish an exemption from the requirement of a tolerance for residues of dibasic esters (DBE; CAS Reg. No. 95481–62–2) under 40 CFR 180.1277 when used as an inert ingredient solvent material/anti-freeze microencapsulated at 10% weight/weight (W/W) or less in pesticide formulations with the active ingredient cyfluthrin. Whitmire Micro-Gen Research Laboratories, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. New data were received by EPA after the publication of the petitoner's Notice of Filing, therefore, EPA is providing the public with an additional opportunity to comment on the petitioner's request in this proposed rule.

DATES: Comments must be received on or before October 29, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0182, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0182. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Tracy Ward, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460-0001; telephone number: (703) 308–9361; e-mail address: *ward.tracyh@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the

public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background and Statutory Findings

In the **Federal Register** of December 23, 1998 (63 FR 71126) (FRL–6047–7), EPA issued a notice under section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5E4442) by Whitmire Micro-Gen Research Laboratories, Inc., 3568 Tree Court Industrial Blvd., St. Louis, MO 63122–6682. The petition requested that 40 CFR 180.910 and 180.930 be amended by establishing a tolerance for residues of the inert ingredient DBE. This notice included a summary of the petition prepared by Whitmire Micro-Gen Research Laboratories, Inc., the petitioner. There were no comments received in response to the notice of filing.

The typical process used by EPA in considering new tolerance exemptions for inert ingredients is to publish the petition for public comment in a Notice of Filing, evaluate the available data and information on the chemical, and publish a final rule in the **Federal Register** if the Agency concludes that a tolerance exemption can be established. In the case of DBE, a significant number of new studies on DBE were received by EPA after the publication of the Notice of Filing [see the **Federal Register** of August 5, 1999 (64 FR 42692)] in which the Agency issued a testing consent order incorporating an enforceable consent agreement (ECA) under section 4 of the Toxic Substance Control Act (TSCA). EPA reviewed the new data [see the **Federal Register** of August 17, 2005 (70 FR 48418)] and considered the study results in evaluating this petition. The Agency and the U.S. Consumer Product Safety Commission (CPSC) agreed that all testing requirements were completed, and that a third testing phase (*in vivo* dermal penetration rate testing) was unnecessary. Considering this new data were not part of the December 23, 1998 Notice of Filing, EPA is providing the public with an additional opportunity to comment on the petitioner's request to establish a tolerance exemption for DBE by proposing to establish a tolerance exemption for DBE in this document.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that '' there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Risk Characterization and Conclusions

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by the dibasic esters (DBE) are discussed in this unit. EPA has sufficient data to assess the hazards of, and to make a determination on, aggregate exposure for this chemical.

The following provides a brief summary of the risk assessment and conclusions for the Agency's review of DBE. The full decision document for this action is available on EPA's Electronic Docket at *http://www.regulations.gov/* under docket number EPA–HQ–OPP–2007–0182.

A. Human Health

The Agency reviewed the information submitted by the petitioner as well as additional information available to the Agency and has determined that DBE has low acute oral and inhalation toxicity and low subchronic oral toxicity with a no observed adverse effect level (NOAEL) of 842 mg/kg/day. In acute eye toxicity studies on the rabbit, DBE had mild to moderate eye irritation. In subchronic inhalation studies, DBE had a systemic inhalation NOAEL ≥ 0.40 mg/L (400 milligrams/milliliter (mg/m^3)), but a nasal irritation NOAEL < 0.02 mg/L (20 mg/m^3). DBE did not induce neurotoxicity or carcinogenicity in the studies reviewed, and it was negative for mutagenicity in most tests, but positive for chromosomal aberrations under activated conditions. In a repeat-dose inhalation reproduction toxicity study, DBE had a NOAEL of 0.40 mg/L (400 mg/m^3) and a Lowest effect level (LEL) of 1.0 mg/L (1,000 mg/m^3) based on decreased pup weights at weaning. In repeat-dose inhalation exposure studies, developmental toxicity was observed at higher doses (1.0 mg/L or 1,000 mg/m3) than maternal toxicity (0.16 mg/L or 160 mg/m^3).

In studies, DBE did not cause dermal irritation in animals exposed for four hours, but caused severe irritation (severe erythema and mild edema) in one animal and reversible mild to moderate irritation in animals exposed to DBE for 24 hours. DBE was not considered to be a skin-sensitizer in guinea pigs. In repeat-dermal exposure studies conducted on the rat, DBE had a systemic dermal NOAEL of 1,000 mg/kg/day, and dermal irritation lowest observed adverse effect level (LOAEL) of 100 mg/kg/day based on the slight, but reversible, erythema and edema.

B. Exposure Assessment

The use of DBE in pesticide products is being limited to 10% or less of microencapsulated pesticide formulations with the insecticide active ingredient cyfluthrin. Uses of cyfluthrin are currently limited to food-use applications such as spot and crack and crevice treatments in food processing plants and food storage areas, and it is typically applied by commercial applicators. Dietary exposures of concern from residues in food and drinking water are not anticipated. The microencapsulated formulation and its restriction to use with one active ingredient will reduce the potential for residential exposures (inhalation and dermal) to a minimal level. DBE is also used in non-pesticide consumer products such as paint solvents. The use of DBE as an inert ingredient in pesticide formulations, with the above limitations, is not expected to contribute significantly to exposures from its use in non-pesticide consumer products.

C. Safety Factor for Infants and Children

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. The toxicity database is sufficient for DBE and potential exposure is adequately characterized based on the low use rate. In terms of hazard, there are low concerns and no residual uncertainties regarding prenatal and/or postnatal toxicity.

D. Cumulative Exposure

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to DBE and any other substances, and the chemical does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that DBE has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

E. Other Considerations

1. *Analytical methods*. Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305-2905; e-mail address: *residuemethods@epa.gov*. Residues are not expected because of the low amount that will be permitted in the pesticide formulation (limited to 10% W/W or less) and the limitation of use with one pesticide active ingredient.

2. *International tolerances*. The Agency is not aware of any country requiring a tolerance for DBE, nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

F. Determination of Safety and Conclusions

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm to the general population, including infants and children, from aggregate exposure to residues of DBE. Accordingly, EPA finds that exempting DBE from the requirement of a tolerance will be safe.

IV. Conclusion

A tolerance exemption is proposed for residues of DBE when it is used as an inert ingredient solvent material/anti-freeze microencapsulated at 10% W/W or less in pesticide formulations with the active ingredient cyfluthrin.

V. Statutory and Executive Order Reviews

This action proposes to establish a tolerance exemption under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–13, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency hereby certifies that this proposed action will not have significant negative economic impact on a substantial number of small entities. Establishing a pesticide tolerance or an exemption from the requirement of a pesticide tolerance is, in effect, the removal of a regulatory restriction on pesticide residues in food and thus such an action will not have any negative economic impact on any entities, including small entities. In addition, the Agency has determined that this action will not have a 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 20, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.1277 is added to subpart D to read as follows:

§ 180.1277 Dibasic esters; Exemption from the requirement of a tolerance.

Dibasic esters (CAS Reg. No. 95481–62–2) is exempted from the requirement of a tolerance for residues when used as an inert ingredient (solvent material/anti-freeze) at 10% W/W or less in microencapsulated pesticide formulations with the active ingredient cyfluthrin.

[FR Doc. E7–17109 Filed 8–28–07; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–3559; MB Docket No. 07–164; RM–11386]

Radio Broadcasting Services; Peach Springs, Arizona

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Smoke and Mirrors LLC, requesting the substitution Channel 268C3 for vacant Channel 285C3 at Peach Springs, Arizona, and to amend the reference coordinates for that allotment. Channel 268C3 can be allotted at reference coordinates 35–29–35 NL and 113–35–17 WL.

DATES: Comments must be filed on or before October 1, 2007, and reply comments on or before October 16, 2007.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: Robert L. Olender, Esq., Koerner & Olender, P.C., 11913 Grey Hollow Court, North Bethesda, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau, (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 07–164, adopted August 8, 2007, and released August 10, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com.*

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona is amended by removing Channel 285C3 and adding Channel 268C3 at Peach Springs.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–17014 Filed 8–28–07; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 72, No. 167

Wednesday, August 29, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. AMS–FV–0109; FV07–900–1NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for an revision to a currently approved information collection enabling certified organic handlers exemption from paying market promotion assessments under 26 Federal marketing order programs.

DATES: Comments on this notice must be received by October 29, 2007.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice. 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.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be 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: Sue Challis, Supervisory Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Sue.Challis@usda.gov.*

Small businesses may request information on this notice by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, room 1406–S, Washington, DC 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certified Organic Handler Market Promotion Assessment Exemption under 26 Federal Marketing Orders.

OMB Number: 0581–0216.

Expiration Date of Approval: January 31, 2008.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide and opportunity for producers of fresh fruit, vegetables, and specialty crops, in specified production areas, to work together to solve marketing problems that cannot be solved individually. This notice covers the following marketing order program citations under 7 CFR: Part 906, Texas citrus; part 915, Florida avocados; part 916, California nectarines; part 917, California peaches and pears; part 922, Washington apricots; part 923, Washington sweet cherries; part 924, Washington/Oregon fresh prunes; part 925, California grapes; part 927, Pears Grown in Oregon and Washington; part 929, Cranberries Grown in States of Massachusetts, *et al.*; part 930, Tart Cherries Grown in the States of Michigan, *et al.*; part 932, California olives; part 947, Oregon/California potatoes; Part 948, Colorado potatoes; part 955, Vidalia Onions, part 956, Washington/Oregon Walla Walla onions, part 958, Idaho-Eastern Oregon onions; part 959, Texas onions; part 966, Florida tomatoes; part 981, California almonds; part 982, Oregon-Washington hazelnuts; part 984, California walnuts; part 985, Far West spearmint oil, part 987, California dates; part 989, California raisins; and part 993, California dried prunes. Marketing orders 931 and 979 were previously included, however, these programs have since terminated. Order regulations help ensure adequate supplies of high quality products for consumers and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), orders may authorize production and marketing research, including paid advertising. Production and marketing research and development, including paid advertising activities to promote the various commodities, are paid for with assessments levied on handlers regulated under the 26 Federal marketing orders.

On May 13, 2002, section 501 of the FAIR Act was amended (7 U.S.C. 7401) to exempt any person that produces and markets solely 100 percent organic products, and that does not produce any conventional or non-organic products, from paying assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm as defined in Section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

To be exempt from paying assessments for marketing promotion, including paid advertising expenses, under the specified marketing orders, the certified organic handler must submit an application, ''Certified Organic Handler Application for Exemption from Market Promotion Assessments Paid Under Federal Marketing Orders'' to the marketing order committee or board. The information request includes the following: Handler's name (applicant); telephone and fax numbers, and an optional e-mail address; name and address of the company; certification that the applicant operates under an approved organic process system plan authorized by the National Organic Program (NOP) and handles products that are eligible to be labeled as 100 percent organic, that the applicant is not a split operation as defined by the Organic Food Production Act of 1990 (OFPA) and the NOP, and that the applicant is subject to assessments under the Federal marketing order program for which this exemption is requested.

A table has been added to the application for the applicant to list all commodities handled and to indicate whether each commodity handled is eligible to be labeled as 100 percent organic. The application requires the applicant to list the number of

producers for whom the applicant handles or markets products. The applicant also is required to attach a copy of the organic handling operation certificate provided by a USDA-accredited certifying agent under the OFPA and the NOP, and a copy of the applicant's NOP producer certificate, if applicable. An NOP certificate for each producer for whom the applicant handles also must be attached.

When the requirements for exemption no longer apply to a handler, the handler shall inform the committee or board within 30 days and pay the full assessment on all remaining assessable product for all committee or board assessments from the date the handler no longer is eligible to the end of the assessment period. The notification by the handler can be made in any manner the handler desires (telephone, fax, e-mail, etc.).

This information is necessary to help the committees or boards to determine an applicant's eligibility and to verify compliance. Inclusion of this information on the form assists the applicants in making their certifications and the committee or boards in properly administering the assessment exemption.

The respective marketing orders (*e.g.* 7 CFR 932.61 and 7 CFR 981.70) also provide that handlers maintain, and make available, all records necessary to demonstrate compliance with order requirements for two years. The burdens on handlers for such recordkeeping requirements are included in the information collection requests previously approved by OMB for the respective marketing orders under the following OMB Control Numbers: OMB No. 0581–0178 for marketing order Nos. 932, 947, 948, 955, 956, 958, 959, 966, 981, 982, 984, 985, 987, 989, and 993; OMB No. 0581–0189 for marketing order Nos. 906, 915, 916, 917, 922, 923, 924, 925, 927, 929, and 930.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters' staff and authorized committee/board employees. Authorized committee/board employees are the primary users of the information and AMS is the secondary user.

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.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Eligible Certified Organic Handlers.

Estimated Number of Respondents: 103.

Estimated Number of Total Annual Responses: 103.

Estimated Number of Responses per Respondent: 1.

Estimated total Annual Burden on Respondents: 52 hours.

Comments are invited 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.

Comments should reference this docket number and the appropriate marketing order and be sent to the USDA in care of the Docket Clerk at the address above. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: August 23, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–4241 Filed 8–28–07; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. AMS–TM–07–0111; TM–07–08]

Notice of Agricultural Management Assistance Organic Certification Cost Share Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This notice invites the following eligible States: Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming, to submit an Application for Federal Assistance (Standard Form 424), and to enter into a Cooperative Agreement with the Agricultural Marketing Service (AMS) for the Allocation of Organic Certification Cost-Share Funds. The AMS has allocated $1.0 million for this organic certification cost-share program in Fiscal Year 2007. Funds will be available under this program to 15 designated States to assist organic crop and livestock producers certified under the National Organic Program (NOP). Eligible States interested in obtaining cost-share funds for their organic producers will have to submit an Application for Federal Assistance, and will have to enter into a cooperative agreement with AMS for the allocation for such funds.

DATES: Completed applications for Federal assistance along with signed cooperative agreements must be received by close of business, September 18, 2007, in order to participate in this program.

ADDRESSES: Applications for Federal assistance and cooperative agreements shall be requested from and submitted to: Robert Pooler, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/TMP/NOP, Room 4008–South, AG Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0264; Telephone: (202) 720–3252; Fax: (202) 205–7808. Additional information may be found through the National Organic Program's homepage at *http://www.ams.usda.gov/nop.*

FOR FURTHER INFORMATION CONTACT: Robert Pooler, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/TM/NOP, Room 4008–South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0268; Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION: This Organic Certification Cost-Share Program is part of the Agricultural Management Assistance Program authorized under the Federal Crop Insurance Act (FCIA), as amended, (7 U.S.C. 1524). Under the applicable FCIA provisions, the Department is authorized to provide cost share assistance to producers in the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. This organic certification cost share

program provides financial assistance to organic producers certified to the NOP authorized under the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et seq.*). This program is in addition to and separate from the National Organic Certification Cost Share Program which is also administered by AMS and is open to all States and U.S. Territories.

To participate in the program, eligible States must complete a Standard Form 424, Application for Federal Assistance, and enter into a written cooperative agreement with AMS. The program will provide cost-share assistance, through participating States, to organic crop and livestock producers receiving certification or update of certification by a USDA accredited certifying agent from October 1, 2007 through September 30, 2008. The Department has determined that payments will be limited to 75 percent of an individual producer's certification costs up to a maximum of $500.00.

Authority: 7 U.S.C. 1524.

Dated: August 23, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–4242 Filed 8–28–07; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Federal and Non-Federal Financial Assistance Instruments

AGENCY: Forest Service, USDA.

ACTION: Notice, request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, Federal and Non-Federal Financial Assistance Instruments.

DATES: Comments must be received in writing on or before October 29, 2007 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Director, Acquisition Management, Forest Service, U.S. Department of Agriculture, Attention: Chris Coppenbarger, 1400 Independence Ave., SW., Mailstop 1138, Washington, DC 20250–1138.

Comments also may be submitted via facsimile to 703–605–5100 or by e-mail to: *ccoppenbarger@fs.fed.us.*

The public may inspect comments received at Forest Service, U.S. Department of Agriculture, 1621 N. Kent Street, RPE 707, Arlington, VA during normal business hours. Visitors are encouraged to call ahead to 703–605–4719 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Chris Coppenbarger, Acquisition Management, 703–605–4719. Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Federal and Non-Federal Financial Assistance Instruments.

OMB Number: 0596–New.

Type of Request: New.

Abstract: In order to carry out specific Forest Service activities, Congress created several authorities to assist the Agency in carrying out its mission. The Forest Service issues Federal Financial Assistance (FFA) awards (i.e., grants and cooperative agreements), as authorized by the Federal Grants and Cooperative Agreements Act (FGCAA), as well as agreements expressly exempted from FGCAA. In addition, Congress created specific authorizations for acts outside the scope of the FGCAA; as well as appropriations language conveying authority for the Forest Service to enter into relationships that are outside the scope of the FGCAA. The Forest Service implements these authorizations using instruments such as collection agreements; FGCAA exempted agreements; memorandums of understanding; and other agreements (which contain mutual benefits for participating parties). These instruments fall outside the scope of the Federal Acquisition Regulations and often require financial plans and statements of work. To create, develop, and administer these funded and non-funded agreements, Forest Service employees collect information from cooperating parties from the pre-award to the closeout stage via telephone calls, e-mails, postal mail, and person-to-person meetings. Respondents usually have multiple options for responding, including forms, non-forms, electronically, face-to-face, over the telephone, and over the Internet. The scope of information collected varies, but typically includes project type, project scope, financial plan, statement of work, and cooperator contact/business information.

The information is collected from non-profit and for-profit institutions; institutions of higher education; state, local, and Native American tribal governments; individuals; foreign governments; and organizations.

Without the collected information, the Forest Service would not be able to create, develop, and administer these funded and non-funded agreements. The Agency would be unable to develop/monitor projects, make or receive payments, or identify financial and accounting errors.

The following forms are associated with this information collection:

FS–1500–NEW1: Cooperative Fire Protection Agreement.

FS–1500–NEW2: Cooperative Law Enforcement Agreement.

FS–1500–NEW3: Cooperative Forest Road Agreement.

FS–1500–NEW4: Challenge Cost Share Agreement.

FS–1500–NEW5: Collection Agreement.

FS–1500–NEW6: Cost-Reimbursable Agreement.

FS–1500–NEW7: Cooperative Research and Development Agreement.

FS–1500–NEW8: Joint Venture Agreement.

FS–1500–NEW9: Memorandum of Understanding.

FS–1500–NEW10: Participating Agreement.

FS–1500–NEW11: FSH 1509.11, Chapter 60—Other Agreements.

FS–1500–NEW12: Cooperative Law Enforcement Annual Operating & Financial Plan.

FS–1500–NEW13: Collection Agreement Financial Plan.

FS–1500–NEW14: Modification Form.

FS–1500–NEW15: Agreement Cover Page.

SF–424: Application for Federal Assistance.

AD–1047: Certification Regarding Department Suspension.

AD–1048: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.

AD–1049: Certificate Regarding Drug Free Workplace Requirements Alternative 1.

AD–1050: Certificate Regarding Drug Free Workplace Requirements Alternative 2.

AD–1052: Certificate Regarding Drug Free Workplace Requirements—State and State Agencies.

SF–269: Financial Status Report (Long Form).

SF–269a: Financial Status Report.

SF–270: Request for Advance or Reimbursement.

SF–272: Federal Cash Transaction Report.

SF–272a: Federal Cash Transaction Report (continuation).

SF–424a: Budget Information Non-Construction Programs.

SF–424b: Assurance—Non-Construction Programs.

SF–25a: Payment Bonds.

Estimate of Annual Burden: .25 to 4 hours annually per response.

Type of Respondents: Non-profit and for-profit institutions; institutions of higher education; state, local, and Native American tribal governments; individuals; foreign governments; and organizations.

Estimated Annual Number of Respondents: 14,489.

Estimated Annual Number of Responses per Respondent: 1–4.

Estimated Total Annual Burden on Respondents: 30,855 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) 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 respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: August 22, 2007.

Hank Kashdan,

Deputy Chief, Business Operations.

[FR Doc. E7–17040 Filed 8–28–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Duchesne Ranger District, Ashley National Forest, UT; South Unit Oil and Gas Development EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Supervisor of the Ashley National Forest gives notice of the intent to prepare an environment impact statement (EIS) to document the analysis and disclose the impacts of an oil and gas development project on lands administered by the Ashley National Forest. The EIS analysis are includes approximately 25,900 acres on the South Unit of the Ashley National Forest in Duchesne County, Utah. The proposed project is located 11 miles south of Duchesne County, Utah in Township 6 South, Ranges 4 and 5 West. Any authorizations and actions proposed for approval in the EIS will be evaluated to determine if they are consistent with direction in the 1986 Ashley National Forest Land and Resource Management Plan (Forest Plan).

DATES: Comments concerning the scope of the analysis must be received within 45 days of publication of this notice in the **Federal Register**. The draft environmental impact statement is expected in June 2008 and the final environmental impact statement is expected in November 2008.

ADDRESSES: Send written comments to David Herron, Project Lead, Ashley National Forest, 355 North Vernal Avenue, Vernal, Utah 84078; phone: (435) 781–5218. Electronic comments may be sent to *comments-intermtn-ashley-duchesne@fs.fed.us*. Email correspondence should include the project name in the subject line. Any attachments must be submitted in MS Word (*.doc) or rich text format (*.rtf) and should include the project name in the document title. Written comments may also be dropped off at the above address during regular business hours (8 a.m. to 5 p.m.), Monday–Friday.

FOR FURTHER INFORMATION CONTACT: David Herron, Project Lead, Ashley National Forest, 355 North Vernal Avenue, Vernal, Utah 84078; phone: (435) 789–1181; e-mail: *daherron@fs.fed.us*.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for this project is to respond to a formal proposal from the Berry Petroleum Company (Berry), to exercise their lease rights, and develop oil and gas resources within their existing federal oil and gas leases, located on the South Unit of the Ashley National Forest. The purpose and need is also to identify the terms and conditions necessary to protect surface resources and prevent conflicts with other activities, programs and users in the area of operations.

Proposed Action

In January 2007, Berry submitted a proposal to the Forest Service to drill up to 400 oil and gas wells on federal mineral leases the Company holds on approximately 25,900 acres in the South Unit of Ashley National Forest. If economically recoverable oil or gas reserves were identified from exploratory drilling, those wells would be put into production. Wells would be drilled from well pads constructed of native soil and rock material using standard cut and fill methods. Well pad construction would require an estimated 2.5 acres of surface disturbance per well pad. If economic quantities of oil and/or gas are found as a result of the drilling of vertical wells, Berry may attempt to directionally drill from some or all of the same well pads to assess whether oil and gas resources can be reached and successfully produced from directional wells. Approximately 100 miles of new access roads and 21 miles of upgraded existing roads would be constructed to reach the proposed well pad sites. The proposal calls for a 20-year construction and drilling period.

Lead and Cooperating Agencies

The Forest Service is the lead agency. The Bureau of Land Management will participate as a cooperating agency. Other eligible agencies may also participate as cooperating agencies.

Responsible Official

The Responsible Official is Kevin B. Elliott, Forest Supervisor, Ashley National Forest, 355 North Vernal Avenue, Vernal, UT 84078.

Nature of Decision To Be Made

The responsible official will decide whether to allow development to occur as proposed or to allow implementation of a reasonable alternative to the proposed action. The selected alternative will establish the terms, conditions, and mitigations needed to protect surface resources during the proposed oil and gas development. Specific ground disturbing developments (wells, roads, compressors, etc.) would require additional analysis prior to implementation, to determine whether those developments are consistent with the scope and requirements of the selected alternative. Approval for such actions on individual well sites would be conducted through the Application for a Permit to Drill (APD) process, in cooperation with the Bureau of Land Management (BLM).

Scoping Process

The Forest Service is seeking information, comments, and assistance from federal, state, and local agencies and individuals or organizations interested in or affected by the proposed action. The comment period on the proposed action will be 45 days from

the date this Notice of Intent is published in the **Federal Register**. Copies of this Notice of Intent will be distributed to interested parties via mailings, posting on the Ashley National Forest Web site (*http://www.fs.fed.us/r4/ashley/projects/*), and publication in the Uintah Basin Standard newspaper. Requests to be added to the mailing list for this project should be sent to: David Herron, Project Leader, Ashley National Forest, 355 North Vernal Avenue, Vernal, Utah 84078, or e-mail to *daherron@fs.fed.us.* A series of public meetings will be scheduled during the scoping period to describe the proposal and to provide an opportunity for public input. Public meetings are being planned for Salt Lake City, Duchesne, and Vernal, Utah. Dates and locations for these meetings will be made available via a mailed scoping notice, the Ashley National Forest Web site, and the Uintah Basin Standard.

Preliminary Issues

Issues that may be analyzed in all alternatives include: The socioeconomic effects of oil and gas development and associated activities; effects on terrestrial and aquatic flora and fauna, including threatened and endangered species, sensitive species, and management indicator species; effects on both developed and dispersed recreation; effects on air quality; effects on water resources, including wetlands, floodplains, riparian areas, private and municipal water systems, and groundwater; effects on visual resources; effects on soils and geologic hazards; effects on cultural resources; effects on upland and riparian vegetation; effects on other mineral resource extraction activities; and effects on noxious weeds and invasive species. Issues may be added or refined based on public comments and internal review.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. The Forest Service requests comments on the nature and scope of the environmental, social, and economic issues, and possible alternatives specifically related to oil and gas development on Ashley National Forest lands currently leased by Berry Petroleum.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 60 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 60-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: August 20, 2007.

Kevin B. Elliott,

Forest Supervisor.

[FR Doc. 07–4227 Filed 8–28–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Dry Fork Station and Hughes Transmission Project

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of draft environmental impact statement and notice of public meeting.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development, is issuing a Draft Environmental Impact Statement (EIS) for the Dry Fork Station and Hughes Transmission Project. The Draft EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (U.S.C. 4231 *et seq.*) in accordance with the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR 1500–1508) and RUS regulations (7 CFR part 1794).

The purpose of the EIS is to evaluate the potential environmental impacts of and alternatives to the Basin Electric Power Cooperative, Inc. (Basin Electric) application for a Rural Development loan guarantee to construct and operate a coal-fired electric generation facility referred to as the Dry Fork Station, consisting of a single maximum net 385 Megawatt (MW) unit, at a site near Gillette, Wyoming, along with other proposed pollution controls collectively known as Best Available Control Technology (BACT). In addition, Basin Electric also proposes to construct and operate 136 miles of 230 kilovolt (kV) transmission line in Campbell and Sheridan counties, referred to as the Hughes Transmission Project. Basin Electric is not requesting a loan guarantee from Rural Development for this action. However, the Hughes Transmission Project is evaluated as a connected action for this EIS because the Dry Fork Station would interconnect with it if the Station is built.

DATES: With this notice, Rural Development invites any affected Federal, State, and local Agencies and other interested persons to comment on the Draft EIS. Written comments on this Draft EIS will be accepted for 45 days following publication of the Environmental Protection Agency's Notice of Availability for this Draft Environmental Impact Statement (DEIS) in the **Federal Register**. Rural Development will hold two (2) public

meetings, on September 25, 2007, at Sheridan College, Watt Agricultural Center, 3059 Coffeen Avenue, Sheridan, Wyoming 82801; and, on September 26, 2007 at the CAM-PLEX Multi-Event Center, Central Pavilion, 1635 Reata Drive, Gillette, Wyoming 82718.

The public meetings will begin with an open house at 4:30 p.m., followed by a public hearing starting at 7 p.m. The hearing will include a presentation summarizing the findings of the DEIS and the opportunity for attendees to submit both oral and written comments. In accordance with 40 CFR Section 1503.1, Inviting Comments, the purpose of the meeting will be to solicit comments from interested parties on the Draft EIS for the Dry Fork Station and Hughes Transmission Project.

ADDRESSES AND FOR FURTHER INFORMATION CONTACT: To send comments or for more information, contact: Richard Fristik, USDA, Rural Development, Utilities Programs, 1400 Independence Avenue, SW., Mail Stop 1571, Room 2240, Washington, DC 20250–1571, telephone (202) 720–5093, fax (202) 690–0649, or e-mail: *Richard.Fristik@wdc.usda.gov*.

A copy of the DEIS can be obtained or viewed online at *http://www.usda.gov/rus/water/ees/deis-dfs.htm*. The files are in a Portable Document Format (.pdf); in order to review or print the document, users need to obtain a free copy of Acrobat® Reader® (© 2003 Adobe Systems Incorporated). The Acrobat® Reader® can be obtained from *http://www.adobe.com/prodindex/acrobat/readstep.html*.

Copies of the DEIS will also be available for public review during normal business hours at the following locations:

Campbell County Public Library, 2101 South 4J Road, Gillette WY 82718–5205, Phone: (307) 687–0009, FAX: (307) 686–4009.

Wright Branch Library—Campbell County Public Library System, 305 Wright Boulevard, Wright, WY 82732.

Sheridan County Fulmer Public Library, 35 W. Alger Street, Sheridan, WY 82801.

Clearmont Branch Library—Sheridan County Public Library, 1240 Front Street, Clearmont, WY 82835, Phone: (307) 758–4331.

Crook County Library, 414 Main Street, Sundance, WY 82729.

Moorcroft Public Library—Crook County Library System, 105 East Converse, Moorcroft, WY 82721.

Johnson County Library, 171 North Adams, Buffalo, WY 82834.

SUPPLEMENTARY INFORMATION: Basin Electric is a regional electric generation and transmission cooperative, a non-profit utility owned by its members. As such, it provides wholesale electricity and related services to 124 member systems in parts of Wyoming, North Dakota, South Dakota, Colorado, Minnesota, Iowa, Nebraska, Montana, and New Mexico. Basin Electric's service territory covers 430,000 square miles from the Canadian to the Mexican border. Under its charter, Basin Electric is required to meet the electric power needs of the cooperative member systems it serves. Due to the growing demand for power in the Powder River Basin (PRB), Basin Electric has determined that additional base load capacity is needed in the PRB.

After considering various ways to meet those future needs, Basin Electric identified the construction of a new coal-fired power plant near Gillette, as its best course of action to meet its electric energy and related service needs. An Alternative Evaluation Study and Site Selection Study examined alternative means of responding to the identified purpose and need for the project. Multiple power generation technologies and potential sites were screened using various criteria, and those remaining were then evaluated in terms of cost-effectiveness, technical feasibility, and environmental soundness. A similar process was followed for the Hughes Transmission Project.

Alternatives for power generation considered by Rural Development include no action, purchased power, load management, renewable energy sources, distributed generation, and alternative site locations. The three alternatives analyzed fully in the DEIS are the No Action Alternative, Proposed Action (Dry Fork Station at the Proposed Site, and the Hughes Transmission Line Proposed Alignment), and Alternative Action (building the power plant at the Alternative Site just over 1 mile from the Proposed Site, and routing the transmission line along the Alternate Alignment).

Under the No Action Alternative, the Dry Fork Station would not be constructed or operated to meet the projected 385–MW base load needs of Basin Electric; there would be no facilities constructed at either the Proposed or Alternative Sites. The Hughes Transmission Project, however, would still be constructed as Basin Electric is not requesting Rural Development funding for this action.

Basin Electric proposes to construct and operate a (maximum net rating) 385 MW (422 MW maximum gross) base load coal-fired power plant and transmission line interconnection near Gillette, Wyoming. Basin Electric proposes to construct a facility in this area due to the proximity of the fuel source in the PRB and delivery of the power to its membership. Basin Electric is requesting Rural Development to provide financing for the proposed project.

The transmission line would consist of approximately 136 miles of 230-kV transmission line that will connect the Hughes Substation east of Gillette, Wyoming, to the Carr Draw Substation west of Gillette and a proposed substation northeast of Sheridan, Wyoming. The proposed schedule developed by Basin Electric would place the transmission line in operation by mid-2009, while the generating facility would be commercially operational by mid-2012.

The Proposed Action would have adverse but non-significant impacts on soils, water, air, biological resources, noise, transportation, farmland and land use, visual resources, cultural resources, human health and safety, and environmental justice. The Proposed Action would result in moderately beneficial socioeconomic impacts, including increased employment opportunities, total purchases of goods and services, and an increase in the tax base.

Utilizing the Alternative Dry Fork Station Site and Alternative Hughes Transmission Line Alignment would result in broadly similar impacts to those of the Proposed Action, with a slightly increased loss of vegetation, including 120 acres of good quality sagebrush habitat at the alternative power plant site, and slightly increased noise impacts due to the Alternative Site's proximity to a residential property. Adverse but non-significant impacts of the Alternative Site include those on soils, water, air, biological resources, noise, transportation, farmland and land use, visual resources, cultural resources, human health and safety, and environmental justice. Impacts to some biological resources would be minimally increased due to the slightly greater length of the Alternative Hughes Alignment. The Alternative Action would also result in moderately beneficial socioeconomic impacts, including increased employment opportunities, total purchases of goods and services, and an increase in the tax base.

James R. Newby,

Assistant Administrator, Electric Program, USDA/Rural Development/Utilities Programs.

[FR Doc. E7–17048 Filed 8–28–07; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 40–2007]

Foreign–Trade Zone 107 - Des Moines, Iowa, Application for Subzone Status, SACMI USA, Ltd. (Food–Processing and Packaging Equipment), Urbandale, Iowa

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Iowa Foreign–Trade Zone Corporation, grantee of FTZ 107, requesting special–purpose subzone status for the packaging and food–processing equipment manufacturing facility of SACMI USA, Ltd. (SACMI), located in Urbandale, Iowa. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 23, 2007.

The SACMI facility (3 acres/65,000 sq. ft.) is located at 3434 106th Circle, in Urbandale, Iowa. The facility (36 employees) will manufacture and warehouse machinery and parts used in the ceramics, plastics, packaging equipment and food–processing industries. SACMI will manufacture labeling machinery (HTSUS 8422.30, duty–free) and compression molding machinery for bottle caps (HTSUS 8477.51, 3.10%) under zone procedures.

Components purchased from abroad (up to 80 percent of finished value) used in manufacturing include grease with/without additive, vulcanized rubber tube, conveyor belts, belting and transmission belts, gasket rings, pipe fit and flanges, screws and bolts, cotters and cotter pins, springs, wrenches, vices, clamps, end milling cutters, tools, stoppers, caps and lids, fans, other parts of machinery for working rubber, safety or relief valves, solenoid valves, appliances, radial ball bearings, cup/cone assembly sets, spherical roller bearings, needle roller bearings, cylindrical roller bearings, cam/crank shafts, gears and gearing, flywheels and pulleys, clutches, clutches and shaft couplings, transmission parts, electric motors under 18.65W, distributors, electric relays, switches for electric circuits, fuses, electrical equipment for switch circuits, coaxial cable, brake parts, other shock absorbers, drawing instruments, and electrical table lamps (duty rate range: free to 9 %).

FTZ procedures could exempt SACMI from Customs duty payments on foreign components that are re–exported. Some 20 percent of the plant's shipments are exported. On domestic shipments, the company would be able to choose the duty rate during customs entry procedures that applies to the finished products (duty–free to 3.10%) for the foreign components listed above and would be able to defer payments until merchandise is shipped from the facility and entered for U.S. consumption. SACMI also plans to realize logistical benefits through the use of weekly entry procedures. The application indicates that all of the above–cited savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 29, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 13, 2007.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, 210 Walnut Street, Suite 749, Des Moines, Iowa 50309 and, the Office of the Executive Secretary, Foreign–Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Avenue, NW, Washington, DC 20230.

For further information, contact Kathleen Boyce at Kathleen__Boyce@ita.doc.gov or (202) 482–1346.

Dated: August 23, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–17116 Filed 8–28–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[06–BIS–14]

Action Affecting Export Privileges; Spector International, Inc.; In the Matter of: Spector International, Inc. d/b/a Norsal Export Limited, 27 Bethpage Drive, Monroe Township, NJ 08831, Respondent

Order Relating to Spector International, Inc. d/b/a Norsal Export Ltd.

The Bureau of Industry and Security, U.S. Department of Commerce (''BIS'') has initiated an administrative proceeding against Spector International, Inc. doing business as Norsal Export Limited (''Norsal'') pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (2007)) (the ''Regulations''),[1] and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. § 2401–2420 (2000)) (the ''Act''),[2] through issuance of a charging letter to Norsal that alleged that Norsal committed 44 violations of the Regulations. Specifically, the charges are:

Charges 1–14 15 CFR 764.2(a)—Export of Microwave Amplifiers Without the Required Licenses

On 14 occasions, between on or about November 9, 2000 and January 9, 2003, Norsal engaged in conduct prohibited by the Regulations by exporting or causing to be exported microwave amplifiers, items subject to the Regulations and classified under Export Control Classification Number (''ECCN'') 3A001.b.4, to the People's Republic of China (''China'') without the Department of Commerce license required by § 742.4 of the Regulations. In so doing, Norsal committed 14 violations § 764.2(a) of the Regulations.

[1] The violations charged occurred between 2000 and 2003. The Regulations governing the violation at issue are found in the 2000 through 2003 version of the Code of Federal Regulations (15 CFR parts 730–774 (2000–2003)). The 2007 Regulations govern the procedural aspects of this case.

[2] Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by successive Presidential Notices, the most recent being that of August 3, 2006 (71 Fed. Reg. 44,551 (Aug. 7, 2006)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701–1706 (2000)).

Charge 15 15 CFR 764.2(c)—Attempted Export of Microwave Amplifiers Without the Required License

On or about March 13, 2003, Norsal attempted a violation of the Regulations by attempting to export microwave amplifiers, items subject to the Regulations and classified under ECCN 3A001.b.4, to China without the Department of Commerce license required by § 742.4 of the Regulations. In so doing, Norsal committed one violation of § 764.2(c) of the Regulations.

Charges 16–30 15 CFR 764.2(e)—Selling Microwave Amplifiers With Knowledge of a Violation of the Regulations

With respect to the exports or attempted exports as described in Charges 1–15 above, Norsal sold microwave amplifiers with the knowledge that a violation was about to occur or was intended to occur in connection with the microwave amplifiers. At all times relevant hereto, Norsal knew or had reason to know that the microwave amplifiers in question required a Department of Commerce license for export to China, and that the required license had not been obtained. In so doing, Norsal committed 15 violations of § 764.2(e) of the Regulations.

Charges 31–44 15 CFR 764.2(g)—False Statement on Shipper's Export Declarations as to Authority To Export

With respect to the exports or attempted exports as described in Charges 1–11 and 13–15, above, Norsal filed or caused to be filed Shipper's Export Declarations (''SEDs'') with the United States Government that contained false statements of fact. Specifically, Norsal filed or caused to be filed 14 SEDs that stated that the microwave amplifiers that were the subjects of the SEDs did not require licenses (''NLR''). This representation is false as at all times relevant to this case a Department of Commerce license was required to export the microwave amplifiers in question in this case to China. In so doing, Norsal committed 14 violations of § 764.2(g) of the Regulations.

Whereas, BIS and Norsal have entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and

Whereas, I have approved of the terms of such Settlement Agreement; *It is Therefore Ordered:*

First, that a civil penalty of $462,00 is assessed against Norsal. Payment shall be suspended for a period of one year from the date of entry of this Order and thereafter shall be waived, provided that during the period of suspension, Norsal has committed no violation of the Act, or any regulation, order, or license issued thereunder.

Second, for a period of twenty-five years from the date of entry of this Order, Spector International, Inc. doing business as Norsal Export Limited, 27 Bethpage Drive, Monroe Township, New Jersey 08831 (''Norsal''), its successors or assigns, and when acting for or on behalf of Norsal, its representatives, agents, officers or employees (''Denied Person'') may not participate, directly or indirectly, in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carry on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Third, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fourth, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Norsal by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fifth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Sixth, that the charging letter, the Settlement Agreement, this Order, and the record of this case as defined by Section 766.20 of the Regulations shall be made available to the public.

Seventh, that the administrative law judge shall be notified that this case is withdrawn from adjudication.

Eighth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register.**

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 21st day of August, 2007.

Wendy L. Wysong,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 07–4226 Filed 8–28–07; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 06–BIS–13]

Action Affecting Export Privileges; Norman Spector; In the Matter of: Norman Spector, 27 Bethpage Drive, Monroe Township, NJ 08831, Respondent

Order Relating to Norman Spector

The Bureau of Industry and Security, U.S. Department of Commerce (''BIS'') has initiated an administrative proceeding against Norman Spector (''Spector'') pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2007)) (the ''Regulations''),[1] and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. § 2401–2420 (2000)) (the ''Act''),[2] through issuance of a charging letter to Spector that alleged that Spector committed 44 violations of the Regulations. Specifically, the charges are:

Charges 1–14 15 CFR 764.2(a)—Export of Microwave Amplifers Without the Required Licenses

On 14 occasions, between on or about November 9, 2000 and January 9, 2003, Spector engaged in conduct prohibited by the Regulations by exporting or causing to be exported microwave amplifiers, items subject to the Regulations and classified under Export Control Classification Number (''ECCN'') 3A001.b.4, to the People's Republic of China (''China'') without the Department of Commerce license required by § 742.4 of the Regulations. In so doing, Spector committed 14 violations of § 764.2(a) of the Regulations.

Charge 15 15 CFR 764.2(c)—Attempted Export of Microwave Amplifiers Without the Required License

On or about March 13, 2003, Spector attempted a violation of the Regulations by attempting to export microwave amplifiers, items subject to the Regulations and classified under ECCN 3A001.b.4, to China without the Department of Commerce license required by § 742.4 of the Regulations. In so doing, Spector committed one violation of § 764.2(c) of the Regulations.

Charges 16–30 15 CFR 764.2(e)—Selling Microwave Amplifiers With Knowledge of a Violation of the Regulations

With respect to the exports or attempted exports as described in Charges 1–15 above, Spector sold microwave amplifiers with the knowledge that a violation was about to occur or was intended to occur in connection with the microwave amplifiers. At all times relevant hereto, Spector knew or had reason to know that the microwave amplifiers in question required a Department of Commerce license for export to China, and that the required license had not been obtained. In so doing, Spector committed 15 violations of § 764.2(e) of the Regulations.

Charge 31–44 15 CFR 764.2(g)—False Statement on Shipper's Export Declarations as to Authority To Export

With respect to the exports or attempted exports as described in Charges 1–11 and 13–15, above Spector filed or caused to be filed Shipper's Export Declarations (''SEDs'') with the United States Government that contained false statements of fact. Specifically, Spector filed or caused to be filed 14 SEDs that stated that the microwave amplifiers that were the subjects of the SEDs did not require licenses (''NLR''). This representation is false as at all times relevant to this case a Department of Commerce license was required to export the microwave amplifiers in question in this case to China. In so doing, Spector committed 14 violations of § 764.2(g) of the Regulations.

Whereas, BIS and Spector have entered into a Settlement Agreement pursuant to § 766.18(b) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

Whereas, I have approved of the terms of such Settlement Agreement; *It is Therefore Ordered:*

First, that a civil penalty of $462,000 is assessed against Spector. Spector shall pay $22,000 to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions. Payment of the remaining $440,000 shall be suspended for a period of one year from the date of entry of this Order and thereafter shall be waived, provided that during the period of suspension, Spector has committed no violation of the Act, or any regulation, order, or license issued thereunder and has made the payment of $22,000, described above, in a timely manner.

Second, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Spector will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

Third, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Spector. Accordingly, if Spector should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Spector's export privileges under the Regulations for a period of one year from the date of entry of this Order.

Fourth, that for a period of twenty-five years from the date of entry of this Order, Norman Spector, 27 Bethpage Drive, Monroe Township, New Jersey 08831, and, when acting for or on behalf of Spector, his representatives, agents, assigns, or employees, (''Denied Person'') may not participate, directly or indirectly, in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulation, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States

[1] The violations charged occurred between 2000 and 2003. The Regulations governing the violation at issue are found in the 2000 through 2003 version of the Code of Federal Regulations (15 CFR parts 730–774 (2000–2003)). The 2007 Regulations govern the procedural aspects of this case.

[2] Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by successive Presidential Notices, the most recent being that of August 3, 2006 (71 Fed. Reg. 44,551 (Aug. 7, 2006)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701–1706 (2000)).

that is subject to the Regulations, or in any other activity subject to the Regulations.

Fifth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Sixth, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Spector by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

Seventh, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Eighth, that the charging letter, the Settlement Agreement, this Order, and the record of this case as defined by Section 766.20 of the Regulations shall be made available to the public.

Ninth, that the administrative law judge shall be notified that this case is withdrawn from adjudication.

Tenth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 21st day of August, 2007.

Wendy L. Wysong,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 07–4228 Filed 8–28–07; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–817]

Oil Country Tubular Goods from Mexico: Notice of NAFTA Panel Decision Not In Harmony With Final Results of Sunset Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 19, 2007, a Bi–National Panel (''Panel'') constituted under the North American Free Trade Agreement (''NAFTA'') affirmed the Department of Commerce's (''the Department's'') redetermination on remand of the final results of the sunset review on oil country tubular goods from Mexico. *See In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Sunset Review of the Antidumping Duty Order*, USA–MEX–2001–1904–03 (July 19, 2007) (''*NAFTA Final Decision*''). The Panel issued its Notice of Final Panel Action in the above–referenced matter on July 30, 2007. This case arises out of the Department's determination in the final results of the first sunset review covering entries for the five years after August 11, 1995. *See Oil Country Tubular Goods (''OCTG'') from Mexico: Final Results of Sunset Review of Antidumping Order*, 66 FR 14131 (March 9, 2001) and accompanying Issues and Decision Memorandum (''*Final Results*''). Consistent with the decision of the *United States Court of Appeals for the Federal Circuit in Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (''Timken''), the Department is notifying the public that the *NAFTA Final Decision* and the Notice of Final Panel Action are not in harmony with the Department's *Final Results*.

EFFECTIVE DATE: August 9, 2007

FOR FURTHER INFORMATION CONTACT: John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION: In the *Final Results*, the Department determined that revocation of the antidumping duty order would likely lead to the continuation or recurrence of dumping. Subsequent to the completion of the sunset review, Tubos de Aceros de Mexico, S.A. (''TAMSA'') challenged the Department's findings and requested that a Bi–National Panel review the final determination. From 2005 to 2007, the Panel issued multiple decisions remanding various aspects of the Department's decision to the agency. *See* Panel decisions of February 11, 2005, February 3, 2006, July 28, 2006, and January 17, 2007. In response to the Panel's January 17, 2007, order, the Department analyzed the redetermination on remand and found that TAMSA's 'other factors' did not outweigh the likelihood presumption of dumping due to the virtual cessation of exports of OCTG by TAMSA during the five-year review period. The Panel disagreed with the Department's factual and legal conclusions with regard to the issues, and remanded the review to the Department on June 1, 2007, with instructions that the Department ''make a determination consistent with the decision of this Panel to the effect that the evidence on the record does not support a finding of likelihood of recurrence or continuation of dumping upon revocation of the antidumping duty order.'' *See In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Sunset Review of the Antidumping Duty Order*, USA–MEX–2001–1904–03 (June 1, 2007) at page 27.

Consistent with the Panel's instructions, the Department issued a determination on June 11, 2007, where the Department ''made a determination to the effect that the evidence on the record does not support a finding or likelihood of recurrence or continuation of dumping upon revocation of the antidumping duty order.'' *See Fifth Redetermination on Remand, Oil Country Tubular Goods from Mexico: Sunset Review*, (June 11, 2007) at page 2. On July 19, 2007, the Panel affirmed the Department's fifth remand redetermination. *See NAFTA Final Decision*. The Panel issued its Notice of Final Panel Action on July 30, 2007.

In *Timken*, the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. *Timken*, 393 F.2d at 341. Because NAFTA panels step into the shoes of the courts they are replacing, they must apply the law of the national court that would otherwise review the administrative determination. Therefore, we are publishing notice that the Panel's Notice of Final Panel Action and its *NAFTA Final Decision* are not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period for requesting an Extraordinary Challenge Committee (''ECC''). If an ECC request is not filed, or if an ECC request is filed, and the Panel's decision is upheld, the Department will instruct U.S. Customs and Border Protection to liquidate the subject merchandise without regard to dumping duties.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: August 21, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–17115 Filed 8–28–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC28

Marine Mammals; File No. 774–1847–02

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

ACTION: Notice; Receipt of Application for Amendment.

SUMMARY: Notice is hereby given that NMFS Southwest Fisheries Science Center, Antarctic Marine Living Resources Program (Rennie Holt, Ph.D., Principal Investigator), 8604 La Jolla Shores Drive, La Jolla, CA 92037, has requested an amendment to scientific research Permit No. 774–1847–01.

DATES: Written, telefaxed, or e-mail comments must be received on or before September 28, 2007.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 774–1847–02.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 774–1847–01, issued on March 20, 2007 (72 FR 13093) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 774–1847–01 authorizes the permit holder to continue a long-term ecosystem monitoring program of pinniped species in the South Shetland Islands, Antarctica. The applicant is authorized to take up to 710 Antarctic fur seals (*Arctophalus gazella*) and 20 leopard seals (*Hydrurga leptonyx*) annually. The animals are captured, measured, weighed, tagged, blood sampled, and have time-depth recorders, VHF transmitters, and platform terminal transmitters attached. A subset of fur seals are given an enema, have a tooth extracted, milk sampled, and are part of a doubly-labeled water study on energetics. A subset of leopard seals are blubber and muscle sampled. The permit authorizes the research-related mortality of up to eight Antarctic fur seals (three adults and five pups) and one leopard seal annually. The permit holder requests authorization to collect vibrissae from any animal currently permited for capture as well as collect tissue samples from 50 adult male Antarctic fur seals. Additional capture is not required to collect these samples.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 23, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–17131 Filed 8–28–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XC31

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat/MPA/Ecosystem Committee, in September, 2007, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Monday, September 17, 2007, at 1 p.m.

ADDRESSES: This meeting will be held at the Radisson Hotel, 180 Water Street, Plymouth, MA 02360; telephone: (508) 747–4900; fax: (508) 747–8937.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will review the Habitat Plan Development Team (PDT) report on the Great South Channel Habitat Areas of Particular Concern (HAPC) alternative and develop a recommendation to the Council. The Committee will also receive a presentation on the Gulf of Maine Mapping Initiative (GOMMI) that would include an update on regional seafloor mapping activities and needs, as well as GOMMI's legislative outreach campaign. The Committee will also consider other topics at their discretion including, but not limited to, actionable items related to the essential fish habitat (EFH) Omnibus Amendment.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 24, 2007.

James P. Burgess,

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

[FR Doc. E7–17088 Filed 8–28–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XC29

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Crab Plan Team will meet in Seattle, WA.

DATES: The meeting will be held September 12–14, 2007, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Alaska Fishery Science Center, 7600 Sand Point Way NE, Building 4, Observer Training Room, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Stram, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The agenda includes the following: (1) NMFS, ADF&G Bering Sea Fishermen's Research Fund, survey results; (2) Review model and assessment results for Bristol Bay red king crab, Bering Sea snow crab; (3) Review stock assessment and fishery evaluation report (SAFE); status of stocks relative to overfishing and current harvest strategies; State annual management report; Economic section of SAFE; review and revise Executive Summary and compile SAFE; Fishery performance/harvest relative to Guideline Harvest levels and Total Allowable Catch; (4) Review of draft crab overfishing definition assessment; (5) Review Board of Fisheries proposals for March 2008 meeting; (6) Aleutian Island Fishery Ecosystem Plan overview; and (7) Other issues as needed.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: August 24, 2007.

James P. Burgess,

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

[FR Doc. E7–17086 Filed 8–28–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XC30

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) and NMFS will hold a Coastal Pelagic Species (CPS) Stock Assessment Review (STAR) Panel workshop to review assessment methods for Pacific mackerel and Pacific Sardine.

DATES: The workshop is scheduled for Tuesday, September 18, 2007, from 10 a.m to 5 p.m.; Wednesday, September 19, 2007, and Thursday September 20, from 8 a.m. to 5 p.m.; and Friday, September 21, 2007, from 8 a.m. to until business for the day is completed.

ADDRESSES: The STAR Panel workshop will be held at the National Marine Fisheries Service, Southwest Fisheries Science Center (SWFSC), Green Room, 8604 La Jolla Shores Drive, La Jolla, CA 92037; telephone: (858) 546–7000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, Pacific Fishery Management Council; telephone: (503) 820–2280; or Dr. Ray Conser, Southwest Fisheries Science Center; telephone: (858) 546–7000.

SUPPLEMENTARY INFORMATION: The purpose of the CPS STAR Panel meeting is to review draft stock assessment documents and any other pertinent information for Pacific mackerel and Pacific Sardine, work with the Stock Assessment Team to make necessary revisions, and produce a STAR Panel report for use by the Council family and other interested persons for developing management recommendations for the 2008 Pacific sardine fishery and assessment methodology recommendations in advance of future updates of the Pacific mackerel assessment.

Although non-emergency issues not contained in this notice may arise during the STAR Panel meeting, those issues may not be the subject of formal action during this meeting. Formal action will be restricted to those issues specifically listed in this notice and any

issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Entry to the Southwest Fisheries Science Center requires visitors to register with the front office each morning. A visitor's badge, which must be worn while at SWFSC, will be issued to non-Federal employees participating in the meeting. Since parking is at a premium at the SWFSC, car pooling, and mass transit are encouraged.

Dated: August 24, 2007.

James P. Burgess,

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

[FR Doc. E7–17087 Filed 8–28–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Tessarae Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Tessarae Inc., a revocable, nonassignable, exclusive license to practice in the field of use defined as design process, systems and applications utilizing high-density resequencing microarrays (greater than 100,000 features per array and less than 500 square micron feature size), and manufacturable under good practice standards in batch quantities greater than 1,000 arrays (such as CustomSeq(®) resequencing microarrays fabricated by Affymetrix, Inc.), for screening, diagnosis where approved by the appropriate local government health authority, and/or surveillance of pathogen induced disease in the United States and certain foreign countries, the Government-owned inventions described in Navy Case No. 98,325, entitled ''Design and Selection of Genetic Targets for Sequence Resolved Organism Detection and Identification'' and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than September 13, 2007.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Rita Manak, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone: 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, e-mail: *techtran@utopia.nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: August 22, 2007.

T. M. Cruz,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7–17126 Filed 8–28–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, 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 29, 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 IC Clearance Official, 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 23, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New.

Title: Determine Tax Status of Supplemental Educational Services Providers.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 41.

Burden Hours: 237.

Abstract: The purpose of this data collection is to provide longitudinal data on the extent to which state-approved supplemental service providers are private for-profit or private non-profit entities. This data collection will supplement current data collection and analysis based on state lists of approved SES providers that are publicly available on SEA Web sites. The summary of supplemental educational service providers is used to inform policymakers and researchers about both the availability of supplemental educational service providers within each state and the types of organizations offering these services. Information from the current data collection has been used in the National Assessment of Title I, and this new information will also be reported through future National Assessment reports.

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 3447. 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. E7–17056 Filed 8–28–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Jacob K. Javits Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.170A.

Dates: Applications Available: August 29, 2007. Deadline for Transmittal of Applications: October 15, 2007. Deadline for Transmittal of the Free Application for Federal Student Aid (FAFSA): January 31, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Jacob K. Javits (JKJ) Fellowship Program is to award fellowships to eligible students of superior ability, selected on the basis of demonstrated achievement, financial need, and exceptional promise, to undertake graduate study in specific fields in the arts, humanities, and social sciences leading to a doctoral degree or to a master's degree in those fields in which the master's degree is the terminal highest degree awarded in the selected field of study at accredited institutions of higher education. The selected fields in the arts are: creative writing, music performance, music theory, music composition, music literature, studio arts (including photography), television, film, cinematography, theater arts, playwriting, screenwriting, acting, and dance. The selected fields in the humanities are: American history, art history (including architectural history), archeology, area studies, classics, comparative literature, English language and literature, folklore, folk life, foreign languages and literature, foreign languages that are less commonly taught as follows: Arabic, Chinese, Japanese, Korean, Russian, Indic family (including Hindi, Urdu, Sinhala, Bengali, Nepali, Punjabi, Marathi, Gujarati, Oriya, Assamese); Iranian family (including Dari, Farsi, Tajiki, Kurdish, Pashto, Balochi); and Turkic family (including Turkish, Azerbaijani/Azeri, Kazakh, Kyrgyz, Turkmen, Uzbek, Uyghur), linguistics, non-American history, philosophy, religion (excluding study of religious vocation), speech, rhetoric, and debate. The selected fields in the social sciences are: anthropology, communications and media, criminology, economics, ethnic and cultural studies, geography, political science, psychology (excluding clinical psychology), public policy and public administration, and sociology (excluding the master's and doctoral degrees in social work).

Invitational Priority: For FY 2008, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Students Studying Less Commonly Taught Languages.

Within the eligible fields under Humanities, the Secretary is particularly interested in receiving applications from students studying foreign languages that are less commonly taught as follows: Arabic, Chinese, Japanese, Korean, Russian, Indic family (including Hindi, Urdu, Sinhala, Bengali, Nepali, Punjabi, Marathi, Gujarati, Oriya, Assamese); Iranian family (including Dari, Farsi, Tajiki, Kurdish, Pashto, Balochi); and Turkic family (including Turkish, Azerbaijani/Azeri, Kazakh, Kyrgyz, Turkmen, Uzbek, Uyghur).

Program Authority: 20 U.S.C. 1134–1134d.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except as provided in 34 CFR 650.3(b)), 77, 82, 84, 85, 86, 97, 98 and 99. (b) The regulations for this program in 34 CFR part 650.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $2,782,212.

Estimated Average Size of Awards: $42,892.

Estimated Number of Awards: 64.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Individuals who at the time of application—(1) Have not completed their first full year of study for a doctoral degree or a master's degree in those fields in which the master's degree is the terminal highest degree awarded in the selected field of study, or will be entering a doctoral degree program or a master's degree program in those fields in which the master's degree is the terminal highest degree awarded in the selected field of study in academic year 2008–2009; (2) are eligible to receive grant, loan, or work assistance pursuant to section 484 of the Higher Education Act of 1965, as amended (HEA); and (3) intend to pursue a doctoral or master's degree in fields selected by the JKJ Fellowship Board at accredited U.S. institutions of higher education. An individual must be a citizen or national of the United States, a permanent resident of the United States, in the United States for other than a temporary purpose and intending to become a permanent resident, or a citizen of any one of the Freely Associated States.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address To Request Application Package:* You can obtain an application package via the Internet or from the Department. To obtain a copy via the Internet, use the following address for the JKJ Fellowship Program Web site: *http://www.ed.gov/programs/jacobjavits/index.html.*

To obtain a copy from the Department, write, fax, or call the following: Carmen Gordon, Jacob K. Javits Fellowship Program, U.S. Department of Education, Teacher and Student Development Service, 1990 K St., NW., Suite 6000, Washington, DC 20006–8524. Telephone: (202) 502–7542 or by e-mail: *ope_javits_program@ed.gov.*

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

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

Note: The FAFSA can be obtained from the institution of higher education's financial aid office or accessed at: *http://www.fafsa.ed.gov*.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times:* Applications Available: August 29, 2007. Deadline for Transmittal of Applications: October 15, 2007. Deadline for Transmittal of the FAFSA: January 31, 2008.

Applications for grants under this program must be submitted in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted in paper format by mail or hand delivery.

a. *Submission of Applications by Mail.* If you submit your application by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.170A), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.170A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

b. *Submission of Applications by Hand Delivery.* If you submit your application by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.170A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are established by the JKJ Program Fellowship Board, pursuant to section 702(a)(2) of the HEA and 34 CFR 650.20(a). The selection criteria for applications in the humanities and social sciences are—(a) Statement of purpose (150 points); (b) Letters of recommendation (100 points); (c) Academic record (100 points); and (d) Scholarly awards/honors (50 points). The selection criteria for applications in the arts are—(a) Statement of purpose (100 points); (b) Letters of recommendation (100 points); (c) Academic record (50 points); (d) Scholarly awards/honors (50 points); and (e) Supporting arts materials (100 points).

2. *Review and Selection Process:* The review and selection process for the JKJ Fellowship Program consists of a two-part process. Eligible applications are read and rated by a panel of distinguished scholars and academics in the arts, humanities, and social sciences on the basis of demonstrated scholarly achievements and exceptional promise. The second part of the evaluation is a determination of financial need.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we will notify you by telephone and we will send a Grant Award Notice (GAN) directly to the institution you will be attending.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* On an annual basis, fellows must submit their Student Aid Report to the Javits Program Coordinator at their institution, as directed by the Secretary pursuant to 34 CFR 650.37. In addition, Javits fellows are required to submit an annual performance report. The Department will contact fellows regarding the completion of the annual performance report.

4. *Performance Measures:* The effectiveness of the JKJ Fellowship Program will be measured by graduate completion rates, time-to-degree completion rates, and the costs per Ph.D or master's degree of talented graduate students with demonstrated financial

need who are pursuing the highest degree available in their designated fields of study. Institutions of higher education in which the fellows are enrolled are required to submit an annual report documenting the fellows' satisfactory academic progress and the determined financial need. Javits fellows are also required to submit an annual performance report to assist program staff in tracking time-to-degree completion rates, graduation rates, as well as the employment status of individual fellows. The Department will use the reports to assess the program's success in assisting fellows in completing their course of study and receiving their degree.

VII. Agency Contacts

For Further Information Contact: Carmen Gordon, Jacob K. Javits Fellowship Program, U.S. Department of Education, Teacher and Student Development Service, 1990 K St., NW., Suite 6000, Washington, DC 20006–8524. Telephone: (202) 502–7542 or by e-mail: *ope_javits_program@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

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

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

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

Dated: August 24, 2007.

Diane Auer Jones,

Assistant Secretary for Postsecondary Education.

[FR Doc. E7–17143 Filed 8–28–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 21, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–45–002.
Applicants: Morgan Stanley.
Description: Morgan Stanley responds to FERC's informal request for information concerning the 12/29/06 Application for Blanket Authorization to Acquire and Sell Securities.
Filed Date: August 15, 2007.
Accession Number: 20070821–0155.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 29, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–4109–002.
Applicants: El Dorado Energy, LLC.
Description: El Dorado Energy, LLC submits an updated market power analysis and revisions to its FERC Electric Tariff, Original Volume 1.
Filed Date: August 16, 2007.
Accession Number: 20070820–0143.
Comment Date: 5 p.m. Eastern Time on Thursday, September 6, 2007.

Docket Numbers: ER01–2508–003.
Applicants: ENMAX Energy Marketing, Inc.
Description: ENMAX Energy Marketing, Inc. submits its triennial market power analysis update in support of the continuation of its market-based rate authority.
Filed Date: August 17, 2007.
Accession Number: 20070821–0056.
Comment Date: 5 p.m. Eastern Time on Friday, September 7, 2007.

Docket Numbers: ER02–2263–008.
Applicants: Southern California Edison Company.
Description: Southern California Edison submits a notice of change in status.
Filed Date: August 16, 2007.
Accession Number: 20070820–0141.
Comment Date: 5 p.m. Eastern Time on Thursday, September 6, 2007.

Docket Numbers: ER03–198–008.
Applicants: Pacific Gas and Electric Company.
Description: Amended Notice of Change in Status of Pacific Gas and Electric Co.
Filed Date: August 21, 2007.
Accession Number: 20070821–5015.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 11, 2007.

Docket Numbers: ER07–799–003; EL07–61–002.
Applicants: Norwalk Power LLC.
Description: Norwalk Power, LLC submits its revised Reliability Must-Run Agreement in compliance with FERC's 7/16/07 Order.
Filed Date: August 15, 2007.
Accession Number: 20070820–0027.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 5, 2007.

Docket Numbers: ER07–1085–001.
Applicants: Niagara Mohawk Power Corporation.
Description: Niagara Mohawk submits the non-redacted version of the Fulton Cogen Agreement.
Filed Date: August 17, 2007.
Accession Number: 20070821–0057.
Comment Date: 5 p.m. Eastern Time on Friday, September 7, 2007.

Docket Numbers: ER07–1199–000.
Applicants: Airtricity Munnsville Wind Farm, LLC.
Description: Airtricity Munnsville Wind Farm, LLC submits an errata to correct the inadvertent pagination of its initial rate schedule FERC Electric Tariff Original Volume 1.
Filed Date: August 16, 2007.
Accession Number: 20070820–0063.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 28, 2007.

Docket Numbers: ER07–1289–000.
Applicants: ISO New England Inc.
Description: Participating Transmission Owners submits proposed revisions to the ISO New England Open Access Transmission Tariff and the Transmission Operating Agreement.
Filed Date: August 16, 2007.
Accession Number: 20070820–0160.
Comment Date: 5 p.m. Eastern Time on Thursday, September 6, 2007.

Docket Numbers: ER07–1290–000.
Applicants: Mid-Continent Area Power Pool.
Description: Mid-Continent Area Power Pool submits seventeen non-conforming service agreements for reassignment of non-firm transmission service and requests waiver of the Commission's filing requirements.
Filed Date: August 16, 2007.
Accession Number: 20070820–0144.
Comment Date: 5 p.m. Eastern Time on Thursday, September 6, 2007.

Docket Numbers: ER07–1291–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits revisions to its Open Access Transmission Tariff, effective 7/13/07 pursuant to Order 890.
Filed Date: August 17, 2007.
Accession Number: 20070820–0148.
Comment Date: 5 p.m. Eastern Time on Friday, September 7, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Nathaniel J. Davis, Sr.,

Acting Deputy Secretary.

[FR Doc. E7–16970 Filed 8–28–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8461–8]

Meetings of the Local Government Advisory Committee (LGAC) and the Small Community Advisory Subcommittee (SCAS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee (LGAC) and the Small Community Advisory Subcommittee (SCAS) will meet in conjunction with the Environmental Council of States (ECOS) in Sun Valley, Idaho on September 18–19, 2007, at the Sun Valley Resort located at 1 Sun Valley Road, Room Limelight Salon A.

Local Government Advisory Committee will meet on the following dates:

Tuesday, September 18, 2007 1:30–5:30 p.m. Mountain Time (MDT).

Wednesday, September 19, 2007 8:30 a.m.–5 p.m. Mountain Time (MDT).

Small Community Advisory Subcommittee will meet on the following dates:

Tuesday, September 18, 2007 10:30-12:30 p.m. Mountain Time (MDT).

Background

There are estimated to be over 26,000 small town governments (with populations less than 10,000) in this country that address and are challenged by complex environmental management issues such as aging wastewater treatment plants, drinking water systems, incinerators, storm water systems, and landfills. Small communities handle solid waste, medical waste, liquid waste and hazardous waste and are often burdened with the staggering costs of meeting compliance and addressing new regulations. This meeting will focus on these many complex and diverse environmental management issues faced by small communities. A field trip will provide an onsite investigation of the varied environmental issues that impact small communities. Additionally, the purpose of the meeting is to improve and enhance our understanding of these needs and build the partnerships at the federal, state, and local level to address the needs of small communities.

Additional information may be obtained by emailing the Designated Federal Officer (DFO) for the Local Government Advisory Committee at *Eargle.Frances@epa.gov,* or *Raymond.Anna@epa.gov* for the Small Community Advisory Subcommittee (SCAS), or in written correspondence to: 1200 Pennsylvania Avenue, NW., (1301A), Washington, DC 20460. This is an open meeting and all interested persons are invited to attend. There will be a public comment period on Tuesday, September 18, 2007 at 2 p.m. (MDT). For further information contact: Frances Eargle, DFO for the Local Government Advisory Committee (LGAC) at (202) 564–3115 or Anna Raymond, DFO for the (SCAS) at (202) 564–3663.

Information on Services for the Disabled: For information on access or services for individuals with disability, please contact Frances Eargle at (202) 564–3115. To request accommodation of a disability, please contact Frances Eargle, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: August 21, 2007.

Anna Raymond,

Designated Federal Officer, Small Community Advisory Subcommittee.

[FR Doc. E7–17107 Filed 8–28–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2007–0902; FRL–8462–1]

Board of Scientific Counselors, Executive Committee Meeting—September 2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting of the Board of Scientific Counselors (BOSC) Executive Committee.

DATES: The meeting will be held on Monday, September 17, 2007, from 8:30 a.m. to 5 p.m. All times noted are eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to 1 business day before the meeting.

ADDRESSES: The meeting will be held at the Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209, Tel: (703) 524–6400, Fax: (703) 524–8964. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0902, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov*, Attention Docket ID No. EPA–HQ–ORD–2007–0902.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2007–0902.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Executive Committee Meeting—September 2007 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2007–0902.

• *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2007–0902. **Note:** This is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0902. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Board of Scientific Counselors, Executive Committee Meeting—September 2007 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Lorelei Kowalski, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–3408; via fax at: (202) 565–2911; or via e-mail at: *kowalski.lorelei@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at either meeting may contact Lorelei Kowalski, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the meeting include, but are not limited to: review of the Technology for Sustainability Subcommittee draft report; update on the BOSC mid-cycle review subcommittees (Endocrine Disrupting Chemicals, Air, and Global Change); update on the BOSC program review subcommittees (Human Health Risk Assessment and Homeland Security); discussion of the BOSC rating tool; update on the BOSC standing subcommittees (Computational Toxicology, National Exposure Research Lab, and National Center for Environmental Research); update on the Children's Environmental Health Research Centers Workgroup; ORD briefing on the NAS report on Toxicity Testing in the 21st Century; an update on EPA's Science Advisory Board activities; and future issues and plans. The meeting is open to the public.

Information on Services for Individuals With Disabilities: For information on access or services for individuals with disabilities, please contact Lorelei Kowalski (202) 564–3408 or *kowalski.lorelei@epa.gov.* To request accommodation of a disability, please contact Lorelei Kowalski, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: August 22, 2007.

Eric Weber,

Acting Director, Office of Science Policy.

[FR Doc. E7–17129 Filed 8–28–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-0037; FRL-8145-8]

Pesticide Registration Review; Fenoxaprop-P-ethyl and Etofenprox Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the following pesticides: Fenoxaprop-P-ethyl, case 7209, and etofenprox, case 7407. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before November 27, 2007.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

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

Mail: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

Delivery: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday,

excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: For information about the pesticides included in this document, contact the specific Chemical Review Managers for these pesticides as identified in the table in Unit III.A.

For general questions on the registration review program, contact Kennan Garvey, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7106; fax number: (703) 308–8090; e-mail address: *garvey.kennan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review published in the **Federal Register** of August 9, 2006, and effective on October 10, 2006 (71 FR 45719) (FRL–8080–4). You may also access the Procedural Regulations for Registration Review on the Agency's website at *http://www.epa.gov/fedrgstr/EPA-PEST/2006/August/Day-09/p12904.htm*. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be periodically reviewed. The goal is a review of a pesticide's registration every 15 years. Under FIFRA section 3(a), a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is periodically reviewing pesticide registrations to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. The implementing regulations establishing the procedures for registration review appear at 40 CFR part 155. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE1.—REGISTRATION REVIEW DOCKETS OPENING

Registration Review Case Name and Number	Pesticide Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Fenoxaprop-P-ethyl, 7209	EPA-HQ-OPP–2007–0437	Kylie Rothwell (703) 308–8055 *rothwell.kylie@epa.gov*
Etofenprox,7407	EPA-HQ-OPP–2007–0804	Sherrie Kinard (703) 305–0563 *kinard.sherrie@epa.gov*

B. Docket Content

1. *Review dockets*. The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information*. More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's website at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm*. Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review*.

3. *Information submission requirements*. Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.
- As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 23, 2007.

Martha Monell,

Acting Director, Office of Pesticides Programs.

[FR Doc. E7–17111 Filed 8–28–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0028; FRL–8123–5]

Sodium Carbonate; Weak Mineral Bases; Reregistration Eligibility Decision for Low Risk Pesticide; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide sodium carbonate; weak mineral bases, and opens a public comment period on this document, related risk assessments, and other support documents. EPA has reviewed the low risk pesticide sodium carbonate; weak mineral bases through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before October 29, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID)

number EPA–HQ–OPP–2006–0028, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0028. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov Web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*,or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Diane Isbell, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8154; fax number: (703) 308–8481; e-mail address: *isbell.diane@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. Using a modified, streamlined version of its public participation process, EPA has completed a RED for the low risk pesticide, sodium carbonate, weak mineral bases under section 4(g)(2)(A) of FIFRA. Sodium carbonate is registered as an active ingredient fungicide that is used as a neutralizer and buffering agent in industrial and manufacturing processes. In addition, sodium carbonate is used as a hard surface disinfectant and sanitizer in institutional and residential settings.

EPA has determined that the data base to support reregistration is substantially complete and that products containing sodium carbonate; weak mineral bases will be eligible for reregistration. Upon submission of any required product

specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address any concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing sodium carbonate; weak mineral bases.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like sodium carbonate; weak mineral bases, which pose no risk concerns, have low use, affect few if any stakeholders, and require no risk mitigation. Once EPA assesses uses and risks for such low risk pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings, such as the sodium carbonate; weak mineral bases RED.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Sodium carbonate; weak mineral bases, however, poses no risks that require mitigation. The Agency therefore is issuing the sodium carbonate; weak mineral bases RED, its risk assessments, and related support materials simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for sodium carbonate; weak mineral bases. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the sodium carbonate; weak mineral bases RED will be implemented as it is now presented.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests, sodium carbonate; weak mineral bases.

Dated: August 9, 2007.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E7–16806 Filed 8–28–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2006–0796; FRL–8462–2]

RIN 2050–AE81

Notice of Data Availability on the Disposal of Coal Combustion Wastes in Landfills and Surface Impoundments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Data Availability.

SUMMARY: This notice announces the availability of new information and data contained in three documents that the Agency is requesting public comments on concerning the management of coal combustion wastes (CCW) in landfills and surface impoundments. The Agency is seeking public comments on how, if at all, this additional information should affect the Agency's decisions as it continues to follow-up on its Regulatory Determination for CCW disposed of in landfills and surface impoundments. The three documents that the Agency is requesting comment on include: a joint U.S. Department of Energy (DOE) and EPA report entitled, *Coal Combustion Waste Management at Landfills and Surface Impoundments, 1994–2004;* a draft risk assessment conducted by EPA on the management of CCW in landfills and surface impoundments; and EPA's damage case assessment. The Agency solicits comments on the extent to which the damage case information, the results of the risk assessment, and the new liner and ground water monitoring information from the DOE/EPA report should affect the Agency's decisions. EPA is also requesting direct comment on the draft risk assessment document to help inform a planned peer review. In addition, the Agency has included in the Docket to this Notice of Data Availability (NODA) a rulemaking petition submitted by a number of citizens' groups and several approaches, one prepared by the electric utility industry and the other prepared by a number of citizens' groups, regarding the management of CCW. The Agency will consider all the information provided through this notice, the comments and new information submitted on this notice, as well as the results of a subsequent peer review of the risk assessment as it continues to follow-up on its Regulatory Determination for CCW disposed of in landfills and surface impoundments.

DATES: Submit comments on or before November 27, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2006–0796, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov,* Attention Docket ID No. EPA–HQ–RCRA–2006–0796. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.
- Fax: Comments may be faxed to 202–566–0272. Attention Docket ID No. EPA–HQ–RCRA–2006–0796.
- Mail: Send two copies of your comments to Notice of Data Availability on the Disposal of Coal Combustion Wastes in Landfills and Surface Impoundments, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention

Docket ID No. EPA–HQ–RCRA–2006–0796.

• Hand Delivery: Deliver two copies of your comments to the Notice of Data Availability on the Disposal of Coal Combustion Wastes in Landfills and Surface Impoundments Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–RCRA–2006–0796. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2006–0796. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Notice of Data Availability on the Disposal of Coal Combustion Wastes in Landfills and Surface Impoundments Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–0270. 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.

FOR FURTHER INFORMATION CONTACT: Alexander Livnat, Office of Solid Waste (5306P), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, telephone (703) 308–7251, e-mail address *livnat.alexander@epa.gov.* For more information on this rulemaking, please visit *http://www.epa.gov/epaoswer/other/fossil/index.htm/.*

SUPPLEMENTARY INFORMATION:

I. What Should I Consider as I Prepare My Comments for EPA?

1. *Tips for Preparing Your Comments.* When submitting comments, remember to:

• Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

• Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

• Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

• Describe any assumptions and provide any technical information and/or data that you used.

• If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

• Provide specific examples to illustrate your concerns, and suggest alternatives.

• Explain your views as clearly as possible.

• Make sure to submit your comments by the comment period deadline identified.

2. *Docket Copying Costs.* The first 100-copied pages are free. Thereafter, the charge for making copies of Docket materials is 15 cents per page.

II. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through *http://www.regulations.gov* or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–RCRA–2006–0796. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, 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 CBI). Information so marked will not be disclosed, except in accordance with procedures set forth in 40 CFR Part 2.

In addition to one complete version of the comment that includes any 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 and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please contact: LaShan Haynes, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, telephone (703) 605–0516, e-mail address *haynes.lashan@epa.gov.*

III. Disposal of CCW in Landfills and Surface Impoundments

A. Background

In May 2000, EPA published its Final Regulatory Determination on Wastes From the Combustion of Fossil Fuels (65 FR 32214). The Agency concluded that these wastes do not warrant regulation under Subtitle C of RCRA and, therefore, retained the hazardous waste exemption of RCRA section 3001(b)(3)(C). We also determined, however, that national regulations under Subtitle D of RCRA were appropriate for coal combustion wastes (referred to as CCW throughout this

notice) when disposed of in landfills or surface impoundments.[1]

Specifically, EPA's determination to develop regulations under Subtitle D of RCRA was based on a factual record developed prior to 1995 which led to the following considerations: (i) The constituents present in these wastes include metals, such as arsenic, cadmium, chromium, lead and mercury, that could present a danger to human health and the environment under certain conditions; (ii) while testing of the CCW using the toxicity characteristic leaching procedure (TCLP) rarely exceeds the hazardous waste toxicity characteristic (or TC), the Agency identified eleven documented cases of proven damages[2] to human health and/or the environment by improper management of these wastes in landfills and surface impoundments; (iii) at the time the Regulatory Determination was made, between 40 and 70 percent of CCW disposal sites lacked controls, such as liners and/or ground water-monitoring; and (iv) while there had been substantive improvements in state regulatory programs, the Agency also identified gaps in state oversight. In deciding to pursue Subtitle D in lieu of Subtitle C regulation, the decisive factors which guided the Agency's thinking at that time included the improving trends in disposal and utilization practices, and the current and potential utilization of the wastes, which the Agency believes it should encourage.

B. Additional Information on Management of CCW in Landfills and Surface Impoundments

Since EPA issued the 2000 Regulatory Determination, which was based on information collected prior to 1995, additional information and data have become available that we believe should be considered as part of the Agency's evaluation regarding the development of regulations under Subtitle D of RCRA for CCW. Therefore, today's Notice of Data Availability (NODA) is soliciting public comment on how, if at all, the following additional information and data should affect the Agency's decisions as it continues to follow-up on its Regulatory Determination for CCW disposed of in landfills and surface impoundments: (1) A joint U.S. Department of Energy (DOE) and EPA report entitled, *Coal Combustion Waste Management at Landfills and Surface Impoundments, 1994–2004;* (2) a draft risk assessment conducted by EPA on the management of CCW in landfills and surface impoundments; and (3) EPA's recently completed damage case assessment. EPA is also seeking direct comment on the draft risk assessment document to help inform a planned peer review. In addition, the Agency is also including in the docket to today's NODA a February 2004 Petition for Rulemaking submitted by the Clean Air Task Force and the Hoosier Environmental Council, jointly with a number of citizens' groups to Prohibit the Placement or Disposal of CCW into Groundwater and Surface Water; and two suggested approaches for managing CCW in landfills and surface impoundments. One approach is a Voluntary Action Plan that was formulated by the electric utility industry through their trade association, the Utility Solid Waste Activities Group (USWAG).[3] The second approach is a proposed framework prepared by a number of citizens' groups[4] for federal regulation of CCW disposed of in landfills and surface impoundments under Subtitle D of RCRA generated by U.S. coal-fired power plants. The Agency is making these documents available in the Docket to allow all interested parties to be aware of the various documents that EPA will consider as it continues to follow up on its Regulatory Determination for CCW disposed of in landfills and surface impoundments.[5]

These documents are available for review and downloading through the docket for today's action (see the **ADDRESSES** section above for instructions on accessing this information from the docket). The remainder of this notice briefly describes the various documents that are being made available for review and/or comment.

1. DOE/EPA Report

In reaching its determination in May 2000 to develop national Subtitle D regulations under RCRA for the management of CCW in landfills and surface impoundments, the Agency generally relied on information and data on industry practices that were available prior to 1995. For information on industry practices, the Agency based its Regulatory Determination on information contained in a report prepared by the Electric Power Research Institute (EPRI)[6] addressing waste management units that were constructed between 1985 and 1995. The Agency, however, recognized that the electric utility industry was changing its management practices. Therefore, in 2005, DOE and EPA conducted a joint study to collect more recent information on CCW management practices by the electric power industry. Specifically, this report presents information and data on CCW disposal practices and state regulatory requirements at landfills and surface impoundments that were permitted, built, or laterally expanded between January 1, 1994, and December

[1] In addition, EPA determined that regulations under Subtitle D of RCRA and/or modifications to the existing regulations established under authority of the Surface Mining Control and Reclamation Act (SMCRA) were appropriate when these wastes are used to fill surface or underground coal mines. As recommended in a recent National Academy of Sciences Report entitled, ''Managing Coal Combustion Residues in Mines,'' National Research Council of the National Academies, 2006, EPA will be collaborating with the U.S. Department of Interior, Office of Surface Mining (OSM) to develop national standards for the placement of CCW in coal mines. A separate notice was issued by OSM regarding this effort (see 72 FR 12026, March 14, 2007; available at *http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-4669.pdf).*

[2] Per the May 2000 Regulatory Determination, 65 FR 32224 and Section 1.4.4 of the 1999 Report to Congress, proven damage cases are those with (i) documented exceedances of primary MCLs or other health-based standards measured in ground water at sufficient distance from the waste management unit to indicate that hazardous constituents have migrated to the extent that they could cause human health concerns, and/or (ii) where a scientific study demonstrates there is documented evidence of another type of damage to human health or the environment (e.g., ecological damage), and/or (iii) where there has been an administrative ruling or court decision with an explicit finding of specific damage to human health or the environment. In cases of co-management of CCWs with other industrial waste types, CCWs must be clearly implicated in the reported damage.

[3] USWAG members include approximately 80 utility companies, the Edison Electric Institute (EEI), the Natural Rural Electric Association (NRECA), the American Public Power Association (APPA), and the American Gas Association (AGA) and represent more than 85% of total U.S. electric generating capacity.

[4] The proposed framework was jointly prepared by Earthjustice, Clean Air Task Force, Environmental Integrity Project, Sierra Club, Natural Resources Defense Council, Waterkeeper Alliance, Hoosier Environmental Council, Public Citizen, Jefferson Action Group, Dine CARE, Army for a Clean Environment, Plains Justice, Appalachian Center for the Economy and the Environment, People in Need of Environmental Safety, Valley Watch, West Virginia Highlands Conservancy, Montana Environmental Information Center, San Juan Citizens Alliance, Clean Wisconsin, Residents Against the Power Plant, Ohio Valley Environmental Coalition, Neighbors for Neighbors, Delaware Riverkeeper Network, Healthlink, Wenham Lake Watershed Association, Coal River Mountain Watch, Dakota Resource Council and Save Us From Future Environmental Risks.

[5] In addition, the Agency is also placing in the docket to today's NODA comments that the Clean Air Task Force and the Hoosier Environmental Council submitted to EPA as Attachment 1 to a July 12, 2005 letter to Thomas P. Dunne, then Acting Assistant Administrator for the Office of Solid Waste and Emergency Response (OSWER) on the electric utility industry's Voluntary Action Plan.

[6] Coal Combustion By-Products and Low-Volume Wastes Co-management Survey, Draft Report, EPRI, June 1997.

31, 2004.[7] The scope of the study excluded waste units that manage CCW in active or abandoned coal mines.

Data in the report on recent and current disposal practices were derived from a survey conducted by USWAG of its members. In addition, EPA supplemented and checked the accuracy of this information by directly contacting state agencies, as well as a limited number of individual electric utilities.

In summary, the report shows an increase in the number of CCW disposal units with respect to liner design and ground water monitoring since 1994. Based on 100% member-response to USWAG's survey, plus EPA's fact-finding efforts, the report identified 56 new CCW management units, of which 38 are landfills, and 18 are surface impoundments. This number, however, does not reflect the total number of new CCW disposal units that were permitted, built or laterally expanded between 1994 and 2004. The study utilized proxy data to derive an estimate of the total number of new units. The first proxy was the tonnage of CCW available for disposal in States that have coal-fired power plant capacity, and the second was the coal-fired generating capacity of electric utilities owning the identified disposal units. The estimated net disposable CCW[8] in the 19 states where new units were identified was then compared with the total net disposable CCW in all states with coal-fired electric generating capacity. Using this approach, it was estimated that the number of identified new CCW management units represents between 64% and 71%, respectively, of the total number of new units established between 1994 and 2004.

The report identified that the use of liners and ground water monitoring at new landfills and surface impoundments built since 1994 has increased with 98% having liners and 91% having ground water monitoring. This compares with liners installed in 75% of landfills and 60% of surface impoundments built between 1985 and 1995; and with ground water monitoring installed at 88% of landfills and 65% of surface impoundments that were established between 1985 and 1995. In addition, the frequency of dry handling in landfills appears to have increased, compared to wet handling in surface impoundments; approximately two-thirds of the new units are landfills, while the other one-third are surface impoundments. The Agency solicits comments and information on the amount or percentage of CCW that is expected to be managed in the future in landfills as opposed to surface impoundments. The percentage of composite liners has also increased for landfills from about 10%, as reported in the 1999 Report to Congress (RTC)[9] to 53% for new units constructed between 1994 and 2004, and for surface impoundments, from 2% as reported in the 1999 RTC to 50% for new units constructed between 1994 and 2004. The number of unlined units currently in operation in the U.S. is not known. The DOE/EPA 2006 Report also provides information from a review of eleven States' CCW programs, including the regulatory designation of CCW for disposal, permitting requirements, liner requirements, ground water-monitoring requirements, and leachate collection requirements.

The Agency requests comments with supporting data on how the findings of the DOE/EPA report should affect the Agency's decision regarding the regulation of CCW in landfills and surface impoundments under RCRA Subtitle D.

2. EPA's Risk Analysis Data

As part of the rulemaking process for making the May 2000 Regulatory Determination for CCW, EPA prepared a draft quantitative risk assessment. However, because time constraints precluded the Agency from addressing public comments on the draft study, EPA did not use the draft risk assessment in making its Regulatory Determination; rather it relied on the damage cases identified. Between 2000 and 2006, EPA addressed pubic comments and updated the risk assessment for the management of CCW in landfills and surface impoundments.

The purpose of the risk assessment is to identify CCW constituents, waste types, liner type, receptors, and exposure pathways with potential risks and to provide information that EPA can use as it continues to follow-up on its Regulatory Determination for CCW disposed of in landfills and surface impoundments. The risk assessment was designed to develop national human and ecological risk estimates that are representative of onsite CCW management settings throughout the United States.[10]

To assess the risks posed by the onsite management of CCW, this risk assessment estimates the release of CCW constituents from landfills and surface impoundments, estimates the concentrations of these contaminants in environmental media surrounding coal-fired utility power plants, and estimates the risks that these concentrations pose to human and ecological receptors. The risk assessment does not address risks that may be due to direct discharges of CCW pollutants to surface waters, which are covered under the National Pollutant Discharge Elimination System (NPDES) program.

The risk analysis includes a full-scale Monte Carlo analysis; however, constituent screening results also are presented as part of the problem formulation discussion, along with a summary of the screening methodology. The full-scale analysis is designed to characterize five waste management scenarios that are defined by two waste management options (CCW disposal at power plant sites in landfills and surface impoundments) and three waste types, as follows:

- Conventional CCW, including fly ash, bottom ash, boiler slag, and flue gas desulfurization (FGD) sludge, which are typically co-disposed in landfills and surface impoundments;
- CCW co-disposed with coal refuse in landfills and surface impoundments, which can result in more acidic disposal conditions than conventional CCW monofills; and,
- Fluidized-bed combustion (FBC) wastes, including fly ash and bed ash. FBC wastes differ from conventional wastes because the limestone mixed during fluidized bed combustion tends to make the FBC waste more alkaline. FBC wastes are only disposed of in landfills in the United States and therefore, the Agency did not model the management of FBC wastes in surface impoundments.

These three waste types provide a good representation of waste disposal practices and the waste chemical conditions that impact the release of CCW constituents from landfills and surface impoundments.

To identify the CCW constituents and exposure pathways to be addressed in this risk analysis, the Agency relied on

[7] A draft of this report was peer reviewed by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), the Utility Water Act Group (UWAG), and the Clean Air Task Force (CATF). Comments received on the draft report, which are included in the docket to today's NODA, have been considered and addressed by DOE and EPA in the final report entitled, *Coal Combustion Waste Management at Landfills and Surface Impoundments, 1994–2004.*

[8] Net disposable CCW is the total CCW generated minus CCW beneficially used.

[9] Wastes from the Combustion of Fossil Fuels, Volume 2: Methods, Findings and Recommendations, EPA–R–99–010, 1999 available at *http://www.epa.gov/epaoswer/other/fossil/volume_2.pdf.*

[10] Because the main technical aspects of the CCW risk assessment were completed in calendar year 2003, the newly collected information from the DOE/EPA report on the 56 new waste management units has not been incorporated into the database utilized for the risk assessment.

a 2003 CCW database assembled over several years to characterize whole waste and waste leachate from CCW disposal sites across the country. The 2003 CCW constituent database includes all of the CCW characterization data used by EPA in its previous risk assessments supplemented with additional data collected from public comments, data from EPA regions and state regulatory agencies, industry submittals, and literature searches.

Also, as noted in footnote 10, because the main technical aspects of the CCW risk assessment were completed in 2003, the newly collected information from the more recent DOE/EPA report on the 56 new waste units established between 1994 and 2004 was not part of the database used in characterizing the CCW landfills and surface impoundments modeled in the risk assessment. The risk assessment reflected management of CCW in both lined and unlined units as part of a Monte Carlo probabilistic risk analysis. Information on lined and unlined units was derived from facility data from a 1995 industry survey.

Specific findings of the risk assessment, from the Monte Carlo analyses of both lined and unlined units, include:

- The 90th and 50th percentile risks for those units (both landfill and surface impoundments) that had a composite liner were below a cancer risk of 10^{-5} and an HQ of 1 for all constituents, waste management scenarios, and exposure pathways modeled in the CCW risk assessment.
- For humans exposed via the ground water to drinking water pathway, arsenic and thallium show risks to human health above the risk criteria for unlined and clay-lined CCW landfills. Arsenic poses a 90th percentile cancer risk of $5 \times 10^{-4} \leq$ for unlined units and 2×10^{-4} for clay-lined units (The 90th percentile arsenic cancer risk from this risk assessment of landfilled CCW falls within the range that EPA established for the arsenic MCL (i.e., 1 to 6 excess cancers in a population of 10,000 individuals)). Thallium shows a 90th percentile noncancer HQ of 3 for unlined units only. The 50th percentile results for this pathway are at or below the risk criteria for all constituents.[11] Other landfill constituents did not show a noncancer risk above an HQ of 1 or risk level of 1 chance in 100,000 excess cancer risk.
- Risks are higher for surface impoundments for the groundwater-to-drinking-water pathway, with a 90th percentile arsenic cancer risk of 9×10^{-3} for unlined units and 3×10^{-3} for clay-lined units. For unlined units, five additional constituents have noncancer HQs ranging from 3 to 5 for the 90th percentile, including boron, lead, cadmium, cobalt, and molybdenum. Two constituents (boron (2) and molybdenum (3)) have HQs greater than 1 for clay-lined surface impoundments. The 50th percentile cancer risk results for arsenic are 3×10^{-4} in unlined units and 9×10^{-5} in clay lined surface impoundments.
- For arsenic, arrival times of the peak concentrations at a receptor well are relatively long for CCW landfills, with travel times ranging from hundreds to thousands of years. Arrival times are much shorter for surface impoundments, with time to peak concentrations being less than 100 years for most of the model runs.
- For humans exposed via the groundwater-to-surface-water (fish consumption) pathway, selenium (HQ = 2) and arsenic (cancer risk = 2×10^{-5}) show 90th percentile risks for unlined surface impoundments above the risk criteria. All other waste management scenarios and all 50th percentile results show risks at or below the risk criteria for the fish consumption pathway.
- Liners appear to reduce risks from all constituents for landfills and surface impoundments. The risks from clay-lined units (as modeled in the risk assessment) were reduced by about half when compared to unlined units. Composite liners appear to be effective in mitigating CCW risks from landfills and surface impoundments.
- For ecological receptors exposed via surface water, the 90th percentile risks for unlined and clay-lined landfills exceed an HQ of 1 for boron (200) and lead (4). For surface impoundments, 90th percentile risks for six constituents: boron (2000), lead (20), arsenic (10), selenium (10), cobalt (5), and barium (2) exceed an HQ of 1. The only exceedance from the 50th percentile risk results is HQ of 4 for boron in surface impoundments.
- For ecological receptors exposed via sediment, 90th percentile risks for lead, arsenic, and cadmium exceeded an HQ of 1 for both landfills (HQs from 2 to 20) and surface impoundments (HQs from 20 to 200). All 50th percentile results show ecological risks at or below the risk criteria for the sediment pathway.

The Agency is making the risk analysis document available in the Docket to allow interested parties to submit comments on the analytical methodology, data, and assumptions used in the analysis and to submit additional information for the Agency to consider. In addition, the risk assessment will undergo independent scientific peer review by experts outside of the EPA following closure of the public comment period. Public comments will be made available to the peer reviewers for their consideration during the review process. The peer review will focus on technical aspects of the analysis, including the construct and implementation of the Monte Carlo analysis, the selection of models to estimate the release of constituents found in CCW from landfills and surface impoundments, and their subsequent fate and transport in the environment, and the characterization of risks resulting from potential exposures to human and ecological receptors.

3. EPA Damage Case Assessment

For the May 2000 Regulatory Determination, the Agency determined there were approximately 300 CCW landfills and 300 CCW surface impoundments used by 440 coal-fired utilities. EPA recently completed an assessment of possible environmental damages from CCW landfills and surface impoundments. Under the Bevill Amendment for the ''special waste'' categories, EPA was statutorily required to examine ''documented cases in which danger to human health or the environment has been proved.'' The criteria used to determine whether danger to human health and the environment has been proved are briefly described in footnote 2 to this NODA and more fully explained in the May 2000 Regulatory Determination at 65 FR 32224.

EPA has gathered or received information on 135 possible damage cases. Sixteen of these were submitted since publication of the 2000 Regulatory Determination. EPA re-evaluated the old damage cases and evaluated the new cases, and they are available in the docket to today's action and subject to comment as part of the NODA. After reviewing these 135 damage cases, EPA identified 24 proven damage cases. Sixteen were determined to be proven damages to ground water and eight were determined to be proven damages to surface water and covered by the National Pollutant Discharge Elimination System (NPDES) under the Clean Water Act.[12] The overwhelming majority of the damage cases reflect management in unlined units—that is, all but one of the 24 proven damage cases involved unlined CCW

[11] The risk analysis presents the correspnding 50th percentile results from the Monte Carlo analyses.

[12] Of the 24 damage cases, 11 were presented and discussed in the May 2000 Regulatory Determination.

management units,[13] including six cases involving disposal of CCW in unlined sand and gravel pits. Additionally, 43 cases were determined to be potential damages to ground water or surface water.[14] Four of the potential damage cases were attributable to oil combustion wastes.

Six of the alleged damage cases were minefills which, while under the scope of the 2000 Regulatory Determination, are outside the scope of this NODA that deals exclusively with surface disposal.[15] The remaining 62 alleged damage cases subject to detailed assessment were not considered damage cases due to either (1) lack of any evidence of damage, or (2) lack of evidence that damages were uniquely associated with CCW.

Of the 16 proven cases of damages to ground water, the Agency has been able to confirm that corrective actions have been completed in six cases and are ongoing in nine cases. The Agency has not received information regarding the one remaining case. Corrective action measures at these CCW management units vary depending on site specific circumstances and include formal closure of the unit, capping, the installation of new liners, ground water treatment, ground water monitoring, and combinations of these measures.

For a more detailed description, see the document CCW_Damage_Case_Assessments.pdf in the docket to today's action. Detailed information on many of these sites is also available in the docket for the 1999 Report to Congress, Docket ID # EPA–HQ–RCRA–1999–0022. The Agency solicits comments and supporting information on the extent to which the damage case information should affect the Agency's decisions regarding the regulation of CCW in landfills and surface impoundments under RCRA Subtitle D.

4. Additional Documents

In addition to the reports identified under (1) to (3) above, the Agency is also including in the docket to today's NODA a February 2004 Petition for Rulemaking submitted by the Clean Air Task Force and the Hoosier Environmental Council, jointly with a number of citizens' groups to Prohibit the Placement or Disposal of CCW into Groundwater and Surface Water; and two suggested approaches for managing CCW in landfills and surface impoundments. One approach is a Voluntary Action Plan that was formulated by the electric utility industry through their trade association, USWAG, regarding the management of CCW. The second approach is a proposed framework prepared by a number of citizens' groups for federal regulation of CCW disposed of in landfills and surface impoundments under Subtitle D of RCRA generated by U.S. coal-fired power plants.

C. Conclusion

The Agency solicits comments on the extent to which the damage case information, the results of the risk assessment, and the new liner and ground water monitoring information should affect the Agency's decisions. The Agency will consider all the information provided through today's notice, the comments and new information submitted on this notice, as well as the results of the peer review of the risk assessment as it continues to follow-up on its Regulatory Determination for CCW disposed of in landfills and surface impoundments.

Dated: August 23, 2007.

Susan Parker Bodine,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. E7–17138 Filed 8–28–07; 8:45 am]

BILLING CODE 6560–50–P

[13] The lone damage case from a lined unit was the result of a liner failure in a surface impoundment.

[14] Per the May 2000 Regulatory Determination, 65 FR 32224, potential damage cases are those with (1) documented exceedances of primary MCLs or other health-based standards only directly beneath or in very close proximity to the waste source, and/or (2) documented exceedances of secondary MCLs or other non-health-based standards on-site or off-site.

[15] See Footnote 1 regarding OSM's ANPR (72 FR 12026).

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: ABLE RADIO CORPORATION, Station NEW, Facility ID 170953, BNPH–20070403ACO, From AGUILA, AZ, To TONOPAH, AZ; ADVANCE ACQUISITION, INC., Station KQJZ, Facility ID 160700, BMP–20070725ALN, From KALISPELL, MT, To EVERGREEN, MT; AMERICAN EDUCATIONAL BROADCASTING, INC., Station KLKA, Facility ID 82692, BMPED–20070803ACY, From GLOBE, AZ, To CASA GRANDE, AZ; CANYON MEDIA CORPORATION, Station KONY, Facility ID 18140, BPH–20070726AHL, From ST. GEORGE, UT, To HURRICANE, UT; CAPSTAR TX LIMITED PARTNERSHIP, Station KIYS, Facility ID 51855, BPH–20070726ADN, From JONESBORO, AR, To CRAWFORDSVILLE, AR; CAPSTAR TX LIMITED PARTNERSHIP, Station KTEX, Facility ID 64631, BPH–20070803ACV, From BROWNSVILLE, TX, To MERCEDES, TX; CHEHALIS VALLEY EDUCATIONAL FOUNDATION, Station KACS, Facility ID 10685, BPED–20070813AAF, From CHEHALIS, WA, To RANIER, WA; CLEAR CHANNEL BROADCASTING LICENSES, INC., Station KHKZ, Facility ID 36166, BPH–20070803ACP, From MERCEDES, TX, To SAN BENITO, TX; COLLEGE CREEK MEDIA, LLC, Station KCLS, Facility ID 55461, BPH–20070803ADM, From ELY, NV, To PIOCHE, NV; CSN INTERNATIONAL, Station KGSF, Facility ID 92987, BMPED–20070430AEP, From ANDERSON, MO, To GREEN FOREST, AR; CSN INTERNATIONAL, Station KJCC, Facility ID 122517, BPED–20070719AAU, From CARNEGIE, OK, To HINTON, OK; CSN INTERNATIONAL, Station WUJC, Facility ID 122209, BMPED–20070806AEW, From ST. MARKS, FL, To TALLAHASSEE, FL; CSN INTERNATIONAL, Station KWYC, Facility ID 87267, BMPED–20070808ACK, From ORCHARD VALLEY, WY, To CHEYENNE, WY; CSN INTERNATIONAL, Station KJCC, Facility ID 122517, BMPED–20070814AAW, From CARNEGIE, OK, To HINTON, OK; EDUCATIONAL MEDIA FOUNDATION, Station KAIS, Facility ID 88397, BMPED–20070720ABV, From REDWOOD VALLEY, CA, To HOPLAND, CA; EDUCATIONAL MEDIA FOUNDATION, Station KVLK, Facility ID 122812, BPED–20070724ACV, From SOCORRO, NM, To MILAN, NM; EDUCATIONAL MEDIA FOUNDATION, Station KAIA, Facility ID 76841, BPED–20070730ACS, From BLYTHEVILLE, AR, To BLOOMFIELD, MO; EDUCATIONAL MEDIA FOUNDATION, Station KAIC, Facility ID 78758, BPED–20070803ACO, From TUCSON, AZ, To MAMMOTH, AZ; EXPONENT BROADCASTING, INC., Station WXJO, Facility ID 25386, BMP–20070725ACM, From GORDON, GA, To DOUGLASVILLE, GA; GEORGIA EAGLE BROADCASTING, INC., Station WMCD, Facility ID 65607, BPH–20070705AAA, From CLAXTON, GA, To SULLIVAN'S ISLAND, SC; KEILY MILLER, Station NEW, Facility ID 165946, BMPH–20070727ABV, From BEATTY, NV, To CRYSTAL, NV; NAPLES EDUCATIONAL

BROADCASTING FOUNDATION, Station WBGY, Facility ID 47386, BPED–20070806AFD, From NAPLES, FL, To EVERGLADES CITY, FL; RADIO PALATKA, INC., Station WPLK, Facility ID 54721, BP–20070725AEF, From PALATKA, FL, To BUNNELL, FL; RADIO REDENTOR, Station WERR, Facility ID 54750, BPH–20070719ADT, From UTUADO, PR, To VEGA ALTA, PR; SHAFFER COMMUNICATIONS GROUP/THIRD COAST JT VENTURE, Station KOPA, Facility ID 82843, BPH–20070723ABQ, From WOODWARD, OK, To BALKO, OK; SIGA BROADCASTING CORPORATION, Station KTMR, Facility ID 28191, BP–20070720ACR, From EDNA, TX, To CONVERSE, TX; WESTERN BROADCASTING LS, LLC, Station KURR, Facility ID 164147, BMPH–20070726AHG, From HURRICANE, UT, To INDIAN SPRINGS, NV; WHITE PARK BROADCASTING, INC., Station KBEN–FM, Facility ID 165998, BMPH–20070716ABY, From BASIN, WY, To COWLEY, WY; WSJD, INC., Station WSJD, Facility ID 55111, BPH–20070801AAB, From PRINCETON, IN, To ELBERFELD, IN.

DATES: Comments may be filed through October 29, 2007.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.*

A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. E7–17029 Filed 8–28–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collections; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 the following information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35): (1) Foreign Branching and Investment by Insured State Nonmember Banks; (2) Procedures for Monitoring Bank Secrecy Act Compliance; (3) Community Reinvestment Act; (4) Application for Waiver of Publication on Acceptance of Brokered Deposits for Adequately Capitalized Insured Institutions; (5) Real Estate Lending Standards; and (6) Management Official Interlocks.

DATES: Comments must be submitted on or before October 29, 2007.

ADDRESSES: Interested parties are invited to submit written comments by any of the following methods. All comments should refer to the appropriate OMB control number:

- *http://www.FDIC.gov/regulations/laws/federal/.*
- *E-mail: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Steven F. Hanft (202–898–3907), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the OMB desk officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Steven F. Hanft, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

1. *Title:* Foreign Branching and Investment by Insured State Nonmember Banks.

OMB Number: 3064–0125.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks.

Estimated Number of Respondents: 61.

Estimated Time per Response: 333 hours.

Total Annual Burden: 20,290 hours.

General Description of Collection: The Federal Deposit Insurance (FDI) Act requires state nonmember banks to obtain FDIC consent to establish or operate a branch in a foreign country, or to acquire and hold, directly or indirectly, stock or other evidence of ownership in any foreign bank or other entity. The FDI Act also authorizes the FDIC to impose conditions for such consent and to issue regulations related thereto. This collection is a direct consequence of those statutory requirements.

2. *Title:* Procedures for Monitoring Bank Secrecy Act Compliance.

OMB Number: 3064–0087.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks.

Estimated Number of Respondents: 5,300.

Estimated Time per Response: 0.5 hour.

Total Annual Burden: 2,650 hours.

General Description of Collection: Insured state nonmember banks must establish and maintain procedures designed to assure and monitor their compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated by the Department of Treasury at 31 CFR 103.

3. *Title:* Community Reinvestment Act.

OMB Number: 3064–0092.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks.

Estimated Number of Respondents: 5,296.

Estimated Time per Response: 36.6 hours.

Total Annual Burden: 193,975 hours.

General Description of Collection: This information collection permits the FDIC to fulfill its obligations under the Community Reinvestment Act to evaluate and assign ratings to the performance of institutions, in connection with helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices. The FDIC uses the information in the examination process and in evaluating applications for mergers, branches, and certain other corporate activities.

4. *Title:* Application for Waiver of Publication on Acceptance of Brokered

Deposits for Adequately Capitalized Insured Institutions.

OMB Number: 3064–0099.

Frequency of Response: On occasion.

Affected Public: Any insured depository institution seeking a waiver to the prohibition on the acceptance of brokered deposits.

Estimated Number of Respondents: 30.

Estimated Time per Response: 6 hours.

Total Annual Burden: 180 hours.

General Description of Collection: Section 29 of the FDI Act prohibits undercapitalized insured depository institutions from accepting, renewing, or rolling over any brokered deposits. Adequately capitalized institutions may do so with a waiver from the FDIC, while well-capitalized institutions may accept, renew, or rollover brokered deposits without restriction.

5. *Title:* Real Estate Lending Standards.

OMB Number: 3064–0112.

Frequency of Response: On occasion.

Affected Public: Insured Savings Associations.

Estimated Number of Respondents: 5,300.

Estimated Time per Response: 20 hours.

Total Annual Burden: 106,000 hours.

General Description of Collection: Institutions will use real estate lending policies to guide their lending operations in a manner that is consistent with safe and sound banking practices and appropriate to their size, nature and scope of their operations. These policies should address certain lending considerations, including loan-to-value limits, loan administration policies, portfolio diversification standards, and documentation, approval and reporting requirements.

6. *Title:* Management Official Interlocks.

OMB Number: 3064–0118.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks.

Estimated Number of Respondents: 2.

Estimated Time per Response: 4 hours.

Total Annual Burden: 8 hours.

General Description of Collection: This collection is associated with the FDIC's Management Official Interlocks regulation, 12 CFR part 348, which implements the Depository Institution Management Interlocks Act (DIMIA). DIMIA generally prohibits bank management officials from serving simultaneously with two unaffiliated depository institutions or their holding companies but allows the FDIC to grant exemptions in appropriate circumstances.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the 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 the 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 the information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, this 22nd day of August, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E7–16912 Filed 8–28–07; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 012013.

Title: MSC/COSCO Space Charter Agreement.

Parties: Mediterranean Shipping Co. S.A. (''MSC'') and COSCO Container Lines Company, Limited.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes MSC to charter space to COSCO in the trade between U.S. Atlantic Coast ports and ports in Italy and Spain.

By Order of the Federal Maritime Commission.

Dated: August 24, 2007.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E7–17134 Filed 8–28–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 017649NF.

Name: Access Freight Forwarders, Inc.

Address: 8220 NW 30th Terrace, Miami, FL 33122.

Date Revoked: August 5, 2007.

Reason: Failed to maintain valid bonds.

License Number: 020187F.

Name: AES Logistics, Inc. dba AES Logistics dba AES Worldwide.

Address: 140 SW., 153rd Street, Burien, WA 98166.

Date Revoked: August 7, 2007.

Reason: Surrendered license voluntarily.

License Number: 017908N.

Name: Crescent Ocean Services, LLC.

Address: 5100 South Dawson Street, Ste. 200, Seattle, WA 98118.

Date Revoked: August 14, 2007.

Reason: Surrendered license voluntarily.

License Number: 019307NF.

Name: Inbox Cargo Solutions, Inc.

Address: 9515 NW., 13th Street, Miami, FL 33172.

Date Revoked: August 13, 2007.

Reason: Failed to maintain valid bonds.

License Number: 018337N.

Name: J & B Logistics, Inc.

Address: 500 Carson Plaza Drive, Ste. 109, Carson, CA 90746.

Date Revoked: August 9, 2007.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E7–17139 Filed 8–28–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicant

Jeepney Express Padala, Inc. dba Jeepney Express; Kalesa Express; Victory Cargo, 2647 West Woodland Drive, Anaheim, CA 92801. Officers: Edna Cabal Quinto, Treasurer (Qualifying Individual), Gregorio Sycip, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

One Arrow, LLC, 12900 Griffing Blvd., Miami, FL 33161. Officer: Emmanuel Nwankwo, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Victoria Shipping, 104 Bald Knob Road, Wetumpka, AL 36092. Susan V. Hagan, Sole Proprietor.

Dated: August 24, 2007.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E7–17128 Filed 8–28–07; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (NCHS) announces the following meeting of the aforementioned committee.

Times and Dates: 2 p.m.–5:30 p.m., September 17, 2007. 8:30 a.m.–2 p.m., September 18, 2007.

Place: NCHS Headquarters, 3311 Toledo Road, Hyattsville, Maryland 20782.

Status: Open to the public, and limited only to the space available. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing advice and making recommendations to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

Matters To Be Discussed: The agenda will include welcome remarks by the Director, NCHS; introduction of new chair and new members and key NCHS staff; data access discussions; discussion of the upcoming review of the SLAITS program; discussion of upcoming program reviews and an open session for comments from the public.

Requests to make oral presentations should be submitted in writing to the contact person listed below. All requests must contain the name, address, telephone number, and organizational affiliation of the presenter.

Written comments should not exceed five single-spaced typed pages in length and must be received by September 10, 2007.

The agenda items are subject to change as priorities dictate.

For Further Information Contact: Virginia S. Cain, Ph.D., Director of Extramural Research, NCHS/CDC, 3311 Toledo Road, Room 7211, Hyattsville, Maryland 20782, telephone (301) 458–4500, fax (301) 458–4020.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 22, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–17137 Filed 8–28–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0420]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Orphan Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Orphan Drugs'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 29, 2007 (72 FR 29515), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0167. The approval expires on August 31, 2010. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: August 23, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–17094 Filed 8–28–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0310]

Companion to Guidance for Industry on Pharmacogenomic Data; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the

availability of a draft guidance entitled ''Pharmacogenomic Data Submissions—Companion Guidance.'' The guidance is intended as a companion to the guidance of the same name, which was issued in 2005 (70 FR 14698; March 23, 2005). It reflects experience gained since the issuance of that guidance with voluntary genomic data submissions as well as with review by FDA of numerous protocols and data submitted under investigational new drug (IND) applications, new drug applications (NDAs), and biologics license applications (BLAs). The recommendations are intended to facilitate scientific progress in the field of pharmacogenomics and to facilitate the use of pharmacogenomic data in drug development.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by November 27, 2007.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit electronic comments to either *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Federico Goodsaid, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, Rm. 3663, Silver Spring, MD 20903–0002, 301–796–1535.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance, which is intended to be used as a companion to the guidance issued in March 2005 entitled ''Pharmacogenomic Data Submissions.'' This draft guidance entitled ''Pharmacogenomic Data Submissions—Companion Guidance'' is based on FDA's experience with voluntary genomic data submissions as well as with its review of numerous protocols and data submitted under IND applications, NDAs, and BLAs during the last 2 years. FDA believes that the recommendations in the draft guidance will benefit sponsors considering the submission of either voluntary genomic data or marketing submissions containing genomics data. As technology changes and more experience is gained, these recommendations may be updated.

Specifically, this draft guidance contains recommendations on gene expression data from microarrays, genotyping, genomic data in clinical study reports, genomic data from nonclinical toxicology studies, and data submission formats. Each of the sections in the guidance make recommendations on technical steps or describes report contents or formats that will facilitate the submission of genomic data to FDA. A concept paper containing the contents of this draft guidance was made available on the Genomics Web site of FDA (*http://www.fda.gov/cder/genomics/conceptpaper_20061107.pdf*) on November 2006. The concept paper was discussed at the FDA/Drug Information Association/Pharmaceutical Research and Manufacturers of America Foundation/Biotechnology Industry Organization workshop on Best Practices and Development of Standards for the Submission of Genomic Data to FDA held in Washington, DC on November 27 and 28, 2006. This draft companion guidance reflects feedback received at and since the workshop.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on recommendations for the submission and review of genomic data. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. 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.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: August 23, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–17103 Filed 8–28–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0125]

Draft Guidance for Industry: Evidence-Based Review System for the Scientific Evaluation of Health Claims; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of July 9, 2007 (72 FR 37246). The document announced the availability for public comment of a draft guidance entitled ''Guidance for Industry: Evidence-Based Review System for the Scientific Evaluation of Health Claims.'' The document was published with an incorrect Internet address for submitting electronic comments and an incorrect telephone number. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Paula Trumbo, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2579.

SUPPLEMENTARY INFORMATION: In FR Doc. E7–13274, appearing on page 37246 in the **Federal Register** of Monday, July 9, 2007, the following corrections are made:

1. On page 37246, in the second column, in the **ADDRESSES** section, the phrase ''*http://www/fda/gov/dockets/ecomments*'' is corrected to read ''*http://www.fda.gov/dockets/ecomments*''.

2. On page 37246, in the second column, in the **FOR FURTHER INFORMATION CONTACT** section, the telephone number ''310–436–2579'' is corrected to read ''301–436–2579''.

Dated: August 23, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–17038 Filed 8–28–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Availability of Draft Policy Documents for Comment

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: This is a Notice of Availability and request for comments on draft Agency Guidance (''Policy Information Notices'' (PINs)) to describe the policy and processes pertaining to requests from federally-funded health centers to change the scope of their Federal project. The PINs, ''Defining Scope of Project and Policy for Requesting Changes,'' ''Change in Scope Requests: Policy for Adding a New Target Population,'' and ''Specialty Services and Health Centers' Scope of Project,'' are available on the Internet at *http://bphc.hrsa.gov.*

DATES: Comments must be received by September 28, 2007.

ADDRESSES: Please send your comments to the following e-mail address: *DPDgeneral@hrsa.gov.*

SUMMARY: HRSA believes that community input is valuable to the development of policies and policy documents related to the implementation of HRSA programs, including the Health Center Program. Therefore, we are requesting comments on the PINs referenced above. After review and consideration of all comments received, the PINs may be amended to incorporate recommendations from the public. Once the PINs are finalized, they will be made available on HRSA's Web site, along with the Agency's ''Response to Public Comments.'' The ''Response to Public Comments'' will summarize the major comments received and describe the Agency's response, including any corresponding changes made to the PINs. Where comments do not result in a revision to the PINs, explanations will be provided.

Background: HRSA administers the Health Center Program, which supports more than 3,800 health care delivery sites, including community health centers, migrant health centers, health care for the homeless centers, and public housing primary care centers. Health centers serve clients that are primarily low-income and minorities, and deliver preventive and primary care services to patients regardless of their ability to pay. Charges for health care services are set according to income. The purpose of the recently published draft PINs is to describe the policy and processes pertaining to requests from federally-funded health centers to change the scope of their Federal project, including requests to include new specialty services and/or a new target population within the scope of the Federal project.

FOR FURTHER INFORMATION CONTACT: For questions regarding this notice, please contact the Office of Policy and Program Development, Bureau of Primary Health Care, HRSA, at 301–594–4300.

Dated: August 21, 2007.

Elizabeth M. Duke,

Administrator.

[FR Doc. E7–17092 Filed 8–28–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Collagen-Induced Platelet Aggregation Inhibitor From Mosquito Salivary Glands

Description of Technology: Exposed collagen in injured blood vessels provides a substrate for platelets to adhere and aggregate initiating the first step in thrombosis, the formation of blood clots inside a blood vessel. Despite the essential role of platelets in vascular injury, excessive platelet aggregation may also result in thrombotic diseases such as stroke and heart attack.

Available for licensing is a collagen binding protein, named aegyptin, which selectively inhibits collagen-platelet aggregation, but not platelet aggregation induced by other agonists. Collagen initiates recruitment of circulating platelets and triggers platelet activation. Collagen also plays a critical role in angiogenesis. Aegyptin blocks the interaction of collagen with its major ligands, von Willebrand factor, glycoprotein VI (GPVI), and integrin $\alpha 2\beta 1$. These three ligands are of particular importance because von Willebrand factor plays a critical role in tethering platelets to collagen, GPVI is the major signaling platelet receptor, and integrin $\alpha 2\beta 1$ mediates platelet adhesion and contributes to activation. Since these ligands play a critical role in the early stages of thrombus formation, aegyptin represents a potentially highly effective therapeutic that can prevent and treat patients with thrombotic disease. Alternatively, aegyptin is potentially useful in conditions where collagen plays a critical role in angiogenesis or in conditions where excessive deposition of collagen plays a pathological role (e.g. pancreatic carcinoma).

Applications:

Adjuvant to ''Clot busting'' therapeutics.

Method to prevent and/or treat cardiovascular/thrombotic disease.

Method to treat patients undergoing invasive cardiovascular procedures (e.g. angioplasty).

Model to study collagen-dependent platelet aggregation or collagen-mediated angiogenesis.

Advantages:

Highly effective therapeutics can negatively modulate thrombosis in its early stages by preventing collagen interaction with three major ligands involved in thrombus/clot formation.

Aegyptin's potential use as a prototype for drug delivery as an oral therapeutic, which can reduce the need for invasive surgeries that dilate blood vessels such as stents or catheters.

Market:

Thrombolytic/antithrombotic therapies are worth billions of dollars, common therapeutics include heparin, warfarin, and plasminogen activators.

Anticancer and antiangiogenic therapies.

Cardiac disease is the number one cause of death in the U.S.

Pancreatic cancer is one of the most lethal cancers, where only 23% patients will survive after one year of diagnosis, and 4% survive after five years of diagnosis.

An estimated 37,170 Americans will be newly diagnosed with pancreatic cancer in 2007.

An estimated 33,370 deaths from pancreatic cancer in the U.S. in 2007.

Pancreatic cancer is the fourth leading cause of cancer death in the U.S.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Eric Calvo *et al.* (NIAID).

Related Publications:

1. A manuscript directly related to this technology will be available as soon as it is accepted for publication.
2. E Calvo. Collagen-platelet aggregation inhibitor from mosquito salivary glands. Biacore T100 seminar series, November 2006, St. Louis, Missouri.
3. S Yoshida and H Watanabe. Robust salivary gland-specific transgene expression in Anopheles stephensi mosquito. Insect Mol Biol. 2006 Aug;15(4):403–410.
4. D Sun *et al.* Expression of functional recombinant mosquito salivary apyrase: A potential therapeutic platelet aggregation inhibitor. Platelets. 2006 May;17(3):178–184.

Patent Status: U.S. Provisional Application No. 60/198,629 filed 09 Jul 2007 (HHS Reference No. E–172–2007/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301/435–4633; *wongje@mail.nih.gov*

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases, Laboratory of Malaria and Vector Research, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the platelet aggregation inhibitor Aegyptin. Please contact Dr. Jose Ribeiro, Head, Vector Biology Section, at 301–496–9389 or *jribeiro@niaid.nih.gov* for more information.

Bifunctional Compounds That Bind to Hormone Receptors

Description of Technology: The development and progression of prostate cancer is dependent on the androgen receptor (AR), a ligand-dependent transcription factor. In the inactive form AR resides in the cytosolic region of the cell and when activated, AR is imported into the nucleus. Initial hormonal therapy for prostate cancer involves lowering serum levels of testosterone to shut down AR activity. Despite initial patient responses to testosterone-depleting therapies, prostate cancer becomes refractory to hormonal therapy. Notably, AR is reactivated in hormone-refractory prostate cancer and reinstates its proliferative and survival activity.

Available for licensing is a novel chemical compound which is bifunctional and binds to AR. This compound is comprised of tubulin-binding and steroid receptor-binding moieties. This compound is designed to antagonize AR function in a nonclassical manner by several mechanisms and kills hormone-refractory prostate cells better than both functional moieties. This compound is a first-in-class of bifunctional steroid receptor binding agents that can antagonize steroid receptors in a variety of hormone-dependent diseases, such as breast and prostate cancer.

Applications:

Therapeutic compounds that selectively target steroid receptor-expressing cancer cells resulting in decreased toxicity.

Method to treat hormone resistant prostate cancer and potentially other steroid receptor dependent diseases such as breast cancer.

Market:

Prostate cancer is the second most common type of cancer among men, wherein one in six men will be diagnosed with prostate cancer.

An estimated 218,890 new cases of prostate cancer and 27,050 deaths due to prostate cancer in the U.S. in 2007.

An estimated 180,510 new cases of breast cancer and 40,060 deaths due to breast cancer in the U.S. in 2007.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Nima Sharifi *et al.* (NCI).

Patent Status: U.S. Provisional Application No. 60/958,351 filed 03 Jul 2007 (HHS Reference No. E–163–2007/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301 435–4633; *wongje@mail.nih.gov*

Collaborative Research Opportunity: The Medical Oncology Branch, National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize treatments of resistant prostate cancer. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Specific Binding Agents for KSHV vIL–6 That Neutralize a Biological Activity

Description of Technology: Kaposi's sarcoma-associated herpes virus (KSHV) is an oncogenic herpes virus originally identified in AIDS associated Kaposi's sarcoma (KS) lesions, the most common tumor associated with HIV infection. KSHV encodes various proteins that have characteristics associated with cellular growth and transformation, including viral (v) IL–6 (KSHV vIL–6). These viral proteins display structural homology to their cellular counterparts, and human and vIL–6 are multifunctional cytokines that have been shown to induce vascular endothelial growth factor and other factors.

Available for licensing are binding agents that neutralize vIL–6 biological activities, methods of diagnosing and treating KSHV disorders, and methods to monitor KSHV patient response to treatment. Deregulation of cellular IL–6 expression is known to contribute to tumor development, suggesting that KSHV-derived vIL–6 could be part of a viral strategy to promote malignant transformation. Neutralizing activity of anti-vIL–6 antibodies may provide a potential therapeutic for KSHV disorders such as HIV, Castleman's disease, and primary effusion lymphoma.

Applications:

Therapeutic compositions to treat KSHV disorders such as KS, Castleman's disease, and primary effusion lymphoma.

Method to diagnose and treat KSHV disorders.

Method to monitor patient response to KSHV treatment.

Market:

Approximately 476,095 persons currently living with HIV/AIDS in the United States.

Estimated annual incidence rate for KS is 5 cases per 100,000/year in the U.S.; KS contributes to approximately 30% of AIDS related deaths.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Giovanna Tosato (NCI) *et al.*

Publications:

1. Y Aoki and G Tosato. Therapeutic options for human herpesvirus-8/Kaposi's sarcoma-associated herpesvirus-related disorders. Expert Rev Anti Ther. 2004 Apr;2(2):213–225.
2. Y Aoki *et al.* Detection of viral interleukin-6 in Kaposi sarcoma-associated herpesvirus-linked disorders. Blood. 2001 Apr 1;97(7):2173–2176.

3. Y Aoki *et al.* Kaposi's sarcoma-associated herpesvirus-encoded interleukin-6. J Hemathother Stem Cell Res. 2000;9(2):137–145.

Patent Status:

U.S. Patent No. 6,939,547 issued 06 Sep 2005 (HHS Reference No. E–180–2000/0–US–03).

U.S. Patent No. 7,108,981 issued 19 Sep 2006 (HHS Reference No. E–180–2000/0–US–04).

U.S. Patent No. 7,235,365 issued 26 Jun 2007 (HHS Reference No. E–180–2000/0–US–05).

U.S. Patent Application No. 11/803,732 filed 14 May 2007 (HHS Reference No. E–180–2000/0–US–06).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute's Laboratory of Cellular Oncology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize therapeutics for Kaposi's sarcoma-associated herpes virus (KSHV). Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Interferon Alpha Hybrids

Description of Technology: Available for licensing are hybrid interferon alpha (INF-α) polypeptides constructed by combinations of INFα21b and INFα2c, and mutants of these hybrids. These hybrid constructs have resulted in novel IFNs that either combine different biological properties from the parent proteins or have significantly different biological activity from both the parents in anti-proliferative, anti-viral, or competitive binding properties. For instance, the hybrid designated HY–3 has higher anti-proliferative activity in Daudi, WISH, and primary human lymphocyte cells exhibiting approximately 6 times higher anti-proliferative activity than either parent IFN. These IFN hybrids provide a powerful tool for studying the structure-function relationship of these molecules. The engineered IFN-α proteins may have important new therapeutic applications and may provide greater insights into understanding of the clinical activities of existing IFN-αs.

Also available for licensing are hybrid INF-α nucleic acids encoding the hybrid polypeptides as well as cells, vectors, pharmaceutical compositions with these nucleic acid sequences.

Applications:

Anti-viral and cancer therapeutics.

Research tool to study IFN-α functions.

Market:

Interferon alpha market was worth $2.1 billion in 2005.

Industry focus is novel subtype or interferon alpha variants with improved pharmacodynamic and safety properties.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Kathryn C. Zoon *et al.* (FDA).

Publications:

1. R Hu *et al.* Protein engineering of interferon alphas. Methods Mol Med. 2005;116:69–80.

2. R Hu *et al.* Human IFN-alpha protein engineering: The amino acid residues at positions 86 and 90 are important for antiproliferative activity. J Immunol. 2001 Aug 1;167(3):1482–1489.

3. Hu *et al.* Divergence of binding, signaling, and biological responses to recombinant human hybrid IFN. J Immunol. 1999 Jul 15;163(2):854–860.

Patent Status:

U.S. Patent No. 7,235,232 issued 26 Jun 2007 (HHS Reference No. E–068–1998/0–US–04)

U.S. Patent No. 6,685,933 issued 03 Feb 2004 (HHS Reference No. E–068–1998/0–US–03).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301/435–4633; *wongje@mail.nih.gov.*

Dated: August 20, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–16929 Filed 8–28–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use. This collection was modified during the 60-day comment period to change the annual burden hours from ten to twelve. This change will capture the increase in burden hour and cost to respondents.

Title: Approval and Coordination of Requirements to use the NETC for Extracurricular Training Activities.

OMB Number: 1660–0029.

Abstract: The National Emergency Training Center (NETC) is a FEMA facility, which houses all FEMA employees in headquarters, regions, field establishments, and other individuals and organizations authorized to use the facility, which provides training and educational programs in emergency response, preparedness, fire prevention and control, disaster response, and long-term disaster recovery.

Affected Public: State, Local or Tribal Government, Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, and Federal Government.

Number of Respondents: 60.

Estimated Time per Respondent: FEMA Form75–10, 6 minutes and FEMA Form 75–11, 6 minutes.

Estimated Total Annual Burden Hours: 12 minutes.

Frequency of Response: On occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before September 28, 2007.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 609, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: August 21, 2007.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–17083 Filed 8–28–07; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–74]

Notice of Submission of Proposed Information Collection to OMB; Application for Mortgage Insurance for Cooperative and Condominium Housing

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

The Application for Mortgage Insurance/CO-op-Condo is used to analyze financial data, cost data, drawings, and specifications to determine cooperative or condominium project eligibility for FHA mortgage insurance.

DATES: *Comments Due Date:* September 28, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0141) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. 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: Application for Mortgage Insurance for Cooperative and Condominium Housing.

OMB Approval Number: 2502–0141.

Form Numbers: HUD–93201.

Description of the Need for the Information and Its Proposed Use: The Application for Mortgage Insurance/CO-op-Condo is used to analyze financial data, cost data, drawings, and specifications to determine cooperative or condominium project eligibility for FHA mortgage insurance.

Frequency of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	15		1		4		60

Total Estimated Burden Hours: 60.

Status: Reinstatement, without change, of previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 22, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–17065 Filed 8–28–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–73]

Notice of Submission of Proposed Information Collection to OMB; HUD Multifamily Energy Assessment

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

This information is used to ensure that owners assess energy needs in an effort to reduce project operating costs and utility expended through cost-effective energy conservation and efficiency measures. HUD used the information in monitoring the Department's energy strategy and for inclusion in the Department's biannual reporting requirements to Congress as required by Section 154 of the Energy Policy Act of 2005.

DATES: *Comments Due Date:* September 28, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2502–NEW) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail

Lillian_L._Deitzer@HUD.gov or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. 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: HUD Multifamily Energy Assessment.

OMB Approval Number: 2502–NEW.

Form Numbers: HUD–9614.

Description of the Need for the Information and its Proposed Use: This information is used to ensure that owners assess energy needs in an effort to reduce project operating costs and utility expended through cost-effective energy conservation and efficiency measures. HUD used the information in monitoring the Department's energy strategy and for inclusion in the Department's biannual reporting requirements to Congress as required by Section 154 of the Energy Policy Act of 2005.

Frequency of Submission: On occasion, annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	16,245	11		1.218		218,070

Total Estimated Burden Hours: 218,070.

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 22, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–17066 Filed 8–28–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5118–N–04]

Notice of Proposed Information Collection: Comment Request; Floodplain Management and Protection of Wetlands

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 29, 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: Marie Young, Reports Liaison Officer, Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7251, Washington, DC 20410–7000.

FOR FURTHER INFORMATION CONTACT: Richard H. Broun, Director, Office of Environment and Energy, Department of Housing and Urban Development, Room 7244, 451 7th Street, Washington, DC 20410–7000. For telephone communication, contact Walter Prybyla, Community Planner, Environmental Review Division, 202–402–4466 or e-mail: *Walter.Prybyla@hud.gov.* This is not a toll-free number. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

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 affected 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: Floodplain Management and Protection of Wetlands.

OMB Control Number: 2506–0151.

Description of the need for the information and proposed use: The purpose of this information collection is to document regulatory compliance with Executive Order 11988, ''Floodplain Management,'' and Executive Order 11990, ''Protection of Wetlands.'' Each respondent that proposes to use HUD assistance to benefit a property located within a floodplain or wetland must establish and maintain sufficient records to enable the Secretary of HUD to determine whether the floodplain management requirements of 24 CFR part 55, especially subpart C, and the protection of wetlands requirements of Executive Order 11990 have been met. The record, together with other environmental compliances that a proposed project may require under the National Environmental Policy Act and related laws, will serve to obtain the approval of an application under 24 CFR part 50 or will allow the use of grant funds or assistance already awarded under 24 CFR part 58.

Agency form numbers, if applicable: Not applicable.

Members of affected public: Primary: Local, State, or Tribal Governments. Others: Public housing agencies, and private non- and for-profit entities.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Annual reporting and recordkeeping hour burden estimate is a total of 2,700 hours. Estimates are 300 respondents, 1 frequency, and 9 hours of response. Total of 300 hours is estimated for notification of floodplain hazard (regulatory reference is Sec. 55.21). Total of 2,400 hours is estimated for documentation of compliance with Sec. 55.20 (regulatory reference is Sec. 55.27).

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 22, 2007.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E7–17098 Filed 8–28–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5125–N–35]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: August 29, 2007.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in National Coalition for the Homeless v. Veterans Administration, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 23, 2007.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E7–17062 Filed 8–28–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of public meetings of the Invasive Species Advisory Committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meetings of the Invasive Species Advisory Committee. The purpose of the Advisory Committee is to provide advice to the National Invasive Species Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues. The purpose of a meeting on October 1–3, 2007 is to convene the full Advisory Committee and to discuss implementation of action items outlined in the National Invasive Species Management Plan, which was finalized on January 18, 2001.

DATES: Meeting of the Invasive Species Advisory Committee: Monday, October 1, 2007 and Tuesday, October 2, 2007; beginning at approximately 8 a.m., and ending at approximately 5 p.m. each day. Members will be participating in an off-site tour on Wednesday, October 3, 2007.

ADDRESSES: Sheraton College Park Hotel, 4095 Powder Mill Road, Beltsville, Maryland 20705. General Session on October 1, 2007 and October 2, 2007 will be held in the Potomac/Susquehanna Room.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, National Invasive Species Council Program Analyst and ISAC Coordinator, (202) 513–7243; Fax: (202) 371–1751.

Dated: August 24, 2007.

Richard L. Orr,

Assistant Director for International Policy and Prevention, National Invasive Species Council.

[FR Doc. E7–17127 Filed 8–28–07; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6695–A2; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of modified decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the decision approving lands for conveyance to The Port Graham Corporation, notice of which was published in the **Federal Register** on June 26, 2007, is modified by identifying the location of the aid to navigation in Easement Identification Number (EIN) No. 104 J as Tract A, U.S. Survey No. 1630, Alaska.

Notice of the modified decision will also be published four times in the Homer Tribune.

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 28, 2007 to file an appeal on the issue in the modified decision.

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. Except as modified, the decision, notice of which was given June 26, 2007, is final.

ADDRESSES: A copy of the modified 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.

Jennifer L. Noe,

Land Law Examiner, Branch of Adjudication 964.

[FR Doc. E7–17124 Filed 8–28–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–320–5700–10; IDI–35397; DGG–07–0001]

Proposed Plan Amendment

AGENCY: Bureau of Land Management, (BLM), Interior.

ACTION: Notice of intent to amend the 1988 Pocatello Resource Management Plan.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) proposes to amend the 1988 Pocatello Resource Management Plan (RMP) pursuant to the regulations at 43 CFR Part 1600, with respect to management of 400 acres of Federal land in Bannock County, Idaho.

Upon publication of this notice in the **Federal Register,** the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. Interested parties may submit written comments and recommendations regarding the land use plan amendment. 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.

Comments: Interested parties may submit comments as to whether the land is physically suited for landfill purposes, whether the use will maximize the future use or uses of the land, whether the land use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

DATES: Comments will be accepted regarding the Plan Amendment, for a period of 30 days, or until September 28, 2007.

ADDRESSES: Send written comments to: David Pacioretty, Pocatello Field Manager, 4350 Cliffs Drive, Pocatello, Idaho 83201.

FOR FURTHER INFORMATION CONTACT: Candi Aguirre, Realty Specialist, 208–478–6357.

SUPPLEMENTARY INFORMATION:

Boise Meridian, Bannock County, Idaho

T. 7 S., R. 35 E.
Sec. 28: SW¼NW¼,
Sec. 29: NE¼SE¼, SE¼SE¼,
Sec. 32: NE¼NE¼, SE¼NE¼,
Sec. 33: NW¼, NW¼NE¼.
Containing 400 acres more or less.

The County of Bannock has submitted an application to acquire these public lands near the community of Pocatello, Bannock County, Idaho to expand their existing landfill, known as the Fort Hall Mine Landfill. This site is expected to reach capacity by the year 2010. The lands applied for are not needed for Federal purposes and lie adjacent to the existing landfill. The 1988 RMP did not identify these lands for transfer out of public ownership but stated that land disposals would be considered through plan amendments where unforeseen needs are identified. The plan also reflected BLM policy of that time in stating that BLM would no longer lease or patent land for landfill purposes under R&PP Act because of the liability associated with hazardous waste disposals. BLM policy later changed as the R&PP Act was amended by Congress to allow public land to be conveyed for landfill purposes without the customary reversionary clause required for R&PP patents.

Dated: August 20, 2007.

David Pacioretty,

Pocatello Field Manager.

[FR Doc. E7–17073 Filed 8–28–07; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission has submitted a request for approval of a questionnaire to the Office of Management and Budget for review.

Purpose of Information Collection: The forms are for use by the Commission in connection with investigation No. 332–481, *Industrial Biotechnology: Development and Adoption by the U.S. Chemical and Liquid Biofuel Industries,* instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the Senate Committee on Finance. The Commission expects to deliver the results of its investigation to the committee by July 2, 2008.

Summary of Proposal

(1) *Number of forms submitted:* 1.

(2) *Title of form:* Liquid Fuel and Chemical Industry Questionnaire.

(3) *Type of request:* New.

(4) *Frequency of use:* Industry questionnaire, single data gathering, scheduled for 2007.

(5) *Description of respondents:* U.S. firms that produce liquid fuels and chemicals.

(6) *Estimated number of respondents:* 1,500.

(7) *Estimated total number of hours to complete the forms:* 60,000.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the forms and supporting documents may be obtained from David Lundy (USITC, telephone no. (202) 205–3439). Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E. Street, SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

By order of the Commission.

Issued: August 23, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–17084 Filed 8–28–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–604]

In the Matter of Certain Sucralose, Sweeteners Containing Sucralose, and Related Intermediate Compounds Thereof; Notice of Commission Determination Not To Review an Initial Determination Granting the Motion of JK Sucralose To Intervene as Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination (''ID'') of the presiding administrative law judge (''ALJ''), granting the motion of JK Sucralose (''JK'') to intervene as respondent.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on May 10, 2007, based upon a complaint filed on behalf of Tate & Lyle Technology Ltd. of London, United Kingdom (''Tate & Lyle'') on April 6, 2007 and supplemented on April 13, 18, 23, and 25. 72 FR 26645 (May 10, 2007). The complaint alleged a violation of subsection (a)(1)(B) of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain sucralose, sweeteners containing sucralose, and related intermediate compounds thereof by reason of infringement of various claims of United States Patent Nos. 5,470,969; 5,034,551; 4,980,463; 5,498,709; and 7,049,435.

JK moved to intervene as a respondent in the investigation. JK asserted before the ALJ that it is a manufacturer of sucralose with its principal place of business at No. 118 Renming East Road, Sheyang County, Jiangsu 224300, P.R. China. According to JK, two of the named respondents, Beijing Forbest Chemical Co., Ltd. and Forbest International USA L.L.C., are customers of sucralose manufactured by JK. JK asserted that the complainant seeks relief which could apply directly to JK, including relief specific to its customers and general relief prohibiting the importation of infringing sucralose. Tate & Lyle opposed this motion. The Commission investigative attorney agreed with JK.

The ALJ granted the motion, finding that it was timely, that JK has neither requested, nor will require, an extension of the target date, that JK has an interest relating to the subject matter of the investigation, that JK's interests are not adequately represented by any of the named parties, that JK's motion will not prejudice any of the existing parties, and that there is good cause to grant JK's motion to intervene. No petitions for review of the subject ID have been filed.

Having reviewed the relevant portions of the record, the Commission has determined not to review the subject ID. This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 210.19 and 210.42(h)(3) of the Commission's Rules of Practice and Procedure (19 CFR 210.19, 210.42(h)(3)).

By order of the Commission.

Issued: August 15, 2007.

Marilyn Abbott,

Secretary to the Commission.

[FR Doc. E7–17085 Filed 8–28–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Privacy Act of 1974; Systems of Records

AGENCY: Foreign Claims Settlement Commission; Justice.

ACTION: Revisions of Notice of Privacy Act Systems of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, notice is given that the Foreign Claims Settlement Commission proposes to modify all of its Privacy Act Systems of Records, as identified in the list set forth below, to include a new routine use that allows disclosure to former employees for purposes of responding to official inquiries by government entities or professional licensing authorities in accordance with the Department of Justice regulation governing access under such circumstances, 28 CFR 16.300–01. The new routine use also allows disclosure to former employees when the Department requires information and/or consultation assistance from the former employee that is necessary for personnel-related or other official purposes regarding a matter within that person's former area of responsibility.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, requires a 40-day period in which to conclude its review of the systems. Therefore, please submit any comments by October 9, 2007. The public, OMB, and the Congress are invited to submit any comments to David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission, Washington, DC 20579 (Room 6002, Bicentennial Building). In accordance with 5 U.S.C. 552a(r), the Commission has provided a report to OMB and the Congress.

Accordingly, pursuant to the provisions of 5 U.S.C. 552a, the Foreign Claims Settlement Commission hereby publishes notice of its proposal to supplement the list of Routine Uses of the Records Maintained in each of its below-listed Privacy Act Systems of Records, including the Categories of Users and the Purposes of Such Uses, by including the following additional Routine Use: ''The Commission may disclose relevant and necessary information to a former employee of the Commission 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 of Justice regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Commission requires information and/or consultation assistance from the former

employee regarding a matter within that person's former area of responsibility.''

Foreign Claims Settlement Commission Privacy Act Systems of Records

Justice/FCSC–1, Indexes of Claimants (Alphabetical)
Justice/FCSC–3, Certifications of awards
Justice/FCSC–4, China, Claims Against
Justice/FCSC–5, Civilian Internees (Vietnam)
Justice/FCSC–8, Cuba, Claims Against
Justice/FCSC–9, Czechoslovakia, Claims Against (2nd Program)
Justice/FCSC–10, East Germany, Registration of Claims Against
Justice/FCSC–11, Federal Republic of Germany, Questionnaire Inquiries from
Justice/FCSC–12, Hungary, Claims Against (2nd Program)
Justice/FCSC–14, Micronesia, Claims Arising in
Justice/FCSC–16, Prisoners of War (Pueblo)
Justice/FCSC–17, Prisoners of War (Vietnam)
Justice/FCSC–19, Soviet Union, Claims Against
Justice/FCSC–21, German Democratic Republic, Claims Against
Justice/FCSC–23, Vietnam, Claims for Losses Against
Justice/FCSC–24, Ethiopia, Claims for Losses Against
Justice/FCSC–25, Egypt, Claims Against
Justice/FCSC–26, Albania, Claims Against
Justice/FCSC–27, Germany, Holocaust Survivors' Claims Against
Justice/FCSC–28, Iraq, Registration of Potential Claims Against

Mauricio J. Tamargo,

Chairman.

[FR Doc. E7–17093 Filed 8–28–07; 8:45 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0243]

Agency Information Collection Activities: Extension of a Currently Approved Collection: Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Extension of a currently approved collection—Grant Management System Online Application.

The Department of Justice (DOJ), Office of Justice Programs (OJP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection information is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** [Volume 72, Number 102, page 29550 on May 29, 2007] allowing for a 60-day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until September 28, 2007. This process is conducted in accordance with 5 CFR 1320.10.

All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Bruce Whitlock, (202) 353–1551, Office of The Chief Information Officer, Office of Justice Programs, Department of Justice, 810 Seventh Street, NW., Washington, DC 20531 or *Bruce.W.Whitlock@usdoj.gov.*

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Grants Management System Online Application.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* There is no form number, Office of The Chief Information Officer, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The primary respondents are State, Local or Tribal Governments applying for grants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 7422 grantees will respond to Grants Management System Online Application and on average it will take each of them 15 hours to complete the 4 applications.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this application is 111,330 hours.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 23, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7–17101 Filed 8–28–07; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day Notice of Information Collection Under Review: Identity Theft Supplement (ITS) to the National Crime Victimization Survey (NCVS).

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in

accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 29, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Katrina Baum, Statistician, Bureau of Justice Statistics, Office of Justice Programs, Department of Justice, 810 7th Street, NW., Washington, DC 20531, or facsimile (202) 307–1463.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies, estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* New collection.

(2) *Title of the Form/Collection:* Identity Theft Supplement (ITS) to the National Crime Victimization Survey.

(3) *Agency form number, if any, and the applicable component of the department sponsoring the collection:* ITS–1. Bureau of Justice Statistics, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* Primary: Persons 16 years or older in NCVS sampled households in the United States. The Identity Theft Supplement (ITS) to the National Crime Victimization Survey collects, analyzes, publishes, and disseminates statistics on the prevalence, economic cost, and consequences of identity theft on victims.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Approximately 62,730 persons 18 years of age or older will complete an ITS interview. The majority of respondents, approximately 58,970 will be administered only the screening portion of the ITS which is designed to filter out those people who have not been victims of repetitive harassing or unwanted contacts and therefore are not eligible to continue with the remainder of the supplement questions. We estimate the average length of the ITS interview for these individuals will be 0.05 hours (three minutes). The complement of this group of respondents are those who had such experienced identity theft. According to the estimates by the Federal Trade Commission, we expect about 6 percent or 3,764 of the respondents to report being a victim of identity theft during the two years preceding the interview. We estimate each of these interviews will take 0.25 hours (15 minutes) to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total respondent burden is approximately 3,891 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 23, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–17102 Filed 8–28–07; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of Job Corps; Advisory Committee on Job Corps; Meeting

AGENCY: Office of Job Corps, Labor.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Advisory Committee on Job Corps (ACJC) was established in accordance with the provisions of the Workforce Investment Act, 29 U.S.C. 2895, and the Federal Advisory Committee Act on August 22, 2006 (71 FR 48949). The Committee was established to advance Job Corps' new vision for student achievement aimed at 21st century high-growth employment. This Committee will also evaluate Job Corps program characteristics, including its purpose, goals, and effectiveness, efficiency, and performance measures in order to address the critical issues facing the provision of job training and education to the youth population that it serves. The Committee may provide other advice and recommendations with regard to identifying and overcoming problems, planning program or center development or strengthening relations between Job Corps and agencies, institutions, or groups engaged in related activities.

DATES: The meeting will be held September 13, 2007 from 8:30 a.m. to 3 p.m.

ADDRESSES: The Advisory Committee meeting will be held at the Roosevelt Hotel, 45 East 45th Street, (Midtown) New York City, New York, 10017.

FOR FURTHER INFORMATION CONTACT: Esther R. Johnson, The Office of Job Corps, at 202–693–3000 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Advisory Committee on Job Corps (ACJC) was established in accordance with the provisions of the Workforce Investment Act, 29 U.S.C. 2895, and the Federal Advisory Committee Act on August 22, 2006 (71 FR 48949). The Committee was established to advance Job Corps' new vision for student achievement aimed at 21st century high-growth employment. This Committee will also evaluate Job Corps program characteristics, including its purpose, goals, and effectiveness, efficiency, and performance measures in order to address the critical issues facing the provision of job training and education to the youth population that it serves. The Committee may provide other advice and recommendations with regard to identifying and overcoming problems, planning program or center development or strengthening relations between Job Corps and agencies, institutions, or groups engaged in related activities.

Agenda: The agenda for the meeting is as follows:

- Continuation of the discussion on onboard strength/retention; program performance and evaluation; and disabilities;
- Introduction of new issues for Committee consideration.

Public Participation: The meeting will be open to the public. Seating will be available to the public on a first-come first-served basis. Seats will be reserved for the media. Individuals with

disabilities should contact the Job Corps official listed below, if special accommodations are needed.

Signed at Washington, DC, this 23rd day of August 2007.

Esther R. Johnson,

National Director, Office of Job Corps.

[FR Doc. E7–17055 Filed 8–28–07; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; 139th Full Council Meeting; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 139th open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held on September 19, 2007.

The session will take place in Room N4437 A–C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will start at 9 a.m., is for members to be updated on activities of the Employee Benefits Security Administration and for chairs of this year's Working Groups to provide progress reports on their individual study topics.

Organizations or members of the public wishing to submit a written statement may do so by submitting 25 copies on or before September 12, 2007 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted electronically to *good.larry@dol.gov.* Statements received on or before September 12 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Larry Good by September 12 at the address indicated.

Signed at Washington, DC, this 23rd day of August, 2007.

Ivan Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration.

[FR Doc. E7–17050 Filed 8–28–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans Working Group on Financial Literacy; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the issue of financial literacy will hold an open public meeting on September 19, 2007.

The session will take place in Room N4437 A–C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The meeting will start immediately following the conclusion of the meeting of the Full Council (which is likely to last 20 to 40 minutes) and continue until approximately 5 p.m., with a one hour break for lunch. The purpose of the open meeting is for Working Group members to hear testimony from invited witnesses. The Working Group is studying financial literacy and the role of employers.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 25 copies on or before September 12, 2007 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted electronically to *good.larry@dol.gov.* Statements received on or before September 12 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by September 12 at the address indicated.

Signed at Washington, DC this 23rd day of August, 2007.

Ivan Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration.

[FR Doc. E7–17051 Filed 8–28–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans Working Group on Fiduciary Responsibilities Update and Revenue Sharing; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the issue of fiduciary responsibilities and revenue sharing will hold an open public meeting on September 20, 2007.

The session will take place in Room N4437 A–C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open Meeting, which will run from 8:30 a.m. to approximately 5 p.m., with a one hour break for lunch, is for Working Group members to hear testimony from invited witnesses. The Working Group is studying the implications of the Pension Protection Act on multiemployer plans and their fiduciaries, and revenue sharing practices of defined contribution plans.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 25 copies on or before September 12, 2007 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted electronically to *good.larry@dol.gov.* Statements received on or before September 12 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry

Good by September 12 at the address indicated.

Signed at Washington, DC this 23rd day of August, 2007.

Ivan Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration.

[FR Doc. E7–17052 Filed 8–28–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans Working Group on Participant Benefit Statements; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the issue of participant benefit statements will hold an open public meeting on September 18, 2007.

The session will take place in Room N4437 A–C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9 a.m. to approximately 5 p.m., with a one hour break for lunch, is for Working Group members to hear testimony from invited witnesses. The Working Group is studying benefit statement requirements of the Pension Protection Act of 2006.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 25 copies on or before September 12, 2007 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted electronically to *good.larry@dol.gov*. Statements received on or before September 12 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by September 12 at the address indicated.

Signed at Washington, DC, this 23rd day of August, 2007.

Ivan Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration.

[FR Doc. E7–17053 Filed 8–28–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 10, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 10, 2007. The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 21st day of August 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 8/13/07 AND 8/17/07

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
61977	Hoover Precision Products, Inc. (Comp)	Erwin, TN	08/13/07	08/10/07
61978	PCS Company (State)	Fraser, MI	08/13/07	07/30/07
61979	Continental A.F.A. (Wrks)	El Paso, TX	08/13/07	08/09/07
61980	Maxair (Comp)	Fort Worth, TX	08/13/07	08/09/07
61981	Tekni-Plex (USW)	Bucyrus, OH	08/14/07	08/13/07
61982	Fasco Industries, Inc. (Comp)	Cassville, MO	08/14/07	08/13/07
61983	Molon Motor and Coil Co. (Wkrs)	El Paso, TX	08/14/07	08/13/07
61984	International Paper (Comp)	Terre Haute, IN	08/15/07	08/14/07
61985	Mayfield Cap Company (Wkrs)	Mayfield, KY	08/15/07	08/06/07
61986	IBM Global Services (Wkrs)	Racine, WI	08/15/07	08/14/07
61987	Longaberger Company (The) (Wkrs)	Frazeysburg, OH	08/15/07	07/23/07
61988	Sun Chemical Corporation (Comp)	Rosebank SI, NY	08/15/07	08/14/07
61989	Yellow Book USA (frmly MacGregor Publishing Co) (Wkrs).	Mount Vernon, WA	08/15/07	08/10/07
61990	CDI Corp (State)	Fishkill, NY	08/15/07	08/10/07
61991	Superior Studs—Glide Studmill (Comp)	Glide, OR	08/16/07	08/15/07
61992	Tyco Electronics (Wrks)	Spartanburg, SC	08/16/07	08/15/07
61993	Dell, Inc. (Wrks)	Roseburg, OR	08/16/07	08/08/07
61994	Child Craft Industries (Comp)	New Salisbury, IN	08/16/07	08/15/07

APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 8/13/07 AND 8/17/07—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
61995	Kimberly Clark Corporation Global Sales (Wrks).	Neenah, WI	08/16/07	08/15/07
61996	Standard Textiles (State)	Augusta, GA	08/16/07	08/15/07
61997	High Rock Hosiery, Inc. (Comp)	Lexington, NC	08/16/07	08/15/07
61998	Bush Industries (Comp)	Jamestown, NY	08/16/07	08/15/07
61999	Geneon Entertainment (USA) (Comp)	Long Beach, CA	08/16/07	08/13/07
62000	Lear Corporation (Wkrs)	Detroit, MI	08/17/07	08/08/07
62001	Unifour Finishers, Inc. (Comp)	Hickory, NC	08/17/07	08/14/07
62002	Broward Casting Foundry (State)	Ft. Lauderdale, FL	08/17/07	08/15/07
62003	Custom Tooling Systems, Inc. (State)	Zeeland, MI	08/17/07	08/15/07
62004	Schrader Bridgeport (Comp)	Monroe, NC	08/17/07	08/16/07

[FR Doc. E7–17042 Filed 8–28–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,552]

The Hershey Company, Oakdale Plant; Oakdale, California; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at The Hershey Company, Oakdale Plant, Oakdale, California. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–61,552; The Hershey Company, Oakdale Plant, Oakdale, California (August 16, 2007).

Signed at Washington, DC this 21st day of August 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–17044 Filed 8–28–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,601]

Intel Corporation, Fab 23; Colorado Springs, CO; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter dated July 14, 2007, a worker requested administrative reconsideration of the Department's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The negative determination was issued on June 15, 2007. The Department's Notice of determination was published in the **Federal Register** on June 28, 2007 (72 FR 35517). Workers produce silicon wafers.

The negative determination was based on the Department's findings that, during the relevant period, the subject firm's sales and production of silicon wafers increased, and the subject firm did not import or shift production of silicon wafers abroad.

A careful review of the administrative record shows that the subject firm increased production in order to create an inventory to satisfy existing customer orders in light of the scheduled plant closure in August 2007.

In the request for reconsideration, the worker alleged that the Department misidentified the article produced at the subject firm and that foreign-produced articles have replaced domestic production.

The Department has carefully reviewed the administrative record and the request for reconsideration, and has determined that the Department will conduct further investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 22nd day of August 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–17045 Filed 8–28–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,995]

Kimberly-Clark Corporation Global Sales; Neenah, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 16, 2007 in response to a petition filed on behalf of workers of Kimberly-Clark Corporation Global Sales, Neenah, Wisconsin.

All workers of the subject firm are covered by a certification of eligibility to apply for worker adjustment assistance and alternative trade adjustment assistance under petition number TA–W–60,017, that does not expire until September 26, 2008.

Consequently, further investigation in this case would serve no purpose and the investigation under this petition has been terminated.

Signed at Washington, DC, this 20th day of August 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–17041 Filed 8–28–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,980]

Maxair; Fort Worth, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 13, 2007 in response to a petition filed by a company official on behalf of workers at Maxair, Forth Worth, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 22nd day of August 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–17047 Filed 8–28–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,968]

Rockwell Automation; Mayfield Heights, Ohio; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 10, 2007 in response to a petition filed by a company official on behalf of workers at Rockwell Automation, Mayfield Heights, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 22nd day of August 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–17046 Filed 8–28–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Request for Information on Earnings, Dual Benefits, Dependents and Third Party Settlements (CA–1032). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before October 29, 2007.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The collection of this information is necessary under provisions of the Federal Employees' Compensation Act (FECA) which states: (1) Compensation must be adjusted to reflect a claimant's earnings while in receipt of benefits (5 U.S.C. 8106); (2) compensation is payable at the augmented rate of 75 percent only if the claimant has one or more dependents as defined by the FECA (5 U.S.C. 8110); (3) compensation may not be paid concurrently with certain benefits from other Federal Agencies, such as the Office of Personnel Management, Social Security, and the Veterans Administration (5 U.S.C. 8116); (4) compensation must be adjusted to reflect any settlement from a third party responsible for the injury for which the claimant is being paid compensation (5 U.S.C. 8132); (5) an individual convicted of any violation related to fraud in the application for, or receipt of, any compensation benefit, forfeits (as of the date of such conviction) any entitlement to such benefits, for any injury occurring on or before the date of conviction (5 U.S.C. 8148 (a)); and, (6) no Federal compensation benefit can be paid to any individual for any period during which such individual is incarcerated for any felony offense (5 U.S.C. 8148 (b)(1)). The information collected through Form CA–1032 is used to ensure that compensation being paid on the periodic roll is correct. This information collection is currently approved for use through February 29, 2008.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are 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 submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval of this information collection in order to ensure that compensation being paid on the periodic roll is correct.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Request for Information on Earnings, Dual Benefits, Dependents, and Third Party Settlements.

OMB Number: 1215–0151.

Agency Number: CA–1032.

Affected Public: Individuals or households.

Total Respondents: 50,000.

Total Annual Responses: 50,000.

Average Time per Response: 20 minutes.

Estimated Total Burden Hours: 16,667.

Frequency: Annually.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $22,000.

Comments submitted in response to this notice will be summarized and/or

included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 23, 2007.

Hazel M. Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E7–17049 Filed 8–28–07; 8:45 am]

BILLING CODE 4510–CH–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Extension of a Currently Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until October 29, 2007.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, E-mail: *ociomail@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: 12 CFR 703 Investment and Deposit Activities.

OMB Number: 3133–0133.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Description: To ensure that federal credit unions make safe and sound investments, the rule requires that they establish written investment policies and review them annually, document details of the individual investments monthly, ensure adequate broker/dealer selection criteria and record credit decisions regarding deposits in certain financial institutions.

Respondents: Federal credit unions.

Estimated No. of Respondents/ Recordkeepers: 5,732.

Estimated Burden Hours per Response: 46.15 hours.

Frequency of Response: Recordkeeping. Reporting. On Occasion. Quarterly.

Estimated Total Annual Burden Hours: 264,529 hours.

Estimated Total Annual Cost: None.

By the National Credit Union Administration Board August 23, 2007.

Hattie Ulan,

Acting Secretary of the Board.

[FR Doc. E7–17060 Filed 8–28–07; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Extension of a Currently Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until October 29, 2007.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, E-mail: *ociomail@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Written Reimbursement Policy.

OMB Number: 3133–0130.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Description: Each Federal Credit Union (FCU) must draft a written reimbursement policy to ensure that the FCU makes payments to its director within the guidelines that the FCU has established in advance and to enable examiners to easily verify compliance by comparing the policy to the actual reimbursements.

Respondents: All federal credit unions.

Estimated No. of Respondents/ Recordkeepers: 5,732.

Estimated Burden Hours per Response: .50 hours.

Frequency of Response: Other. Once and update.

Estimated Total Annual Burden Hours: 2879.50.

Estimated Total Annual Cost: None.

By the National Credit Union Administration Board on August 23, 2007.

Hattie Ulan,

Acting Secretary of the Board.

[FR Doc. E7–17063 Filed 8–28–07; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Extension of a Currently Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until October 29, 2007.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, E-mail: *ociomail@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street,

Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Designation of Low Income Status.

OMB Number: 3133–0117.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Description: Under section 107(6) of the Federal Credit Union Act, 12 U.S.C. Part 1757(6), and section 701.34 of NCUA Regulations, 12 CFR Part 701.34, credit unions that serve predominantly low-income members can accept nonmember share accounts from any source if the credit union obtains a low income designation from NCUA.

Respondents: Certain credit unions that serve predominantly low income members.

Estimated No. of Respondents/ Recordkeepers: 15.

Estimated Burden Hours per Response: 15 hours.

Frequency of Response: Recordkeeping and other, once.

Estimated Total Annual Burden Hours: 225 hours.

Estimated Total Annual Cost: $3,600.00.

By the National Credit Union Administration Board on August 23, 2007.

Hattie Ulan,

Acting Secretary of the Board.

[FR Doc. E7–17064 Filed 8–28–07; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until October 29, 2007.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, E-mail: *ociomail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Management Official Interlocks.

OMB Number: 3133–0152.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Description: Part 711 of NCUA's Rules and Regulations directs federally insured credit unions that want to share a management official with another financial institution to either apply for approval from the NCUA Board or maintain records to show the eligibility for a small market share exemption.

Respondents: All federally insured credit unions.

Estimated No. of Respondents/ Recordkeepers: 1.

Estimated Burden Hours per Response: 3 hours.

Frequency of Response: Recordkeeping. Upon application.

Estimated Total Annual Burden Hours: 3.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on August 23, 2007.

Hattie Ulan,

Acting Secretary of the Board.

[FR Doc. E7–17070 Filed 8–28–07; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until October 29, 2007.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer listed below:

Clearance Officer: Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, E-mail: *ociomail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Leasing—Statistical Documentation Required for a Guarantor of a Residual Value.

OMB Number: 3133–0151.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Description: Part 714 of NCUA's Rules and Regulations directs federal credit unions to evaluate whether a guarantor of a residual value has the financial resources to meet the guarantee.

Respondents: All federal credit unions.

Estimated No. of Respondents/ Recordkeepers: 380.

Estimated Burden Hours per Response: 2 hours.

Frequency of Response: Recordkeeping.

Estimated Total Annual Burden Hours: 760.

Estimated Total Annual Cost: $13,300.

By the National Credit Union Administration Board on August 23, 2007.

Hattie Ulan,

Acting Secretary of the Board.

[FR Doc. E7–17072 Filed 8–28–07; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until October 29, 2007.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, E-mail: *ociomail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Production of Nonpublic Records and Testimony of Employees in Legal Proceedings.

OMB Number: 3133–0146.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents: Respondents will most likely be persons involved in legal proceedings.

Estimated No. of Respondents/ Recordkeepers: 36.

Estimated Burden Hours per Response: 2.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 72.

Estimated Total Annual Cost: None.

By the National Credit Union Administration Board on August 23, 2007.

Hattie Ulan,

Acting Secretary of the Board.

[FR Doc. E7–17074 Filed 8–28–07; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Extension of a Currently Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until October 29, 2007.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, E-mail: *ociomail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Payment on Shares by Public Units and Nonmembers.

OMB Number: 3133–0114.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Description: 5 CFR 701.32 limits nonmember and public unit deposits in federally insured credit unions to 20 percent of their shares or $1.5 million, whichever is greater. The collection of information requirement is for those credit unions seeking an exemption from the above limit.

Respondents: Credit Unions seeking an exemption from the limits on share deposits by public unit and nonmember accounts set by 5 CFR 701.32.

Estimated No. of Respondents/ Recordkeepers: 20.

Estimated Burden Hours per Response: 2 hours.

Frequency of Response: Other. As exemption is requested.

Estimated Total Annual Burden Hours: 40.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on August 23, 2007.

Hattie Ulan,

Acting Secretary of the Board.

[FR Doc. E7–17108 Filed 8–28–07; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until October 29, 2007.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, E-mail: *ociomail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Credit Committee Records.

OMB Number: 3133–0058.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Description: The standard FCU Bylaws require an FCU to maintain records of its loan approvals and denials.

Respondents: All Federal Credit Unions.

Estimated No. of Respondents/ Recordkeepers: 5,732.

Estimated Burden Hours per Response: 8 hours.

Frequency of Response: Recordkeeping. Other, twice a month.

Estimated Total Annual Burden Hours: 45,856 hours.

Estimated Total Annual Cost: $770,839.36.

By the National Credit Union Administration Board on August 23, 2007.

Hattie Ulan,

Acting Secretary of the Board.

[FR Doc. E7–17113 Filed 8–28–07; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Extension of a Currently Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until October 29, 2007.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, E-mail: *ociomail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Federal Credit Union (FCU) Membership Applications and Denials.

OMB Number: 3133–0052.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Description: Article II, section 2 of the FCU Bylaws requires persons applying for membership in an FCU to complete an application. The Federal Credit Union Act directs the FCU to provide the applicant with written reasons when the FCU denies a membership application.

Respondents: All Federal Credit Unions.

Estimated No. of Respondents/ Recordkeepers: 1,433.

Estimated Burden Hours per Response: 1 hour.

Frequency of Response: Recordkeeping, reporting and on occasion.

Estimated Total Annual Burden Hours: 1,433.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on August 23, 2007.

Hattie Ulan,

Acting Secretary of the Board.

[FR Doc. E7–17114 Filed 8–28–07; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Extension of a Currently Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until October 29, 2007.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, E-mail: *ociomail@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0137.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Community Development Revolving Loan Program for Credit Unions Application for Technical Assistance.

Description: NCUA requests this information from credit unions to ensure that the funds are distributed to aid in providing member services and enhancing credit union operations.

Respondents: Federal credit unions.

Estimated No. of Respondents/ Recordkeepers: 116.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Reporting and on occasion.

Estimated Total Annual Burden Hours: 116 hours.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on August 23, 2007.

Hattie Ulan,

Acting Secretary of the Board.

[FR Doc. E7–17117 Filed 8–28–07; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather C. Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* September 11, 2007.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Education and Training in Preservation and Access Education and Training Grants, submitted to the Division of Preservation and Access, at the July 3, 2007 deadline.

2. *Date:* September 20, 2007.
Time: 2:30 p.m. to 5:30 p.m.
Room: 421.
Program: This meeting, which will be by teleconference, will review applications for Humanities Initiatives for Faculty, submitted to the Division of Education Programs at the June 15, 2007 deadline.

3. *Date:* September 25, 2007.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for United States History and Culture I in Preservation and Access Humanities Collections and Resources, submitted to the Division of Preservation and Access, at the July 17, 2007 deadline.

4. *Date:* September 25, 2007.
Time: 2:30 p.m. to 5:30 p.m.
Room: 421.
Program: This meeting, which will be by teleconference, will review applications for Humanities Initiatives for Faculty, submitted to the Division of Education Programs at the June 15, 2007 deadline.

Heather C. Gottry,
Acting Advisory Committee Management Officer.

[FR Doc. E7–17099 Filed 8–28–07; 8:45 am]
BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–324 and 50–325]

Carolina Power & Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–71 and DPR–62 issued to the Carolina Power & Light Company (the licensee) for operation of the Brunswick Steam Electric Plant, Unit Nos. 1 and 2, located in Brunswick County, North Carolina.

The proposed amendment would change the Technical Specifications related to the fuel design description and the fuel criticality methods to accommodate the transition to AREVA fuel.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendments revise the fuel bundle description contained in Technical Specification 4.2.1, ''Fuel Assemblies,'' to reflect both the existing fuel designs in use and the new AREVA NP fuel design. The change to the fuel assembly description involves a minor revision to reflect that AREVA fuel assemblies have a water channel.

The proposed amendments also revise Technical Specification 4.3, ''Fuel Storage,'' to remove criteria specific to GNF–A fuel storage criticality methods. The criticality analysis criteria being retained in Technical Specifications 4.3.1.1 and 4.3.1.2 will continue to ensure that adequate criticality margins are maintained for new and spent fuel storage.

These changes do not involve any plant modifications or operational changes that could affect system reliability, performance, or possibility of an operator error. These requested changes do not affect any postulated accident precursors, do not affect the performance of any accident mitigation systems, and do not introduce any new accident initiation mechanisms.

Based on the above, the proposed amendments do not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

As previously stated, the proposed amendments revise Technical Specification fuel bundle description and fuel storage rack criticality requirements to support receipt and storage of a new fuel bundle manufactured by a different vendor. Analytic methods will continue to be used to demonstrate the criticality acceptability of fuel being stored in the new and spent fuel storage racks. As such, the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendments incorporate an administrative revision to the Technical Specification fuel bundle description and modify the fuel storage Technical Specification requirements to remove vendor-specific nomenclature for criticality analysis criteria. Criticality analyses for new and spent fuel storage will continue to ensure compliance with fuel storage and criticality criteria described in the Updated Final Safety Analysis Report.

Therefore, the proposed amendments do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(I) through (c)(1)(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated January 22, 2007, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in

ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 22nd day of August 2007.

For the Nuclear Regulatory Commission.

Stewart N. Bailey,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–17135 Filed 8–28–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a teleconference meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on September 20, 2007. This meeting is a continuation of the discussion of training and experience implementation issues in the medical community from the June 12, 2007 and August 16, 2007 ACMUI meetings. The meeting will be a discussion of various items related to the training and experience criteria in 10 CFR part 35, which includes but is not limited to: Preceptor availability and recency of training requirements. A copy of the agenda for the meeting can be obtained at *http://www.nrc.gov/reading-rm/doc-collections/acmui/agenda* or by contacting Ms. Ashley M. Tull at the contact information below.

DATES: The teleconference meeting will be held on Thursday, September 20, 2007, from 1 p.m. to 3 p.m Eastern Daylight Time.

Public Participation: Any member of the public who wishes to participate in the teleconference discussion should contact Ms. Tull using the contact information below.

FOR FURTHER INFORMATION CONTACT: Ashley M. Tull, e-mail: *amt1@nrc.gov,* telephone: (301) 415–5294 or (918) 488–0552.

Conduct of the Meeting

Leon S. Malmud, M.D., will chair the meeting. Dr. Malmud will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Tull at the contact information listed above. All submittals must be received by September 17, 2007, and must pertain to the topic on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection on NRC's Web site (*www.nrc.gov*) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about December 20, 2007. Minutes of the meeting will be available on or about October 20, 2007.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, *U.S. Code of Federal Regulations*, Part 7.

Dated: August 22, 2007.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E7–17091 Filed 8–28–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the Subcommittee on Digital Instrumentation and Control Systems; Notice of Meeting

The ACRS Subcommittee on Digital Instrumentation and Control Systems will hold a meeting on September 13, 2007, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, September 13, 2007—8:30 a.m. until the conclusion of business.

The Subcommittee will hold discussions with representatives of the NRC staff and the industry regarding digital instrumentation and control systems issues. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the industry, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Charles G. Hammer (telephone 301/415–7363) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 6:45 a.m. and 3:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: August 22, 2007.

Antonio F. Dias,

Acting Branch Chief, ACRS.

[FR Doc. E7–17136 Filed 8–28–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste and Materials; Meeting on Planning and Procedures; Notice of Meeting

The Advisory Committee on Nuclear Waste and Materials (ACNW&M) will hold a Planning and Procedures meeting on September 18, 2007, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW&M, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, September 18, 2007—8:30 a.m.–9:30 a.m.

The Committee will discuss proposed ACNW&M activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Antonio F. Dias (*Telephone:* 301/415–6805) between 8:15 a.m. and 5 p.m. (ET) 5 days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:15 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least 2 working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: August 23, 2007.

Antonio F. Dias,

Branch Chief, ACNW&M.

[FR Doc. 07–4256 Filed 8–27–07; 10:07 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comment With Respect to the Annual National Trade Estimate Report on Foreign Trade Barriers

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to section 303 of the Trade and Tariff Act of 1984, as amended, USTR is required to publish annually the National Trade Estimate Report on Foreign Trade Barriers (NTE). With this notice, the Trade Policy Staff Committee (TPSC) is requesting interested parties to assist it in identifying significant barriers to U.S. exports of goods, services and overseas direct investment for inclusion in the NTE. Particularly important are impediments materially affecting the actual and potential financial performance of an industry sector. The TPSC invites written comments that provide views relevant to the issues to be examined in preparing the NTE.

DATES: Public comments are due not later than Thursday, November 8, 2007.

ADDRESSES: Submissions by electronic mail: *FR0717@USTR.EOP.GOV.* Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative (202–395–6143). The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: Questions regarding the report, its subject matter or procedural questions concerning submissions should be directed to Ms. Gloria Blue, Office of Policy Coordination, Office of the United States Trade Representative (202–395–3475).

SUPPLEMENTARY INFORMATION: Last year's report may be found on USTR's Internet Home Page (*www.ustr.gov*) in the Document Library under the section on Reports. In order to ensure compliance with the statutory mandate for reporting foreign trade barriers that are significant, we will focus particularly on those restrictions where there has been active private sector interest.

The information submitted should relate to one or more of the following ten categories of foreign trade barriers:

(1) Import policies (*e.g.*, tariffs and other import charges, quantitative restrictions, import licensing, and customs barriers);

(2) standards, testing, labeling, and certification (including unnecessarily restrictive application of phytosanitary standards, refusal to accept U.S. manufacturers' self-certification of conformance to foreign product standards, and environmental restrictions);

(3) government procurement (*e.g.*, ''buy national'' policies and closed bidding);

(4) export subsidies (*e.g.*, export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);

(5) lack of intellectual property protection (*e.g.*, inadequate patent, copyright, and trademark regimes);

(6) services barriers (*e.g.*, limits on the range of financial services offered by foreign financial institutions, regulation of international data flows, restrictions on the use of data processing, quotas on imports of foreign films, and barriers to the provision of services by professionals (*e.g.*, lawyers, doctors, accountants, engineers, nurses, etc.));

(7) investment barriers (*e.g.*, limitations on foreign equity participation and on access to foreign government-funded R&D consortia, local content, technology transfer and export performance requirements, and restrictions on repatriation of earnings, capital, fees and royalties);

(8) anticompetitive practices with trade effects tolerated by foreign governments (including anticompetitive activities of both state-owned and private firms that apply to services or to goods and that restrict the sale of U.S. products to any firm, not just to foreign firms, that perpetuate the practices);

(9) trade restrictions affecting electronic commerce (*e.g.*, tariff and non-tariff measures, burdensome and discriminatory regulations and standards, and discriminatory taxation); and

(10) other barriers (i.e., barriers that encompass more than one category, e.g, bribery and corruption, or that affect a single sector).

As in the case of last year's NTE, we are asking that particular emphasis be placed on any practices that may violate U.S. trade agreements. We are also interested in receiving any new or updated information pertinent to the barriers covered in last year's report as well as new information. Please note that the information not used in the NTE will be maintained for use in future negotiations.

It is most important that your submission contain estimates of the potential increase in exports that would result from the removal of the barrier, as well as a clear discussion of the method(s) by which the estimates were computed. Estimates should fall within the following value ranges: Less than $5 million; $5 to $25 million; $25 million to $50 million; $50 million to $100 million; $100 million to $500 million; or over $500 million. Such assessments enhance USTR's ability to conduct meaningful comparative analyses of a barrier's effect over a range of industries.

Please note that interested parties discussing barriers in more than one country should, whenever possible, provide a separate submission (i.e., one that is self-contained) for each country with the country indicated in the subject line of each submission. If separate, country-specific submissions are not feasible, please identify all countries covered by a submission in the subject line of that submission.

Requirements for Submissions: In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event an e-mail submission is impossible, submissions should be made by facsimile. Facsimile submissions should not exceed a maximum of 20 pages.

E-mail submissions should be single copy transmissions in English. Submissions should use the following subject line: ''2008 National Trade Estimate Report—Submission by (sector, company, association) Documents must be submitted as either WordPerfect (''WPD''), MSWord (''DOC''), or text (''TXT'') file. Documents should not be submitted as electronic image files or contain imbedded images (for example, ''JPG'', ''PDF'' ''BMP'', or ''GIF''), as these type of files are generally excessively large. Supporting Documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel, pre-formatted for printing on 8½ x 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Petitions will be available for public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6. If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked ''Business Confidential'' in large, bold letters at the top and bottom of every page of the documents. The public version that does not contain business confidential information must be clearly marked either ''Public Version'' or ''Non-Confidential'' in large, bold letters at the top and bottom of every page. The file name of any documents containing business confidential information attached to an e-mail transmission should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the person or party submitting the petition. Submissions by e-mail should not include separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the submission. The e-mail address for submissions is *FR0717@ustr.eop.gov.* Public versions of all documents relating to this review will be available for review shortly after the due date by appointment in the USTR Public Reading Room, 1724 F Street, NW., Washington, DC. Availability of documents may be ascertained and appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202–395–6186).

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. E7–17118 Filed 8–28–07; 8:45 am]

BILLING CODE 3190–W7–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

AGENCY: Postal Regulatory Commission.

TIME AND DATE: Wednesday, August 29, 2007, at 2:30 p.m.

PLACE: Commission Conference Room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: Consideration of fiscal years 2008 and 2009 budgets; Selection of vice chairman.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

Dated: August 24, 2007.

Steven W. Williams,

Secretary.

[FR Doc. 07–4254 Filed 8–24–07; 4:42 pm]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form BD–N/Rule 15b11–1; SEC File No. 270–498; OMB Control No. 3235–0556.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15b11–1 (17 CFR 240.15b11–1) and Form BD–N (17 CFR 249.501b) serve as the form of notice for futures commission merchants and introducing brokers that register as broker-dealers by notice pursuant to section 15(b)(11)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). Specifically, the form requires a broker-dealer registering by notice to indicate whether it is filing a notice registration to conduct a securities business in security futures products and if so, that it satisfies the statutory conditions for notice registration.

The total annual burden imposed by Rule 15b11–1 and Form BD–N is approximately 8 hours, based on approximately 16 responses (16 initial filings + 0 amendments). Each initial filing requires approximately 30 minutes to complete and each amendment requires approximately 15 minutes to complete. There is no annual cost burden.

The Commission will use the information collected pursuant to Rule 15b11–1 to elicit basic identification information as well as information that will allow the Commission to ensure that the futures commission merchants and introducing brokers meet the statutory conditions to register by notice pursuant to section 15(b)(11) of the Exchange Act. This information will assist the Commission in fulfilling its regulatory obligations.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 60 days of this notice.

Dated: August 22, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–17077 Filed 8–28–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 15Ba2–5; OMB Control No. 3235–0088; SEC File No. 270–91.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15Ba2–5 (17 CFR 240.15Ba2–5)—Registration of Fiduciaries

On July 7, 1975, effective July 16, 1975 (*see* 41 FR 28948, July 14, 1975), the Commission adopted Rule 15Ba2–5 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) to permit a duly-appointed fiduciary to assume immediate responsibility for the operation of a municipal securities dealer's business. Without the rule, the fiduciary would not be able to assume operation until it registered as a municipal securities dealer. Under the rule, the registration of a municipal securities dealer is deemed to be the registration of any executor, administrator, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary, appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such municipal securities dealer, provided that such fiduciary files with the Commission, within 30 days after entering upon the performance of his duties, a statement setting forth as to such fiduciary substantially the same information required by Form MSD or Form BD. The statement is necessary to ensure that the Commission and the public have adequate information about the fiduciary.

There is approximately 1 respondent per year that requires an aggregate total of 4 hours to comply with this rule. This respondent makes an estimated 1 annual response. Each response takes approximately 4 hours to complete. Thus, the total compliance burden per year is 4 burden hours. The approximate cost per hour is $20, resulting in a total cost of compliance for the respondent of approximately $80 (*i.e.*, 4 hours × $20).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 60 days of this notice.

Dated: August 22, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–17078 Filed 8–28–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56304; File No. SR–CTA–2007–01]

Consolidated Tape Association; Order Approving the Ninth Charges Amendment to the Second Restatement of the Consolidated Tape Association Plan

August 22, 2007.

I. Introduction

On July 20, 2007, the Consolidated Tape Association (''CTA'') Plan Participants (''Participants'') [1] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 608 thereunder,[3] a proposal to amend the Second Restatement of the CTA Plan (the ''Plan'') [4] to impose a limit on the maximum amount that any entity is required to pay for any calendar month's charge for broadcast, cable or satellite television distribution of a Network A ticker. The proposed Plan amendment was published for comment in the **Federal Register** on August 1, 2007.[5] No comment letters were received in response to the Notice. This order approves the proposed Plan amendment.

II. Description of the Proposal

The Plan currently imposes a charge of $2.00 for every 1,000 households reached on broadcast, cable and satellite television distribution of a Network A ticker (the ''Broadcast Charge''). A minimum monthly vendor payment of $2,000 applies. CTA permits prorating for those who broadcast the data for less than the entire business day, based upon the number of minutes that the vendor displays the real-time ticker, divided by the number of minutes the primary market is open for trading (currently 390 minutes).

CTA proposes to cap the Broadcast Charge by providing that no entity is required to pay more than the ''Television Ticker Maximum'' for any calendar month. For months falling in calendar year 2007, the Participants propose that the monthly ''Television Ticker Maximum'' shall be $150,000. For each subsequent calendar year, the monthly Television Ticker Maximum would increase by the ''Annual Increase Amount.'' [6] The CTA Participants propose to apply the monthly maximum amount that any entity is required to pay for any calendar month's Broadcast Charge retroactively to May 1, 2007.

III. Discussion

The Commission finds that the proposed CTA Plan amendment is consistent with the Act and the rules and regulations thereunder.[7] Specifically, the Commission finds that the amendment is consistent with Rule 608(b)(2) [8] of the Act in that it is necessary for the protection of investors, the maintenance of fair and orderly markets, and to remove impediments to a national market system. The Commission also finds that the proposed cap on Broadcast Charges is fair and reasonable and provides for an equitable allocation of dues, fees, and other charges among vendors, data recipients and other persons using CTA Network A facilities.

The proposed amendment would reduce the amount of fees paid by some entities that broadcast data to customers and result in a reduction of costs for

[1] Each Participant executed the proposed amendment. The Participants are the American Stock Exchange LLC; Boston Stock Exchange, Inc.; Chicago Board Options Exchange, Inc.; Chicago Stock Exchange, Inc.; International Securities Exchange LLC; The NASDAQ Stock Market LLC; National Association of Securities Dealers, Inc.; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE Arca, Inc.; and Philadelphia Stock Exchange, Inc.

[2] 15 U.S.C. 78k–1.

[3] 17 CFR 242.608.

[4] The proposal was originally filed on June 19, 2007. However, it was refiled on July 20, 2007, to reflect technical revisions made in response to the Commission's staff comments.

[5] *See* Securities Exchange Act Release No. 56134 (July 25, 2007), 72 FR 42139 (''Notice'').

[6] The ''Annual Increase Amount'' is an amount equal to the percentage increase in the annual composite share volume for the preceding calendar year, subject to a maximum annual increase of five percent. The ''Annual Increase Amount'' is the same adjustment factor that the Network A rate schedule has long applied to the monthly broker-dealer enterprise fee.

[7] The Commission has considered the proposed amendment's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 242.608 (b)(2).

investors. Thus, the proposed amendment is consistent with, and would further, one of the principal objectives for the national market system set forth in Section 11A(a)(1)(C)(iii) [9] of the Act—increasing the availability of market information to broker-dealers and investors.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,[10] and the rules thereunder, that the proposed amendment to the CTA Plan (SR–CTA–2007–01) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–17080 Filed 8–28–07; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[10] 15 U.S.C. 78k–1.

[11] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27936; 812–13364]

Allianz RCM Global EcoTrends Fund, *et al.*; Notice of Application

August 23, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c–3 under the Act, and pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose asset-based distribution fees and early withdrawal charges.

Applicants: Allianz RCM Global EcoTrends Fund (the ''EcoTrends Fund''), Allianz Global Investors Fund Management LLC (the ''Manager'') and Allianz Global Investors Distributors LLC (the ''Distributor'').

Filing Dates: The application was filed on February 15, 2007, and amended on July 26, 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 September 17, 2007, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o William V. Healy, Esq., Allianz Global Investors Fund Management, LLC, 1345 Avenue of the Americas, 49th Floor, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: John Yoder, Senior Counsel, at (202) 551–6878 or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The EcoTrends Fund is a continuously offered non-diversified closed-end management investment company registered under the Act and organized as a Massachusetts business trust. The Manager is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as investment adviser to the EcoTrends Fund. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934, acts as principal underwriter to the EcoTrends Fund. The Distributor is under common control with the Manager and is an affiliated person, as defined in section 2(a)(3) of the Act, of the Manager.

2. Applicants request that the order also apply to any other continuously offered registered closed-end management investment companies existing now or in the future that operate as interval funds pursuant to rule 23c–3 under the Act for which the Manager, the Distributor, or any entity controlling, controlled by or under common control with the Manager or the Distributor acts as investment adviser, principal underwriter or administrator (such investment companies, together with the EcoTrends Fund, the ''Funds'').[1]

3. The EcoTrends Fund continuously offers its shares to the public pursuant to rule 415 under the Securities Act of 1933 at net asset value. The shares of the EcoTrends Fund are not listed on any securities exchange and will not be quoted on any quotation medium. Applicants do not expect that any secondary market will develop for the shares of the EcoTrends Fund. The EcoTrends Fund intends to operate as an ''interval fund'' pursuant to rule 23c–3 under the Act and to make periodic repurchase offers to its shareholders.

4. The Funds seek the flexibility to be structured as multiple class funds. The EcoTrends Fund currently offers one class of shares and intends to offer additional classes of shares. The EcoTrends Fund currently offers Class A shares at net asset value with a front-end sales charge of up to 4.5% and an annual servicing and/or distribution fee of up to .25% of average daily net assets. The EcoTrends Fund intends to offer Class C shares at net asset value with an annual distribution fee of up to 75% and an annual servicing fee of .25% (each based on average daily net assets) and no front-end sales charge. Class C shares would be subject to an early withdrawal charge (''EWC'') of 1% for shares repurchased within one year of purchase. The Funds may in the future offer additional classes of shares and/or another sales charge structure.

5. Applicants represent that any asset-based service and distribution fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD Sales Charge Rule''). Applicants also represent that each Fund will disclose in its prospectus, the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus as is required for open-end multiple class funds under Form N–1A. As is required for open-end funds, each Fund will disclose its expenses in shareholder reports, and disclose any arrangements that result in breakpoints in or elimination of sales loads in its prospectus.[2] Each Fund and the

[1] Any Fund relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

[2] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment

Distributor will also comply with any requirements that may be adopted by the Commission regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements as if those requirements applied to the Fund and the Distributor.[3]

6. Each Fund will allocate all expenses incurred by it among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of a Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. Applicants state that each Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

7. Each Fund may waive the EWC for certain categories of shareholders or transactions to be established from time to time. With respect to any waiver of, scheduled variation in, or elimination of the EWC, each Fund will comply with rule 22d–1 under the Act as if the Fund were an open-end investment company.

8. Each Fund may offer its shareholders an exchange feature under which shareholders of the Fund may, during the Fund's periodic repurchase periods, exchange their shares for shares of the same class of other registered open-end investment companies or registered closed-end investment companies that comply with rule 23c–3 under the Act and continuously offer their shares at net asset value, and that are in the Fund's group of investment companies. Fund shares so exchanged will count as part of the repurchase offer amount as specified in rule 23c–3 under the Act. Any exchange option will comply with rule 11a–3 under the Act as if the Funds were open-end investment companies subject to that rule. In complying with rule 11a–3, each Fund will treat the EWCs as if they were a contingent deferred sales load (''CDSL'').

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Funds may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that permitting multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its shares and provide investors with a broader choice of shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

Early Withdrawal Charges

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company will purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the Act permits a registered closed-end investment company (an ''interval fund'') to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the Act provides that an interval fund may deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. As noted above, section 6(c) provides that the Commission may exempt any person, security or transaction from any provision of the Act, if and to the extent that the 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. Because the Funds operate pursuant to rule 23c–3 under the Act, applicants request relief under sections 6(c) and 23(c) from rule 23c–3 to permit the Funds to impose EWCs on shares of the Funds submitted for repurchase that have been held for less than a specified period.

4. Applicants believe that the requested relief meets the standards of sections 6(c) and 23(c)(3). Rule 6c–10 under the Act permits open-end investment companies to impose CDSLs, subject to certain conditions. Applicants state that EWCs are functionally similar to CDSLs imposed by open-end investment companies under rule 6c–10. Applicants state that EWCs may be necessary for the Distributor to recover distribution costs. Applicants will comply with rule 6c–10

Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

[3] Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds, Investment Company Act Release No. 26341 (Jan. 29, 2004) (proposing release).

as if that rule applied to closed-end investment companies. The Funds also will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSLs. Applicants further state that the Funds will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act.

Asset-Based Distribution Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to permit the Funds to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c–10, 11a–3, 12b–1, 17d–3, 18f–3 and 22d–1 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the NASD Sales Charge Rule, as amended from time to time.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–17076 Filed 8–28–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56307; File No. SR–Amex–2007–96]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to an Extension of the Options Penny Quoting Pilot Program

August 22, 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 August 21, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been substantially prepared by Amex.[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

The Exchange proposes to (i) Expand the current pilot program for the quoting of a limited number of options classes in pennies (the ''Penny Quoting Pilot Program'' or ''Pilot Program'') and (ii) extend the Pilot Program through March 27, 2009. The text of the proposed rule change is available at *http://www.amex.com,* at 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex is proposing to expand the current Penny Pilot Quoting Pilot Program[4] which commenced on January 26, 2007. The Exchange believes that expanding the current Pilot Program, as proposed in this rule filing, will allow further analysis and review of the impact of penny quoting based on a greater number of actively-traded options classes.

The current Penny Quoting Pilot Program includes thirteen (13) options classes. The Pilot Program was recently extended by the Exchange through September 27, 2007.[5] The Exchange intends to roll-out the proposed expansion of the Pilot Program in two (2) phases.

First, commencing on September 28, 2007, the Exchange will include the twenty-two (22) most actively-traded, multiply-listed options classes (excluding Google (GOOG), Nasdaq–100 Index (NDX) and the Russell 2000 Index (RUT)) in the Penny Quoting Pilot Program. The Exchange also proposes to set forth in a Regulatory Circular the list of the options classes subject to the proposed expansion of the Pilot Program. In addition to the thirteen (13) options classes that are currently part of the Pilot Program, this would expand the Penny Quoting Pilot Program to include approximately 35% of total industry options volume.

Second, the Exchange on March 28, 2008 would further commence an expansion of the Pilot Program to last for one (1) year through March 27, 2009. Amex anticipates that an additional twenty-eight (28) option classes will be added to the Penny Quoting Pilot Program at that time such that the Pilot would include the Top 50 multiply-listed options classes by national volume. As a result, the Pilot Program would then consist of sixty-three (63) options classes. The Exchange will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the proposed rule change submitted by the Exchange contained non-substantive errors, which, for the purpose of this notice, have been corrected. The Exchange has committed to address these errors formally in an amendment to the proposed rule change following publication of this notice. Telephone conversation between Jeffrey Burns, Vice President and Associate General Counsel and Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission on August 22, 2007.

[4] *See* Securities Exchange Act Release No. 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007).

[5] *See* Securities Exchange Act Release No. 56159 (July 27, 2007), 72 FR 43300 (August 3, 2007).

submit a proposed rule change pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 identifying the options classes to be included in the second phase of the Pilot Program expansion.

The Exchange believes that the proposed expansion is a measured increase to the existing Pilot Program given system capacity constraints and concerns that exist industry-wide. As set forth in the Exchange's original rule filing in connection with the Pilot Program, the Amex believes that a considerate and measured expansion is required because quoting options in pennies is expected to increase quote message traffic. The Exchange believes that the proposed expansion of options classes that may quote in pennies under the Pilot Program is reasonable given the system capacity constraints and quote mitigation strategies in place at the Amex as well as the other options exchanges.

The Exchange represents that it will submit reports analyzing the Pilot Program for the following time periods: (i) May 1, 2007 through September 27, 2007; (ii) September 28, 2007 through January 31, 2008; (iii) February 1, 2008 through July 31, 2008; and (iv) August 1, 2008 through January 31, 2009. The Pilot Reports will be submitted to the Commission within thirty (30) days of the end of such time periods. The Exchange expects the Pilot Reports, among other things, to assess the impact of the Pilot Program during the relevant time period comparing quotation and trading activity as follows: (1) Quotation spread, quotation size, average daily volume and other relevant factors: (2) the number of quotations in the Penny Quoting Pilot Program and the effect on Amex system's capacity; and (3) an assessment of trade-throughs and how they were addressed.

The quoting requirements in connection with the Penny Quoting Pilot Program will continue to provide for (i) A minimum price variation (''MPV'') of $0.01 for options with premiums of up to $3 or (ii) a MPV of $0.05 for options with premiums of $3 or greater, except for QQQQ options which trade at an MPV of $0.01 for all premiums.

As part of the Penny Quoting Pilot Program, the Exchange implemented quote mitigation strategies due to concerns regarding system capacity. The Exchange believes that the quote mitigation strategies in place since the introduction of the Pilot Program continue to be effective. Therefore, in this filing, the Exchange is also proposing to further extend the effectiveness of the quote mitigation strategies through March 27, 2009.

Finally, the Exchange believes that an additional extension of the Penny Quoting Pilot Program through March 27, 2009 is warranted and appropriate for the purpose of implementing the proposed expansion.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(5) of the Act,[7] in particular, in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism 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 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 on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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. The Commission also requests and encourages interested persons to submit comments on the following specific questions:

- Whether there are circumstances under which options classes included in the Penny Pilot should be removed from the Pilot?
- If so, what factors should be considered in making the determination to remove an option class from the Penny Pilot?
  - Should an objective standard be used? For instance, should an option class come out of the Penny Pilot if its trading volume drops below a threshold amount? If so, what should that threshold be? Or, should an option class come out of the Penny Pilot if it is no longer among the most actively-traded options? If so, what should be considered the most-actively traded options? What statistics or analysis should be used to support a determination to remove an options class?
  - Should a more subjective analysis be allowed? If so, what factors should be taken into account?
- What concerns might arise by removing an option from the Penny Pilot? How could such concerns be ameliorated?
- How frequently should the analysis be undertaken (*e.g.*, annually, bi-annually, quarterly), or should the evaluation be an automated process?
- If a determination is made that an option should be removed from the Penny Pilot, how much notice should be given to market participants that the quoting increment will change?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2007–96 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Amex–2007–96. 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

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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–Amex–2007–96 and should be submitted on or before September 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–17082 Filed 8–28–07; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56302; File No. SR–CBOE–2007–88]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change To Amend its Rule Regarding the Hybrid Opening System Opening Rotations

August 22, 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, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rule related to opening rotations conducted via the Hybrid Opening System (''HOSS''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Office of the Secretary, CBOE and at the Commission.

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 self-regulatory organization 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 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

The Exchange is proposing to amend its HOSS procedures contained in CBOE Rule 6.2B. HOSS is the Exchange's automated system for initiating trading at the beginning of each trading day. The HOSS procedures currently provide that an opening rotation for an options class shall be initiated by HOSS at a randomly selected time within a number of seconds after the primary market[3] for the underlying security opens (or after 8:30 a.m. (Central Time) for index options).[4]

The Exchange is proposing to amend Rule 6.2B to permit the opening rotation for an options class to be initiated by HOSS after the opening of the underlying security on either the primary listing market, the primary volume market[5] or the first market to open the underlying security. Determinations on the particular configuration for the market for the underlying security would be made on a class-by-class by the appropriate Exchange Procedure Committee and announced to the membership via Regulatory Circular. The Exchange believes that the proposed rule change will provide it with more flexibility to determine when to permit the HOSS opening rotation process to begin, which should contribute to the Exchange's ability to conduct openings in a fairly and orderly manner.

[3] For purposes of CBOE Rule 6.2B, the Exchange has interpreted the ''primary market'' to be the primary listing market.

[4] For purposes of CBOE Rule 6.2B, when the underlying market ''opens'' is determined, on a class-by-class basis, to be either the opening trade and/or opening quote (or whichever occurs first). Once the underlying market open occurs, HOSS initiates the overlying option class opening and sends a Rotation Notice to market participants. Thereafter, HOSS will open the series of a class in a random order.

[5] For purposes of CBOE Rule 6.2B, the primary volume market will be defined as the market with the most liquidity in that underlying security for the previous two calendar months.

2. Statutory Basis

By allowing for more flexibility in the manner in which HOSS is programmed to initiate an opening rotation, the Exchange is enhancing its ability to conduct fair and orderly openings, and, as such, the Exchange believes this proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2007–88 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2007–88. 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–2007–88 and should be submitted on or before September 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–17079 Filed 8–28–07; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56306; File No. SR–ISE–2007–74]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to an Extension of the Penny Pilot Program

August 22, 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 August 21, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been substantially prepared by ISE. On August 22, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to expand a pilot program to quote and trade certain options in pennies. The text of the proposed rule change is available at *http://www.ise.com*, at 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 24, 2007, the Commission approved ISE's rule filing, SR–ISE–2006–62, which allowed 13 option classes to quote in penny increments in connection with the implementation of an industry-wide, six month pilot program (the ''Penny Pilot Program'').[3] Under the Penny Pilot Program, the minimum price variation for all 13 option classes, except for the Nasdaq-100 Index Tracking Stock (''QQQQs''), is $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. The QQQQs are quoted in $0.01 increments for all options series. A recent extension of the Penny Pilot Program is scheduled to expire on September 27, 2007.[4] ISE now proposes to expand the Penny Pilot Program in two phases.

In both phases, the 13 options classes currently in the Penny Pilot Program would continue to be quoted as they are today. In addition, Phase I of the expansion would begin on September 28, 2007 and would continue for six months. This phase would include the 22 additional option classes noted in Exhibit 5. These 22 option classes are among the most actively traded, multiply-listed option classes based on national average daily volume, and together with the existing 13 option classes that are currently in the Penny Pilot Program, represent approximately 35% of the total industry volume.

Phase II of the expansion would begin on March 28, 2008 and continue for one year until March 27, 2009. It is currently anticipated that an additional 28 option classes would be added to the Penny Pilot Program on March 28, 2008, bringing the total number of option classes in the Penny Pilot Program to 63. These 28 new option classes would also be among the most actively traded, multiply-listed option classes. ISE intends to submit a proposed rule change pursuant to section (b)(3)(A) of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–ISE–2006–62) (the ''Initial Filing'').

[4] *See* Securities Exchange Act Release No. 56151 (July 26, 2007), 72 FR 42452 (August 2, 2007) (SR–ISE–2007–68).

the Exchange Act announcing the names of these twenty-eight option classes prior to the beginning of Phase II and, pursuant to ISE Rule 710, intends to disseminate a Regulatory Information Circular.[5]

ISE believes that expanding the Penny Pilot Program as proposed by this rule filing would allow the Exchange and the Commission to further analyze, and over a longer period of time, the impact of quoting and trading option classes in penny increments and the impact of the Penny Pilot Program on liquidity, market structure and quote traffic.

As proposed in the Initial Filing, ISE represents that options trading in penny increments would not be eligible for split pricing, as permitted under ISE Rule 716. In the Initial Filing, the Exchange also referenced quote mitigation strategies that are currently in place and proposed to apply them to the Penny Pilot Program. The Exchange proposes to continue applying those quote mitigation strategies during the extension and expansion of the Penny Pilot Program, as contemplated by this rule filing. Specifically, as proposed in ISE Rule 804, ISE would continue to utilize a holdback timer that delays quotation updates for up to, but not longer than, one second. The Exchange's monitoring and delisting policies, as proposed in the Initial Filing, would also continue to apply.

Finally, ISE intends to submit reports to the Commission analyzing the Penny Pilot Program for the following time periods:

- May 1, 2007–September 27, 2007.
- September 28, 2007–January 31, 2008.
- February 1, 2008–July 31, 2008.
- August 1, 2008–January 31, 2009.

The Exchange anticipates its reports will analyze the impact of penny pricing on market quality and options system capacity. The Exchange will submit each report within one month following the end of the period being analyzed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(5) of the Act,[7] in particular, in that the proposed rule change is 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 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 on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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. The Commission also requests and encourages interested persons to submit comments on the following specific questions:

- Whether there are circumstances under which options classes included in the Penny Pilot should be removed from the Pilot?
- If so, what factors should be considered in making the determination to remove an option class from the Penny Pilot?
- Should an objective standard be used? For instance, should an option class come out of the Penny Pilot if its trading volume drops below a threshold amount? If so, what should that threshold be? Or, should an option class come out of the Penny Pilot if it is no longer among the most actively traded options? If so, what should be considered the most actively traded options? What statistics or analysis should be used to support a determination to remove an options class?
- Should a more subjective analysis be allowed? If so, what factors should be taken into account?
- What concerns might arise by removing an option from the Penny Pilot? How could such concerns be ameliorated?
- How frequently should the analysis be undertaken (*e.g.*, annually, bi-annually, quarterly), or should the evaluation be an automated process?
- If a determination is made that an option should be removed from the Penny Pilot, how much notice should be given to market participants that the quoting increment will change?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2007–74 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISE–2007–74. 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

[5] Telephone conversation between Samir Patel, Assistant General Counsel, ISE, Jennifer Colihan, Special Counsel, Division of Market Regulation (''Division''), Commission, and Johnna Dumler, Special Counsel, Division, Commission on August 22, 2007.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–74 and should be submitted on or before September 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–17081 Filed 8–28–07; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region VII Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region VII Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a National Regulatory Fairness Hearing on Wednesday, September 5, 2007, at 10 a.m. The forum will take place at the Iowa Department of Economic Development, 2nd Floor ICN Room, 200 East Grand Avenue, Des Moines, IA 50309. 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 Dave Lentell, in writing or by fax in order to be placed on the agenda. Dave Lentell, Business Development Specialist, SBA, Des Moines District Office, 210 Walnut Street, Room 749, Des Moines, IA 50309–4106, phone (515) 284–4522, and fax (202) 481–5838, e-mail: *Thomas.lentell@sba.gov.*

For more information, see our Web site at *www.sba.gov/ombudsman.*

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–17096 Filed 8–28–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Advisory Committee on Veterans Business Affairs; Public Meeting

The U.S. Small Business Administration (SBA), pursuant to the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50), SBA Advisory Committee on Veterans Business Affairs will host a public federal meeting on Tuesday, September 18, 2007, starting at 9 a.m. until 5 p.m. The meeting will be held at the U.S. Small Business Administration, 409 3rd Street, SW., Eisenhower Conference Room, 7th Floor, Washington, DC 20416.

The purpose of the meeting is to discuss issues pertaining to SBA's services, programs and outreach for veterans and service-disabled veterans.

Anyone wishing to attend must contact Cheryl Clark, Program Liaison, Office of Veterans Business Development at (202) 205–6773 or send an e-mail to *cheryl.clark@sba.gov.*

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–17089 Filed 8–28–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5918]

Correction Request to Public Notice 5870

ACTION: Notice; correction.

SUMMARY: On July 31, 2007, Public Notice 5870 was published in the **Federal Register** (Volume 72, Number 146) pertaining to the grant announcement, ''United States-Egypt Science and Technology Joint Board: Public Announcement of a Science and Technology Program for Competitive Grants to Support International, Collaborative Projects in Science and Technology Between U.S. and Egyptian Cooperators.'' The referenced Notice is hereby corrected to include the grant application guidelines Web site: *http://cairo.usembassy.gov/usegypt.htm,* and address for Program Administrator in Cairo: Barbara Jones, Program Administrator, U.S.-Egypt Science and Technology Grants Program, USAID/Cairo, Unit 64902, APO AE 09839–4902; phone: 011–(20–2) 2522–6887; fax: 011 (20–2) 2522–7041; E-mail: *bljones@usaid.gov.*

FOR FURTHER INFORMATION CONTACT: Please contact Robert S. Senseney, Senior Advisor for Science Partnerships, Office of Science and Technology Cooperation, Bureau of Oceans, Environment and Science, U.S. Department of State and Chair, U.S.-Egypt S&T Joint Board at (202) 663–3246 or *SenseneyRS@state.gov.*

Dated: August 23, 2007.

Bruce Howard,

Director, Office of Science and Technology Cooperation, Department of State.

[FR Doc. E7–17121 Filed 8–28–07; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 5919]

Correction Request to Public Notice 5871

ACTION: Notice; correction.

SUMMARY: On July 31, 2007, Public Notice 5871 was published in the **Federal Register** (Volume 72, Number 146) pertaining to the grant announcement ''United States-Egypt Science and Technology Joint Board: Public Announcement of a Science and Technology Program for Competitive Grants To Support Junior Scientist Development Visits by U.S. and Egyptian Scientists.'' The referenced Notice is hereby corrected to include the correct grant application guidelines Web site: *http://cairo.usembassy.gov/usegypt.htm,* and correct address for USAID Program Administrator in Cairo: Barbara Jones, Program Administrator, U.S.-Egypt Science and Technology Grants Program, USAID/Cairo, Unit 64902, APO AE 09839–4902; phone: 011–(20–2) 2522–6887; fax: 011–(20–2) 2522–7041; E-mail: *bljones@usaid.gov.*

FOR FURTHER INFORMATION CONTACT: Please contact Robert S. Senseney, Senior Advisor for Science Partnerships, Office of Science and Technology Cooperation, Bureau of Oceans, Environment and Science, U.S. Department of State and Chair, U.S.-Egypt S&T Joint Board at (202) 663–3246 or *SenseneyRS@state.gov.*

Dated: August 23, 2007.

Bruce Howard,

Director, Office of Science and Technology Cooperation, Department of State.

[FR Doc. E7–17120 Filed 8–28–07; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANE–2007–35.23–1]

Policy for Electronic Propeller Control Systems, §§ 35.21 and 35.23

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance; policy statement.

[8] 17 CFR 200.30–3(a)(12).

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of policy for certifying a propeller with an Electronic Propeller Control System (EPCS).

DATES: The FAA issued policy statement number ANE–2007–35.23–1 on August 22, 2007.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, FAA, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jay.turnberg@faa.gov;* telephone: (781) 238–7116; fax: (781) 238–7199. The policy statement is available on the Internet at the following address: *http://www.faa.gov.* (click on the ''Regulations and Policies'' tab, then ''Regulatory and Guidance Library''). If you do not have access to the Internet, you may request a copy of the policy by contacting the individual listed in this section.

SUPPLEMENTARY INFORMATION: The FAA published the policy at *http://www.faa.gov/aircraft/draft_docs/* on September 27, 2006 to announce the availability of the proposed policy and invite interested parties to comment.

We have filed in the docket all comments we received, as well as a report summarizing each substantive public contact with FAA personnel concerning this policy. The docket is available for public inspection. If you wish to review the docket in person, go to the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Background

This FAA policy statement presents one method to obtain approval to certify a propeller with an Electronic Propeller Control System. This guidance may also be used for the development of special conditions that the Administrator may find necessary to establish a level of safety for propellers with an EPCS equivalent to that established by the existing airworthiness standards for propellers with conventional control systems.

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

Dated: Issued in Burlington, Massachusetts, on August 22, 2007.

Mark A. Rumizen,

Aircraft Certification Service.

[FR Doc. 07–4230 Filed 8–28–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Government/Industry Aeronautical Charting Forum Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the bi-annual meeting of the Federal Aviation Administration (FAA) Aeronautical Charting Forum (ACF) to discuss informational content and design of aeronautical charts and related products, as well as instrument flight procedures development policy and design criteria.

DATES: The ACF is separated into two distinct groups. The Instrument Procedures Group (IPG) will meet October 23, 2007, from 8:30 a.m. to 5 p.m. The Charting Group will meet October 24 and 25 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be hosted by the Air Line Pilots Association, 535 Herndon Parkway, Herndon, VA 20172.

FOR FURTHER INFORMATION CONTACT: For information relating to the Instrument Procedures Group, contact Thomas E. Schneider, FAA, Flight Procedures Standards Branch, AFS–420, 6500 South MacArthur Blvd, P.O. Box 25082, Oklahoma City, OK 73125; telephone (405) 954–5852; fax (405) 954–2528.

For information relating to the Charting Group, contact John A. Moore, FAA, National Aeronautical Charting Group Requirements and Technology Team, AJW–3521, 1305 East-West Highway, SSMC4–Station 5544, Silver Spring, MD 20910; telephone: (301) 713–2631, fax: (301) 713–1960.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C.. App. II), notice is hereby given of a meeting of the FAA Aeronautical Charting Forum to be held from October 23, 2007 through October 25, 2007, from 8:30 a.m. to 5 p.m. at the Air Line Pilots Association, 535 Herndon Parkway, Herndon, VA 20172.

The Instrument Procedures Group agenda will include briefings and discussions on recommendations regarding pilot procedures for instrument flight, as well as criteria, design, and developmental policy for instrument approach and departure procedures.

The Charting Group agenda will include briefings and discussions on recommendations regarding aeronautical charting specifications, flight information products, as well as new aeronautical charting and air traffic control initiatives.

Attendance is open to the interested public, but will be limited to the space available.

The public must make arrangements by October 5, 2007, to present oral statements at the meeting. The public may present written statements and/or new agenda items to the committee by providing a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by October 5, 2007. Public statements will only be considered if time permits.

Issued in Washington, DC, on August 22, 2007.

John A. Moore Jr.,

Co-Chair, Aeronautical Charting Forum.

[FR Doc. 07–4229 Filed 8–28–07; 8:45 am]

BILLING CODE 4940–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Meting of the National Parks Overflights Advisory Group Aviation Rulemaking Committee

ACTION: Notice of meeting.

SUMMARY: The Federal Aviation Administration (FAA) and the National Park Service (NPS), in accordance with the National Parks Air Tour Management Act of 2000, announce the next meeting of the National Parks Overflights Advisory Group (NPOAG) Aviation Rulemaking Committee (ARC). This notification provides the dates, location, and agenda for the meetings.

DATES AND LOCATION: The NPOAG ARC will meet on September 25–26, 2007. The meetings will take place in the 3rd floor conference room at the National Park Service's Natural Resource Program Center which is located at 1201 Oak Ridge Drive, Fort Collins, Colorado 80525, phone number (970) 267–2107. The meetings will be held from 8:30 a.m. to 5 p.m. on September 25th and 26th. Although these are not public meetings, members of the public can attend the meetings. A short time will be provided for public comment at the meetings.

FOR FURTHER INFORMATION CONTACT: For the NPOAG meeting contact Barry Brayer, AWP–1SP, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, P.O. Box 92007, Los Angeles, CA 90009–2007, telephone: (310) 725–3800, e-mail: *Barry.Brayer@faa.gov,* or Karen Trevino, National Park Service, Natural Sounds Program, 1201 Oakridge Dr., Suite 100, Fort Collins, CO 80525,

telephone: (970) 225–3563, e-mail: *Karen_Trevino@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (NPATMA), enacted on April 5, 2000, as Public Law 106–181, required the establishment of the NPOAG within one year after its enactment. The Act requires that the NPOAG be a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

The duties of the NPOAG include providing advice, information, and recommendations to the FAA Administrator and the NPS Director on: Implementation of Public Law 106–181; quiet aircraft technology; other measures that might accommodate interests to visitors to national parks; and at the request of he Administrator and the Director, on safety, environmental, and other issues related to commercial air tour operations over national parks or tribal lands.

Agenda for the September 25–26, 2007 NPOAG Meeting

The agenda for the meeting will include, but is not limited to, the following: Review and approval of previous meeting minutes; update on ongoing Air Tour Management Program projects; proposed legislative changes to NPATMA; and NPOAG subgroup assignments.

Attendance at the Meetings

Although these are not public meetings, interested persons may attend. Because seating is limited, if you play to attend please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT** so that meeting space may be made to accommodate all attendees.

Record of the Meetings

If you cannot attend the NPOAG meeting, a summary record of the meeting will be made available under the NPOAG section of the FAA ATMP Web site at *http://www.atmp.faa.gov* or through the Special Programs Staff, Western-Pacific Region, Federal Aviation Administration, P.O. Box 92007, Los Angeles, CA 90009–2007, telephone: (310) 725–3800.

Issued in Hawthorne, CA, on August 21, 2007.

William C. Withycombe,

Regional Administrator, Western-Pacific Region.

[FR Doc. 07–4231 Filed 8–28–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on a Proposed U.S. Highway Project in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces 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 highway project to construct a fourth bore for the Caldecott Tunnel on State Route 24 between kilo post 6.7 to 10.0 (post miles 5.3 to 6.2) in Alameda County and between kilo post 0.0 to 3.7 (post miles 0.0 to 1.3) in Contra Costa County, State of California. These actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before February 25, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Cesar E. Perez, Project Development Engineer, Federal Highway Administration, 650 Capitol Mall, Suite 4–100, Sacramento, CA 95814, weekdays between 7 a.m. and 4 p.m., telephone 916–498–5065, *Cesar.Perez@fhwa.dot.gov* or Cristina Ferraz, Project Manager, California Department of Transportation, 111 Grand Avenue, Oakland, CA 94612, weekdays between 8 a.m. and 4:30 p.m., (510) 286–5559, *Cristina_Ferraz@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing approvals for the following highway project in the State of California.

The Caldecott Improvement Project would alleviate traffic congestion and delays and improve safety and operations on State Route 24 in Alameda and Contra Costa Counties, California. This would be accomplished by constructing a two-lane fourth bore along State Route 24 at the Caldecott Tunnel. The actions by the Federal agencies and the laws under which such actions were taken are described in the Environmental Assessment (EA)/ Finding of No Significant Impact (FONSI) for the project, approved on August 17, 2007 and in other documents in the FHWA administrative record.

The EA/FONSI and other documents are available by contacting FHWA or Caltrans at the addresses provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Land:* Landscape and Scenic Enhancement (Wildflowers) [23 U.S.C. 219].
3. *Air:* Clean Air Act 42 U.S.C. 7401–7671(q).
4. *Wildlife:* 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. Section 4(f) of the U.S. Department of Transportation Act of 1966 [49 U.S.C. 303].
6. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(aa) 11]; 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].
7. *Social and Economic:* 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]; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675; Superfund Amendments and Reauthorization Act of 1986 (SARA); 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 Populations 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 program.)

Authority: 23 U.S.C. 139(I)(1).

Issued on: August 21, 2007.

Maiser Khaled,

Director, Project Development & Environment, Sacramento, California.

[FR Doc. E7–17071 Filed 8–28–07; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 456X)]

BNSF Railway Company—Abandonment Exemption—in Riverside County, CA

BNSF Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 0.50 miles of rail line, extending between milepost ES 0 + 00 and milepost ES 26 + 35, in Riverside, Riverside County, CA.[1] The line traverses United States Postal Service Zip Code 92504.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 28, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 10, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 18, 2007, with the Surface Transportation Board, 395 E. Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed both an environmental report and a historic report that address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 31, 2007. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by August 29, 2008, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 22, 2007.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–16960 Filed 8–28–07; 8:45 am]

BILLING CODE 4915–01–P

[1] BNSF indicates that a portion of the trackage for the proposed abandonment mistakenly was removed by a contractor for the city of Riverside (the city) and that, if the abandonment is not approved, the track will be restored by BNSF at the city's expense.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0080]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to initiate and document expenditures, to claim reimbursement as well as make funeral arrangements and authorize burial benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 29, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *mary.stout@va.gov*. Please refer to ''OMB Control No. 2900–0376'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mary Stout at (202) 461–5867.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Claim for Payment of Cost of Unauthorized Medical Services, VA Form 10–583.

b. Funeral Arrangements Form for Disposition of Remains of the Deceased, VA Form 10–2065.

c. Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, VA Form 10–2511.

d. Authorization and Invoice for Medical and Hospital Services, VA Form 10–7078.

e. Request for Payment of Beneficiary Travel after the Date of Service.

OMB Control Number: 2900–0080.

Type of Review: Revision of a currently approved collection.

Abstract:

a. VA Form 10–583 is used to request payment or reimbursement of the cost of unauthorized non-VA medical services.

b. VA Form 10–2065 is completed by VA personnel during an interview with relatives of the deceased, and to identify the funeral home to which the remains are to be released. The form is also used as a control document when VA is requested to arrange for the transportation of the deceased from the place of death to the place of burial, and/or when burial is requested in a National Cemetery.

c. VA Form 10–2511 is used to process payment for ambulance or other hired vehicular forms of transportation for eligible veterans to and from VA health care facilities for examination, treatment or care.

d. VA uses VA Form 10–7078 to authorize expenditures from the medical care account and process payment of medical and hospital services provided by other than Federal health providers to VA beneficiaries.

e. Claimants who request payment for beneficiary travel after the time of service may do so in writing or in person.

Affected Public: Business or other for profit, Individuals or households, and Not for profit institutions.

Estimated Total Annual Burden: 30,391 hours.

a. VA Form 10–583—17,188.

b. VA Form 10–2065—2,053.

c. VA Form 10–2511—2,333.

d. VA Form 10–7078—8,400.

e. Request for Payment of Beneficiary Travel after the Date of Service—417.

Estimated Average Burden per Respondent:

a. VA Form 10–583—15 minutes.

b. VA Form 10–2065—5 minutes.

c. VA Form 10–2511—2 minutes

d. VA Form 10–7078—2 minutes.

e. Request for Payment of Beneficiary Travel after the Date of Service—1 minute.

Frequency of Response: On occasion.

Estimated Number of Respondents: 440,380.

a. VA Form 10–583—68,750 respondents.

b. VA Form 10–2065—24,630 respondents.

c. VA Form 10–2511—70,000 respondents.

d. VA Form 10–7078—252,000 respondents.

e. Request for Payment of Beneficiary Travel after the Date of Service—25,000.

Dated: August 16, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–17090 Filed 8–28–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (21–0819)]

Agency Information Collection: Emergency Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the United States Department of Veterans Affairs (VA), has submitted to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). The reason for the emergency clearance is to determine a service member's eligibility for participation in a joint DOD/VA Disability Evaluation Board and VA compensation after separation from service. OMB has been requested to act on this emergency clearance request by September 21, 2007.

DATES: Comments must be submitted on or before September 12, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–New (21–0819)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–7870 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–New (21–0819).''

SUPPLEMENTARY INFORMATION:

Title: VA/DOD Joint Disability Evaluation Board Claim, VA Form 21–0819.

OMB Control Number: 2900–New (21–0819).

Type of Review: New collection.

Abstract: As a result of President Bush's Interagency Task Force on Returning Global War on Terror Heroes, VA and the Department of Defense (DOD) have agreed to develop a joint process in which Global War on Terror (GWOT) service members are evaluated to assign disability ratings, which will be used to determine military retention,

level of disability for retirement, and VA disability compensation. VA Form 21–0819 will be used to gather the necessary information to determine the service member's eligibility for participation in a joint DOD/VA Disability Evaluation Board and VA compensation after separation from service.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 14,000.

Dated: August 20, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–17095 Filed 8–28–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Disability Benefits Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Disability Benefits Commission has scheduled a meeting for September 19–21, 2007, at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC. On Wednesday, September 19, the session will begin at 10 a.m. and end at 5 p.m. On Thursday, September 20, the session will begin at 8:30 a.m. and end at 5 p.m. On Friday, September 21, the session will begin at 8:30 a.m. and end at 12 noon. The meeting is open to the public.

The purpose of the Commission is to carry out a study of the benefits under the laws of the United States that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service.

The agenda for this meeting will feature ongoing review, discussions and decisions by the Commission as it continues the process of assembling its final report. There will be time set aside for public comments. Interested persons may attend and present oral statements to the Commission on September 19. Oral presentations will be limited to five minutes or less. Interested parties may also provide written comments for review by the Commission prior to the meeting, by e-mail to *veterans@vetscommission.com* or by mail to Mr. Ray Wilburn, Executive Director, Veterans' Disability Benefits Commission, 1101 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20004.

Dated: August 22, 2007.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–4239 Filed 8–28–07; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on the Readjustment of Veterans will be held on October 4–5, 2007, at The American Legion, Washington Office, 1608 K Street, NW., Washington, DC, from 8 a.m. to 4:30 p.m. each day. The meeting will be open to the public.

The purpose of the Committee is to review the post-war readjustment needs of veterans and to evaluate the availability and effectiveness of VA programs to meet these needs.

The agenda for October 4 will feature a review of VA and Department of Defense (DOD) programs to address the mental health and readjustment service needs of returning war veterans, deployment-related stress problems faced by service members and their families, and Battlemind Training for Families as developed by the Walter Reed Army Institute for Research.

On October 5, the Committee will be provided an update on the current activities of the Readjustment Counseling Service Vet Center program to serve the veterans from Operation Enduring Freedom and Operation Iraqi Freedom. The agenda will also include a review of the partnership between VA and DOD in ensuring a seamless transition for returning war veterans, strategic planning activities, and drafting recommendations for the Committee's next report to Congress.

Time will not be allocated at this meeting for receiving oral presentations from the public. However, members of the public may direct written questions or submit prepared statements for review by the Committee in advance to Mr. Charles M. Flora, M.S.W., Designated Federal Officer, Readjustment Counseling Service, Department of Veterans Affairs (15), 810 Vermont Avenue, NW., Washington, DC 20420. Those who plan to attend or have questions concerning the meeting may contact Mr. Flora at (202) 461–6531 or e-mail at *charles.flora@va.gov.*

Dated: August 24, 2007.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–4238 Filed 8–28–07; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday,
August 29, 2007

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 484

Medicare Program; Home Health Prospective Payment System Refinement and Rate Update for Calendar Year 2008; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 484

[CMS–1541–FC]

RIN 0938–AO32

Medicare Program; Home Health Prospective Payment System Refinement and Rate Update for Calendar Year 2008

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period sets forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health services, effective on January 1, 2008. As part of this final rule with comment period, we are also rebasing and revising the home health market basket to ensure it continues to adequately reflect the price changes of efficiently providing home health services. This final rule with comment period also sets forth the refinements to the payment system. In addition, this final rule with comment period establishes new quality of care data collection requirements.

Finally, this final rule with comment period allows for further public comment on the 2.71 percent reduction to the home health prospective payment system payment rates that are scheduled to occur in 2011, to account for changes in coding that were not related to an underlying change in patient health status (section III.B.6).

DATES: *Effective date:* These regulations are effective on January 1, 2008.

Comment date: We will consider public comments on the provisions in section III.B.6 that deal with the 2.71 percent reduction to payment rates in 2011. To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 29, 2007.

ADDRESSES: In commenting, please refer to file code CMS–1541–FC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking.* Click on the link ''Submit electronic comments on CMS regulations with an open comment period.'' (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1541–FC, P.O. Box 8012, Baltimore, MD 21244–8012.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1541–FC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Randy Throndset, (410) 786–0131. Sharon Ventura, (410) 786–1985 and Katie Lucas, (410) 786–7723 (for general issues). Kathy Walch, (410) 786–7970 (for clinical OASIS issues). Doug Brown, (410) 786–0028 (for quality issues). Mollie Knight, (410) 786–7948; and Heidi Oumarou, (410) 786–7942 (for market basket issues).

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on the 2.71 percent reduction to the Home Health Prospective Payment System (HH PPS) rates for 2011, as set forth in this final rule with comment period, to assist us in fully considering this issue and developing policies.

Inspection of Public Comments: All comments received before the close of the comment period will be available for viewing by the public, including any personally identifiable or confidential business information that is included in the 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 and Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Table of Contents

I. Background
- A. Requirements of the Balanced Budget Act of 1997 for Establishing the Prospective Payment System for Home Health Services
- B. Deficit Reduction Act of 2005
- C. Updates to the HH PPS
- D. System for Payment of Home Health Services

II. Summary of the Provisions of the CY 2008 Proposed Rule

III. Analysis of and Response to Public Comments on the CY 2008 Proposed Rule
- A. General Comments on the CY 2008 HH PPS Proposed Rule
  - 1. Operational Issues
  - 2. The Schedule for Implementation of the CY 2008 Refinements
  - 3. Complexity of the System
- B. Case-Mix Model Refinements
  - 1. General Comments
  - 2. Later Episodes
  - 3. Addition of Variables
  - 4. Addition of Therapy Thresholds

5. Determination of Case-Mix Weights
6. Case-Mix Change Under the HH PPS
7. Case-Mix Groups
8. OASIS Reporting and Coding Practices
C. Payment Adjustments
1. The Partial Episode Payment (PEP) Adjustment
2. The Low Utilization Payment Adjustment (LUPA)
3. The Significant Change in Condition (SCIC) Adjustment
4. Non-Routine Medical Supplies (NRS)
D. The Outlier Policy
E. The Update of the HH PPS Rates
1. The Home Health Market Basket Update
2. The Rebasing and Revising of the Home Health Market Basket
3. Wage Index
4. Home Health Care Quality Improvement
5. CY 2008 Payment Updates
IV. Provisions of the Final Rule With Comment Period
V. Collection of Information Requirements
VI. Regulatory Impact Analysis
A. Overall Impact
B. Anticipated Effects
C. Accounting Statement
Addendum A. CY 2008 Wage Index for Rural Areas by CBSA; Applicable Pre-floor and Pre-reclassified Hospital Wage Index
Addendum B. CY 2008 Wage Index for Urban Areas by CBSA; Applicable Pre-floor and Pre-reclassified Hospital Wage Index
Addendum C. Comparison of the CY 2007 HH PPS Wage Index and the CY 2008 HH PPS Wage Index

I. Background

A. Requirements of the Balanced Budget Act of 1997 for Establishing the Prospective Payment System for Home Health Services

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) enacted on August 5, 1997, significantly changed the way Medicare pays for Medicare home health services. Section 4603 of the BBA governed the development of the home health prospective payment system (HH PPS). Until the implementation of a HH PPS on October 1, 2000, home health agencies (HHAs) received payment under a cost-based reimbursement system.

Section 4603(a) of the BBA provides the authority for the development of a HH PPS for all Medicare-covered home health services provided under a plan of care that were paid on a reasonable cost basis by adding section 1895 of the Social Security Act (the Act), entitled ''Prospective Payment For Home Health Services,'' to the Act.

Section 1895(b)(1) of the Act requires the Secretary to establish a HH PPS for all costs of home health services paid under Medicare.

Section 1895(b)(3)(A) of the Act requires that (1) the computation of a standard prospective payment amount include all costs for home health services covered and paid for on a reasonable cost basis and be initially based on the most recent audited cost report data available to the Secretary, and (2) the prospective payment amounts be standardized to eliminate the effects of case-mix and wage levels among HHAs.

Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the home health applicable increase percentage as specified in the statute.

Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of an appropriate case-mix adjustment factor that adjusts for significant variation in costs among different units of services. Similarly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages, and wage-related costs applicable to home health services furnished in a geographic area compared to the applicable national average level. These wage-adjustment factors may be used by the Secretary for the different geographic wage levels for purposes of section 1886(d)(3)(E) of the Act.

Section 1895(b)(5) of the Act gives the Secretary the option to make additions or adjustments to the payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. Total outlier payments in a given fiscal year (FY) may not exceed 5 percent of total payments projected or estimated.

In accordance with the statute, we published a final rule (65 FR 41128) in the **Federal Register** on July 3, 2000 to implement the HH PPS legislation. The July 2000 final rule established requirements for the new HH PPS for home health services as required by section 4603 of the BBA, as subsequently amended by section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act (OCESAA) for Fiscal Year 1999, (Pub. L. 105–277), enacted on October 21, 1998; and by sections 302, 305, and 306 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act (BBRA) of 1999, (Pub. L. 106–113), enacted on November 29, 1999. The requirements include the implementation of a HH PPS for home health services, consolidated billing requirements, and a number of other related changes. The HH PPS described in that rule replaced the retrospective reasonable cost-based system that was used by Medicare for the payment of home health services under Part A and Part B.

For a complete and full description of the HH PPS as required by the BBA, see the July 2000 HH PPS final rule.

B. Deficit Reduction Act of 2005

On February 8, 2006, the Deficit Reduction Act (DRA) of 2005 (Pub. L. 109–171) was enacted. This legislation affected updates to HH payment rates for calendar year (CY) 2006. The DRA also required HHAs to submit home health care quality data and created a linkage between that data and payment beginning in CY 2007.

Specifically, section 5201 of the DRA changed the CY 2006 update from the applicable home health market basket percentage increase minus 0.8 percentage points to a 0 percent update. In addition, section 5201 of the DRA amends section 421(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003). The amended section 421(a) of the MMA requires that for home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act) on or after January 1, 2006 and before January 1, 2007, that the Secretary increase the payment amount otherwise made under section 1895 of the Act for home health services by 5 percent. The statute waives budget neutrality for purposes of this increase since it specifically states that the Secretary must not reduce the standard prospective payment amount (or amounts) under section 1895 of the Act applicable to home health services furnished during a period to offset the increase in payments resulting in the application of this section of the statute.

The 0 percent update to the payment rates and the rural add-on provisions of the DRA were implemented through Pub. 100–20, One Time Notification, Transmittal 211 issued on February 10, 2006.

In addition, section 5201 of the DRA requires HHAs to submit data for purposes of measuring health care quality, and links the quality data submission to payment. This requirement is applicable for CY 2007 and each subsequent year. If an HHA does not submit quality data, the home health market basket percentage increase will be reduced 2 percentage points.

C. Updates to the HH PPS

As required by section 1895(b)(3)(B) of the Act, we have historically updated the HH PPS rates annually in a separate

Federal Register document. In those documents, we also incorporated the legislative changes to the system required by the statute after the BBA, specifically the MMA. On November 9, 2006, we published a final rule titled ''Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2007 and Deficit Reduction Act of 2005 Changes to Medicare Payment for Oxygen Equipment and Capped Rental Durable Medical Equipment; Final Rule'' (CMS–1304–F) (71 FR 65884) in the **Federal Register** that updated the 60-day national episode rates and the national per-visit amounts under the Medicare HH PPS for home health services for CY 2007. In addition, the November 2006 final rule ended the 1-year transition period that consisted of a blend of 50 percent of the new area labor market designations' wage index and 50 percent of the previous area labor market designations' wage index. We also revised the fixed dollar loss ratio, which is used in the calculation of outlier payments. According to section 5201(c)(2) of the DRA, this final rule also reduced, by 2 percentage points, the home health market basket percentage increase to HHAs that did not submit required quality data, as determined by the Secretary.

D. System for Payment of Home Health Services

Generally, Medicare makes payment under the HH PPS on the basis of a national standardized 60-day episode payment rate that is adjusted for case-mix and wage index. The national standardized 60-day episode payment rate includes the six home health disciplines (skilled nursing, home health aide, physical therapy, speech-language pathology, occupational therapy, and medical social services) and medical supplies. Durable medical equipment covered under home health is paid for outside the HH PPS payment. To adjust for case-mix, the HH PPS uses an 80-category case-mix classification to assign patients to a home health resource group (HHRG). Clinical needs, functional status, and service utilization are computed from responses to selected data elements in the OASIS assessment instrument.

For episodes with four or fewer visits, Medicare pays on the basis of a national per-visit amount by discipline, referred to as a low utilization payment adjustment (LUPA). Medicare also adjusts the national standardized 60-day episode payment rate for certain intervening events that are subject to a partial episode payment adjustment (PEP adjustment) or a significant change in condition adjustment (SCIC adjustment). For certain cases that exceed a specific cost threshold, an outlier adjustment may also be available.

II. Summary of the Provisions of the CY 2008 Proposed Rule

We published a proposed rule in the **Federal Register** on May 4, 2007 (72 FR 25356) that set forth a proposed update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health services. In accordance with section 1895(b)(3)(B) of the Act, the standard prospective payment amounts are to be increased by a factor equal to the applicable home health market basket update for those HHAs that submit quality data as required by the Secretary. The proposed home health market basket update for CY 2008 was 2.9 percent. For HHAs that fail to submit the required quality data, the home health market basket update would be reduced by 2 percentage points.

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require the Secretary to establish area wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services and to provide appropriate adjustments to the episode payment amounts under the HH PPS to account for area wage differences. As set forth in the July 3, 2000 final rule (65 FR 41128), the statute provides that the wage adjustment factors may be the factors used by the Secretary for the purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustment factors. In the CY 2008 proposed rule (72 FR 25449), we proposed to use the 2008 pre-floor and pre-reclassified hospital wage index (not including any reclassification under section 1886(d)(8)(B) of the Act) to adjust rates for CY 2008 and would publish those final wage index values in the final rule.

As part of the CY 2008 proposed rule (72 FR 25435), we also proposed to rebase and revise the home health market basket to reflect FY 2003 Medicare cost report data, the latest available and most complete data on the structure of HHA costs. In the proposed rebased and revised home health market basket, the labor-related share was 77.082 (an increase from the current labor-related share of 76.775). The proposed non-labor-related share was 22.918 (a decrease from the current non-labor-related share of 23.225). The increase in the proposed labor-related share using the FY 2003 home health market basket was primarily due to the increase in the benefit cost weight.

The CY 2008 proposed rule (72 FR 25358) also proposed refinements to the payment system. Extensive research was conducted to investigate ways to improve the performance of the case-mix model. This research was the basis for our proposals to refine the case-mix model. We proposed to refine the case-mix model to reflect different resource costs for early home health episodes versus later home health episodes and to expand the case-mix variables included in the payment model. For 2008, we proposed a 4-equation case-mix model that recognizes and differentiates payment for episodes of care based on whether a patient is in what is considered to be an early (1st or 2nd episode in a sequence of adjacent episodes) or later (the 3rd episode and beyond in a sequence of adjacent episodes) episode of care as well as recognizing whether a patient was a high therapy (14 or more therapy visits) or low therapy (13 or fewer therapy visits) case. We defined episodes as adjacent if they were separated by no more than a 60-day period between claims. Analysis of the performance of the case-mix model for later episodes revealed two important differences for episodes occurring later in the home health treatment compared to earlier episodes: higher resource use per episode and a different relationship between clinical conditions and resource use. We also proposed that additional variables include scores for certain wound and skin conditions; more diagnosis groups such as pulmonary, cardiac, and cancer diagnoses; and certain secondary diagnoses. The proposed 4-equation model resulted in 153 case-mix groups.

In addition, we proposed to replace the current single therapy threshold of 10 visits with three therapy thresholds at 6, 14, and 20 visits. We proposed that payment for additional therapy visits between the three thresholds would increase gradually, incorporating a declining, rather than a constant, amount per added therapy visit. The proposed approach would not reduce total payments to home health providers because the payment model would still predict total resource cost. We noted that the combined effect of the new therapy thresholds and payment gradations was expected to reduce the undesirable emphasis in treatment planning on a single therapy visit threshold, and to restore the primacy of clinical considerations in treatment planning for rehabilitation patients.

In the May 4, 2007 proposed rule (72 FR 25395), we further proposed to make

an adjustment for case-mix that was not due to a change in the underlying health status of the home health users. Section 1895(b)(3)(B) of the Act requires that in compensating for case-mix change, a payment reduction must be applied to the standardized payment amount. At the time of publication of the proposed rule, the most recent available data, from which to compute an average case-mix weight, or case-mix index, under the HH PPS rule, was from 2003. Using the 2003 data, the average case-mix weight per episode for initial episodes was 1.233. Analysis of a 1-percent sample of initial episodes from the 1999–2000 data under the HH IPS revealed an average case-mix weight of 1.125. Standardized to the distribution of agency type (freestanding proprietary, freestanding not-for-profit, hospital-based, government, and skilled nursing facility (SNF)-based) that existed in 2003 under the HH PPS, the average weight was 1.134. We noted this time period is likely not free from anticipatory response to the HH PPS, because we published our initial HH PPS proposal on October 28, 1999. The increase in the average case-mix using this time period as the baseline resulted in an 8.7 percent increase (from 1.134 to 1.233; 1.233–1.134=0.099; 0.099/1.134=0.087; 0.087×100=8.7 percent). We proposed that the 8.7 percent of case-mix change that occurred between the 12 months ending September 30, 2000 and the most recent available data at the time from 2003 be considered case-mix change unrelated to change in health status, also referred to as ''nominal case-mix change.'' We proposed to apply this reduction over 3 years at 2.75 percent per year. Our analysis on the average case-mix under the HH PPS using an Abt Associates' case-mix study sample from October 1997 to April of 1998 as the baseline revealed an increase in the average case-mix of 23.3 percent (from 1.0 during October 1997 to April 1998 to 1.233 in 2003). Because we believed the HHAs response to BBA provisions, such as the home health interim payment system (HH IPS) during this period, could have produced data from this sample that reflected a case-mix in flux, we were not confident that the trend in the case-mix index (CMI) between the time of the Abt Associates case-mix study sample and 2003 data, used in the analysis for the proposed rule, reflected only changes in nominal coding practices. Conversely, the average case-mix for a sample data set for 12 months ending September 30, 2000 (HH IPS baseline) was found to be 1.125, standardized to 1.134. Using this time period as the base-line from which to measure nominal change in case-mix under the HH PPS, we identified an 8.7 percent change (increase) in the average CMI that would not be due to a change in the patient health status (1.233, 2003 rate −1.134, September 2000 baseline = 0.099; 0.099/1.134 = 0.087). Consequently, we proposed to account for that 8.7 percent in case-mix change, that we considered to be nominal by reducing the national 60-day episode rate by 2.75 percent, per year, for 3 years (subject to change upon analysis of newer, 2005 data for the final rule), beginning in CY 2008.

Additionally, we proposed to modify a number of existing HH PPS payment adjustments. Specifically, we proposed modifying the LUPA by increasing the payment, by $92.63, for LUPA episodes that occur as the only episode or the initial episode during a sequence of adjacent episodes. It has been suggested, by the industry, that LUPA payment rates do not adequately account for the front-loading of costs in an episode. Our analysis showed that these types of LUPAs require longer visits, on average, than non-LUPA episodes, and that the longer average visit length is due to the start of care visit, when the case is opened and the initial assessment takes place. Consequently, these analyses indicate that payments for such episodes may not offset the full cost of initial visits. We also proposed eliminating the significant change in condition (SCIC) payment adjustment. The current SCIC policy allows an HHA to adjust payment when a beneficiary experiences a SCIC during the 60-day episode that was not envisioned in the original plan of care. Because of the apparent difficulty HHAs have in interpreting the SCIC policy, their negative margins, the decline in the occurrence of SCICs, and the estimated little impact on outlays in eliminating the SCIC policy, we proposed to eliminate the SCIC policy.

In the development of the HH PPS, non-routine medical supplies (NRS) were accounted for by attributing $49.62 to the standardized episode payment. In the CY 2008 proposed rule (72 FR 25427), we proposed to apply a severity adjustment to the NRS portion of the HH PPS standardized episode payment. Specifically, we proposed a five-severity group level approach that we believe would account for NRS costs based on measurable conditions, would be feasible to administer, and offered HHAs some protection against episodes with extremely high NRS costs. Finally, we did not propose to modify the existing Partial Episode Payment (PEP) Adjustment. At the time of the proposed rule, our analysis did not suggest a more appropriate alternative payment policy. However, we solicited the public for suggestions and comments on this aspect of the HH PPS for ways to improve the PEP adjustment policy.

Section 1895(b)(5) of the Act also allows for the provision of an addition or adjustment to account for outlier episodes, which are those episodes that incur unusually large costs due to patient care needs. Under the HH PPS, outlier payments are made for episodes for which the estimated cost exceeds a threshold amount. The wage adjusted fixed dollar loss (FDL) amount represents the amount of loss that an agency must bear before an episode becomes eligible for outlier payments. Section 1895(b)(5) of the Act requires that the estimated total outlier payments may not exceed 5 percent of total estimated HH PPS payments. With outlier payments having increased in recent years, and given the unknown effects that the proposed refinements may have on outliers, we proposed to maintain the FDL ratio of 0.67. We stated, in the proposed rule (72 FR 25434), that we believed this would continue to meet the statutory requirement of having an outlier payment outlay that does not exceed 5 percent of total HH PPS payments, while still providing for an adequate number of episodes to qualify for outlier payments. We further stated in the proposed rule (72 FR 25434) that we would rely on the latest data and best analysis available at the time to estimate outlier payments and update the FDL ratio in the final rule if appropriate.

Finally for CY 2007, we specified 10 OASIS quality measures as appropriate for measurements of health care quality. These measures were to be submitted by HHAs to meet their statutory requirements to submit data for a full increase in their home health market basket percentage increase amount. For CY 2008, we proposed to expand the set of 10 measures by adding up to 2 National Quality Forum (NQF)-endorsed measures. The proposed additional measures for 2008 were as follows:

- Emergent Care for Wound Infection, Deteriorating Wound Status
- Improvement in the Status of Surgical Wounds

Accordingly, for CY 2008, we proposed to consider the 12 OASIS quality measures submitted by HHAs to CMS for episodes beginning on or after July 1, 2006 and before July 1, 2007 as meeting the reporting requirement for CY 2008.

III. Analysis of and Responses to Public Comments on the CY 2008 Proposed Rule

In response to the publication of the CY 2008 HH PPS proposed rule, we received approximately 150 items of correspondence from the public. We received numerous comments from various trade associations and major organizations. Comments also originated from HHAs, hospitals, other providers, suppliers, practitioners, advocacy groups, consulting firms, and private citizens. The following discussion, arranged by subject area, includes our responses to the comments and, where appropriate, a brief summary as to whether or not we are implementing the proposed provision or some variation thereof.

A. General Comments on the CY 2008 HH PPS Proposed Rule

1. Operational Issues

Overall, commenters were pleased with the proposed changes to the HH PPS. However, commenters did express concerns over the burden they perceived that would be placed on HHAs to accomplish a number of the proposed changes.

Comment: Commenters generally appreciated CMS's plan to automatically adjust claims to reflect the actual amount of therapy provided versus that initially reported in OASIS item M0826, Therapy Need, but two commenters noted that for payment adjustments to be made accurately, Medicare's Common Working File (CWF) system must contain timely, accurate information. Numerous commenters were concerned that the creation of M0110 (Episode Timing) would be burdensome, as agencies do not have the information to complete them. The commenters did not want to be penalized if M0110 was answered incorrectly, and wanted to avoid administrative burden from having to cancel and resubmit final claims and Request for Anticipated Payments (RAPs).

Response: CMS has made efforts over the last several years to reduce internal processing delays and ensure that the CWF is updated with claim receipts more quickly overall. While new errors may arise that delay processing, we will seek to correct them as swiftly as possible in light of all the competing demands on our systems.

The factor that most affects the timeliness and accuracy of the CWF is how promptly within the 15 to 27 month timely filing period each provider submits its claims. Medicare systems can only process to the greatest degree of accuracy based on the information received to date. In all instances where we foresee submission or processing lags affecting the accuracy of claim payments under the refined system, we are designing processes to retrospectively adjust paid claims at the point when the delayed information is received. For example, the CWF will automatically adjust claims up or down to correct for episode timing (early or later, from M0110) and for therapy need (M0826) when submitted information is found to be incorrect.

No cancelling and resubmission on the part of HHAs will be required in these instances. Additionally, as the proposed rule noted, providers have the option of using a default answer reflecting an early episode in M0110 in cases where information about episode sequence is not readily available.

Comment: Most commenters supported the elimination of OASIS item M0175 from the case-mix model, as they sometimes found it difficult to code accurately. Some commenters thought that we were eliminating M0175 from the OASIS entirely, and supported that. Several recommended that we also stop retrospective M0175 audits. One asked that we keep M0175 as a case-mix variable, and apply the points to patients who have been admitted directly from a hospital.

Response: We appreciate the support of our decision to eliminate M0175 as a case-mix variable. We are not eliminating M0175 from the OASIS, as is explained in section III.E.4, but only removing it from the case-mix model. The M0175 item's results across the four equations were difficult to interpret, and the item's explanatory power (with respect to contribution to the R-squared statistic) was small. Therefore, M0175 was not included as a case-mix variable in our final case-mix model.

The M0175 item is part of the original HH PPS case-mix model and was reflected in the determination of payments under that system. The retrospective M0175 audits are still necessary to correct payments that were made inappropriately under the original HH PPS. These payment corrections have been repeatedly recommended to CMS by HHS's Office of Inspector General.

Comment: One commenter proposed that the timeliness of information on Medicare systems would be increased by the removal of the option to submit no-RAP LUPA claims. The commenter believes that requiring RAPs for all episodes will speed submission of episodes to Medicare.

Response: The no-RAP LUPA billing mechanism was created as part of the original implementation of the HH PPS in response to concerns from the home health industry that requiring RAPs for brief LUPA episodes presented an administrative burden. Absent consistent feedback throughout the home health industry that the benefits of removing this billing mechanism would outweigh the costs, we plan to retain the no-RAP LUPA process. However, we note this billing mechanism is an operational issue and we have not received many comments on this issue. It should be further noted that requiring the submission of RAPs for all episodes will not necessarily speed the submission of those RAPs in all cases. RAPs, like no-RAP LUPAs, can also be submitted at any point in the timely filing period.

Comment: One commenter asked whether home health services received when a beneficiary is enrolled in a Medicare Advantage (MA) Plan will be considered in determining the sequence of adjacent episodes in cases where the beneficiary has disenrolled from the MA Plan and resumes his or her coverage under the Medicare fee-for-service program.

Response: Medicare does not typically receive claim-by-claim or individual service data on beneficiaries enrolled in MA Plans. As a result, the information is not available to determine whether a beneficiary has been receiving home health services under the plan or for how long. Medicare systems will determine sequences of adjacent episodes based on the fee-for-service episode information currently housed in the CWF and accessible to Medicare providers through eligibility inquiry transactions.

Comment: A commenter believed that the addition of multiple payment tiers based on therapy usage would create a problem concerning beneficiary notification of their financial obligation to pay for home health services. Many beneficiaries are now enrolled in Medicare replacement plans that require a co-pay on the episodic rate. The Medicare Conditions of Participation (CoPs) at 42 CFR 484.10 require that the HHA notify the patient in advance of his or her liability for payment. The commenter believed some consideration needs to be made about the obligations of HHAs to meet this requirement as it is virtually impossible to calculate the rate and provide notices of the changing rate prior to providing service.

Response: The provisions of this rule apply to Medicare's fee-for-service HH PPS and do not apply to Medicare Advantage/Medicare Choice plans where co-pays for home health services provided under the plan may exist. As

long as the patient meets the Medicare fee-for-service eligibility requirements, and the HHA provides covered services that are reasonable and necessary based on the patient's plan of care, there would be no financial obligation on the part of the patient. However, if the patient asks the HHA for services outside the scope of the Medicare home health benefit, or the HHA provides non-covered services, the HHA would be required to provide the patient with financial liability information via the Advanced Beneficiary Notification (ABN). The multiple payment tiers (that is, multiple therapy thresholds) would not affect the determination of the patient's financial liability. That liability would be outside the scope of the Medicare home health benefit, and would be determined between the HHA and the patient. This comment is beyond the scope of this final rule with comment period, which deals with payment under HH PPS to fee-for-service HHAs.

Comment: Several commenters wrote that smaller, rural agencies are particularly disadvantaged by the changes in the proposed rule. They were concerned that the proposed changes will limit the ability of agencies to survive or compete, which could limit access for patients. This may impact rural patients more than urban patients.

Another commenter noted that CMS derives resource costs by weighting each minute reported on the claim by the national average labor market hourly rate for the discipline, and summing the total. The commenter believed that it is not realistic to attribute the same resource cost to rural beneficiaries as to urban beneficiaries, who have more social programs available to them. Additionally, this method does not account for the significant travel costs associated with rural beneficiaries. The commenter added that this is why there has periodically been a rural add-on.

Response: Our impact tables show that rural agencies, on average, will experience a modest reduction in total payments between 2007 and 2008—less than 2 percent. Factors in the reduction are discussed in section VI.B. These include the small reduction in the average case-mix weight in 2008 among rural agencies, the impact of the wage index, and several other factors discussed in that section. The offsetting positive effect of the annual payment update offsets most of the total negative effect of the changes.

Medicare prices are adjusted for the cost differences among different locations. Although we use standardized national average resource cost estimates for developing the relative case-mix weights, the pricing procedure applied after accounting for standardized resource costs adjusts for geographic differences in cost levels. We have no data to effectively evaluate the comments on the disadvantages attributed to rurally residing beneficiaries.

Comment: A commenter suggested raising the RAP to 75 percent of the base rate. Another commenter noted that the proposed rule is silent on the need to increase the RAP, even though program abuse of the RAP has not materialized. This commenter proposed that the RAP be increased to 80/20 for all providers who have participated in the HH PPS since its inception, and noted that CMS would retain the right to reduce this level for abuse of the RAP. The commenter further proposed that less established providers could operate under current RAP rules until they had a 5 year record of responsible Medicare performance.

Response: Before HH PPS implementation, HHAs were accustomed to billing Medicare on a 30-day cycle or receiving periodic interim payments. The change to a 60-day episode of care under HH PPS, combined with concerns over delays due to claims processing times, documentation requirements, and medical review, led us to address agency cash flow concerns in our 1999 HH PPS proposed rule. At that time, we proposed a split percentage payment to ensure that agencies have adequate cash flow to maintain quality services to beneficiaries. In 2000, we implemented the RAP which paid 60 percent up front for an initial episode, as we recognized that some administrative costs were front-loaded; the remaining 40 percent would be paid after submission of the final claim. We allowed a RAP of 50 percent for a subsequent episode, with the remaining 50 percent paid upon receipt of the final claim.

We expect agencies to follow normal business practices with regard to financing their operations. The current RAP percentage splits are reasonable given the RAP's purpose, therefore, we do not see a need to increase them. Moreover, we believe our current process protects against abuse, as an agency's RAP may be reduced or withheld when protecting Medicare program integrity warrants this action.

Comment: Two commenters wrote that they are unable to make meaningful public comment because CMS has not released the impact file that would enable modeling of the proposed changes. Agencies are unable to plan operationally and financially for these changes.

Response: We do not agree that agencies are unable to plan operationally and financially for these changes. We worked with a large, 20-percent sample of 2005 claims, which would not permit us to produce accurate summaries at the agency level for many agencies, which would be required for a file of the type mentioned by the commenter. Our proposed rule impact table provided average case-mix weights for agencies to use as estimates, according to the detailed subgroup to which they belong. Consistent with resources available, we opted to provide a simple preliminary grouper to assist agencies in understanding the impacts. We also provided preliminary grouper logic (''pseudocode'') for software developers assisting some agencies to evaluate the impacts.

Comment: A number of commenters noted that home health agencies provide quality care that saves Medicare money in hospital or other inpatient facility benefits. Several commenters expressed concern that the proposed changes do not consider today's health picture, with an aging population, a wave of baby boomers entering retirement, a shortage of nurses, high fuel costs, and the cost of technological advances such as telehealth and physician's portal.

Response: The goal of the refinements in this regulation is to pay as accurately as possible given the case-mix of patients in home health agencies today. We appreciate the broad context referenced in this comment, and will continue to work with the home health industry and the public to understand and anticipate changes that affect proper pricing of home health services.

Comment: A commenter suggested that we revise the regulation requiring that orders and plans of care for home health patients be signed by a physician. Another commenter asked that the CoPs be changed to allow therapists, in addition to nurses, to open a case, as it could improve the ability to accurately project therapy requirements for patients.

Response: We appreciate these comments, but note that this regulation updates the HH PPS payment rates and does not change any of the CoPs. Sections 1814(a)(2)(c) and 1835(a)(2)(A)(ii) of the Act require that orders and plans of care be established and periodically reviewed by a physician. The CoP dictating the physician signature requirements on the plan of care is detailed in 42 CFR 484.18(b) and (c).

Moreover, in 42 CFR 484.55(a)(1), agencies are required to have a registered nurse conduct an initial assessment. We note, however in 42

CFR 484.55(a)(2), the home health CoP regulations state that ''when rehabilitation therapy service * * * is the only service ordered by the physician, and if the need for that service establishes program eligibility, the initial assessment visit may be made by the appropriate rehabilitation skilled professional.''

Comment: A commenter noted that CMS currently uses salary information to estimate the costs of a visit, and does not include overhead costs. This method assumes indirect costs are proportional to direct costs. The commenter believes this assumption may be incorrect, and suggested examining cost report data to see if further review provides better data on overhead costs. This information could be combined with claims information about home health charges to better assess labor costs. These two sources of information could be used to compute the per-visit discipline costs for different types of episodes.

Response: CMS' methodology does assume that overhead costs are proportional to direct labor costs. We will continue to consider the appropriate role of cost reports in understanding potential improvements to our methodology. At this time, we believe the role is limited, as demonstrated by the limitations on cost report reliability pertaining to the derivation of cost-to-charge ratios for the analysis of NRS payments. We urge agencies to put more resources into accurately completing the cost reports for future use in payment refinements.

Comment: A commenter suggested that the recommendations from the two Technical Expert Panel (TEP) meetings be shared with the industry, and that the industry be allowed to provide feedback, as these affected the development of the proposed rule.

Response: The TEP was administered by Abt Associates. The panel was not asked for, nor did it produce, consensus recommendations. Abt Associates used TEP participants as a sounding board about differing aspects of the research approach and the refinements emerging from it at the time of the TEP meeting.

Comment: A commenter asked that we provide detailed technical specifications and grouper software with issuance of the final rule.

Response: We intend to issue detailed specifications and a grouper software package as soon as possible after the issuance of this rule.

Comment: A commenter noted that there was an error in Table 5 posted to CMS' Web Site.

Response: Table 5 was originally posted with an error, but was replaced with a corrected version. The correct version was promptly posted on the CMS Web site.

Comment: Regarding dual eligibles, a commenter suggested that CMS improve the alignment of HHRGs and Medicare coverage guidelines for homebound status and medical necessity, particularly for cases that receive coverage under ''Assessment and Observation'' or ''Management and Evaluation of the Care Plan'' guidelines. Improved alignment of the payment system and coverage rules is critical to addressing ongoing disputes between state Medicaid agencies and the Medicare program regarding Third Party Liability.

Response: These comments are outside the scope of this regulation; however, we will take them under consideration when evaluating the need for additional guidance on Medicare coverage guidelines.

Comment: A commenter is concerned that the proposed HH PPS refinements place emphasis on therapy and would support a system that provides for the utilization of restorative nursing as a substitution for therapist visits. The expansion of this type of service utilization will ultimately provide better patient outcomes and address the growing demand for restorative services.

Response: The proposed refinements were developed within the disciplines covered by the home health benefit. A specialty of restorative nursing is not recognized within those disciplines. Moreover, we do not have evidence about effects on patient outcomes from implementing the commenter's proposal.

Comment: A commenter believed it is important for CMS to align regulatory and reimbursement decisions so that they reflect the needs of patients as outlined by the Institute of Medicine. The commenter stated that the proposed regulation signals a change in which the home health industry would be asked to move from its current focus on acute and rehabilitative services to the provisions of more long-term care services of the type offered prior to HH PPS implementation. The commenter asked CMS to clarify whether it prefers Medicare home health services to emphasize more sophisticated treatments or whether it expects home health services to be used solely for long-term care and/or custodial services, which have traditionally been the purview of Medicaid.

Response: We disagree that the proposals signal a shift away from acute and rehabilitative services. The proposals recognize that a minority of patients have an extended period of incapacitation and need for medically necessary nursing or rehabilitative or assistive services, while they continue to meet the homebound requirement. Agencies are expected to apply the statutory eligibility and coverage criteria.

Comment: A commenter questioned whether the increase seen in costs of late episodes is due to end-of-life care given to patients who did not want hospice care.

Response: We appreciate the comment. We note, however, our analysis did not focus on whether or not the patient had a terminal illness.

2. The Schedule for Implementation of the CY 2008 Refinements

In the May 4, 2007 proposed rule, we proposed to implement the finalized updates and refinements on January 1, 2008. However, we did recognize that there may be operational considerations, affecting CMS or the industry, which could necessitate an implementation schedule that results in certain refinements becoming effective on different dates (a split-implementation). We solicited the public for suggestions and comments on this matter.

Comment: Several commenters expressed concern about the amount of time available for providers to make any necessary changes to their billing systems and administrative processes between the publication of this rule and the implementation date of episodes beginning on January 1, 2008. They were concerned about the administrative burden, and that CMS does not have a contingency plan to facilitate interim payments to HHAs that are unable to bill Medicare under the revised HH PPS. A contingency payment arrangement would ensure that no provider is presented with a significant cash flow problem because of the tight timeframe involved. Several commenters suggested we convene an ongoing series of implementation meetings including Medicare contractors, the home health community, and the vendors who support the home health industry to reduce the likelihood of delays and errors. One commenter asks for additional resources to help providers cope with this major change. Another asked that we not follow a split-implementation plan.

Response: While the changes described by this rule are significant, their overall impact on provider billing practices are far less extensive than those required for the initial implementation of HH PPS. We also anticipate the time period between the issuance of this final rule with comment

period and the implementation date will be longer than the period that was available between publication of the final rule on July 3, 2000, and initial implementation of the HH PPS on October 1, 2000. CMS expects to issue final implementing instructions and educational materials about the case-mix refinement changes as soon as it is feasible after finalization of the proposals contained in this final rule with comment period. We also plan to conduct outreach through industry associations and representatives of software companies that serve home health agencies to facilitate this transition.

CMS plans to conduct calls with vendors, hold OASIS training, and continue the use of the home health Open Door Forums (ODFs) as mechanisms to provide information to HHAs regarding implementation. Regarding cash flow issues and contingency plans, CMS is taking steps, internally, to test systems changes before implementation. We do not feel that the vulnerabilities that existed when we moved from a cost-based system to a prospective payment system exist today in moving to a refined HH PPS system. Consequently, we do not feel it is necessary to create an elaborate contingency plan as was needed for the implementation of the HH PPS.

Comment: Several commenters expressed that an implementation date of January 1, 2008 be delayed because the HH PPS reform changes are significant, and providers will have to educate all of their employees on the changes in addition to working closely with the vendors to initiate complex IT changes. Because as providers, they must also implement the changes throughout the organization, to both clinical and financial staff, the commenters suggested that CMS delay the implementation date to October 1, 2008 to allow ample time for providers to make all the necessary adjustments. The commenters also requested that CMS release of the home health CoPs coincide with the implementation of HH PPS refinement requirements to ease the burden of staff training. It was also suggested that the implementation be linked to future ICD–9–CM coding manuals.

Response: We recognize that the changes described in this rule are significant. However, the overall impact on provider billing practices is far less significant than the impact resulting from the initial implementation of the HH PPS when we were moving from a reasonable cost-based system to that of a prospective payment system. And as mentioned previously, there is more time between the issuance of this rule and the effective date (January 1, 2008) than there was for the initial implementation of the HH PPS. Consequently, we believe that there will be sufficient time for agencies and their vendors to make the changes necessary to implement the system on January 1, 2008. Regarding the home health CoPs, these are on a separate track from our home health payment regulations, and will be implemented through a separate rule-making process.

While we recognize that implementing the updates and refinements of this rule is an ambitious task, we believe that it is in the best interest of the industry, CMS, and home health recipients to implement a finalized set of refinements without further delay and without a split-implementation. The refinements will work together to improve the accuracy and appropriateness of the HH PPS, which has not undergone major refinements since its inception in October of 2000. Updates to the HH PPS are not linked, specifically, to coding manuals, and thus there would be no advantage to delaying implementation to any future coding manual update. CMS will make every effort to communicate the instructions necessary for HHAs to implement all of the changes to the HH PPS, in a timely manner so that implementation of these changes occurs as smoothly as possible.

Comment: Several commenters expressed that the comment period was too brief to afford providers enough time to understand the proposed changes and assess the impact that the changes will have on their businesses.

Response: We provided the 60-day comment period from the date of display, with the 60-day period for comments ending on June 26, 2007. We acknowledge that in the publication of the May 4, 2007 proposed rule, the comment period was incorrectly listed as closing on July 3, 2007. The correct date for the close of the comment period was June 26, 2007. Recognizing the implication of this incorrect date, CMS alerted the public to the correct date through listserves, open door forums, and the publication of a correction notice on May 11, 2007 (72 FR 26867). We believe the comment period, as corrected, provided adequate time for commenters to review the proposals and assess their options.

Comment: Several commenters questioned the listing of an earlier deadline on the internet for submission of public comments, June 26, 2007, rather than the deadline published in the **Federal Register**, July 3, 2007.

Response: We recognize that there was an inadvertent technical error in the May 4, 2007 proposed rule in that July 3, 2007 was incorrectly noted as the close of the comment period. Subsequent to that publication, a correction notice was published on May 11, 2007 (72 FR 26867), noting that error and correctly stating that the end of the comment period for the HH PPS proposed rule was June 26, 2007 and not July 3, 2007.

We believe we made reasonable efforts to quickly alert the public to the error such that adequate time to comment on the proposed rule was provided.

3. Complexity of the System

In general, our goal for the proposed refinements was to ensure that the home health payment system continues to produce appropriate compensation for providers while creating opportunities for home health agencies to manage home health care efficiently. We also believe it is important in any refinement to maintain an appropriate degree of operational efficiency.

Comment: Several commenters stated that the goal of ''operational simplicity'' is not achieved by the proposed refinements. One commenter stated that the proposed system is twice as complex as the current system, thus making it more difficult for providers to understand how it works. Moreover, the commenter stated it will make it more difficult for providers to manage the level of services provided for each HHRG with the payment for that HHRG.

Response: We acknowledge the proposed refined system is more complex than the current system. The proposed refinements to the current system represent an attempt to pay more accurately for the range and intensity of home health services that are provided to our beneficiaries.

The proposed refinements are derived from the concepts that form the basis of the current payment approach. We agree that any refinements to the system will take time and training to learn. CMS has conducted extensive outreach regarding the proposed refinements. We have posted a Fact Sheet which summarizes the proposed changes on our home health Web site to assist agencies in understanding the differences between the current system and the proposed refinements. We have developed and posted an Excel toy grouper, which allows agencies to see the effect of the new proposal on their payments (see ''Toy Grouper'' on the CMS Home Health Web site at: *http://www.cms.hhs.gov/center/hha.asp)*. We have posted the draft pseudocode for

the HHRG grouper software at the same Web site address. We also continue to plan for additional training and outreach.

We have also developed claims processing procedures to reduce the amount of administrative burden associated with using a more complex case-mix model. For example, providers do not have to determine whether an episode is early (the initial episode in a sequence of adjacent episodes or the next adjacent episode, if any) or later (all adjacent episodes beyond the second episode) if they choose not to. Information from Medicare systems will be used during claims processing to automatically address this issue. We will also relieve providers of the responsibility for resubmitting a claim if the number of therapy visits delivered during an episode is more than or less than the number originally forecasted on the OASIS.

Comment: A commenter stated that the Excel toy grouper did not allow for enough digits in the ICD–9 codes to effectively capture the degree of change needed. The commenter also noted that each case had to be added individually, which resulted in increased entering time; the results were confusing to the commenter.

Response: We believe that the requirement that the ICD–9 codes be entered exactly as they appear in the proposed rule and the current grouper documentation does not negate the usefulness of the Excel toy grouper. The instructions imbedded in the Excel toy grouper specify the requirements for entering the ICD–9 codes. We provided the Excel toy grouper as a courtesy to allow users to more easily calculate the proposed new CY 2008 HHRGs and resulting payments rather than having only the grouper pseudocode for analysis. Moreover, the majority of feedback from commenters regarding the Excel toy grouper indicated that the tool is helpful and easy to use.

B. Case-Mix Model Refinements

In the proposed rule, we proposed to refine the case-mix model to reflect different resource costs for early home health episodes versus later home health episodes and to expand the case-mix variables included in the payment model. We proposed additional variables including scores for certain wound and skin conditions; more diagnosis groups such as pulmonary, cardiac, and cancer diagnoses; and certain secondary diagnoses. We also proposed to replace the current single therapy threshold of 10 visits with three therapy thresholds (6, 14, and 20 visits). In addition, we proposed that payment for therapy episodes would increase gradually between the first and third therapy thresholds. For a complete description of the proposed case-mix refinements model and the underlying research, we refer readers to the CY 2008 HH PPS proposed rule (72 FR 25358–25420) published on May 4, 2007.

1. General Comments

Comment: A commenter wrote that an industry analysis of 2006 HH PPS data using the proposed case-mix model showed a decline in reimbursement for specific populations with congestive heart failure (CHF), chronic obstructive pulmonary disease (COPD), ulcers, diabetes, orthopedic diagnoses, and neurological diagnoses. Given these findings, the commenter asked how the proposed case-mix refinement could improve reimbursement. The commenter suggested that CMS use more current diagnosis data so as not to skew the results, and score secondary diagnoses. Other commenters echoed the concern that the refinement was based on ''old'' data. A couple of commenters noted that there has been a philosophical change to front-load visits in home health which has not been captured by the data.

Response: We are unable to specifically address the industry analysis mentioned above without more detailed information on their analysis. We note the proposed case-mix model pays for more diagnoses than under the current HH PPS model, including recognition of point-bearing diagnoses for heart disease and COPD. Agencies will continue to receive points to the extent that patients have certain conditions or diagnoses (for example, ulcers, diabetes, orthopedic diagnoses, and neurological diagnoses). Agencies can also receive points for secondary diagnoses, thereby accounting for multiple co-morbidities. Also, the proposed case-mix model allows points for some resource intensive interactions. Furthermore, agencies will be receiving improved reimbursement for supplies, particularly those related to ulcers or wounds. We believed the model as proposed would better align agency costs with payments.

We further note that the proposed refinement research was based upon data files created from a 20-percent sample of claims data collected between 2001 and 2004. OASIS data was further linked to claims and cost reports. However for this final rule with comment period, we used more recent data, claims processed from 2005, with the associated OASIS data. Therefore, this final rule with comment period is based upon the most recent data available, and reflects any philosophical or diagnosis changes that the industry has experienced.

Comment: A commenter suggested that the case-mix refinement model was too complex, and suggested that we simplify it so that the assessment can drive clinical and functional dimension scores that are the same regardless of the number of therapy visits or timing of the episode. Subsequent factors could be added into the case-mix for the sequential number of the episode and for the number of visits.

Response: Based on our data analysis, implementing the commenter's suggestion would ignore patterns in the data that we think reflect differences between patients and would thereby reduce accuracy. We have tried to strike a balance between simplicity and complexity. The new system is more complex than the old system but this is a natural outgrowth of our attempt to pay more accurately for the range and intensity of home health services that can be provided to our beneficiaries.

As noted in the discussion of complexity in section III.A.3, a system may seem initially overly complex when it is new. We believe the proposed refinements are clearly focused, and are a logical outgrowth of the original payment system. We detail our attempts to make the proposed refinements easier to understand and implement in a previous comment in section III.A.3.

Comment: One commenter noted that the proposed diagnosis changes may negatively impact providers who are currently providing care to those in early episodes with less than 14 therapy visits. Those providers have worked hard to help patients become independent and rehabilitated as soon as possible.

Response: Our proposal was intended to refine and to better fit costs incurred by agencies for patients with differing characteristics and needs under the prospective payment system. The resource cost estimates are derived from minutes spent on visits in the home during a 60-day period. The source of the minutes data is a very large, representative sample of Medicare claims. Therefore, we expect that the proposal does reflect agencies' average costs for patients with characteristics measured on the OASIS and used in defining payment groups.

Comment: While supporting the concept behind the new case-mix system, a commenter is concerned about any payment system that ties payments explicitly to the level of services provided. Under the proposed system, HHAs could seek higher payments by

providing more therapy or providing later episodes of home care. The commenter notes that HHA margins will increase with the number of therapy visits.

Response: We are attuned to concerns about payment incentives that could drive up therapy visits unnecessarily. We implemented a gradual increase in payments between the proposed first and third therapy thresholds to achieve two goals: (1) To better match costs to payments; and (2) to avoid incentives for providers to distort patterns of good care created by the increase in payment that would occur at each proposed therapy threshold. As a disincentive for agencies to deliver more than the appropriate, clinically determined number of therapy visits, we also proposed that any per-visit increase incorporate a declining, rather than a constant, amount per added therapy visit. We will monitor the impact of the changes implemented, including on home health agency margins, and will propose further refinements to the therapy threshold, as well as other aspects of the HH PPS, if warranted.

Comment: Several commenters were concerned that paying more for later episodes would lead to gaming, with patients on service longer than is appropriate. One commenter noted the growth in HHAs in her area had led to more competition for patients; providers may not be discharging patients when they should. Additionally, this commenter felt the fiscal intermediaries (FIs) concentrate review activities on larger agencies where there is the greatest potential for risk of harm to beneficiaries or where the dollars recovered are greater. The commenter encouraged discussion and investigation of these issues. Another commenter was concerned that the proposed case-mix refinements created incentives for less efficient and less effective care if agencies provided unneeded care just to extend the length of stay. A third commenter felt that the proposal would lead to unwarranted recertification of episodes.

Response: We appreciate the concerns and will monitor the use of home health visits. Additionally, we will share these concerns with the Regional Home Health Intermediaries (RHHIs).

Comment: A commenter's analysis of the proposed changes to the case-mix system found that it would result in a more even distribution of payments relative to costs. The commenter's analysis resulted in a more uniform payment to cost ratio. The commenter noted the proposed refinement would reduce the differences in financial returns among different types of patients, and reduce the provider's preference for some patients.

Response: We appreciate the commenter's assessment of the proposed changes to the case-mix system, and agree that the proposed refinements improve the performance and payment accuracy of the HH PPS. We agree that these changes will reduce incentives to select patients based upon perceived financial advantages.

Comment: A commenter noted that an analysis of the coefficient of variation (CV) of the proposed HHRGs found it to be more internally homogeneous. The average CV has dropped from 0.81 in the current system to 0.75 for the proposed HHRGs. The reduction in variation means that the new resource groups are better at identifying episodes with similar resource use than under the current system. Further, the reduction in within-group variation reduces the potential for providers to select the least costly patients in a resource group and makes a modest improvement in the accuracy of the system.

Response: We agree with the commenter, and believe that the proposed payment system better matches payments to costs. We also believe that the payments will be more accurate, and will benefit patients as well as agencies.

Comment: Since this is the first time the case-mix index has been updated since the inception of HH PPS, and considering the rapid pace of change that can occur in health care delivery, a commenter suggested CMS update the case-mix index with greater frequency to ensure that payments reflect agency costs.

Response: We will continue to monitor the performance of any finalized case-mix model, and will make changes to it as necessary. Future refinements may occur at more frequent intervals, depending on the research outcomes. We recognize that changes in health care delivery may also affect the model, and will monitor those as well.

Comment: A commenter asked CMS to accept all pertinent diagnoses. The commenter believed that without a complete clinical picture, the ability to accurately assess patient severity, evaluate outcomes, and make policy decisions is seriously jeopardized.

Response: We agree that a complete clinical picture of the patient is necessary to accurately assess patient severity and evaluate outcomes. To qualify for Medicare coverage of home health services, a beneficiary must be under the care of a physician who establishes the plan of care (POC). The POC must contain all pertinent diagnoses as stipulated in 42 CFR 484.18(a). All diagnoses listed in OASIS M0230/240 and M0246 should be pertinent and are expected to be listed in the patient's POC.

2. Later Episodes

In the proposed rule, for 2008 we proposed a 4-equation case-mix model that recognizes and differentiates payment for episodes of care based on whether a patient is in what is considered to be an early (1st or 2nd episode in a sequence of adjacent episodes) or later (the 3rd episode and beyond in a sequence of adjacent episodes) episode of care as well as recognizing whether a patient was a high therapy (14 or more therapy visits) or low therapy (13 or fewer therapy visits) case. Early episodes are defined as to include not only the initial episode in a sequence of adjacent episodes, but also the next adjacent episode, if any, that followed the initial episode. Later episodes are defined as all adjacent episodes beyond the second episode. Episodes are considered to be adjacent if they are separated by no more than a 60-day period between claims. The analysis of the performance of the case-mix model for later episodes revealed two important differences for episodes occurring later in the home health treatment compared to earlier episodes: (1) Higher resource use per episode and (2) a different relationship between clinical conditions and resource use.

Comment: We received a question about the case-mix weights for early versus later episodes when the service utilization is for 16 to 17 therapy visits (S2; see table 3, III.B.5). In all other gradients except this one, the case-mix weight is greater for later episodes than for early episodes. The commenter asked why in this case the later episodes were not associated with a higher case-mix weight.

Response: The model results in Table 4 of the proposed rule (72 FR 25388) indicated that the higher cost for later episodes was associated with clinical and functional severity levels above the base levels C1 and F1, and not at or below the base levels C1 and F1. The amount isolated in the payment regression associated with 16 to 17 therapy visits was simply not higher for later episodes.

Comment: Several commenters asked for clarification of the definition of early and later episodes and adjacent episodes.

Response: Early episodes are defined as the initial episode or the next episode in a sequence of adjacent episodes. Therefore an early episode can be the first or second episode in a series of adjacent episodes, or even the first and

only episode that a patient has. Later episodes are defined as all subsequent adjacent episodes beyond the second episode. Episodes are considered to be adjacent if they are contiguous, meaning that they are separated by no more than a 60-day period between episodes. This means any gaps are less than or equal to 60 days in length. In determining a gap, we only consider whether the beneficiary was receiving home health care from traditional fee-for-service Medicare. If the beneficiary transfers from a managed care plan, that time under managed care is considered part of the gap.

For example, if the beneficiary has not received home health care through traditional Medicare for at least 60 days, and then receives home health care from agency A, that is an early episode. If that episode receives a PEP adjustment and agency B recertifies the beneficiary for a second episode, that second episode is also an early episode. However, the beneficiary could have received home health care from other traditional Medicare providers within 60 days before coming to agency A. The designation of early or later would depend upon how many adjacent episodes of care were received prior to coming to agency A. The CWF will examine claims upon receipt in comparison to all previously processed episodes to make sure the episode is correctly designated as early or later.

The 60-day period to determine a gap that will begin a new sequence of episodes will be counted in most instances from the calculated 60-day end date of the episode. That is, in most cases CWF will count from ''day 60'' of an episode without regard to an earlier discharge date in the episode. The exception to this is for episodes that were subject to PEP adjustment. In PEP cases, CWF will count 60 days from the date of the last billable home health visit provided in the PEP episode. Regarding PEP adjustments, consider the following example: An episode is opened on January 1, 2008 which would normally span until February 29, 2008. If this episode were not subject to a PEP adjustment, any episode within 60 days following February 29, 2008 would be considered an adjacent episode. In the case of a PEP adjustment, the determination of an adjacent episode would no longer be based on day 60, but would instead be based on the latest billable visit in the episode. Assume in the example, the patient is transferred to another HHA (triggering the PEP adjustment) on February 15, 2008 but the last billable visit is provided on February 13, 2008. In this case, any episode within 60 days following the February 13, 2008 visit would be considered an adjacent episode.

Intervening stays in inpatient facilities will not create any special considerations in counting the 60-day gap. If an inpatient stay occurred within an episode, it would not be a part of the gap, as counting would begin at ''day 60'' which in this case would be later than the inpatient discharge date. If an inpatient stay occurred within the period after the end of HH episode and before the beginning of the next one, those days would be counted as part of the gap just as any other days would.

If episodes are received after a particular claim is paid that change the sequence initially assigned to the paid episode (for example, by service dates falling earlier than those of the paid episode, or by falling within a gap between paid episodes), Medicare systems will initiate automatic adjustments to correct the payment of any necessary episodes.

Upon receipt of a HH episode coded to represent the early episode in a sequence, Medicare systems will search the episode history records that are maintained for each beneficiary. If two or more adjacent episodes are found on that history, the claim for the new episode will be recoded to represent its sequence correctly and paid according to the changed code. In addition, when any new episode is added to those history records for each beneficiary, the coding representing episode sequence on previously paid episodes will be checked to see if the presence of the newly added episode causes the need for changes to those episodes. If the need for changes is found, Medicare systems will initiate automatic adjustments to those previously paid episodes.

For example, a given episode is initially determined to be, and paid as the second episode (early) in a sequence of episodes. After some period of time, a claim is submitted by another HHA that occurs before the previously designated first episode in the sequence of adjacent episodes and is less than 60 days before the beginning of that previously designated first episode. In such a case, the episode corresponding to the newly submitted claim becomes the first episode of this sequence of adjacent episodes and thus is considered to be an early episode. The episode previously designated as the first episode in the sequence of episodes now becomes the second episode in the sequence of adjacent episodes and is thus still considered to be an early episode. The real change occurs with the episode previously described as the second episode in the sequence of adjacent episodes. Under this scenario, that original second episode is now considered to be the third episode in the sequence of adjacent episodes, thus changing its status from that of an early episode to that of a later episode.

Comment: A commenter noted that CMS determined its four equation model based on information collected from the OASIS data set. The data collection is required for both Medicare and Medicaid patients. The commenter stated that the analysis by CMS included a period of time when instructions dictated collection of all information from payer sources. The data is inclusive of the Medicaid patients, who under Medicare regulations, would not be eligible for the third or additional episodes of care. The commenter questioned the type of patients served in third or later episodes, noting that the CMS data suggest that few patients fall into the new equations. The commenter believed that one group of patients includes those with severely infected wounds, Parkinson's disease, Amyotrophic Lateral Sclerosis (ALS), stroke, or similar conditions, while another group includes those receiving B–12 injections and catheter care, or Medicaid patients.

Response: We used data from Medicare episodes only, linked to the OASIS assessment that generated the HHRG. Medicare episodes include episodes of some patients who are dually eligible for Medicare and Medicaid. Later episodes include both Medicare-only and dually eligible patients with a variety of conditions and needs.

To summarize, we are implementing the proposed aspect of the case-mix model that recognizes and differentiates payment for episodes of care based on whether a patient is in what is considered to be an early or later episode of care as we believe that it better accounts for the higher resource use per episode and the different relationship between clinical conditions and resource use that exists in later episodes.

3. Addition of Variables

In the proposed rule, for 2008 we proposed to expand the case-mix variables to include scores for conditions such as infected surgical wounds, abscesses, chronic ulcers, and gangrene; more diagnosis groups such as pulmonary, cardiac, and cancer diagnoses; and certain secondary diagnoses.

Comment: Several commenters were concerned that we had not included a variable for informal caregivers. One commented that higher costs for these

patients are not captured because of the unmeasured effects of multiple co-morbidities, patient non-compliance, and the tendency to live alone. Several commenters felt that CMS' policy position on caregivers placed the fear of negative incentives above the needs of the beneficiary. Commenters were concerned that payment incentives might limit access for patients without caregivers or result in institutional care. Others suggested that we refine OASIS items related to caregiver access to produce more reliable information about the actual roles caregivers play in meeting the day-to-day needs of home health patients, and the time they are available. Some commenters expressed concern that these patients would have difficulty accessing care due to their high costs. We were asked to conduct further research into the role of caregivers and their affect on costs.

Response: OASIS item M0350 asks whether there are assisting persons in the home, other than the home care agency staff. We recognize that the data collected by this item is limited in the information it collects regarding caregivers. However, in the absence of other data, we used this item in our analysis. We found that on average, episodes without caregivers would be underpaid. However the score to be gained by adding this variable was not large, and the overall ability of the four-equation model to explain resource costs is minimally improved by adding this variable. As we noted in the proposed rule, we believe this variable raises significant policy concerns. We maintain that a case-mix adjustment should not discourage assistance from family members of home care patients, nor should it make patients feel that there is some financial stake in how they report their familial supports during convalescence. We believe that adjusting payment in response to the absence of a caregiver would introduce negative incentives with adverse affects on home health Medicare beneficiaries. We will continue to study the effects of caregivers on the case-mix model.

Using our final analytic data set, we rechecked the contribution of this variable to explain home health resource use. We found no change from what was described for this variable in the proposed rule. Consistent with our original policy on this item, we did not include this variable in the final four-equation model of this rule. We will continue to explore additional refinements to the OASIS instrument to gather more information regarding the roles caregivers play in home health care and to better quantify any unmeasured effects of multiple co-morbidities, patient non-compliance, or living alone.

Comment: Several commenters were concerned that a variable for Medicare/Medicaid dual eligibles was not included in the payment model. One commenter noted that the increased costs associated with dual eligibles have been confirmed by MedPAC in hospital DSH studies, and it is unlikely that these costs disappear once the patient is in home health. Another noted that these patients have longer lengths of stay and multiple co-morbidities. Several commenters noted that Medicaid numbers are not consistently reported in OASIS because Medicaid is not the primary payer. Others suggested that CMS compare the impact of Medicaid eligibility by studying resource use of a sample of home health patients enrolled in a Medicaid program from Medicaid files against home health patients without Medicaid.

Response: HHAs are required to complete OASIS item M0065, which asks for the patient's Medicaid number, whether or not Medicaid is the reimbursement source for the home care episode. CMS has sought to improve the accuracy of the OASIS data through extensive training and guidance on proper use of OASIS. Additionally, the OASIS guidelines provide clear instructions to complete M0065. Therefore we believe it is appropriate to use M0065 in an analysis of resource use in patients with Medicaid. After accounting for a broad range of clinical and functional factors which predict resource use, M0065 was found to have a low score, suggesting that having Medicaid is not a strong predictor of resource use. Accordingly, we did not propose to include a Medicaid variable in the case-mix model. Using our final analytic data set, we rechecked the contribution of this variable to explain home health resource use. We found no change from what was described for this variable in the proposed rule. Consistent with our original policy on this item, we did not include this variable in the final four-equation model of this rule. We will continue to study the effect of dual eligibles on the case-mix model, and we encourage HHAs to complete M0065 as required.

Comment: A commenter asked that we evaluate the impact of adding a case-mix variable for patients aged 85 or older, who have greater care needs, and for diabetics. The commenter also expressed concern that providers in Southern states would be more affected by proposed policies noted in the proposed rule, as these parts of the country serve larger populations of two groups at high risk for diabetes.

Response: In considering variables for inclusion in the model, we analyzed the relationship between resource use and patient characteristics. We were able to measure resource use directly from the claims sample and patient characteristics from the OASIS assessments. Variables were assessed for statistical performance and for policy appropriateness. Diabetes is taken into account as a point-bearing case-mix diagnosis under the current HH PPS, and under this final rule with comment period continues to receive points as either a primary or a secondary diagnosis (see Table 2A for the points given).

Our research did not find the proportion of home health beneficiaries 85 or older to be increasing. The literature reports that those 85 or older were actually less likely to be admitted to home health agencies (McCall et al., 2003). Additionally, we tested an age variable and found it was not associated with greater resource use after controlling for other factors. As such, we did not include it in our case-mix model. Accordingly, we did not propose to include a variable for those 85 and older in the refinements.

Comment: A commenter stated that the proposed rule refers to unnamed variables which while correlated with higher home health cost, were not considered in the case-mix because of negative treatment incentives they could create. The commenter believed CMS should specify these alternatives which were not adopted along with the reason for dismissing them.

Response: As in our original HH PPS proposal, we avoided including a score for catheter-using patients in the case-mix system, out of concern that this would work against catheter removal at the appropriate time. However, for the proposed refinement approach, we did include a score in the non-routine supplies model out of concern that agencies would fail to admit patients with supplies costs.

Comment: A commenter objected to the proposal to eliminate M0610 (behavioral problems) as a case-mix variable. The commenter noted that patients with behavioral problems, including those without formal psychiatric diagnoses, consume large amounts of resources. The commenter asked for further data to support removal of M0610.

Response: We have added case-mix scores to the system for psychiatric conditions, as they are better markers for increased resource use related to behavioral problems than M0610. When the psychiatric conditions were included in the model, M0610 does not

add further predictive power (that is, it was not statistically significant).

Comment: Several commenters asked that V-codes be included in the case-mix diagnosis list as they are appropriately prevalent in home care due to ICD–9 coding guidelines. One commenter suggested V-codes be added as interactions. A number of commenters also asked for more guidance regarding coding, especially in the use of V-codes. Several commenters noted that they have had to hire certified coders.

Response: We have included selected codes from the V44 and V55 code categories in Tables 2B and 10B. The major use of V-codes in the home health setting occurs when a person with a current or resolving disease or injury encounters the health care system for specific aftercare of that disease or injury. V-codes are less specific to the clinical condition of the patient than are numeric diagnosis codes. A single V-code could substitute for various numeric codes each of which describes a specific different clinical condition.

For more guidance regarding coding especially in the use of V-codes please see the CDC Web site noted below to obtain a copy of the ICD–9–CM Official Coding Guidelines effective November 15, 2005. (*http://www.cdc.gov/nchs/datawh/ftpserv/ftpicd9/ftpicd9.htm.*)

Comment: CMS currently allows points for bowel ostomies, but reimbursement points should be allocated to all ostomies. A commenter suggested we add V55.0–V55.9 to the non-routine supply list to capture patients needing supplies for non-bowel ostomies.

Response: It is important to note that all ostomies were not included in the original HH PPS payment because the OASIS instrument does not capture all ostomies, for example, the tracheostomy is not included in the OASIS instrument. Therefore, we do not have data for all ostomies. However, we have tested the non-routine supplies for stoma conditions for which we have added appropriate ''status (V44) V-codes'' and ''attention (V55) V-codes'' to the model.

Comment: A commenter asked that we include fracture aftercare codes and orthopedic correction codes (V54.01–V54.9) as point bearing codes.

Response: The HH PPS does not rely on V-codes, except as mentioned above. Therefore we are continuing to require agencies to list the underlying problem that led to the V-codes in M0246 of the OASIS assessment. The numeric fracture codes are listed in Table 2B and are expected to be assigned when indicated to our optional payment item M0246. When a fracture code is assigned to M0246 it will be expected that the appropriate aftercare V-code from V54.1 through V54.8 will be assigned to M0230. We note, however, that assigning of V54.01, V54.02 and V54.09 is considered generally inappropriate in the post-acute care setting.

Comment: The proposed rule designates the dementia codes 290.0 series as manifestation codes in the Psych 2 diagnosis group. A commenter stated those codes can only be placed as secondary diagnoses, but the proposed rule only offers points when Psych 2 conditions are primary diagnoses. Patients with these diagnoses require considerable resources even when the primary focus of the plan of care is another diagnosis. Commenters suggested allowing case-mix points when Psych 2 diagnoses are in the secondary position.

Response: The ICD–9–CM code category 290, Dementia, codes are listed in the ''Psych 2—Degenerative and other organic psychiatric disorders''. The ICD–9–CM code category 290 codes are point bearing regardless of whether the codes are primary or secondary diagnoses. We have removed the manifestation designation for these codes.

Comment: Commenters noted that key surgical complication codes (996 and 997 series) have been omitted from the case-mix. These series include joint prosthesis complications, amputation complications, skin graft complications, transplanted organ complications, etc. They believed these codes should be added to the case-mix diagnoses.

Response: We disagree. It is not appropriate to add these codes to the case-mix because these codes represent complications that are typically treated initially in the inpatient setting.

Comment: One commenter asked that we add 728.87 and 781.3 back to the table of point-bearing diagnosis codes. This commenter also asked that we add the 414 series of diagnosis codes.

Response: We disagree with the suggestion that 728.87, Muscle weakness (generalized) and 781.3, Lack of Coordination, should be added to Table 2B. The conditions assigned to the 781.3 and 728.87 diagnosis codes are identified as nonspecific conditions that represent general symptomatic complaints in the elderly population as such. We believe inclusion of these codes would threaten to move the case-mix model away from a foundation of reliable and meaningful diagnosis codes that are appropriate for home care.

We agree with the addition of the diagnostic category 414, ''Other forms of chronic ischemic heart disease'' codes to the case-mix model, with one exception. We are not including code 414.9, ''Chronic ischemic heart disease, unspecified'', because this is a nonspecific code and there are numerous specific codes that we would expect to be used for this condition. As noted previously, we believe the implementation of the refined HH PPS will better reflect more accurate payments, and we are taking steps to ensure the least amount of burden for HHAs.

Comment: Several commenters noted that the neuro 3 code list included ICD–9 diagnosis 436, which is an outdated code. They asked that it be replaced with 434.91.

Response: We are aware of the ICD–9–CM changes effective October 1, 2004 to the classification of unspecified cerebrovascular accident (CVA). Before this change these conditions were indexed to 436, Acute but ill-defined cerebrovascular disease. In order to comply with the ''ICD–9–CM Official Guidelines for Coding and Reporting'', effective November 15, 2006, we have deleted codes in categories 430–437 listed in the ''Neuro 3-Stroke'' diagnostic category of Table 2B of the proposed rule. The conditions in categories 430–437 identify the cause of the initial onset of an acute stroke and must not be assigned in the home health setting.

Agencies should use ICD–9–CM code category 438, Late Effects of Cerebrovascular disease, for conditions occurring at any time after the onset of an acute stroke. The coding guidelines indicate that these ''late effects'' include neurologic deficits that persist after the initial onset of conditions classifiable to 430 through 437. The neurologic deficits caused by cerebrovascular disease may be present from the onset or may arise at any time after the onset of the condition classifiable to 430 through 437.

To summarize, we deleted diagnosis codes from Table 2B in the following situations:

- The code was assigned to a minor condition or mild symptom that may be found in the elderly population;
- The code was a non-specific code or
- The code could not be assigned within the home health setting.

We believe the deletion of these codes directly correlates with the goals stipulated in the proposed rule. Specifically, the proposed rule stipulated that the case-mix system avoid, to the fullest extent possible, nonspecific or ambiguous ICD–9–CM codes, codes that represent general symptomatic complaints in the elderly

population, and codes that lack consensus for clear diagnostic criteria within the medical community. The diagnosis codes listed in Table 2C at the end of section III.B.5 are identified as minor conditions or mild symptoms that may be found in the elderly population or identified as non-specific conditions and as noted above, have been deleted as point-bearing diagnosis codes. The following discussion provides further explanation of the specific changes to the diagnoses occurring in Table 2B (also found at the end of section III.B.5):

- Deletion of constipation and mild, unspecified burns;
- Deletion of acute stroke codes (categories 430–437);
- Revision of code category 410, Acute Myocardial Infarction and
- Addition of code category 414, Other forms of chronic ischemic heart disease.

Constipation

The clinical condition of constipation (ICD–9–CM codes 564.00, 564.01, 564.02, and 564.09) was originally included in the GI group. Occurrences of constipation as a primary diagnosis were extremely rare. Therefore, the analysis was conducted with constipation as a secondary diagnosis separate from the rest of the diagnoses in the GI group. The results of this analysis show 2, 5, 1, and 5 points from leg 1 to leg 4, respectively, of the four-equation model (please see Table 2A at the end of section III.B.5). However, this likely reflects selective coding by providers of only those patients with more severe forms of this condition without inclusion of the many patients with mild constipation symptoms. Constipation is both a clinical symptom and a medical diagnosis (ICD–9–CM 564). It is relatively common in the elderly population with a prevalence ranging from 15 to 20 percent in the community setting. The clinical acuity of patients with constipation can range from asymptomatic to extreme distress (including abdominal pain and impending bowel obstruction). The ICD–9–CM codes, however, do not distinguish the severity levels of these patients. Since there are no specific diagnostic clinical criteria for constipation that are widely accepted throughout the medical community, clinicians are free to assign this diagnosis to all patients with even minimal symptoms of constipation regardless of severity. If additional points were allowed for constipation under the HH PPS, we would expect to find a large increase in the number of patients with this diagnosis simply because HHAs would be allowed to begin including all patients with constipation symptoms, not just those who are more severely affected. Furthermore, the ICD–9–CM category 564 (Functional Digestive Disorders Not Elsewhere Classified) specifically excludes those clinical conditions that are more accurately identified by other more specific ICD–9–CM diagnostic codes. Therefore, codes 564.00, 564.01, 564.02 and 564.09 have been deleted from the Gastrointestinal Disorders diagnostic category in Table 2A (found at the end of section III.B.5). Most patients with significant constipation symptoms can be captured with other ICD–9–CM diagnostic codes that are more specific than the codes for constipation.

First Degree Burns

A first degree burn is a minor self-limited condition that usually requires no professional medical attention. The skin typically displays mild redness without blisters. The most common example of a first degree burn is mild sunburn. Neither bandages nor medical supplies are required for first degree burns. This condition is often not coded as a diagnosis for medical billing because it rarely requires any professional medical treatment. Therefore the actual frequency of first degree burns is underreported in medical claims databases. Because the severity of this condition is so minimal, we do not think it is appropriate to include it in the four-equation case-mix model. In addition, no medical supplies are required for treatment of this condition so it would be inappropriate to include it in Table 10B for Non-Routine Supplies.

Late Effects of Cerebrovascular Disease

To comply with the ''ICD–9–CM Official Guidelines for Coding and Reporting'', Effective November 15, 2006 we have deleted codes in categories 430–437 listed in the ''Neuro 3-Stroke'' diagnostic category from Table 2B of the proposed rule. The conditions in categories 430–437 identify the cause of the initial onset of an acute stroke and must not be assigned in the home health setting.

The ICD–9–CM coding guidelines stipulate the assignment of code category 438, Late Effects of Cerebrovascular disease, for conditions occurring at any time after the onset of an acute stroke. The coding guidelines indicate that these ''late effects'' include neurologic deficits that persist after the initial onset of conditions classifiable to 430–437. The neurologic deficits caused by cerebrovascular disease may be present from the onset or may arise at any time after the onset of the condition classifiable to 430–437. Table 2C includes these codes as deletions from Table 2B of the proposed rule.

Acute Myocardial Infarction

We have also revised code category 410, Acute Myocardial Infarction, in the ''Heart Disease'' category of Table 2B of the proposed rule, to comply with ICD–9–CM coding instruction (see Table 2C at the end of section III.B.5 for the list of the 410 codes to be included). The code category 410 has been replaced in Table 2B with specific codes from category 410, (410.x2). The specific codes designate an episode of care following the initial episode of care. The fifth-digit sub-classification of 2 is for use with code category 410 to designate an episode of care following the initial episode when the patient is admitted for further observation, evaluation, or treatment for a myocardial infarction that has received initial treatment but is still less than 8 weeks old.

We have also revised code category 045, Acute Poliomyelitis, in the Neuro 2-Peripheral Neurological disorders section of Table 2B to correlate with ICD–9–CM coding instructions by replacing this code with code 138, Late effects of acute poliomyelitis(see Table 2C at the end of section III.B.5).

Chronic Ischemic Heart Disease

We also evaluated the appropriateness of code suggestions from commenters, and we have inserted codes from ICD–9–CM code category 414, other forms of chronic ischemic heart disease to Table 2B. The only code from category 414 that was not included is 414.9, ''Chronic ischemic heart disease, unspecified'' due to the non-specificity of the code and the fact that we would expect that other codes from this category would be used if appropriate.

Table 2C lists those codes noted above that have been deleted or added to Table 2B in the proposed rule. Tables 2A, 2B, and 2C are found at the end of section II.B.5. We recognize that some HHAs have used ICD–9–CM coding in the past which will no longer meet future coding standards, as discussed above. For example, some acute stroke codes were recognized in the original case-mix system, and we included them in the modeling of the refined system finalized in this rule to capture the effects on the diagnosis group score. However, we assume that these acute stroke codes will not be used in the future, and these changes are reflected in the codes listed in Table 2B.

4. Addition of Therapy Thresholds

In the proposed rule, for 2008, we proposed to discontinue the use of a single 10-therapy threshold, for the purpose of payment, and proposed to implement three therapy thresholds at 6, 14, and 20 visits. We proposed using graduated steps (groupings of 1 to 4 visits) between these three thresholds to provide an equitable increase in payment that would not otherwise occur between the three threshold levels. As a disincentive for agencies to attempt to reach a therapy level higher than the appropriate, clinically determined number of therapy visits, we proposed to decelerate the increase in payment with each grouping of additional therapy visits between the therapy thresholds.

For example, if the current proposed model produces an average value for each additional grouping of therapy visits above 6 and below 14 visits, we would incrementally decrease the marginal payment for each grouping of therapy visits as the number of therapy visits grow. At this time, no study has been performed to study the clinically appropriate number of visits primarily because of the resources required to perform such a study. Under fee-for-service Medicare, beneficiaries can select clinicians to treat and act on their behalf so long as the clinicians meet the CoPs, such as licensing (qualified nurses and therapists), and other forms of credentialing (CoPs). In the research vacuum that exists, the Medicare program relies upon the providers to determine the clinically appropriate number of visits. However, we found that a payment system with an incentive such as the 10-visit-therapy threshold indicated that such reliance was perhaps misplaced. Our revised system of multiple thresholds and smoothing (that is, graduated per-visit payments between the thresholds) is an attempt to reduce the financial incentive that we saw as distorting clinically appropriate decision making. MedPAC has stated repeatedly that the home health benefit would be enhanced by a better understanding and definition of appropriate clinical standards (e.g., *Report to the Congress: Medicare Payment Policy,* MedPac, March 2006, p. 195). We believe it would take years of research to determine with sufficient precision for payment purposes and claims processing what is clinically appropriate. We will continue to rely on the RHHIs during normal medical review operations to consider therapy treatment plan appropriateness on a case-by-case basis. Of course, we also continue to rely in good faith on the professional judgment of certified agencies and their clinicians to select appropriate courses of treatment for their patients.

Comment: Many commenters supported our proposal to have multiple therapy thresholds. However, several questioned the point allocation for functional variables in relation to therapy. One commenter was concerned that this could lead to gaming, where agencies prescribe 14 visits instead of 10 visits, noting that almost all patients who need 10 physical therapy or rehab visits could benefit from 14 visits. The commenter was concerned that the cost to agencies would be prohibitive, and would force them to replace physical therapists with physical therapy assistants, to drop therapy services altogether, or gaming to receive reasonable reimbursement. Another commenter noted that the dollar increments between 6 and 14 visits were so modest that they may create payment deficits.

Response: We appreciate the comments supporting our multiple therapy thresholds. We disagree with the commenter's concern that our increased therapy thresholds will be cost prohibitive and will force providers to replace physical therapists with physical therapy assistants or to drop therapy services altogether. The goal of the case-mix refinements is to better align payment with actual agency costs. Changing to multiple therapy thresholds with a gradual increase in payment better aligns costs and payments and avoids incentives for providers to distort patterns of good care.

Specifically, because we used multiple regression to derive the point values, with indicator variables for therapy visits (for example, 7 to 9 therapy visits) included in the regression model, the point allocations for functional variables take into account the range of visits into which the treatment plan falls. The point allocations therefore serve to define more precisely the average resources used by a patient given that a certain range of therapy visits is to be delivered. We are aware that the new threshold of 14 therapy visits may be misperceived as a new target for treatment. We do, however, intend to monitor administrative data for indications of gaming, which could include shorter lengths for prior therapy visits and increased frequencies of episodes with 14 or more visits without evidence that an increase in the number of therapy visits was appropriate for the patients. We believe that the need to spend on therapy visits, in order to get paid for high therapy treatment plans, will provide a natural disincentive to game the system, and that imposing on the regression model a mildly decelerating trend in the resources per added therapy visit between 6 and 20 therapy visits will further mitigate against gaming. We detail the resource cost values that impose a decelerating trend in the four-equation model in Table 1. We have updated this table using 2005 data. If a potential problem is detected through data analysis processes with our RHHIs, then the RHHIs may conduct Medical Review of claims identified as potential problems to determine if the services rendered were reasonable and necessary.

Comment: While supporting the concept of a graduated therapy threshold, several commenters were concerned that the reimbursement decrease was so substantial. One commenter noted that his calculations showed that it would require 17 therapy visits under the proposed system to receive the same therapy adjustment as under the current system, when the 10-therapy threshold is met. The commenter noted the resource intensity of therapy services, and asked that we consider a greater payment allocation for visits from 10 to 14. Another commenter noted that the new therapy thresholds will minimize payment for orthopedic cases. This commenter recommended that the therapy threshold be changed to 6, 12, and 20 to allow adequate compensation for therapy visits.

Response: The original 10-visit therapy threshold supported treatment plans involving 10 therapy visits and higher, so one should not expect that weights under the original system for 10 visits would be comparable to weights under the new system for 10 therapy visits. Compared to the original system, weights under the new system are more precise with respect to the cost of a given range of therapy (for example, a range of 16 to 17 therapy visits). It is important to understand that the regression method modeled the addition to total resource cost for treatment plans with each range of therapy visits in Table 4 of the proposed rule—not just the addition to cost from therapy visits. Therefore, the services utilization severity levels cannot be noted strictly as direct costs for added ranges of therapy visits, though the cost of added therapy visits is certainly very important in producing the values noted in Table 4 of the proposed rule and thus the proposed relative case-mix weights. The proposal was not intended to propose minimized payment for orthopedic cases, but to reflect to the best of our ability the treatment

practices extant in the data for different types of patients and costs experienced by a wide range of patients in the data analyzed.

Comment: A commenter stated that the variations in payment introduced by multiple therapy thresholds were not consistent with a regression model. This commenter's initial analysis indicated that agencies can obtain significant additional payments when they provide 14 therapy visits as opposed to 13 therapy visits when all other OASIS answers remain constant, even though the scoring in the 3rd and 4th equations is different from the scoring in the 1st and 3rd equations. The commenter stated that the inconsistencies found in this review make it difficult to understand how CMS arrived at the proposed increments between HHRGs. The commenter asks for additional information on how CMS arrived at the increments in payment between the various levels of therapy services proposed.

Response: For an early episode, Table 4 in the proposed rule indicated that agencies would receive an additional $2,191.76 − $1,771.84=$419.42 before wage adjustment for treatment plans involving 14 or 15 therapy visits. For later episodes, agencies would receive an additional $2,198.69-$1,907.93=$290.76. In the final version of Table 4, which is based on CY2005 data, agencies would receive an additional $366.03 for early episodes and $504.44 for later episodes. These values result from using indicator variables in the regression for differing ranges of therapy visits (ranges indicated in Tables 3 and 4 of the proposed rule) and from reintroducing the decelerated payments per added therapy visit at the stage of the payment regression. Our technique for reintroducing the decelerated payments was to estimate a variant of the four-equation model that did not incorporate deceleration. From this, we were able to compare the added payments for the proposed ranges of therapy visits with and without deceleration in order to adjust the services utilization (S-level) marginal resource cost estimates of the payment regression appropriately.

Comment: Several commenters questioned the $36 estimated marginal cost of adding a seventh therapy visit to an episode with 6 therapy visits and the deceleration of payments, as the source for this information was not cited, and the dollars appear to be significantly below agency costs. One commenter asks for additional information regarding how CMS identified an incremental cost of $36 between the 6th and 7th therapy visits. Another commenter noted that the Excel toy grouper produced an increased payment of $402 for the seventh visit.

Response: We cited the source for the starting value of $36 in the proposed rule (72 FR 25364). It was the addition to total resource cost from comparing episodes with 7 therapy visits to episodes with 6 therapy visits, based on a variant of the four-equation model that allowed for a separate marginal addition to cost associated with each separate, individual number of therapy visits. Thus, this value was entirely data driven, given the entire set of clinical, functional, and therapy indicator variables used in the four-equation model. In the final version, the updated analysis yielded a starting value of $42 instead of $36. The declining trend was modeled by decrements of 1.5 units instead of 1 unit. Please see Table 1 at the end of this section for details. It should be understood that the resource cost measure is not equivalent to the average cost of a therapy visit, as it is derived from national Bureau of Labor Statistics survey data on the direct hourly wage and benefit cost of therapy-related clinical disciplines in home care. We convert minutes per episode reported on claims into resource cost dollars using the national wage and benefit data. Table 4 of the proposed rule indicated that the therapy increment for services utilization severity S3 encompasses treatment plans that include 7, 8, or 9 therapy visits. We intend to monitor payments under the system in the future for evidence that agencies are failing to provide the full range of visits included in each S-level.

Comment: Several commenters questioned our assumption that most patients would require 6 to 13 visits and that 14 or more therapy visits would not be normal. They note that therapy services are resource intensive. A commenter disagreed with our statement that several common treatment plans only require about 6 visits, using the example of falls.

Response: Abt Associates conducted TEP meetings on December 15, 2005 and March 14, 2006. These TEP meetings provided an opportunity for experts, industry representatives, and practitioners in the field of home health care to provide feedback on Abt's research examining the HH PPS and exploration of payment policy alternatives. Abt received input from TEP members as to what the appropriate levels for the therapy threshold would be based on clinical conditions of home health patients. Different sets of therapy thresholds were discussed at TEP meetings. Abt considered this feedback when developing recommendations for refinements to the HH PPS.

Comment: A commenter strongly disagreed that patients with a high risk of falls should be used as an example of patients with a treatment plan commonly requiring 6 therapy visits (72 FR 25363). The comment did not include an alternate illustration or example of a common treatment plan requiring 6 therapy visits, however, the commenter did agree with us that there are therapy treatment plans within the 6 visit range.

The commenter stated that ''clinical experience with homebound Medicare patients at high risk for falls indicates that these patients typically have significant problems with balance and gait. They may also be receiving treatments that elevate their risk, including the use of diuretics.'' The commenter is concerned that payment contractors will apply this example to the medical review process and deny needed visits to patients at risk for falls who have extensive therapy needs.

Response: We used the example of patients with a risk of falls as typically receiving six therapy visits based on input from Abt Associates, using information from their TEP. According to the TEP, physicians may deliberately order short term plans of care for patients because they want the patient to proceed to outpatient therapy as soon as possible. A short-term plan of care of six visits will typically involve evaluation, safety/falls assessment and prevention intervention, with the possibility of more than one therapy discipline being involved.

We disagree with the commenter that the RHHIs will apply the example of patients with a high risk of falls as a basis for their decision on the determination of coverage. Section 20.1.2 in Chapter Seven of the Medicare Benefit Policy Manual explains the following: ''The intermediary's decision on whether care is reasonable and necessary is based on information reflected in the home health plan of care, the OASIS as required by 42 CFR 484.55 or a medical record of the individual patient. Medicare does not deny coverage solely on the basis of the reviewer's general inferences about patients with similar diagnoses or on data related to utilization generally, but bases it upon objective clinical evidence regarding the patient's individual need for care.'' It is at the discretion of the contractor to determine the use of its resources. If a potential problem is detected through their data analysis processes, then they may conduct Medical Review of claims to determine

if the services rendered were reasonable and necessary.

Comment: A commenter was concerned that CMS planned to conduct automatic medical reviews of every episode requiring 20 or more therapy visits. While this commenter agreed that such cases are unusual, there was concern that the threat of automatic medical review could provide an incentive for providers to restrict the number of visits to individuals who need a higher level of intervention.

Another commenter asked if HHAs should anticipate an increase in therapy Additional Documentation Requests (ADRs) from the RHHIs, at least initially, as we validate the appropriateness of the new therapy thresholds and the accuracy of provider coding. The commenter noted that increases in ADRs lead to unfunded increases in administrative costs, even if they result in no adjustments.

Response: The intermediary's decision on whether care is reasonable and necessary is based on information reflected in the home health plan of care, the OASIS as required by 42 CFR 484.55 or a medical record of the individual patient. Medicare does not deny coverage solely on the basis of the reviewer's general inferences about patients with similar diagnoses or on data related to utilization generally, but bases it upon objective clinical evidence regarding the patient's individual need for care. As mentioned above, it is at the discretion of the contractor to determine the use of its resources. If a potential problem is detected through their data analysis processes, then they may conduct Medical Review of claims to determine if the services rendered were reasonable and necessary.

Medical review targets problem areas which demonstrate significant risk to the Medicare program as a result of inappropriate payments, over-utilization, abusive billing and unnecessary services. Here, the Medicare Contractors (RHHIs) use different parameters to target their review of home health claims. The decision regarding which claim to review depends on the information obtained from data analysis which includes all providers submitting claims for payment. A provider's claims may be subject to review if they do not meet the coverage, coding, and billing guidelines contained in the statute, regulations, coverage guidance, CMS manuals, and contractor policies.

Comment: A commenter noted that providers are sensitive to financial incentives associated with therapy visits, but that it is difficult to anticipate how utilization may change under the proposed system. The commenter asked that analysis of changes in therapy under the new system be a key priority for future research. The commenter also noted that higher payments for third and later episodes appear reasonable, but suggested further research into the nature of third and subsequent episodes.

Response: We agree that financial incentives can affect care provided, and we will monitor the effects of the refined payment system. We will be analyzing changes in therapy under the refined system and will conduct further refinement research as appropriate.

Comment: A commenter noted that adding therapy thresholds in the revised case-mix regression model improved the ability of the model to predict resource use, with substantially increased R-squared for both early and later episodes, as compared to the R-squared values for a single therapy threshold model (72 FR 25365, May 4, 2007). The commenter asked what the improved R-squared values were, and if they were statistically significant. Further, the commenter asked if there were concerns that the randomness being measured was truly not random, which would raise questions about the appropriateness of a linear regression model and its associated R-squared.

Response: Abt Associates estimated models without therapy thresholds using the basic four-equation structure. The basic four-equation structure incorporates a threshold at 14 therapy visits. After adding thresholds to this model at 6 and 20 visits, and adding per-visit therapy variables, the R-squared statistic increased by approximately 0.10. We subsequently modified the approach to the per-visit therapy variables, as described in the proposed rule. We believe the linear model is appropriate based on results of experimentation with nonlinear specifications during the research. This technical topic is treated in the Abt Associates Final Technical Report.

Comment: A commenter noted that the four-equation model actually contains a fifth equation for 20 or more therapy visits and asked for clarification regarding how to code as early or later episodes in this case.

Response: The OASIS item for early or later episodes (M0110) needs to be completed for all episodes, regardless of the number of therapy visits. The estimated number of therapy visits must also be entered into OASIS (M0826). The episode will then be assigned an appropriate HHRG by the grouper, and priced out correctly by the Pricer. The system will automatically verify the accuracy of the early/later designation, and correct the payment if necessary.

As explained in the proposed rule (72 FR 25388), we collapsed all episodes with visits over 19 when we saw the results of the four-equation model. These episodes are grouped in the payment regression, and severity distinctions are made using the breakpoints described in that last column (20+ therapy visits) of Table 3, Severity Group Definitions: Four-equation model (72 FR 25387).

We note the labeling of Table 3 in the proposed rule left the impression among some readers that there was a fifth equation. The commenter may have been confused because Table 3 in the proposed rule shows a separate column for all episodes with 20 or more visits, which can give the appearance of a five-equation model rather than a four-equation model. However, there are only four equations from which to draw case-mix points. Table 2A of the proposed rule gives a description of each diagnosis group, followed by four columns with the four ''legs'' of the four-equation model. If an episode has 20 or more visits, the case-mix points would come from the second leg if it is an early episode, and from the fourth leg if it is a later episode. The table column headers indicate that these two legs are for 14 or more therapy visits. As explained in the proposed rule, we found strong similarities in the case-mix-adjusted costs for early and later episodes with 20 or more therapy visits. In other words, the results of the four-equation model indicated that predicted costs for the same clinical and functional severity levels across the two equations (equations 2 and 4) were highly similar. Therefore, to reduce the number of groups and thereby simplify the system at the payment regression stage, we treated episodes with 20 or more therapy visits the same (that is, we used the same indicator variables for clinical and functional severity, regardless of whether the episode was from the early or later equation for 14 plus therapy visits).

In summary, upon examining the CY 2005 data on the resource cost trends by number of therapy visits, we changed the starting value for the marginal cost of going from six therapy visits to seven therapy visits from $36 to $42, consistent with the observed value in the data. The declining trend was modeled by decrements of 1.5 units, as shown in Table 1, because the marginal value observed in the data was no higher than $30 when going from 14 to 15 therapy visits. Had we used decrements of 1.0 units, as in the proposed rule, the imposed values would have descended to a value of $34, which is less consistent with the

observation when going from 14 to 15 therapy visits. Using 1.5-unit increments, the imposed values descended to a value of $29, which is more consistent with the actual data.

We are implementing the three therapy thresholds of 6, 14, and 20. The groups of visits in final Table 1, used to achieve graduated steps of increased payment between the therapy thresholds, have not changed as a result of modeling with the newer, most current 2005 data. The deceleration of the increase in payment with each individual visit between the therapy thresholds is being implemented as in the final Table 1 (see below).

TABLE 1.—RESOURCE COST VALUES IMPOSING DECELERATION TREND IN FOUR-EQUATION MODEL

Equation and services utilization severity level	Number of therapy visits in severity level	Resource cost values imposed in regression procedure
1st and 2nd Episodes, 6–13—Therapy Visits:		
S3	7, 8, 9	42, 40.50, 39
S4	10	37.50
S5	11, 12,13	36, 34.50, 33
1st and 2nd Episodes, 14–19—Therapy Visits:		
S1*	14*, 15	*, 29
S2	16, 17	27.50, 26
S3	18, 19	24.50, 23
3rd+ Episodes, 6–13—Therapy Visits:		
S3	7, 8, 9	42, 40.50, 39
S4	10	37.50
S5	11, 12, 13	36, 34.50, 33
3rd+ Episodes, 14–19—Therapy Visits:		
S1*	14*, 15	*, 29
S2	16, 17	27.50, 26
S3	18, 19	24.50, 23

*No value was imposed in the regression procedure for a 14th therapy visit (because the regression intercept estimate for the grouping step automatically includes the resource cost impact of this visit).

5. Determination of Case-Mix Weights

In the proposed rule, we revised the case-mix weights, as noted in the previous sections of this final rule with comment period, describing the refinements. In this section, we describe the final revisions to the case-mix model and the determination of the final case-mix weights. For specifics, see the tables at the end of this section.

Comment: A number of commenters supported the higher case-mix weights for third and subsequent episodes of care. However, two commenters were concerned that the analysis weighted third and subsequent episodes more highly because Medicaid data is included in the OASIS (M0150), and Medicaid patients account for 85 percent of all third and subsequent episodes. They noted that most agencies have fewer than two episodes per patient, and would be adversely affected by the proposed weights. Another noted that patients new to home health often have a high degree of anxiety, and therefore need more frequent contact. Additionally, ''best practice'' guidelines recommend a higher level of care during the first few weeks of a home health episode. This commenter asked CMS to reconsider a payment adjustment based on early rather than later episodes. Several commenters suggested eliminating the early or later episode distinction and redistributing the weights amongst all episodes. They claimed that this would simplify the model and eliminate the difficulties of determining early or later status of patients using the CWF. One commenter proposed that we use a two-equation model that excludes reference to enhanced reimbursement for the third and fourth episodes. The commenter suggested that not having increased reimbursement for later episodes would more accurately reflect the way the majority of patients are receiving care and reduce the incentive to drive up costs and possibly reduce patient independence.

Response: The later episodes reflect patients who tend on average to have higher resource needs and extended stays in home health care. The later episode distinction resulted from our attempts to differentiate the resources needed by long-stay patients. Many observers in the past indicated it would be appropriate for the case-mix system to recognize that the Medicare home health benefit serves a minority who are experiencing an extended period of illness and incapacitation. It is not possible to always identify all these cases upon admission, and an administratively feasible way to address this situation is to create a provision specifically for these cases when they reach a milestone indicative of an extended stay in home care. The provision for separate groups for long-stay patients is not made at the expense of shorter-stay patients, as our data analysis showed a modest difference in resource cost over the 60-day certification period. That some patients at the start of care need frequent visits is accounted for in our data by the resource cost measure for the entire 60-day period. We agree that agencies should follow best practice guidelines that are intended to bring about early independence and avoid hospital readmissions by front-loading visits when appropriate. Further, we do not believe the payment incentives associated with the long-stay equations are so strong as to that they distort the fundamental goals of returning patients to health and independence as soon as possible.

Comment: A commenter asked if the M0230/240/246 case-mix scores can now be combined or should only the highest case-mix score be considered in evaluating the clinical dimension. The commenter asked that we clarify Table 2A of the proposed rule, and asked how to handle episodes with 20 or more visits. Another commenter asked if only those co-morbidities that are actually being addressed in the care plan are to be included.

Response: Case-mix scores from different diagnosis groups in Table 2A are additive; a diagnosis group is a line item in the table. Points cannot be given more than once for diagnoses in the

same group. For example, a patient with both heart disease and hypertension would not get points twice for item 11 in Table 2A. However, a patient with a Neuro 3 diagnosis who meets criteria for points for Items 16 and 17 in Table 2A would be eligible for points from both items. A summary of the guidelines used in scoring is posted at the CMS home health Web site and entitled ''Toy Grouper Logic Guidelines'' (Web site address: *http://www.cms.hhs.gov/center/hha.asp).* In the footnote to the final Table 2A, we have clarified that scores are additive.

In addition, the commenter may have been confused because Table 3 shows a separate column for all episodes with 20 or more visits, which can give the appearance of a five-equation model rather than a four-equation model. However, there are only four equations from which to draw case-mix points. Table 2A gives a description of each diagnosis group, followed by four columns with the four ''legs'' of the four-equation model. If an episode has 20 or more visits, the case-mix points would come from the second leg if it is an early episode, and from the fourth leg if it is a later episode. The table column headers indicate that these two legs are for 14 or more therapy visits.

Comment: A number of commenters expressed concern about the impact of changes made to the point allocation for OASIS functional variables in relationship to therapy. The current case-mix system allocates 6 to 9 points for M0700 (ambulation) deficits. However, the proposed case-mix refinement system allocates zero points for ambulation deficits in two of the three equations, including both equations for 14 or more therapy visits. Two commenters also noted that the point allocation for M0690 (transfers) were affected unless the patient required 13 or more therapy visits. They were concerned that the proposed new case-mix methodology was not capturing the appropriate points to allow for necessary resources for functionally impaired patients. The commenters proposed that CMS study this further before imposing a negative adjustment.

Response: The proposed four-equation model cannot be compared on a point-by-point basis with the current case-mix model. The models are based upon different data sets, and the model structures are different (for example, a single equation model versus a four-equation model; a single therapy threshold versus multiple therapy thresholds). Under the current model, an episode receives a functional score severity level of F0, F1, F2, F3, F4, or F5 based on having 0 to 30 or more points. Under the proposed four-equation model, an episode receives a functional score of severity level F1, F2, or F3 based on having 0 to 10 or more points, and depending on the episode timing and number of therapy visits. Because the models are not directly comparable, it cannot be assumed that fewer points under the proposed model results in a negative payment adjustment.

The points given in Table 2A of the proposed rule were derived from modeling actual claims data, and represent prior experience in home health care. The score is the value of the regression coefficient for the variable, and measures the impact of the data element on total resource cost of the episode. For this final rule with comment period, we updated the dataset using 2005 data in the regression analysis, and this resulted in some changes in the scores presented in Table 2A of this rule. We will also continue to study the case-mix model, and will make additional refinements as needed.

Comment: A commenter noted that it appears that some individual items in Table 2A of the proposed rule have the potential to move the clinical dimension from the lowest (C1) to the highest (C3).

Response: This is correct. We determined the points based on our research. One example would be an early episode with a primary diagnosis in the skin 1 group (item 25 in Table 2A); diagnoses in this category are resource intensive.

Comment: Several commenters asked that we clarify the reason for linking the case-mix adjustment for 781.2 (gait abnormality) with pressure ulcers. Persons receiving therapy for gait training are not typically bed or chair bound and therefore it is unlikely that they would have pressure ulcers. Additionally, points are not allocated for the gait disorder diagnosis in the 14 plus therapy visit equations.

Response: The regression model indicated that patients with pressure ulcers are overall more clinically compromised if they also have the diagnosis of 781.2 than pressure ulcer patients without the diagnosis of 781.2. As to the points allocated for this type of patient, because we are adopting a graduated payment for therapy in the 14 plus visit category, the gait disorder diagnosis does not add any additional explanatory power to the model and is not statistically significant.

In summary, in the proposed rule, we stated our intention to update the data used for the four-equation model and validate the model. We based our proposal on FY 2003 claims and linked OASIS assessments, a period before V-codes were allowed on OASIS. For validation, we used a random 20% sample of 2005 claims linked to OASIS assessments to create an analytic file for modeling case-mix. We examined the diagnoses fields on the OASIS assessments (M0230/M0240/M0245) for indications that some diagnoses groups in the proposed model might be reported at differing rates in 2005 than in 2003, and we did find some changes. For example, we observed lower rates of reporting primary diagnoses for the neurological diagnosis groups, orthopedic groups other than gait abnormality, cardiac group, and some of the cancer diagnosis codes. We observed somewhat higher primary diagnosis rates for the diabetes, hypertension, and degenerative and other organic psychiatric groups. Secondary diagnosis reporting typically decreased only by about 1 percentage point for each of the proposed diagnosis groups. Moreover, a preliminary validation of the model on FY 2005 data indicated that the results were substantially the same as the results of modeling resources in the four-equation structure using FY 2003 data. We concluded that the proposed four equation model in the proposed rule was reliable notwithstanding reporting changes expected from the introduction of V-codes on OASIS. We made a number of refinements based on the validation model we estimated using the FY 2005 analytic file. We subsequently updated the data to CY 2005 and made some further refinements. The final results are shown in Tables 1, 2a, and 3. The R-square statistic for the final case-mix model is 0.45.

Major differences in the 2005 data compared to the 2003 data concerned a small number of the primary and secondary diagnosis groups we identified for the case-mix model in the proposed rule: Cancer and psychiatric conditions [affective and other psychoses, depression (Psych 1 Group) and degenerative and other organic psychiatric disorders (Psych 2 Group)]. When we examined the model's estimates of cancer-related marginal resources and marginal resources of the Psych 1 group, we found that a distinction between primary and secondary diagnoses was not needed, as scores were generally similar across the equations. For Psych 2, only primary diagnoses contributed to this group in the proposed rule model. However, the updated estimates indicated secondary diagnoses should be recognized in the model, so we combined secondary with primary diagnoses into a new group for

these psychiatric conditions. Because these changes eliminated distinctions between primary and secondary diagnosis positioning on OASIS M0230/M0240, we welcomed them as a simplification of the case-mix model. We also believe there are advantages from moving away from separate scores for primary and secondary diagnosis reporting. Specifically, it reduces potential incentives to alter the placement of codes based on financial considerations. The final model includes two diagnosis groups with differing scores for primary and secondary diagnoses: Diabetes and certain skin conditions [specifically, traumatic wounds, burns, and post-operative complications (Skin 1)].

In addition, we added stroke (''Neuro 3'' diagnosis group) as a primary diagnosis, irrespective of any interactions. The final result in the updated data of using this re-defined stroke variable was an added score in equation 2 of the model (early episodes, 14 or more therapy visits). Along with this change, the data revealed some differences in the cost-increasing interactions with stroke, which are reflected in the final model. The final model indicates added points when stroke is accompanied by dressing and/or ambulation functional limitations, as well as dysphagia.

Interactions involving the other three neurological groups also reflected some changes. For example, we found that separating the interactions of functional limitations with multiple sclerosis (Neuro 4) into two line items in the proposed table 2A did not work well in the new data, despite results obtained with the data used for the proposed rule. However, combining all four functional limitation interactions recognized in the proposed model produced useful results. Based on estimates from the new data, we also modified the interaction of toileting with the remaining neurological groups, brain disorders and paralysis (Neuro 1) and peripheral neurological disorders (Neuro 2). The data revealed that peripheral neurological disorders (Neuro 2) in this interaction were no longer statistically significant, so this group was removed from the interaction.

In the 2005 data, a cost-increasing effect from incontinence was not observed, so it was deleted from the four-equation model. An interaction in the proposed model involving incontinence and certain neurological conditions [brain disorders and paralysis (Neuro 1) was no longer statistically significant, so this variable was removed as well.

Other differences in the four-equation model generally were small point changes for specific scores. For example, a primary diagnosis of diabetes incurred an increase of one point in three of the four equations, while the interaction of stroke and dysphagia incurred a loss of one point in the third equation and a gain of one point in the first equation.

We tested a suggestion from a commenter to include V-codes from ICD–9–CM for stoma. We defined variables using selected V-codes to serve as markers for patients with stoma other than colostomies and gastrostomies, which were already measured or proxied in our variable set. This change resulted in the addition of two major types of stoma. Specifically, we added appropriate variables in both the case-mix model and the NRS model to capture patients with resource needs or supplies cost needs due to tracheostomy and urostomy/cystostomy. We are implementing as final the case-mix weights and scoring resulting from the four-equation model with therapy thresholds at 6, 14, and 20 therapy visits and with an early or later episode distinction. We have updated our modeling to use 2005 data, which resulted in some changes in case-mix weights and item scoring. We are implementing as final the versions of Tables 2A, 2B, 2C, 3, 4, and 5 that are shown below.

BILLING CODE 4120–01–P

Table 2A: Case-Mix Adjustment Variables and Scores

	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
	CLINICAL DIMENSION				
1	Primary or Other Diagnosis = Blindness/Low Vision	3	3	3	3
2	Primary or Other Diagnosis = Blood disorders	2	5		
3	Primary or Other Diagnosis = Cancer, selected benign neoplasms	4	7	3	10
4	Primary Diagnosis = Diabetes	5	12	1	8
5	Other Diagnosis = Diabetes	2	4	1	4
6	Primary or Other Diagnosis = Dysphagia ***AND*** Primary or Other Diagnosis = Neuro 3 - Stroke	2	6		6
7	Primary or Other Diagnosis = Dysphagia ***AND*** M0250 (Therapy at home) = 3 (Enteral)		6		

Table 2A: Case-Mix Adjustment Variables and Scores

	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
8	Primary or Other Diagnosis = Gastrointestinal disorders	2	6	1	4
9	Primary or Other Diagnosis = Gastrointestinal disorders ***AND*** M0550 (ostomy) = 1 or 2	3			
10	Primary or Other Diagnosis = Gastrointestinal disorders ***AND*** Primary or Other Diagnosis = Neuro 1 - Brain disorders and paralysis, OR Neuro 2 - Peripheral neurological disorders, OR Neuro 3 - Stroke, OR Neuro 4 - Multiple Sclerosis			2	
11	Primary or Other Diagnosis = Heart Disease OR Hypertension	3	7	1	8
12	Primary Diagnosis = Neuro 1 - Brain disorders and paralysis	3	8	5	8
13	Primary or Other Diagnosis = Neuro 1 - Brain disorders and paralysis ***AND*** M0680 (Toileting) = 2 or more	3	10	3	10
14	Primary or Other Diagnosis = Neuro 1 - Brain disorders and paralysis OR Neuro 2 - Peripheral neurological disorders ***AND*** M0650 or M0660 (Dressing upper or lower body) = 1, 2, or 3	2	4	2	2
15	Primary or Other Diagnosis = Neuro 3 - Stroke		1		

Table 2A: Case-Mix Adjustment Variables and Scores					
	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
16	Primary or Other Diagnosis = Neuro 3 - Stroke ***AND*** M0650 or M0660 (Dressing upper or lower body)= 1, 2, or 3	1	3	2	8
17	Primary or Other Diagnosis = Neuro 3 - Stroke ***AND*** M0700 (Ambulation) = 3 or more	1	5		
18	Primary or Other Diagnosis = Neuro 4 - Multiple Sclerosis ***AND AT LEAST ONE OF THE FOLLOWING:*** M0670 (bathing) = 2 or more OR M0680 (Toileting) = 2 or more ***OR*** M0690 (Transferring) = 2 or more ***OR*** M0700 (Ambulation) = 3 or more	3	3	12	18
19	Primary or Other Diagnosis = Ortho 1 - Leg Disorders or Gait Disorders ***AND*** M0460 (most problematic pressure ulcer stage)= 1, 2, 3 or 4	2			
20	Primary or Other Diagnosis = Ortho 1 - Leg OR Ortho 2 - Other orthopedic disorders ***AND*** M0250 (Therapy at home) = 1 (IV/Infusion) or 2 (Parenteral)	5	5		

Table 2A: Case-Mix Adjustment Variables and Scores

	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
21	Primary or Other Diagnosis = Psych 1 - Affective and other psychoses, depression	3	5	2	5
22	Primary or Other Diagnosis = Psych 2 - Degenerative and other organic psychiatric disorders	1	2		2
23	Primary or Other Diagnosis = Pulmonary disorders	1	5	1	5
24	Primary or Other Diagnosis = Pulmonary disorders ***AND*** M0700 (Ambulation) = 1 or more	1			
25	Primary Diagnosis = Skin 1 - Traumatic wounds, burns, and post-operative complications	10	20	8	20
26	Other Diagnosis = Skin 1 - Traumatic wounds, burns, post-operative complications	6	6	4	4
27	Primary or Other Diagnosis = Skin 1 -Traumatic wounds, burns, and post-operative complications OR Skin 2 - Ulcers and other skin conditions ***AND*** M0250 (Therapy at home) = 1 (IV/Infusion) or 2 (Parenteral)	2		2	
28	Primary or Other Diagnosis = Skin 2 - Ulcers and other skin conditions	6	12	5	12
29	Primary or Other Diagnosis = Tracheostomy	4	4	4	
30	Primary or Other Diagnosis = Urostomy/Cystostomy	6	23	4	23

Table 2A: Case-Mix Adjustment Variables and Scores

	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
31	M0250 (Therapy at home) = 1 (IV/Infusion) or 2 (Parenteral)	8	15	5	12
32	M0250 (Therapy at home) = 3 (Enteral)	4	12		12
33	M0390 (Vision) = 1 or more	1			1
34	M0420 (Pain)= 2 or 3	1			
35	M0450 = Two or more pressure ulcers at stage 3 or 4	3	3	5	5
36	M0460 (Most problematic pressure ulcer stage)= 1 or 2	5	11	5	11
37	M0460 (Most problematic pressure ulcer stage)= 3 or 4	16	26	12	23
38	M0476 (Stasis ulcer status)= 2	8	8	8	8
39	M0476 (Stasis ulcer status)= 3	11	11	11	11
40	M0488 (Surgical wound status)= 2		2	3	
41	M0488 (Surgical wound status)= 3	4	4	4	4
42	M0490 (Dyspnea) = 2, 3, or 4	2	2		
43	M0540 (Bowel Incontinence) = 2 to 5	1	2	1	
44	M0550 (Ostomy)= 1 or 2	5	9	3	9
45	M0800 (Injectable Drug Use) = 0, 1, or 2	1	1	2	4
FUNCTIONAL DIMENSION					
46	M0650 or M0660 (Dressing upper or lower body)= 1, 2, or 3	2	4	2	2
47	M0670 (Bathing) = 2 or more	3	3	6	6
48	M0680 (Toileting) = 2 or more	2	3	2	
49	M0690 (Transferring) = 2 or more		2		
50	M0700 (Ambulation) = 1 or 2	1		1	
51	M0700 (Ambulation) = 3 or more	3	4	4	5

Notes: The data for the regression equations come from a 20 percent random sample of episodes from CY 2005. The sample excludes LUPA episodes, outlier episodes, and episodes with SCIC or PEP adjustments.

Points are additive, however points may not be given for the same line item in the table more than once.

Please see Medicare Home Health Diagnosis Coding guidance at http://www.cms.hhs.gov/HomeHealthPPS/03_coding&billing.asp for definitions of primary and secondary diagnoses.

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
Blindness and low vision	369.01		BETTER EYE: TOTAL IMPAIRMENT; LESSER EYE: TOTAL IMPAIRMENT
	369.02		BETTER EYE: NEAR TOTAL IMPAIRMENT; LESSER EYE: NOT FURTHER SPECIFIED
	369.03		BETTER EYE: NEAR TOTAL IMPAIRMENT; LESSER EYE: TOTAL IMPAIRMENT
	369.04		BETTER EYE: NEAR TOTAL IMPAIRMENT; LESSER EYE: NEAR
	369.05		BETTER EYE: PROFOUND IMPAIRMENT; LESSER EYE: NOT FURTHER SPECIFIED
	369.06		BETTER EYE: PROFOUND IMPAIRMENT; LESSER EYE: TOTAL IMPAIRMENT
	369.07		BETTER EYE: PROFOUND IMPAIRMENT; LESSER EYE: NEAR TOTAL IMPAIRMENT
	369.08		BETTER EYE: PROFOUND IMPAIRMENT; LESSER EYE: PROFOUND IMPAIRMENT
	369.10		IMPAIRMENT LEVEL NOT FURTHER SPECIFIED, BLINDNESS, ONE EYE, LOW VISION OTHER EYE
	369.11		BETTER EYE: SEVERE IMPAIRMENT; LESSER EYE: BLIND, NOT FURTHER SPECIFIED
	369.12		BETTER EYE: SEVERE IMPAIRMENT; LESSER EYE: TOTAL IMPAIRMENT
	369.13		BETTER EYE: SEVERE IMPAIRMENT; LESSER EYE: NEAR TOTAL IMPAIRMENT
	369.14		BETTER EYE: SEVERE IMPAIRMENT; LESSER EYE: PROFOUND IMPAIRMENT
	369.15		BETTER EYE: MODERATE IMPAIRMENT; LESSER EYE: BLIND, NOT FURTHER SPECIFIED
	369.16		BETTER EYE: MODERATE IMPAIRMENT; LESSER EYE: TOTAL IMPAIRMENT
	369.17		BETTER EYE: MODERATE IMPAIRMENT; LESSER EYE: NEAR TOTAL IMPAIRMENT
	369.18		BETTER EYE: MODERATE IMPAIRMENT; LESSER EYE: PROFOUND IMPAIRMENT

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	369.20		IMPAIRMENT LEVEL NOT FURTHER SPECIFIED, LOW VISION, BOTH EYES NOS
	369.21		BETTER EYE: SEVERE IMPAIRMENT; LESSER EYE: NOT FURTHER SPECIFIED
	369.22		BETTER EYE: SEVERE IMPAIRMENT; LESSER EYE: SEVERE IMPAIRMENT
	369.23		BETTER EYE: MODERATE IMPAIRMENT; LESSER EYE: NOT FURTHER SPECIFIED
	369.24		BETTER EYE: MODERATE IMPAIRMENT; LESSER EYE: SEVERE IMPAIRMENT
	369.25		BETTER EYE: MODERATE IMPAIRMENT; LESSER EYE: MODERATE IMPAIR
	369.3		BLINDNESS NOS, BOTH EYES
	369.4		LEGAL BLINDNESS-USA DEF
	950		INJURY TO OPTIC NERVE AND PATHWAYS
Blood disorders	281		OTHER DEFICIENCY ANEMIAS
	282		HEREDITARY HEMOLYTIC ANEMIAS
	283		ACQUIRED HEMOLYTIC ANEMIAS
	284		APLASTIC ANEMIA
	285		OTHER AND UNSPECIFIED ANEMIAS
	287		PURPURA&OTHER HEMORRHAGIC CONDS
	288		DISEASES OF WHITE BLOOD CELLS
	289		OTH DISEASES BLD&BLD-FORMING ORGANS
Cancer and selected benign neoplasms	140		MALIGNANT NEOPLASM OF LIP
	141		MALIGNANT NEOPLASM OF TONGUE
	142		MALIG NEOPLASM MAJOR SALIV GLANDS
	143		MALIGNANT NEOPLASM OF GUM
	144		MALIGNANT NEOPLASM FLOOR MOUTH
	145		MALIG NEOPLSM OTH&UNSPEC PART MOUTH
	146		MALIGNANT NEOPLASM OF OROPHARYNX
	147		MALIGNANT NEOPLASM OF NASOPHARYNX
	148		MALIGNANT NEOPLASM OF HYPOPHARYNX
	149		OTH MALIG NEO LIP-MOUTH-PHARYNX
	150		MALIGNANT NEOPLASM OF ESOPHAGUS
	151		MALIGNANT NEOPLASM OF STOMACH
	152		MALIG NEOPLSM SM INTEST INCL DUODUM
	153		MALIGNANT NEOPLASM OF COLON
	154		MAL NEO RECT RECTOSIGMOID JUNC&ANUS
	155		MALIG NEOPLASM LIVER&INTRAHEP BDS
	156		MALIG NEOPLSM GALLBLADD&XTRAHEP BDS
	157		MALIGNANT NEOPLASM OF PANCREAS
	158		MALIG NEOPLASM RETROPERITON&PERITON

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	159		MAL NEO DIGES ORGANS&PANCREAS OTH
	160		MAL NEO NASL CAV/MID EAR&ACSS SINUS
	161		MALIGNANT NEO LARYNX*
	162		MALIGNANT NEO TRACHEA/LUNG*
	163		MALIGNANT NEOPL PLEURA*
	164		MAL NEO THYMUS/MEDIASTIN*
	165		OTH/ILL-DEF MAL NEO RESP*
	170		MALIG NEOPLASM BONE&ARTICLR CART
	171		MALIG NEOPLSM CNCTV&OTH SOFT TISSUE
	172		MALIGNANT MELANOMA OF SKIN
	173		OTHER MALIGNANT NEOPLASM OF SKIN
	174		MALIGNANT NEOPLASM OF FEMALE BREAST
	175		MALIGNANT NEOPLASM OF MALE BREAST
	176		KAPOSIS SARCOMA
	179		MALIG NEOPLASM UTERUS PART UNSPEC
	180		MALIGNANT NEOPLASM OF CERVIX UTERI
	181		MALIGNANT NEOPLASM OF PLACENTA
	182		MALIGNANT NEOPLASM BODY UTERUS
	183		MALIG NEOPLSM OVRY&OTH UTERN ADNEXA
	184		MALIG NEOPLSM OTH&UNS FE GENIT ORGN
	185		MALIGNANT NEOPLASM OF PROSTATE
	186		MALIGNANT NEOPLASM OF TESTIS
	187		MAL NEOPLSM PENIS&OTH MALE GNT ORGN
	188		MALIGNANT NEOPLASM OF BLADDER
	189		MAL NEO KIDNEY&OTH&UNS URIN ORGN
	190		MALIGNANT NEOPLASM OF EYE
	192.0		MALIGNANT NEOPLASM, CRANIAL NERVES
	192.8		MALIGNANT NEOPLASM OTHER NERV SYS
	192.9		MALIGNANT NEOPLASM, UNS PART NERV SYS
	193		MALIGNANT NEOPLASM OF THYROID GLAND
	194		MAL NEO OTH ENDOCRN GLND&REL STRCT
	195		MALIG NEOPLASM OTH&ILL-DEFIND SITES
	196		SEC&UNSPEC MALIG NEOPLASM NODES
	197		SEC MALIG NEOPLASM RESP&DIGESTV SYS
	198		SEC MALIG NEOPLASM OTHER SPEC SITES
	199		MALIG NEOPLASM WITHOUT SPEC SITE
	200		LYMPHOSARCOMA AND RETICULOSARCOMA
	201		HODGKINS DISEASE
	202		OTH MAL NEO LYMPHOID&HISTCYT TISS
	203		MX MYELOMA&IMMUNOPROLIFERAT NEOPLSM
	204		LYMPHOID LEUKEMIA
	205		MYELOID LEUKEMIA
	206		MONOCYTIC LEUKEMIA
	207		OTHER SPECIFIED LEUKEMIA

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	208		LEUKEMIA OF UNSPECIFIED CELL TYPE
	213 except 213.9		BENIGN NEOPLASM OF BONE AND ARTICULAR CARTILAGE
	225.1		BEN NEOPLSM CRANIAL NERVES
	225.8		BEN NEOPLSM OTH SPEC SITES
	230 except 230.9		CARCINOMA IN SITU OF DIGESTIVE ORGANS
	231 except 231.9		CARCINOMA IN SITU OF RESPIRATORY SYSTEM
	232 except 232.9		CARCINOMA IN SITU OF SKIN
	233 except 233.9		CARCINOMA IN SITU OF BREAST AND GENITOURINARY SYSTEM
	234 except 234.9		CARCINOMA IN SITU OF OTHER AND UNSPECIFIED SITES
Diabetes	250		DIABETES MELLITUS
	357.2	M	POLYNEUROPATHY IN DIABETES
	362.01	M	BACKGROUND DIABETIC RETINOPATHY
	362.02	M	PROLIFERATIVE DIABETIC RETINOPATHY
	366.41	M	DIABETIC CATARACT
Dysphagia	787.20		DYSPHAGIA, UNSPECIFIED
	787.21		DYSPHAGIA, ORAL PHASE
	787.22		DYSPHAGIA, OROPHARYNGEAL PHASE
	787.23		DYSPHAGIA, PHARYNGEAL PHASE
	787.24		DYSPHAGIA, PHARYNGOESOPHAGEAL PHASE
	787.29		OTHER DYSPHAGIA
Gait Abnormality	781.2		ABNORM GAIT
Gastrointestinal disorders	002		TYPHOID AND PARATYPHOID FEVERS
	003		OTHER SALMONELLA INFECTIONS
	004		SHIGELLOSIS
	005		OTHER FOOD POISONING
	006		AMEBIASIS
	007		OTHER PROTOZOAL INTESTINAL DISEASES
	008		INTESTINAL INFS DUE OTH ORGANISMS
	009		ILL-DEFINED INTESTINAL INFECTIONS
	530		DISEASES OF ESOPHAGUS
	531		GASTRIC ULCER
	532		DUODENAL ULCER
	533		PEPTIC ULCER, SITE UNSPECIFIED
	534		GASTROJEJUNAL ULCER
	535		GASTRITIS AND DUODENITIS

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	536		DISORDERS OF FUNCTION OF STOMACH
	537		OTHER DISORDERS OF STOMACH&DUODENUM
	540		ACUTE APPENDICITIS
	541		APPENDICITIS, UNQUALIFIED
	542		OTHER APPENDICITIS
	543		OTHER DISEASES OF APPENDIX
	555		REGIONAL ENTERITIS
	556		ULCERATIVE COLITIS
	557		VASCULAR INSUFFICIENCY OF INTESTINE
	558		OTH NONINF GASTROENTERITIS&COLITIS
	560		INTEST OBST W/O MENTION HERN
	562		DIVERTICULA OF INTESTINE
	564 except 564.0x and 564.9		FUNCTIONAL DIGESTIVE DISORDERS, NOT ELSEWHERE CLASSIFIED
	567.0	M	PERITONITIS IN INFEC DIS CLASS ELSEWH
	567.1		PNEUMOCOCCAL PERITONITIS
	567.21		PERITONITIS (ACUTE) GENERALIZED
	567.22		PERITONEAL ABSCESS
	567.23		SPONTANEOUS BACTERIAL PERITONITIS
	567.29		OTHER SUPPURATIVE PERITONITIS
	567.31		PSOAS MUSCLE ABSCESS
	567.38		OTHER RETROPERITONEAL ABSCESS
	567.39		OTHER RETROPERITONEAL INFECTIONS
	567.81		CHOLEPERITONITIS
	567.82		SCLEROSING MESENTERITIS
	567.89		OTHER SPECIFIED PERITONITIS
	567.9		UNSPECIFIED PERITONITIS
	568		OTHER DISORDERS OF PERITONEUM
	569 except 569.9		OTHER DISORDERS OF INTESTINE
	570		ACUTE&SUBACUTE NECROSIS OF LIVER

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	571		CHRONIC LIVER DISEASE AND CIRRHOSIS
	572		LIVER ABSC&SEQUELAE CHRON LIVR DZ
	573.0		CHRONIC PASSIVE CONGESTION OF LIVER
	573.1	M	HEPATITIS IN VIRAL DISEASES CLASS ELSW
	573.2	M	HEPATITIS IN INFEC DISEASES CLASS ELSW
	573.3		HEPATITIS, UNSPECIFIED
	573.4		HEPATIC INFARCTION
	573.8		OTHER SPECIFIED DISORDERS OF LIVER
	573.9		UNSPECIFIED DISORDER OF LIVER
	574		CHOLELITHIASIS
	575		OTHER DISORDERS OF GALLBLADDER
	576		OTHER DISORDERS OF BILIARY TRACT
	577		DISEASES OF PANCREAS
	578		GASTROINTESTINAL HEMORRHAGE
	579		INTESTINAL MALABSORPTION
	783.21		ABNORMAL LOSS OF WEIGHT
	783.22		ABNORMAL UNDERWEIGHT
Heart Disease	411		OTH AC&SUBAC FORMS ISCHEMIC HRT DZ
	410.02		AMI ANTEROLATERAL,SUBSEQ
	410.12		AMI ANTERIOR WALL,SUBSEQ
	410.22		AMI INFEROLATERAL,SUBSEQ
	410.32		AMI INFEROPOST, SUBSEQ
	410.42		AMI INFERIOR WALL,SUBSEQ
	410.52		AMI LATERAL NEC, SUBSEQ
	410.62		TRUE POST INFARCT,SUBSEQ
	410.72		SUBENDO INFARCT, SUBSEQ
	410.82		AMI NEC, SUBSEQUENT
	410.92		AMI NOS, SUBSEQUENT
	414 except 414.9		OTHER FORMS OF CHRONIC ISCHEMIC HEART DISEASE
	428		HEART FAILURE
Hypertension	401.0		ESSENTIAL HYPERTENSION - MALIGNANT
	401.1		BENIGN HYPERTENSION
	401.9		HYPERTENSION, UNSPECIFIED
	402.00		MAL HYP HT DIS W/O HF
	402.01		MAL HYPERT HRT DIS W HF

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	402.10		BENIGN HYPERT HRT DIS W/O HF
	402.11		BENIGN HYP HT DIS W HF
	402.90		UNSPECIFIED HYPERT HRT DIS W/O HF
	402.91		HYP HT DIS NOS W HT FAIL
	403		HYPERTENSIVE RENAL DISEASE
	404		HYPERTENSIVE HEART&RENAL DISEASE
	405		SECONDARY HYPERTENSION
Neuro 1 - Brain disorders and paralysis	013		TB MENINGES&CNTRL NERV SYS
	046		SLOW VIRUS INFECTION CNTRL NERV SYS
	047		MENINGITIS DUE TO ENTEROVIRUS
	048		OTH ENTEROVIRUS DZ CNTRL NERV SYS
	049		OTH NON-ARTHROPOD BORNE VIRL DX-CNS
	191		MALIGNANT NEOPLASM OF BRAIN
	192.2		MALIG NEOPLSM SPINAL CORD
	192.3		MALIG NEOPLSM SPINAL MENINGES
	225.0		BEN NEOPLSM BRAIN
	225.2		BEN NEOPLSM BRAIN MENINGES
	225.3		BEN NEOPLSM SPINAL CORD
	225.4		BEN NEOPLSM SPINAL CORD MENINGES
	320.0		HEMOPHILUS MENINGITIS
	320.1		PNEUMOCOCCAL MENINGITIS
	320.2		STREPTOCOCCAL MENINGITIS
	320.3		STAPHYLOCOCCAL MENINGITIS
	320.7	M	MENINGITIS OTH BACT DZ CLASS ELSW
	320.81		ANAEROBIC MENINGITIS
	320.82		MENINGITIS DUE GM-NEG BACTER NEC
	320.89		MENINGITIS DUE OTHER SPEC BACTERIA
	320.9		MENINGITIS DUE UNSPEC BACTERIUM
	321.0	M	CRYPTOCOCCAL MENINGITIS
	321.1	M	MENINGITIS IN OTHER FUNGAL DISEASES
	321.2	M	MENINGITIS DUE TO VIRUSES NEC
	321.3	M	MENINGITIS DUE TO TRYPANOSOMIASIS
	321.4	M	MENINGITIS IN SARCOIDOSIS
	321.8		MENINGITIS-OTH NONBCTRL ORGNISMS CE
	322		MENINGITIS OF UNSPECIFIED CAUSE
	323.01	M	ENCEPHALITIS & ENCEPHALOMYELITIS IN VIRAL DIS CLASS ELSW
	323.02	*M*	MYELITIS IN VIRAL DISEASES CLASSIFIED ELSEWHERE
	323.1	M	ENCEPHALIT RICKETTS DZ CLASS ELSW
	323.2	M	ENCEPHALIT PROTOZOAL DZ CLASS ELSW

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	323.41	M	OTH ENCEPHALITIS AND ENCEPHALOMYELITIS DUE TO INF CLASS ELSW
	323.42	M	OTHER MYELITIS DUE TO INFECTION CLASSIFIED ELSEWHERE
	323.51		ENCEPH/MYEL FOLWG IMMUNE
	323.52		MYELITIS FOLLWG IMMUNE
	323.61	*M*	INFEC ACUTE DISSEM ENCEPHALOMYELITIS (ADEM)
	323.62	M	OTH POSTINFECTIOUS ENCEPHALITIS & ENCEPHALOMYELITIS
	323.63	M	POSTINFECTIOUS MYELITIS
	323.71	M	TOXIC ENCEPHALITIS AND ENCEPHALOMYELITIS
	323.72	*M*	TOXIC MYELITIS
	323.81		OTHER CAUSES OF ENCEPHALITIS AND ENCEPHALOMYELITIS
	323.82		OTHER CAUSES OF MYELITIS
	323.9		ENCEPHALITIS NOS
	324		INTRACRANIAL&INTRASPINAL ABSCESS
	325		PHLEBIT&THRMBOPHLB INTRACRAN VENUS
	326		LATE EFF INTRACRAN ABSC/PYOGEN INF
	330.0		LEUKODYSTROPHY
	330.1		CEREBRAL LIPIDOSES
	330.2	M	CEREB DEGEN IN LIPIDOSIS
	330.3	M	CERB DEG CHLD IN OTH DIS
	330.8		CEREB DEGEN IN CHILD NEC
	330.9		CEREB DEGEN IN CHILD NOS
	334.1		HERED SPASTIC PARAPLEGIA
	335		ANTERIOR HORN CELL DISEASE
	336.0		SYRINGOMYELIA AND SYRINGOBULBIA
	336.1		VASCULAR MYELOPATHIES
	336.2	M	SUBACUTE COMB DEGEN SPINL CRD DZ CE
	336.3	M	MYELOPATHY OTH DISEASES CLASS ELSW
	336.8		OTHER MYELOPATHY
	337.3		AUTONOMIC DYSREFLEXIA
	344.00		QUADRIPLEGIA, UNSPECIFIED
	344.01		QUADRIPLEGIA, C1-C4, COMPLETE
	344.02		QUADRIPLEGIA, C1-C4, INCOMPLETE
	344.03		QUADRIPLEGIA, C5-C7, COMPLETE
	344.04		QUADRIPLEGIA, C5-C7, INCOMPLETE
	344.09		QUADRIPLEGIA, OTHER
	344.1		PARAPLEGIA

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	344.81		OTHER SPECIFIED PARALYTIC SYNDROMES - LOCKED-IN STATE
	344.89		OTHER SPECIFIED PARALYTIC SYNDROMES - OTHER SPECIFIED PARALYTIC SYNDROME
	348		OTHER CONDITIONS OF BRAIN
	349.82		TOXIC ENCEPHALOPATHY
	741		SPINA BIFIDA
	780.01		COMA
	780.03		PERSISTENT VEGETATIVE STATE
	806		FX VERT COLUMN W/SPINAL CORD INJURY
	851		CEREBRAL LACERATION AND CONTUSION
	852		SUBARACH SUB&XTRADURL HEMOR FLW INJ
	853		OTH&UNS INTRACRAN HEMOR FLW INJURY
	854		INTRACRAN INJURY OTH&UNSPEC NATURE
	907		LATE EFFECTS INJURIES NERVOUS SYS
	952		SP CRD INJR W/O EVIDENCE SP BN INJR
Neuro 2 - Peripheral neurological disorders	138		LATE EFFECT ACUTE POLIO
	332		PARKINSONS DISEASE
	333		OTH XTRAPYRAMIDAL DZ&ABN MOVMNT D/O
	334.0		FRIEDREICH'S ATAXIA
	334.2		PRIMARY CEREBELLAR DEGEN
	334.3		CEREBELLAR ATAXIA NEC
	334.4	M	CEREBEL ATAX IN OTH DIS
	334.8		SPINOCEREBELLAR DIS NEC
	337.0		IDIOPATH PERIPH AUTONOM NEUROPATHY
	337.1	M	PRIPHERL AUTONOMIC NEUROPTHY D/O CE
	337.20		UNSPEC REFLEX SYMPATHETIC DYSTROPHY
	337.21		REFLX SYMPATHET DYSTROPHY UP LIMB
	337.22		REFLX SYMPATHET DYSTROPHY LOW LIMB

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	337.29		REFLX SYMPATHET DYSTROPHY OTH SITE
	337.9		UNSPEC DISORDER AUTONOM NERV SYSTEM
	343		INFANTILE CEREBRAL PALSY
	344.2		DIPLEGIA OF BOTH UPPER LIMBS
	352		DISORDERS OF OTHER CRANIAL NERVES
	353.0		BRACHIAL PLEXUS LESION
	353.1		LUMBOSACRAL PLEXUS LESION
	353.5		NEURALGIC AMYLOTROPHY
	354.5		MONONEURITIS MULTIPLEX
	355.2		OTHER LESION OF FEMORAL NERVE
	355.9		LESION OF SCIATIC NERVE
	356		HEREDIT&IDIOPATH PERIPH NEUROPATHY
	357.0		ACUTE INFECTIVE POLYNEURITIS
	357.1	M	POLYNEUROPATHY COLL VASC DISEASE
	357.3	M	POLYNEUROPATHY IN MALIGNANT DISEASE
	357.4	M	POLYNEUROPATHY OTH DZ CLASS ELSW
	357.5		ALCOHOLIC POLYNEUROPATHY
	357.6		POLYNEUROPATHY DUE TO DRUGS
	357.7		POLYNEUROPATHY DUE OTH TOXIC AGENTS
	357.81		CHRONIC INFLAMMATORY DEMYELINATING POLYNEURITIS
	357.82		CRIT ILLNESS NEUROPATHY
	357.89		INFLAM/TOX NEUROPATHY

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	358.00		MYASTHENIA GRAVIS W/O ACUTE
	358.01		MYASTHENIA GRAVIS W/ACUTE
	358.1	M	MYASTHENIC SYNDROMES DZ CLASS ELSW
	358.2		TOXIC MYONEURAL DISORDERS
	359.0		CONGEN HEREDIT MUSCULAR DYSTROPHY
	359.1		HEREDITARY PROGRESSIVE MUSC DYSTROPH
	359.3		PERIODIC PARALYSIS
	359.4		TOXIC MYOPATHY
	359.5	M	MYOPATHY ENDOCRINE DZ CLASS ELSW
	359.6	M	SX INFLAM MYOPATHY DZ CLASS ELSW
	359.81		CRITICAL ILLNESS MYOPATHY
	359.89		OTHER MYOPATHIES
	386.00		MÉNIÉRE'S DISEASE, UNSPECIFIED, MÉNIÉRE'S DISEASE (ACTIVE)
	386.01		ACTIVE MÉNIÉRE'S DISEASE, COCHLEOVESTIBULAR
	386.02		ACTIVE MÉNIÉRE'S DISEASE, COCHLEAR
	386.03		ACTIVE MÉNIÉRE'S DISEASE, VESTIBULAR
	386.2		VERTIGO OF CENTRAL ORIGIN
	386.30		LABYRINTHITIS, UNSPECIFIED
	386.31		SEROUS LABYRINTHITIS, DIFFUSE LABYRINTHITIS
	386.32		CIRCUMSCRIBED LABYRINTHITIS, FOCAL LABYRINTHITIS
	386.33		SUPPURATIVE LABYRINTHITIS, PURULENT LABYRINTHITIS
	386.34		TOXIC LABYRINTHITIS
	386.35		VIRAL LABYRINTHITIS

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names			
Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	392		RHEUMATIC CHOREA
	953		INJURY TO NERVE ROOTS&SPINAL PLEXUS
	954		INJR OTH NRV TRNK NO SHLDR&PLV GIRD
	955.8		INJR PERIPH NRV SHLDR GIRDL&UP LIMB
	956.0		INJR TO SCIATIC NERVE
	956.1		INJ TO FEMORAL NERVE
	956.8		INJR TO MULTIPLE PELVIC AND LE NERVES
Neuro 3 - Stroke	342		HEMIPLEGIA AND HEMIPARESIS
	344.30		MONOPLEGIA OF LOWER LIMB, AFFECTING UNSPECIFIED SIDE
	344.31		MONOPLEGIA OF LOWER LIMB, AFFECTING DOMINANT SIDE
	344.32		MONOPLEGIA OF LOWER LIMB, AFFECTING NONDOMINANT SIDE
	344.40		MONOPLEGIA OF UPPER LIMB, AFFECTING UNSPECIFIED SIDE
	344.41		MONOPLEGIA OF UPPER LIMB, AFFECTING DOMINANT SIDE
	344.42		MONOPLEGIA OF UPPER LIMB, AFFECTING NONDOMINANT SIDE
	344.60		CAUDA EQUINA SYNDROME, WITHOUT MENTION OF NEUROGENIC BLADDER
	344.61		CAUDA EQUINA SYNDROME, WITH NEUROGENIC BLADDER
	438		LATE EFF CEREBROVASCULAR DZ
	781.8		NEURO NEGLECT SYNDROME
Neuro 4 - Multiple Sclerosis	340		MULTIPLE SCLEROSIS
	341.0		NEUROMYELITIS OPTICA
	341.1		SCHILDER'S DISEASE
	341.20		ACUTE (TRANSVERSE) MYELITIS NOS
	341.21	M	ACUTE (TRANSVERSE) MYELITIS IN CONDITIONS CLASSIFIED ELSEWHERE
	341.22		IDIOPATHIC TRANSVERSE MYELITIS
	341.8		OTHER DEMYELINATING DISEASES OF CENTRAL NERVOUS SYSTEM

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	341.9		DEMYELINATING DISEASE OF CENTRAL NERVOUS SYSTEM, UNSPECIFIED
Ortho 1 - Leg Disorders	711.05		PYOGEN ARTHRITIS-PELVIS
	711.06		PYOGEN ARTHRITIS-L/LEG
	711.07		PYOGEN ARTHRITIS-ANKLE
	711.15	M	REITER ARTHRITIS-PELVIS
	711.16	M	REITER ARTHRITIS-L/LEG
	711.17	M	REITER ARTHRITIS-ANKLE
	711.25	M	BEHCET ARTHRITIS-PELVIS
	711.26	M	BEHCET ARTHRITIS-L/LEG
	711.27	M	BEHCET ARTHRITIS-ANKLE
	711.35	M	DYSENTER ARTHRIT-PELVIS
	711.36	M	DYSENTER ARTHRIT-L/LEG
	711.37	M	DYSENTER ARTHRIT-ANKLE
	711.45	M	BACT ARTHRITIS-PELVIS
	711.46	M	BACT ARTHRITIS-L/LEG
	711.47	M	BACT ARTHRITIS-ANKLE
	711.55	M	VIRAL ARTHRITIS-PELVIS
	711.56	M	VIRAL ARTHRITIS-L/LEG
	711.57	M	VIRAL ARTHRITIS-ANKLE
	711.65	M	MYCOTIC ARTHRITIS-PELVI
	711.66	M	MYCOTIC ARTHRITIS-L/LEG
	711.67	M	MYCOTIC ARTHRITIS-ANKLE
	711.75	M	HELMINTH ARTHRIT-PELVIS
	711.76	M	HELMINTH ARTHRIT-L/LEG
	711.77	M	HELMINTH ARTHRIT-ANKLE
	711.85	M	INF ARTHRITIS NEC-PELVI
	711.86	M	INF ARTHRITIS NEC-L/LEG
	711.87	M	INF ARTHRITIS NEC-ANKLE
	711.95		INF ARTHRIT NOS-PELVIS
	711.96		INF ARTHRIT NOS-L/LEG
	711.97		INF ARTHRIT NOS-ANKLE
	712.15	M	DICALC PHOS CRYST-PELVI
	712.16	M	DICALC PHOS CRYST-L/LEG
	712.17	M	DICALC PHOS CRYST-ANKLE
	712.25	M	PYROPHOSPH CRYST-PELVIS
	712.26	M	PYROPHOSPH CRYST-L/LEG
	712.27	M	PYROPHOSPH CRYST-ANKLE
	712.35	M	CHONDROCALCIN NOS-PELVI
	712.36	M	CHONDROCALCIN NOS-L/LEG
	712.37	M	CHONDROCALCIN NOS-ANKLE
	712.85		CRYST ARTHROP NEC-PELVI
	712.86		CRYST ARTHROP NEC-L/LEG
	712.87		CRYST ARTHROP NEC-ANKLE
	716.05		KASCHIN-BECK DIS-PELVIS

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	716.06		KASCHIN-BECK DIS-L/LEG
	716.07		KASCHIN-BECK DIS-ANKLE
	716.15		TRAUM ARTHROPATHY-PELVIS
	716.16		TRAUM ARTHROPATHY-L/LEG
	716.17		TRAUM ARTHROPATHY-ANKLE
	716.25		ALLERG ARTHRITIS-PELVIS
	716.26		ALLERG ARTHRITIS-L/LEG
	716.27		ALLERG ARTHRITIS-ANKLE
	716.35		CLIMACT ARTHRITIS-PELVIS
	716.36		CLIMACT ARTHRITIS-L/LEG
	716.37		CLIMACT ARTHRITIS-ANKLE
	716.45		TRANS ARTHROPATHY-PELVIS
	716.46		TRANS ARTHROPATHY-L/LEG
	716.47		TRANS ARTHROPATHY-ANKLE
	716.85		ARTHROPATHY NEC-PELVIS
	716.86		ARTHROPATHY NEC-L/LEG
	716.87		ARTHROPATHY NEC-ANKLE
	717		INTERNAL DERANGEMENT OF KNEE
	718.05		ART CARTIL DISORDER PELVIS AND THIGH
	718.07		ART CARTIL DIS ANKLE FOOT
	718.15		LOOSE BODY-PELVIS
	718.17		LOOSE BODY-ANKLE
	718.25		PATHOLOGIC DISLOCATION PELVIS AND THIGH
	718.26		PATHOLOGIC DISLOCATION LOWER LEG
	718.27		PATHOLOGIC DISLOCATION ANKLE FOOT
	718.35		RECURRENT DISLOCATION PELVIS AND THIGH
	718.36		RECURRENT DISLOCATION LOW LEG
	718.37		RECURRENT DISLOCATION ANKLE FOOT
	718.45		CONTRACTURE PELVIS AND THIGH
	718.46		CONTRACTURE LOWER LEG
	718.47		CONTRACTURE OF JOINT ANKLE FOOT
	718.55		ANKYLOSIS OF PELVIS AND THIGH
	718.56		ANKYLOSIS OF LOWER LEG
	718.57		ANKYLOSIS OF JOINT ANKLE FOOT
	718.75		DEVELOPMENTAL DISLOCATION OF JOINT -PELVIC REGION AND THIGH

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	718.76		DEVELOPMENTAL DISLOCATION OF JOINT -LOWER LEG
	718.77		DEVELOPMENTAL DISLOCATION OF JOINT -ANKLE AND FOOT
	719.15		HEMARTHROSIS PELVIS AND THIGH
	719.16		HEMARTHROSIS LOWER LEG
	719.17		HEMARTHROSIS ANKLE AND FOOT
	719.25		VILLONODULAR SYNOVITIS PELVIS AND THIGH
	719.26		VILLONODULAR SYNOVITIS LOWER LEG
	719.27		VILLONODULAR SYNOVITIS ANKLE AND FOOT
	719.35		PALANDROMIC RHEUMATISM PELVIS AND THIGH
	719.36		PALANDROMIC RHEUMATISM LOWER LEG
	719.37		PALANDROMIC RHEUMATISM ANKLE AND FOOT
	727.65		RUPTURE OF TENDON QUADRACEPS
	727.66		RUPTURE OF TENDON PATELLAR
	727.67		RUPTURE OF TENDON ACHILLES
	727.68		RUPTURE OTHER TENDONS FOOT AND ANKLE
	730.05		AC OSTEOMYELITIS-PELVIS
	730.06		AC OSTEOMYELITIS-L/LEG
	730.07		AC OSTEOMYELITIS-ANKLE
	730.15		CHR OSTEOMYELIT-PELVIS
	730.16		CHR OSTEOMYELIT-L/LEG
	730.17		CHR OSTEOMYELIT-ANKLE
	730.25		OSTEOMYELITIS NOS-PELVI
	730.26		OSTEOMYELITIS NOS-L/LEG
	730.27		OSTEOMYELITIS NOS-ANKLE
	730.35		PERIOSTITIS-PELVIS
	730.36		PERIOSTITIS-L/LEG
	730.37		PERIOSTITIS-ANKLE
	730.75	M	POLIO OSTEOPATHY-PELVIS
	730.76	M	POLIO OSTEOPATHY-L/LEG
	730.77	M	POLIO OSTEOPATHY-ANKLE
	730.85	M	BONE INFECT NEC-PELVIS
	730.86	M	BONE INFECT NEC-L/LEG
	730.87	M	BONE INFECT NEC-ANKLE
	730.95		BONE INFECT NOS-PELVIS

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names			
Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	730.96		BONE INFECT NOS-L/LEG
	730.97		BONE INFECT NOS-ANKLE
	733.14		PATHOLOGIC FRACTURE OF NECK OF FEMUR
	733.15		PATHOLOGIC FRACTURE OF FEMUR
	733.16		PATHOLOGIC FRACTURE OF TIBIA OR FIBULA
	733.42		ASEPTIC NECROSIS OF HEAD AND NECK OF FEMUR
	733.43		ASEPTIC NECROSIS OF MEDIAL FEMORAL CONDYLE
	808		FRACTURE OF PELVIS
	820		FRACTURE OF NECK OF FEMUR
	821		FRACTURE OTHER&UNSPEC PARTS FEMUR
	822		FRACTURE OF PATELLA
	823		FRACTURE OF TIBIA AND FIBULA
	824		FRACTURE OF ANKLE
	825		FRACTURE 1/MORE TARSAL&MT BNS
	827		OTH MX&ILL-DEFINED FX LOWER LIMB
	828		MX FX LEGS-LEG W/ARM-LEGS W/RIBS
	835		DISLOCATION OF HIP
	836		DISLOCATION OF KNEE
	897		TRAUMATIC AMPUTATION OF LEG
	928		CRUSHING INJURY OF LOWER LIMB
Ortho 2 - Other Orthopedic disorders	711.01		PYOGEN ARTHRITIS-SHLDER
	711.02		PYOGEN ARTHRITIS-UP/ARM
	711.03		PYOGEN ARTHRITIS-FOREAR
	711.04		PYOGEN ARTHRITIS-HAND
	711.08		PYOGEN ARTHRITIS NEC
	711.09		PYOGEN ARTHRITIS-MULT
	711.10	M	REITER ARTHRITIS-UNSPEC
	711.11	M	REITER ARTHRITIS-SHLDER
	711.12	M	REITER ARTHRITIS-UP/ARM
	711.13	M	REITER ARTHRITIS-FOREAR
	711.14	M	REITER ARTHRITIS-HAND
	711.18	M	REITER ARTHRITIS NEC
	711.19	M	REITER ARTHRITIS-MULT
	711.20	M	BEHCET ARTHRITIS-UNSPEC
	711.21	M	BEHCET ARTHRITIS-SHLDER
	711.22	M	BEHCET ARTHRITIS-UP/ARM
	711.23	M	BEHCET ARTHRITIS-FOREAR
	711.24	M	BEHCET ARTHRITIS-HAND
	711.28	M	BEHCET ARTHRITIS NEC

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	711.29	M	BEHCET ARTHRITIS-MULT
	711.30	M	DYSENTER ARTHRIT-UNSPEC
	711.31	M	DYSENTER ARTHRIT-SHLDER
	711.32	M	DYSENTER ARTHRIT-UP/ARM
	711.33	M	DYSENTER ARTHRIT-FOREAR
	711.34	M	DYSENTER ARTHRIT-HAND
	711.38	M	DYSENTER ARTHRIT NEC
	711.39	M	DYSENTER ARTHRIT-MULT
	711.40	M	BACT ARTHRITIS-UNSPEC
	711.41	M	BACT ARTHRITIS-SHLDER
	711.42	M	BACT ARTHRITIS-UP/ARM
	711.43	M	BACT ARTHRITIS-FOREARM
	711.44	M	BACT ARTHRITIS-HAND
	711.48	M	BACT ARTHRITIS NEC
	711.49	M	BACT ARTHRITIS-MULT
	711.50	M	VIRAL ARTHRITIS-UNSPEC
	711.51	M	VIRAL ARTHRITIS-SHLDER
	711.52	M	VIRAL ARTHRITIS-UP/ARM
	711.53	M	VIRAL ARTHRITIS-FOREARM
	711.54	M	VIRAL ARTHRITIS-HAND
	711.58	M	VIRAL ARTHRITIS NEC
	711.59	M	VIRAL ARTHRITIS-MULT
	711.60	M	MYCOTIC ARTHRITIS-UNSPE
	711.61	M	MYCOTIC ARTHRITIS-SHLDE
	711.62	M	MYCOTIC ARTHRITIS-UP/AR
	711.63	M	MYCOTIC ARTHRIT-FOREARM
	711.64	M	MYCOTIC ARTHRITIS-HAND
	711.68	M	MYCOTIC ARTHRITIS NEC
	711.69	M	MYCOTIC ARTHRITIS-MULT
	711.70	M	HELMINTH ARTHRIT-UNSPEC
	711.71	M	HELMINTH ARTHRIT-SHLDER
	711.72	M	HELMINTH ARTHRIT-UP/ARM
	711.73	M	HELMINTH ARTHRIT-FOREAR
	711.74	M	HELMINTH ARTHRIT-HAND
	711.78	M	HELMINTH ARTHRIT NEC
	711.79	M	HELMINTH ARTHRIT-MULT
	711.80	M	INF ARTHRITIS NEC-UNSPE
	711.81	M	INF ARTHRITIS NEC-SHLDE
	711.82	M	INF ARTHRITIS NEC-UP/AR
	711.83	M	INF ARTHRIT NEC-FOREARM
	711.84	M	INF ARTHRITIS NEC-HAND
	711.88	M	INF ARTHRIT NEC-OTH SIT
	711.89	M	INF ARTHRITIS NEC-MULT
	711.90		INF ARTHRITIS NOS-UNSPE
	711.91		INF ARTHRITIS NOS-SHLDE

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	711.92		INF ARTHRITIS NOS-UP/AR
	711.93		INF ARTHRIT NOS-FOREARM
	711.94		INF ARTHRIT NOS-HAND
	711.98		INF ARTHRIT NOS-OTH SIT
	711.99		INF ARTHRITIS NOS-MULT
	712.10	M	DICALC PHOS CRYST-UNSPE
	712.11	M	DICALC PHOS CRYST-SHLDE
	712.12	M	DICALC PHOS CRYST-UP/AR
	712.13	M	DICALC PHOS CRYS-FOREAR
	712.14	M	DICALC PHOS CRYST-HAND
	712.18	M	DICALC PHOS CRY-SITE NE
	712.19	M	DICALC PHOS CRYST-MULT
	712.20	M	PYROPHOSPH CRYST-UNSPEC
	712.21	M	PYROPHOSPH CRYST-SHLDER
	712.22	M	PYROPHOSPH CRYST-UP/ARM
	712.23	M	PYROPHOSPH CRYST-FOREAR
	712.24	M	PYROPHOSPH CRYST-HAND
	712.28	M	PYROPHOS CRYST-SITE NEC
	712.29	M	PYROPHOS CRYST-MULT
	712.30	M	CHONDROCALCIN NOS-UNSPE
	712.31	M	CHONDROCALCIN NOS-SHLDE
	712.32	M	CHONDROCALCIN NOS-UP/AR
	712.33	M	CHONDROCALC NOS-FOREARM
	712.34	M	CHONDROCALCIN NOS-HAND
	712.38	M	CHONDROCALC NOS-OTH SIT
	712.39	M	CHONDROCALCIN NOS-MULT
	712.80		CRYST ARTHROP NEC-UNSPE
	712.81		CRYST ARTHROP NEC-SHLDE
	712.82		CRYST ARTHROP NEC-UP/AR
	712.83		CRYS ARTHROP NEC-FOREAR
	712.84		CRYST ARTHROP NEC-HAND
	712.88		CRY ARTHROP NEC-OTH SIT
	712.89		CRYST ARTHROP NEC-MULT
	713.0	M	ARTHROP W ENDOCR/MET DI
	713.1	M	ARTHROP W NONINF GI DIS
	713.2	M	ARTHROPATH W HEMATOL DI
	713.3	M	ARTHROPATHY W SKIN DIS
	713.4	M	ARTHROPATHY W RESP DIS
	713.5	M	ARTHROPATHY W NERVE DIS
	713.6	M	ARTHROP W HYPERSEN REAC
	713.7	M	ARTHROP W SYSTEM DIS NE
	713.8	M	ARTHROP W OTH DIS NEC
	714		RA&OTH INFLAM POLYARTHROPATHIES
	715.15		OSTEOARTHROSIS, LOCALIZED, PRIMARY, PELVIS AND THIGH

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	715.16		OSTEOARTHROSIS, LOCALIZED, PRIMARY, LOWER LEG
	715.25		OSTEOARTHROSIS, LOCALIZED, SECONDARY, PELVIS AND THIGH
	715.26		OSTEOARTHROSIS, LOCALIZED, SECONDARY, LOWER LEG
	715.35		OSTEOARTHROSIS, LOCALIZED, NOT SPEC PRIMARY OR SECONDARY, PELVIS AND THIGH
	715.36		OSTEOARTHROSIS, LOCALIZED, NOT SPEC PRIMARY OR SECONDARY, LOWER LEG
	715.95		OSTEOARTHROSIS, UNSPECIFIED, PELVIS AND THIGH
	715.96		OSTEOARTHROSIS, UNSPECIFIED, LOWER LEG
	716.00		KASCHIN-BECK DIS-UNSPEC
	716.01		KASCHIN-BECK DIS-SHLDER
	716.02		KASCHIN-BECK DIS-UP/ARM
	716.03		KASCHIN-BECK DIS-FOREARM
	716.04		KASCHIN-BECK DIS-HAND
	716.08		KASCHIN-BECK DIS NEC
	716.09		KASCHIN-BECK DIS-MULT
	716.10		TRAUM ARTHROPATHY-UNSPEC
	716.11		TRAUM ARTHROPATHY-SHLDER
	716.12		TRAUM ARTHROPATHY-UP/ARM
	716.13		TRAUM ARTHROPATH-FOREARM
	716.14		TRAUM ARTHROPATHY-HAND
	716.18		TRAUM ARTHROPATHY NEC
	716.19		TRAUM ARTHROPATHY-MULT
	716.20		ALLERG ARTHRITIS-UNSPEC
	716.21		ALLERG ARTHRITIS-SHLDER
	716.22		ALLERG ARTHRITIS-UP/ARM
	716.23		ALLERG ARTHRITIS-FOREARM
	716.24		ALLERG ARTHRITIS-HAND
	716.28		ALLERG ARTHRITIS NEC
	716.29		ALLERG ARTHRITIS-MULT
	716.30		CLIMACT ARTHRITIS-UNSPEC
	716.31		CLIMACT ARTHRITIS-SHLDER
	716.32		CLIMACT ARTHRITIS-UP/ARM
	716.33		CLIMACT ARTHRIT-FOREARM
	716.34		CLIMACT ARTHRITIS-HAND
	716.38		CLIMACT ARTHRITIS NEC
	716.39		CLIMACT ARTHRITIS-MULT
	716.40		TRANS ARTHROPATHY-UNSPEC
	716.41		TRANS ARTHROPATHY-SHLDER
	716.42		TRANS ARTHROPATHY-UP/ARM

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	716.43		TRANS ARTHROPATH-FOREARM
	716.44		TRANS ARTHROPATHY-HAND
	716.48		TRANS ARTHROPATHY NEC
	716.49		TRANS ARTHROPATHY-MULT
	716.80		ARTHROPATHY NEC-UNSPEC
	716.81		ARTHROPATHY NEC-SHLDER
	716.82		ARTHROPATHY NEC-UP/ARM
	716.83		ARTHROPATHY NEC-FOREARM
	716.84		ARTHROPATHY NEC-HAND
	716.88		ARTHROPATHY NEC-OTH SITE
	716.89		ARTHROPATHY NEC-MULT
	718.01		ART CARTIL DISORDER SHOULDER
	718.02		ART CARTIL DIS UPPER ARM
	718.03		ART CARTIL DIS FOREARM
	718.04		ART CARTIL DIS HAND
	718.08		ART CART DIS OTH SITES
	718.09		ART CART DIS MULT
	718.10		LOOSE BODY-UNSPEC
	718.11		LOOSE BODY-SHLDER
	718.12		LOOSE BODY-UP/ARM
	718.13		LOOSE BODY-FOREARM
	718.14		LOOSE BODY-HAND
	718.18		LOOSE BODY-JOINT NEC
	718.19		LOOSE BODY-MULT JOINTS
	718.20		PATHOLOGIC DISLOCATION UNSPEC SITE
	718.21		PATHOLOGIC DISLOCATION SHOULDER
	718.22		PATHOLOGIC DISLOCATION UPPER ARM
	718.23		PATHOLOGIC DISLOCATION FOREARM
	718.24		PATHOLOGIC DISLOCATION HAND
	718.28		PATHOLOGIC DISLOCATION OTH LOC
	718.29		PATHOLOGIC DISLOCATION MULT LOC
	718.30		RECURRENT DISLOCATION UNSPEC SITE

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	718.31		RECURRENT DISLOCATION SHOULDER
	718.32		RECURRENT DISLOCATION UPPER ARM
	718.33		RECURRENT DISLOCATION FOREARM
	718.34		RECURRENT DISLOCATION HAND
	718.38		RECURRENT DISLOCATION OTH LOC
	718.39		RECURRENT DISLOCATION MULT LOC
	718.40		CONTRACTURE OF JOINT UNSPEC SITE
	718.41		CONTRACTURE SHOULDER
	718.42		CONTRACTURE OF JOINT UPPER ARM
	718.43		CONTRACTURE OF JOINT FOREARM
	718.44		CONTRACTURE OF JOINT HAND
	718.48		CONTRACTURE OF JOINT OTH LOC
	718.49		CONTRACTURE OF JOINT MULT LOC
	718.50		ANKYLOSIS OF JOINT UNSPEC SITE
	718.51		ANKYLOSIS OF SHOULDER
	718.52		ANKYLOSIS OF JOINT UPPER ARM
	718.53		ANKYLOSIS OF JOINT FOREARM
	718.54		ANKYLOSIS OF JOINT HAND
	718.58		ANKYLOSIS OF JOINT OTH LOC
	718.59		ANKYLOSIS OF JOINT MULT LOC
	718.60		UNSPED 'INTRAPELVIC PROTRUSION ACETAB
	718.70		DEVELOPMENTAL DISLOCATION OF JOINT -SITE UNSPECIFIED
	718.71		DEVELOPMENTAL DISLOCATION OF JOINT -SHOULDER REGION
	718.72		DEVELOPMENTAL DISLOCATION OF JOINT -UPPER ARM
	718.73		DEVELOPMENTAL DISLOCATION OF JOINT -FOREARM
	718.74		DEVELOPMENTAL DISLOCATION OF JOINT -HAND
	718.78		DEVELOPMENTAL DISLOCATION OF JOINT -OTHER SPECIFIED SITES
	718.79		DEVELOPMENTAL DISLOCATION OF JOINT -MULTIPLE SITES
	719.10		HEMARTHROSIS UNSPECIFIED SITE
	719.11		HEMARTHROSIS SHOULDER
	719.12		HEMARTHROSIS UPPER ARM

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	719.13		HEMARTHROSIS FOREARM
	719.14		HEMARTHROSIS HAND
	719.18		HEMARTHROSIS OTHER SPECIFIED
	719.19		HEMARTHROSIS MULTIPLE SITES
	719.20		VILLONODULAR SYNOVITIS UNSPECIFIED SITE
	719.21		VILLONODULAR SYNOVITIS SHOULDER
	719.22		VILLONODULAR SYNOVITIS UPPER ARM
	719.23		VILLONODULAR SYNOVITIS FOREARM
	719.24		VILLONODULAR SYNOVITIS HAND
	719.28		VILLONODULAR SYNOVITIS OTHER SITES
	719.29		VILLONODULAR SYNOVITIS MULTIPLE SITES
	719.30		PALANDROMIC RHEUMATISM UNSPECIFIED SITE
	719.31		PALANDROMIC RHEUMATISM SHOULDER
	719.32		PALANDROMIC RHEUMATISM UPPER ARM
	719.33		PALANDROMIC RHEUMATISM FOREARM
	719.34		PALANDROMIC RHEUMATISM HAND
	719.38		PALANDROMIC RHEUMATISM OTHER SITES
	719.39		PALANDROMIC RHEUMATISM MULTIPLE SITES
	720.0		ANKYLOSING SPONDYLITIS
	720.1		SPINAL ENTHESOPATHY
	720.2		SACROILIITIS NEC
	720.81	M	SPONDYLOPATHY IN OTH DI
	720.89		OTHER INFLAMMATORY SPONDYLOPATHIES
	720.9		UNSPEC INFLAMMATORY SPONDYLOPATHY
	721		SPONDYLOSIS AND ALLIED DISORDERS
	722 except 722.3x		INTERVERTEBRAL DISC DISORDERS
	723.0		SPINAL STENOSIS OF CERVICAL REGION
	723.2		CERVICOCRANIAL SYNDROME
	723.3		CERVICOBRACHIAL SYNDROME
	723.4		BRACHIA NEURITIS OR RADICULITIS
	723.5		TORTICOLLIS, UNSPECIFIED
	723.7		OSSIFICATION OF POSTERIOR LONGITUDINAL LIGAMENT IN CERVICAL REGION
	724.00		SPINAL STENOSIS NOS
	724.01		SPINAL STENOSIS-THORACIC
	724.02		SPINAL STENOSIS-LUMBAR
	724.09		SPINAL STENOSIS-OTH SITE
	724.3		SCIATICA
	724.4		LUMBOSACRAL NEURITIS NOS

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	724.6		DISORDERS OF SACRUM
	725		POLYMYALGIA RHEUMATICA
	726.0		ADHESIVE CAPSULITIS
	726.10		DISORDERS OF BURSAE AND TENDONS
	726.11		CALCIFYING TENDINITIS
	726.12		BICIPITAL TENOSYNOVITIS
	726.19		ROTATOR CUFF SYNDROME OTHER
	727.61		COMPLETE RUPTURE OF ROTATOR CUFF
	728.0		INFECTIVE MYOSITIS
	728.10		CALCIFICATION AND OSSIFICATION, UNSPECIFIED
	728.11		PROGRESSIVE MYOSITIS OSSIFICANS
	728.12		TRAUMATIC MYOSITIS OSSIFICATIONS
	728.13		POST OP HETEROTOPIC CALCIFICATION
	728.19		OTHER MUSCULAR CALCIFICATION AND OSSIFICATION
	728.6		CONTRACTURE OF PALMAR FASCIA
	730.00		AC OSTEOMYELITIS-UNSPEC
	730.01		AC OSTEOMYELITIS-SHLDER
	730.02		AC OSTEOMYELITIS-UP/ARM
	730.03		AC OSTEOMYELITIS-FOREAR
	730.04		AC OSTEOMYELITIS-HAND
	730.08		AC OSTEOMYELITIS NEC
	730.09		AC OSTEOMYELITIS-MULT
	730.10		CHR OSTEOMYELITIS-UNSP
	730.11		CHR OSTEOMYELIT-SHLDER
	730.12		CHR OSTEOMYELIT-UP/ARM
	730.13		CHR OSTEOMYELIT-FOREARM
	730.14		CHR OSTEOMYELIT-HAND
	730.18		CHR OSTEOMYELIT NEC
	730.19		CHR OSTEOMYELIT-MULT
	730.20		OSTEOMYELITIS NOS-UNSPE
	730.21		OSTEOMYELITIS NOS-SHLDE
	730.22		OSTEOMYELITIS NOS-UP/AR
	730.23		OSTEOMYELIT NOS-FOREARM
	730.24		OSTEOMYELITIS NOS-HAND
	730.28		OSTEOMYELIT NOS-OTH SIT
	730.29		OSTEOMYELITIS NOS-MULT
	730.30		PERIOSTITIS-UNSPEC
	730.31		PERIOSTITIS-SHLDER
	730.32		PERIOSTITIS-UP/ARM
	730.33		PERIOSTITIS-FOREARM
	730.34		PERIOSTITIS-HAND
	730.38		PERIOSTITIS NEC
	730.39		PERIOSTITIS-MULT

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	730.70	M	POLIO OSTEOPATHY-UNSPEC
	730.71	M	POLIO OSTEOPATHY-SHLDER
	730.72	M	POLIO OSTEOPATHY-UP/ARM
	730.73	M	POLIO OSTEOPATHY-FOREAR
	730.74	M	POLIO OSTEOPATHY-HAND
	730.78	M	POLIO OSTEOPATHY NEC
	730.79	M	POLIO OSTEOPATHY-MULT
	730.80	M	BONE INFECT NEC-UNSPEC
	730.81	M	BONE INFECT NEC-SHLDER
	730.82	M	BONE INFECT NEC-UP/ARM
	730.83	M	BONE INFECT NEC-FOREARM
	730.84	M	BONE INFECT NEC-HAND
	730.88	M	BONE INFECT NEC-OTH SIT
	730.89	M	BONE INFECT NEC-MULT
	730.90		BONE INFEC NOS-UNSP SIT
	730.91		BONE INFECT NOS-SHLDER
	730.92		BONE INFECT NOS-UP/ARM
	730.93		BONE INFECT NOS-FOREARM
	730.94		BONE INFECT NOS-HAND
	730.98		BONE INFECT NOS-OTH SIT
	730.99		BONE INFECT NOS-MULT
	731.0		OSTEITIS DEFORMANS W/O BN TUMR
	731.1	M	OSTEITIS DEFORMANS DZ CLASS ELSW
	731.2		HYPERTROPH PULM OSTEOARTHROPATHY
	731.8	M	OTH BONE INVOLVEMENT DZ CLASS ELSW
	732		OSTEOCHONDROPATHIES
	733.10		PATHOLOGIC FRACTURE UNSPEC
	733.11		PATHOLOGIC FRACTURE HUMERUS
	733.12		PATHOLOGIC FRACTURE DISTAL RADIUS ULNA
	733.13		PATHOLOGIC FRACTURE OF VERTEBRAE
	733.19		PATHOLOGIC FRACTURE OTH SPEC SITE
	800		FRACTURE OF VAULT OF SKULL
	801		FRACTURE OF BASE OF SKULL
	802		FRACTURE OF FACE BONES
	803		OTHER&UNQUALIFIED SKULL FRACTURES
	804		MX FX INVLV SKULL/FACE W/OTH BNS
	805		FX VERT COLUMN W/O SP CRD INJR
	807		FRACTURE RIB STERNUM LARYNX&TRACHEA
	809		ILL-DEFINED FRACTURES BONES TRUNK
	810		FRACTURE OF CLAVICLE
	811		FRACTURE OF SCAPULA
	812		FRACTURE OF HUMERUS
	813		FRACTURE OF RADIUS AND ULNA

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	814		FRACTURE OF CARPAL BONE
	815		FRACTURE OF METACARPAL BONE
	816		FRACTURE ONE OR MORE PHALANGES HAND
	817		MULTIPLE FRACTURES OF HAND BONES
	818		ILL-DEFINED FRACTURES OF UPPER LIMB
	819		MX FX UP LIMBS&LIMBS W/RIB&STERNUM
	831		DISLOCATION OF SHOULDER
	832		DISLOCATION OF ELBOW
	833		DISLOCATION OF WRIST
	837		DISLOCATION OF ANKLE
	838		DISLOCATION OF FOOT
	846		SPRAINS&STRAINS SACROILIAC REGION
	847		SPRAINS&STRAINS OTH&UNS PART BACK
Psych 1 - Affective and other psychoses, depression	295		SCHIZOPHRENIA
	296.0x Except for 296.06		BIPOLAR I DISORDER, SINGLE MANIC EPISODE
	296.1x Except for 296.16		MANIC DISORDER, RECURRENT EPISODE
	296.2x except for 296.26		MAJOR DEPRESSIVE DISORDER, SINGLE EPISODE
	296.3x except for 296.36		MAJOR DEPRESSIVE DISORDER RECURRENT EPISODE
	296.4x except for 296.46		BIPOLAR I DISORDER, MOST RECENT EPISODE (OR CURRENT) MANIC
	296.5x except for 296.56		BIPOLAR I DISORDER, MOST RECENT EPISODE (OR CURRENT) DEPRESSED
	296.6x except for 296.66		BIPOLAR I DISORDER, MOST RECENT EPISODE (OR CURRENT) MIXED
	296.7		BIPOLAR I DISORDER, MOST RECENT EPISODE (OR CURRENT) UNSPECIFIED
	296.80		BIPOLAR DISORDER, UNSPECIFIED
	296.81		ATYPICAL MANIC DISORDER
	296.82		ATYPICAL DEPRESSIVE DISORDER

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	296.89		OTHER AND UNSPECIFIED BIPOLAR DISORDERS
	296.90		UNSPECIFIED EPISODIC MOOD DISORDER
	296.99		OTHER SPECIFIED EPISODIC MOOD DISORDER
	297		DELUSIONAL DIS
	298		OTH PSYCHOSES
	311		DEPRESSIVE DISORDER NEC
Psych 2 - Degenerative and other organic psychiatric disorders	290 except 290.8, 290.9		DEMENTIAS
	291.1		ALCOHOL PSYCHOSIS
	291.2		ALCOHOL DEMENTIA
	292.81		DRUG INDUCED DELIRIUM
	292.82		DRUG INDUCED PERSISTING DEMENTIA
	292.83		DRUG INDUCED PERSISTING AMNESTIC DISORDER
	292.84		DRUG INDUCED MOOD DISORDER
	292.85		DRUG INDUCED SLEEP DISORDERS
	292.89		OTHER DEPRESSIVE STATE INDUCED BY DRUGS
	294.0		AMNESTIC DISORD OTH DIS
	294.10	M	DEMENTIA IN COND CLASS ELSW NOS
	294.11	M	DEMENTIA IN COND CLASS ELSW W BEHAV DISTURB
	294.8		MENTAL DISOR NEC OTH DIS
	331.0		ALZHEIMER'S DISEASE
	331.11		PICK'S DISEASE
	331.19		OTH FRONTO-TEMPORAL DEMENTIA

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	331.2		SENILE DEGENERAT BRAIN
	331.3		COMMUNICAT HYDROCEPHALUS
	331.4		OBSTRUCTIV HYDROCEPHALUS
	331.5		IDIOPATHIC NORMAL PRESSURE HYDROCEPHALUS (INPH)
	331.7	M	CEREB DEGEN IN OTH DIS
	331.81		REYE'S SYNDROME
	331.82		DEMENTIA WITH LEWY BODIES
	331.89		CEREB DEGENERATION NEC
Pulmonary disorders	491 except 491.9		CHRONIC BRONCHITIS
	492		EMPHYSEMA
	493.20		CHRONIC OBSTRUCTIVE ASTHMA UNSPECIFIED
	493.21		CHRONIC OBSTRUCTIVE ASTHMA WITH STATUS ASTHMATICUS
	493.22		CHRONIC OBSTRUCTIVE ASTHMA WITH (ACUTE) EXACERBATION
Skin 1 - Traumatic wounds, burns and post-operative complications	870		OPEN WOUND OF OCULAR ADNEXA
	872		OPEN WOUND OF EAR
	873		OTHER OPEN WOUND OF HEAD
	874		OPEN WOUND OF NECK
	875		OPEN WOUND OF CHEST
	876		OPEN WOUND OF BACK
	877		OPEN WOUND OF BUTTOCK
	878		OPEN WND GNT ORGN INCL TRAUMAT AMP
	879		OPEN WOUND OTH&UNSPEC SITE NO LIMBS

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	880		OPEN WOUND OF SHOULDER&UPPER ARM
	881		OPEN WOUND OF ELBOW FOREARM&WRIST
	882		OPEN WOUND HAND EXCEPT FINGER ALONE
	883		OPEN WOUND OF FINGER
	884		MX&UNSPEC OPEN WOUND UPPER LIMB
	885		TRAUMATIC AMPUTATION OF THUMB
	886		TRAUMATIC AMPUTATION OTHER FINGER
	887		TRAUMATIC AMPUTATION OF ARM&HAND
	890		OPEN WOUND OF HIP AND THIGH
	891		OPEN WOUND OF KNEE, LEG , AND ANKLE
	892		OPEN WOUND OF FOOT EXCEPT TOE ALONE
	893		OPEN WOUND OF TOE
	894		MX&UNSPEC OPEN WOUND LOWER LIMB
	895		TRAUMATIC AMPUTATION OF TOE
	896		TRAUMATIC AMPUTATION OF FOOT
	927		CRUSHING INJURY OF UPPER LIMB
	941 except 941.0x, 941.1x		BURN OF FACE, HEAD, AND NECK
	942 except 942.0x, 942.1x		BURN OF TRUNK
	943 except 943.0x, 943.1x		BURN OF UPPER LIMB, EXCEPT WRIST AND HAND
	944 except 944.0x, 944.1x		BURN OF WRIST(S) AND HAND(S)

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names			
Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	945 except 945.0x, 945.1x		BURN OF LOWER LIMB(S)
	946.2		BURNS OF MULTIPLE SPECIFIED SITES, BLISTERS, EPIDERMAL LOSS [SECOND DEGREE]
	946.3		BURNS OF MULTIPLE SPECIFIED SITES, FULL-THICKNESS SKIN LOSS [THIRD DEGREE NOS]
	946.4		BURNS OF MULTIPLE SPECIFIED SITES, DEEP NECROSIS OF UNDERLYING TISSUES [DEEP THIRD DEGREE] WITHOUT MENTION OF LOSS OF A BODY PART
	946.5		BURNS OF MULTIPLE SPECIFIED SITES, DEEP NECROSIS OF UNDERLYING TISSUES [DEEP THIRD DEGREE] WITH LOSS OF A BODY PART
	948		Burns classified according to the extent of body surface involved
	951		INJURY TO OTHER CRANIAL NERVE
	955.0		INJURY TO AXILLARY NERVE
	955.1		INJURY TO MEDIAN NERVE
	955.2		INJURY TO ULNAR NERVE
	955.3		INJURY TO RADIAL NERVE
	955.4		INJURY TO MUSCULOCUTANEOUS NERVE
	955.6		INJURY TO DIGITAL NERVE
	955.7		INJURY TO OTHER SPECIFIED NERVE(S) SHOULDER GIRDLE AND UPPER LIMB
	956.2		INJURY TO POSTERIOR TIBIAL NERVE
	956.3		INJURY TO PERONEAL NERVE
	956.5		INJURY TO OTHER SPECIFIED NERVE(S) OF PELVIC GIRDLE AND LOWER LIMB
	998.11		HEMORRHAGE COMPLICATING A PROCEDURE
	998.12		HEMATOMA COMPLICATING A PROCEDURE
	998.13		SEROMA COMPLICATING A PROCEDURE

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	998.2		ACC PUNCT/LACRATION DURING PROC NEC
	998.31		DISRUPTION OF INTERNAL OPERATION WOUND
	998.32		DISRUPTION OF EXTERNAL OPERATION WOUND
	998.4		FB ACC LEFT DURING PROC NEC
	998.51		INFECTED POSTOPERATIVE SEROMA
	998.59		OTHER POSTOPERATIVE INFECTION
	998.6		PERSISTENT POSTOPERATIVE FIST NEC
	998.83		NON-HEALING SURGICAL WOUND NEC
Skin 2 - Ulcers and other skin conditions	440.23		ATHEROSCLER-ART EXTREM W/ULCERATION
	440.24		ATHERSCLER-ART EXTREM W/GANGRENE
	447.2		RUPTURE OF ARTERY
	447.8		ARTERIAL DISEASE NEC
	565		ANAL FISSURE AND FISTULA
	566		ABSCESS OF ANAL AND RECTAL REGIONS
	680		CARBUNCLE AND FURUNCLE
	681.00		FINGER - CELLULITIS AND ABSCESS, UNSPECIFIED
	681.01		FELON
	681.10		TOE - CELLULITIS AND ABSCESS, UNSPECIFIED
	681.9		CELLULITIS AND ABSCESS OF UNSPECIFIED DIGIT
	682		OTHER CELLULITIS AND ABSCESS

Table 2B: Diagnosis Codes, "Secondary-only" Diagnosis Codes, Diagnosis Groups, and Diagnosis Group Variable Names

Diagnostic Category	ICD-9-CM Code	Manifestation codes	Short Description of ICD-9-CM Code
	683		ACUTE LYMPHADENITIS
	685		PILONIDAL CYST
	686		OTH LOCAL INF SKIN&SUBCUT TISSUE
	707.10		ULCER OF LOWER LIMB, UNSPECIFIED
	707.11		ULCER OF THIGH
	707.12		ULCER OF CALF
	707.13		ULCER OF ANKLE
	707.14		ULCER OF HEEL AND MIDFOOT
	707.15		ULCER OF OTHER PART OF FOOT
	707.19		ULCER OF OTHER PART OF LOWER LIMB
	707.8		CHRONIC ULCER OTHER SPECIFIED SITE
	707.9		CHRONIC ULCER OF UNSPECIFIED SITE
	785.4	*M*	GANGRENE
Tracheostomy care	V55.0		TRACHEOSTOMY
Urostomy/Cystostomy Care	V55.5		CYSTOSTOMY
	V55.6		OTHER ARTIFICIAL OPENING OF URINARY TRACT-NEPHROSTOMY, URETEROSTOMY, URETHROSTOMY

Note: The category codes listed in Table 2B include all the related 4- and 5-digit codes. "ICD-9-CM Official Guidelines for Coding and Reporting" dictate the following:

- A three-digit code is to be used only if it is not further subdivided.
- Where fourth-digit subcategories and /or fifth-digit subclassifications are provided, they must be assigned.
- A code is invalid if it has not been coded to the full number of digits required for that code.
- Codes with three digits are included in ICD-9-CM as the heading of a category of codes that may be further subdivided by the use of fourth and/or fifth digits, which provide greater detail.
- Manifestation codes are indicated by "M". ICD-9-CM guidelines pertaining to multiple coding and sequencing of diagnosis codes apply to OASIS diagnosis items.

For official ICD-9-CM coding guidance, please go to:

http://www.cdc.gov/nchs/datawh/ftpserv/ftpicd9/ftpicd9.htm

Table 2C. Deletions and Additions to Table 2B of the Proposed Rule

ICD-9-CM Codes Deleted	Code Description	Diagnostic Category
286	Coagulation Defects	***Blood Disorders***
213.9	Benign Neoplasm Bone and articular cartilage, site unspecified	***Cancer & Selected Benign Neoplasm***
225.9	Benign Nervous system, part unspecified	
230.9	CA IN SITU, other and unspecified digestive organs	
231.9	CA IN SITU, Respiratory system, part unspecified	
232.9	CA IN SITU, Skin site unspecified	
233.9	CA. IN SITU, Other and Unspecified Urinary organs	
234.9	CA IN SITU Site Unspecified	
564.00	Constipation Unspecified	***Gastrointestinal disorders***
564.01	Slow Transit Constipation	
564.02	Dysfunctional Constipation	
564.09	Other Constipation	
564.9	Unspecified functional disorder of intestine	
569.9	Unspecified Disorder of intestine	
410.0x ***EXCEPT FOR 410.02***	Acute myocardial infarction of anterolateral wall, subsequent episode of care	***Heart Disease***
410.1x ***EXCEPT FOR 410.12***	Acute myocardial infarction of other anterior wall, subsequent episode of care.	
410.2x	Acute myocardial infarction	

EXCEPT FOR 410.22	of inferolateral wall, subsequent episode of care	
410.3x ***EXCEPT FOR 410.32***	Acute myocardial infarction of inferoposterior wall, subsequent episode of care	
410.4x ***EXCEPT FOR 410.42***	Acute myocardial infarction of other inferior wall, subsequent episode of care	
410.5x ***EXCEPT FOR 410.52***	Acute myocardial infarction of other lateral wall, subsequent episode of care	
410.6x ***EXCEPT FOR 410.62***	Acute myocardial infarction, true posterior wall infarction, subsequent episode of care	
410.7x ***EXCEPT FOR 410.72***	Acute myocardial infarction, subendocardial infarction, subsequent episode of care	
410.8x ***EXCEPT FOR 410.82***	Acute myocardial infarction, of other specified sites, subsequent episode of care	
410.9x ***EXCEPT FOR 410.92***	Acute myocardial infarction, of unspecified site, subsequent episode of care	
336.9	Unspecified disorder of autonomic nervous system	***Neuro 1-Brain disorders and paralysis***
344.9	Paralysis Unspecified	
045	Acute Poliomyelitis	***Neuro 2 -Peripheral Neurological disorders***
334.9	Spinocerebellar disease, unspecified	
357.9	Unspecified, Inflammatory and toxic neuropathy	
358.9	Myoneural disorders, unspecified	
359.9	Myopathy, Unspecified	

386.04	Inactive Meniere's disease; Meniere's disease in remission	
430	Subarachnoid hemorrhage	***Neuro-3 Stroke***
431	Intracerebral hemorrhage	
432	Other and Unspecified intracranial hemorrhage	
433.01	Occlusion & Stenosis, Basilar artery, W Infarction	
433.11	Occlusion & Stenosis, Carotid artery, W. Infarction	
433.21	Occlusion & Stenosis, Vertebral artery, W. Infarction	
433.31	Occlusion & Stenosis Multiple and Bilateral W. Infarction	
433.81	Occlusion & Stenosis, Other Specified precerebral artery, W. Infarction	
434.01	Cerebral thrombosis W. Infarction	
434.11	Cerebral Embolism W. Infarction	
435	Transient Cerebral Ischemia	
436	Acute but ill-defined cerebrovascular disease.	
716.5x	Unspecified Polyarthropathy or polyarthritis	***Ortho 1-Leg Disorders***
716.6x	Unspecified monoarthritis	
716.9x	Arthropathy, unspecified	
718.8x	Other Joint derangement, not elsewhere classified	
718.9x	Unspecified derangement of joint	
712.9x	Unspecified crystal arthropathy	***Ortho 2-Other Orthopedic Disorders***

723.1	Cervicalgia (pain in the neck)	
723.6	Panniculitis specified as affecting neck	
723.8	Other syndromes affecting cervical region	
723.9	Unspecified musculoskeletal disorders and symptoms referable to neck	
724.1	Pain in Thoracic Spine	
724.2	Lumbago	
724.5	Backache unspecified	
724.7x	Disorders of Coccyx	
724.8	Other symptoms referable to back	
724.9	Other unspecified back disorders	
728.2	Muscular wasting and disuse atrophy, not elsewhere classified	
728.3	Other specific Muscle Disorders	
728.4	Laxity of ligament	
728.5	Hypermobility syndrome	
296.06	Bipolar 1 disorder, single manic episode, in full remission	***Psych. 1 Affective and other psychoses, depression***
296.16	Manic disorder, recurrent episode, in full remission	
296.26	Major depressive disorder, single episode, in full remission	
296.36	Major depressive disorder, recurrent episode, in full remission	
296.46	Bipolar 1 disorder, most recent episode (or current)	

	manic, in full remission	
296.56	Bipolar 1 disorder, most recent episode (or current) depressed, in full remission	
296.66	Bipolar 1 disorder, most recent episode (or current) unspecified	
294.9	Unspecified persistent mental disorders due to conditions classified elsewhere	***Psych 2-Degenerative and other organic psychiatric disorders***
331.9	Cerebral degeneration, unspecified	
491.9	Unspecified Chronic Bronchitis	***Pulmonary Disorders***
496	Chronic airway obstruction, not elsewhere classified	
941.0x	Burn of Face, head and neck Unspecified degree	***Skin 1—Traumatic Wounds, burns and post-operative complications***
941.1x	Erythema (first degree)	
942.0x	Burn of Trunk, Unspecified degree	
942.1x	Burn of Trunk, Erythema (first degree)	
943.0x	Burn of upper limb, except wrist and hand, unspecified degree	
943.1x	Burn of upper limb, except wrist and hand, Erythema (first degree)	
944.0x	Burn of wrist(s) and hand(s) Unspecified degree	
944.1x	Burn of wrist(s) and hand(s) Erythema (first degree)	
945.0x	Burn of lower limb(s), unspecified degree	
945.1x	Burn of lower limb(s), Erythema (first degree)	

946.0	Burns of multiple sites, unspecified degree	
946.1	Burns of multiple specified sites, Erythema (first degree)	
949	Burn, Unspecified	
955.5	Injury to Cutaneous sensory nerve, upper limb	
955.9	Injury to Unspecified nerve of shoulder girdle and upper limb	
956.4	Injury to Cutaneous sensory nerve, lower limb	
956.9	Injury to Unspecified nerve of pelvic girdle and lower limb	
681.11	Onychia and paronychia of toe	***Skin 2-Ulcers and other skin conditions***
681.02	Onychia and paronychia of finger	
684	Impetigo	
ICD-9-CM Codes Added	**Code Description**	**Diagnostic Category**
414.00	Coronary atherosclerosis of unspecified type of vessel, native or graft	***Heart Disease***
414.01	Coronary atherosclerosis, of native coronary artery	
414.02	Coronary atherosclerosis, of autologous vein bypass graft	
414.03	Coronary atherosclerosis, of nonautologous biological bypass graft	
414.04	Coronary atherosclerosis of artery bypass graft	

414.05	Coronary atherosclerosis of unspecified type of bypass graft	
414.06	Coronary atherosclerosis of native coronary artery of transplanted heart	
414.07	Coronary atherosclerosis of bypass graft (artery) (vein) of transplanted heart	
414.10	Aneurysm of heart (wall)	
414.11	Aneurysm of coronary vessels	
414.12	Dissection of coronary artery	
414.19	Other aneurysm of heart	
414.2	Chronic total occlusion of coronary artery	
414.8	Other specified forms of chronic ischemic heart disease	
138	Late effects of acute poliomyelitis	***Neuro 2 – Peripheral Neurological Disorders***
357.81	Chronic Inflammatory Demyelinating Polyneuritis	
447.2	Rupture of an artery	***Skin 2 - Ulcers and Other Skin Conditions***
447.8	Other specified disorders of arteries and arterioles	
V55.0	Tracheostomy	***Tracheostomy Care***
V55.5	Cystostomy	***Urostomy/Cystostomy Care***
V55.6	Other artificial opening of Urinary Tract—Nephrostomy, Ureterostomy, Urethrostomy	

Table 3: Severity Group Definitions: Four-Equation Model

		1st & 2nd Episodes		3rd+ Episodes		All Episodes
		0 to 13 therapy visits	14 to 19 therapy visits	0 to 13 therapy visits	14 to 19 therapy visits	20+ therapy visits
Grouping Step:		1	2	3	4	5
Equation(s) used to calculate points: (see Table 2a)		*1*	*2*	*3*	*4*	*(2&4)*
Dimension	Severity Levels:					
Clinical	C1	0 to 4	0 to 6	0 to 2	0 to 8	0 to 7
	C2	5 to 8	7 to 14	3 to 5	9 to 16	8 to 14
	C3	9+	15+	6+	17+	15+
Functional	F1	0 to 5	0 to 6	0 to 8	0 to 7	0 to 6
	F2	6	7	9	8	7
	F3	7+	8+	10+	9+	8+
Services Utilization (number of therapy visits)	S1	0 to 5	14 to 15	0 to 5	14 to 15	20+ (One Group)
	S2	6	16 to 17	6	16 to 17	
	S3	7 to 9	18 to 19	7 to 9	18 to 19	
	S4	10		10		
	S5	11 to 13		11 to 13		

Note: For episodes with 20 or more therapy visits, scoring for clinical and functional severity is assigned based on the four-equation model, that is, scoring is assigned from score values of either Equation 2 or Equation 4, according to whether the episode occurred as "early" or "later." However, severity level classification is based on the same score intervals for all episodes with 20 or more therapy visits (see Grouping Step 5 in Table 3).

Table 4: Regression Coefficients for Calculating Case-Mix Relative Weights	
Intercept (constant for all case mix groups)	$1,322.84
1st and 2nd Episodes, 0 to 13 Therapy Visits	
C2	$342.35
C3	$722.76
F2	$201.14
F3	$391.17
S2 (6 therapy visits)	$608.54
S3 (7-9 therapy visits)	$1,083.48
S4 (10 therapy visits)	$1,570.40
S5 (11-13 therapy visits)	$1,970.53
1st and 2nd Episodes, 14 to 19 Therapy Visits	
Constant	$2,336.56
C2	$569.39
C3	$1,227.24
F2	$263.84
F3	$429.40
S2 (16-17 therapy visits)	$353.41
S3 (18-19 therapy visits)	$664.54
3rd+ Episodes, 0 to 13 Therapy Visits	
Constant	$162.52
C2	$131.92
C3	$648.48
F2	$304.11
F3	$592.17
S2 (6 therapy visits)	$794.26
S3 (7-9 therapy visits)	$1,253.83
S4 (10 therapy visits)	$1,756.05
S5 (11-13 therapy visits)	$2,152.60
3rd+ Episodes, 14 to 19 Therapy Visits	
Constant	$2,657.05
C2	$623.44
C3	$1,350.51
F2	$297.14
F3	$681.27
S2 (16-17 therapy visits)	$263.08
S3 (18-19 therapy visits)	$617.86
All Episodes, 20+ Therapy Visits	
Constant	$4,465.45

C2	$485.15
C3	$1,212.24
F2	$430.13
F3	$916.44
Note: Regression coefficients were scaled by a multiplier to account for the difference in cost levels between the resource cost estimates in the Abt Associates analytic file and the level of the payments CMS will make in CY2008.	

Table 5: Case-Mix Groups, Average Cost, and Case-Mix Weight				
Severity Level for Each Dimension				
Clinical	Functional	Service Utilization	Average Cost	Case-mix weight
1st and 2nd Episodes, 0 to 13 Therapy* Visits				
C1	F1	S1	$1,322.84	0.5827
C1	F1	S2	$1,931.39	0.8507
C1	F1	S3	$2,406.33	1.0599
C1	F1	S4	$2,893.24	1.2744
C1	F1	S5	$3,293.37	1.4506
C1	F2	S1	$1,523.98	0.6713
C1	F2	S2	$2,132.53	0.9393
C1	F2	S3	$2,607.47	1.1485
C1	F2	S4	$3,094.38	1.3630
C1	F2	S5	$3,494.51	1.5392
C1	F3	S1	$1,714.01	0.7550
C1	F3	S2	$2,322.56	1.0230
C1	F3	S3	$2,797.50	1.2322
C1	F3	S4	$3,284.41	1.4467
C1	F3	S5	$3,684.54	1.6229
C2	F1	S1	$1,665.19	0.7335
C2	F1	S2	$2,273.73	1.0015
C2	F1	S3	$2,748.67	1.2107
C2	F1	S4	$3,235.59	1.4252
C2	F1	S5	$3,635.71	1.6014
C2	F2	S1	$1,866.33	0.8221
C2	F2	S2	$2,474.87	1.0901
C2	F2	S3	$2,949.81	1.2993
C2	F2	S4	$3,436.73	1.5138
C2	F2	S5	$3,836.85	1.6900
C2	F3	S1	$2,056.36	0.9058
C2	F3	S2	$2,664.90	1.1738
C2	F3	S3	$3,139.84	1.3830
C2	F3	S4	$3,626.76	1.5975
C2	F3	S5	$4,026.88	1.7737

Table 5: Case-Mix Groups, Average Cost, and Case-Mix Weight				
Severity Level for Each Dimension				
Clinical	Functional	Service Utilization	Average Cost	Case-mix weight
C3	F1	S1	$2,045.60	0.9010
C3	F1	S2	$2,654.15	1.1691
C3	F1	S3	$3,129.09	1.3783
C3	F1	S4	$3,616.00	1.5927
C3	F1	S5	$4,016.13	1.7690
C3	F2	S1	$2,246.74	0.9896
C3	F2	S2	$2,855.29	1.2577
C3	F2	S3	$3,330.23	1.4669
C3	F2	S4	$3,817.14	1.6813
C3	F2	S5	$4,217.27	1.8576
C3	F3	S1	$2,436.77	1.0733
C3	F3	S2	$3,045.32	1.3414
C3	F3	S3	$3,520.26	1.5506
C3	F3	S4	$4,007.17	1.7650
C3	F3	S5	$4,407.30	1.9413
1st and 2nd Episodes, 14 to 19 Therapy* Visits				
C1	F1	S1	$3,659.40	1.6118
C1	F1	S2	$4,012.81	1.7675
C1	F1	S3	$4,323.95	1.9046
C1	F2	S1	$3,923.24	1.7281
C1	F2	S2	$4,276.65	1.8837
C1	F2	S3	$4,587.78	2.0208
C1	F3	S1	$4,088.80	1.8010
C1	F3	S2	$4,442.21	1.9566
C1	F3	S3	$4,753.35	2.0937
C2	F1	S1	$4,228.79	1.8626
C2	F1	S2	$4,582.20	2.0183
C2	F1	S3	$4,893.34	2.1554
C2	F2	S1	$4,492.63	1.9789
C2	F2	S2	$4,846.04	2.1345
C2	F2	S3	$5,157.17	2.2716
C2	F3	S1	$4,658.19	2.0518
C2	F3	S2	$5,011.61	2.2074
C2	F3	S3	$5,322.74	2.3445
C3	F1	S1	$4,886.64	2.1524
C3	F1	S2	$5,240.05	2.3081
C3	F1	S3	$5,551.18	2.4451
C3	F2	S1	$5,150.47	2.2686
C3	F2	S2	$5,503.89	2.4243

Table 5: Case-Mix Groups, Average Cost, and Case-Mix Weight				
Severity Level for Each Dimension				
Clinical	Functional	Service Utilization	Average Cost	Case-mix weight
C3	F2	S3	$5,815.02	2.5613
C3	F3	S1	$5,316.04	2.3415
C3	F3	S2	$5,669.45	2.4972
C3	F3	S3	$5,980.58	2.6342
3rd+ Episodes, 0 to 13 Therapy* Visits				
C1	F1	S1	$1,485.36	0.6543
C1	F1	S2	$2,279.62	1.0041
C1	F1	S3	$2,739.19	1.2065
C1	F1	S4	$3,241.41	1.4277
C1	F1	S5	$3,637.97	1.6024
C1	F2	S1	$1,789.47	0.7882
C1	F2	S2	$2,583.73	1.1380
C1	F2	S3	$3,043.30	1.3405
C1	F2	S4	$3,545.52	1.5617
C1	F2	S5	$3,942.08	1.7364
C1	F3	S1	$2,077.53	0.9151
C1	F3	S2	$2,871.79	1.2649
C1	F3	S3	$3,331.36	1.4674
C1	F3	S4	$3,833.58	1.6886
C1	F3	S5	$4,230.13	1.8632
C2	F1	S1	$1,617.28	0.7124
C2	F1	S2	$2,411.54	1.0622
C2	F1	S3	$2,871.11	1.2646
C2	F1	S4	$3,373.33	1.4858
C2	F1	S5	$3,769.88	1.6605
C2	F2	S1	$1,921.39	0.8463
C2	F2	S2	$2,715.65	1.1962
C2	F2	S3	$3,175.22	1.3986
C2	F2	S4	$3,677.44	1.6198
C2	F2	S5	$4,073.99	1.7945
C2	F3	S1	$2,209.44	0.9732
C2	F3	S2	$3,003.70	1.3230
C2	F3	S3	$3,463.28	1.5255
C2	F3	S4	$3,965.49	1.7467
C2	F3	S5	$4,362.05	1.9213
C3	F1	S1	$2,133.84	0.9399
C3	F1	S2	$2,928.10	1.2897
C3	F1	S3	$3,387.67	1.4922
C3	F1	S4	$3,889.89	1.7134
C3	F1	S5	$4,286.45	1.8880
C3	F2	S1	$2,437.95	1.0738

Table 5: Case-Mix Groups, Average Cost, and Case-Mix Weight				
Severity Level for Each Dimension				
Clinical	Functional	Service Utilization	Average Cost	Case-mix weight
C3	F2	S2	$3,232.21	1.4237
C3	F2	S3	$3,691.78	1.6261
C3	F2	S4	$4,194.00	1.8473
C3	F2	S5	$4,590.55	2.0220
C3	F3	S1	$2,726.01	1.2007
C3	F3	S2	$3,520.27	1.5506
C3	F3	S3	$3,979.84	1.7530
C3	F3	S4	$4,482.06	1.9742
C3	F3	S5	$4,878.61	2.1489
3rd+ Episodes, 14 to 19 Therapy* Visits				
C1	F1	S1	$3,979.89	1.7530
C1	F1	S2	$4,242.97	1.8689
C1	F1	S3	$4,597.75	2.0252
C1	F2	S1	$4,277.03	1.8839
C1	F2	S2	$4,540.12	1.9998
C1	F2	S3	$4,894.89	2.1560
C1	F3	S1	$4,661.16	2.0531
C1	F3	S2	$4,924.25	2.1690
C1	F3	S3	$5,279.02	2.3252
C2	F1	S1	$4,603.33	2.0276
C2	F1	S2	$4,866.42	2.1435
C2	F1	S3	$5,221.19	2.2998
C2	F2	S1	$4,900.48	2.1585
C2	F2	S2	$5,163.56	2.2744
C2	F2	S3	$5,518.34	2.4306
C2	F3	S1	$5,284.61	2.3277
C2	F3	S2	$5,547.69	2.4436
C2	F3	S3	$5,902.47	2.5998
C3	F1	S1	$5,330.40	2.3479
C3	F1	S2	$5,593.48	2.4637
C3	F1	S3	$5,948.26	2.6200
C3	F2	S1	$5,627.54	2.4787
C3	F2	S2	$5,890.63	2.5946
C3	F2	S3	$6,245.40	2.7509
C3	F3	S1	$6,011.67	2.6479
C3	F3	S2	$6,274.76	2.7638
C3	F3	S3	$6,629.53	2.9201
All Episodes, 20+ Therapy* Visits				
C1	F1	S1	$5,788.29	2.5495
C1	F2	S1	$6,218.42	2.7390
C1	F3	S1	$6,704.73	2.9532

Table 5: Case-Mix Groups, Average Cost, and Case-Mix Weight				
Severity Level for Each Dimension				
Clinical	Functional	Service Utilization	Average Cost	Case-mix weight
C2	F1	S1	$6,273.44	2.7632
C2	F2	S1	$6,703.56	2.9527
C2	F3	S1	$7,189.88	3.1669
C3	F1	S1	$7,000.53	3.0835
C3	F2	S1	$7,430.66	3.2730
C3	F3	S1	$7,916.98	3.4872

*Therapy is defined as physical therapy, speech-language pathology, or occupational therapy.

BILLING CODE 4120–01–C

6. Case-Mix Change Under the HH PPS

Section 1895(b)(3)(B)(iv) of the Act specifically provides the Secretary with the authority to adjust the standard payment amount (or amounts) if the Secretary determines that the case-mix adjustments resulted (or would likely result) in a change in aggregate payments that is the result of changes in the coding or classification of different units of services that do not reflect real changes in case-mix. The Secretary may then adjust the payment amount to eliminate the effect of the coding or classification changes that do not reflect real changes in case-mix.

In the proposed rule, in order to identify whether the adjustment factor was needed, we first determined the current average case-mix weight per paid episode. The most recent available data from which to compute an average case-mix weight, or case-mix index (CMI), under the HH PPS was from 2003. Using the most current available data from 2003, the average case-mix weight per episode for initial episodes is 1.233. To proceed with the CMI adjustment, next we determined the baseline year needed to evaluate the trend in the average case-mix per episode.

There were two different baseline years that were considered from which to measure the increase in case-mix: 1) A cohort that used home care from October 1997 to April 1998 (the Abt case-mix study sample which was used to develop the current case-mix model) and 2) the cohort that used home care during the 12 month period ending September 30, 2000 (HH IPS Baseline). The increase in the average case-mix using the Abt Associates case-mix study sample as the baseline was 23.3 percent (from 1.0 to 1.233). There were several advantages to using data from Abt Associates case-mix study as the baseline from which we measured the increase in case-mix. The time period was free from any anticipatory response to the HH PPS, and data from this time period were used to develop the original HH PPS model. Also, this is the only nationally representative dataset from the 1997 to 1998 time period that measured patient characteristics using an OASIS assessment form comparable to the one currently adopted for the HH PPS. However, agencies included in this sample were volunteers for the study and could not be considered a perfectly representative, unbiased sample. Furthermore, the response to Balanced Budget Act of 1997 provisions such as the home health interim payment system (HH IPS) during this period might produce data from this sample that reflect a case-mix in flux; for example, venipuncture patients were suddenly no longer eligible, and long-term care patients were less likely to be admitted. Therefore, we were not confident the trend in the CMI between the time of the Abt Associates study and 2003 reflected only changes in coding practices due to real change in case-mix.

We then looked to the HH IPS baseline period, the 12 month period ending 9/30/2000. Analysis of a 1-percent sample of initial episodes from the 1999 through 2000 data under the HH IPS revealed an average case-mix weight of 1.125. Standardized to the distribution of agency type (freestanding proprietary, freestanding not-for-profit, hospital-based, government, and SNF-based) that existed in 2003 under the HH PPS, the average weight was 1.134. We noted this time period was likely not free from anticipatory response to the HH PPS, because we published our initial HH PPS proposal on October 28, 1999. The increase in the average case-mix using this time period as the baseline was 8.7 percent (from 1.134 to 1.233; 1.233–1.134=0.099; 0.099/1.134=0.087; 0.087*100=8.7 percent).

As a result of various studies, analysis of OASIS data, and changes to the home health benefit as due to the BBA, we stated our belief that change in case-mix of 13.4 percent between the time of the Abt Associates case-mix study and the end of the HH IPS period reflected substantial change in the real case-mix. In contrast to that 13.4 percent, we considered that the 8.7 percent increase in the national case-mix index between the HH IPS baseline and the CY 2003 could not be considered a real increase in case-mix. Trend data on visits from the proposed rule (72 FR 25393), resource data presented in the proposed rule (72 FR 25394), and our analysis of changes in rates of health characteristics on OASIS assessments and changes in reporting practices all led to our conclusion that the underlying case-mix of the population of home health users was essentially stable between the HH IPS baseline and CY 2003. Our research showed that HHAs have reduced services while the CMI continued to rise. In addition to the trend analysis, we conducted several additional kinds of analyses of data and documentary materials related to home health case-mix coding change. The results supported our view that the change in the CMI since the HH IPS baseline mostly reflected provider responses to the changes that accompanied the HH PPS, including particulars of the payment system itself and changes to OASIS reporting requirements. Our analyses indicated generally modest changes in overall OASIS health characteristics between the two periods noted above, a specific pattern of changes in scaled OASIS responses that was not indicative of material worsening of presenting health status, various changes in the OASIS reporting instructions that helped account for numerous coding changes we observed, and a large increase in post-surgical

patients with their traditionally lower case-mix index.

Therefore, based upon our trend analysis we believed the change in the case-mix index between the Abt case-mix sample (a cohort admitted between October 1997 and April 1998) and the HH IPS period (the 12 month period ending September 30, 2000) is due to real case-mix change. We took this view, even though we understood that there could be some issue as to whether this period was affected by case-mix change due to providers anticipating, in the last year of HH IPS, the forthcoming case-mix system, with its incentives to intensify rehabilitation services. The change from these two periods is from 1.00 to 1.134, an increase of 13.4 percent. However, we did not propose to adjust for case-mix change based on this change in values, as some of that change reflected real change in case-mix. However, we did propose that the 8.7 percent of case-mix change that occurred between the 12 months ending September 30, 2000 (HH IPS baseline, CMI=1.134), and the most recent available data from 2003 (CMI=1.233), be considered a change in the CMI that does not reflect a ''real'' change in case-mix, but rather is a ''nominal'' change in case-mix. We proposed a reduction in HH PPS national standardized 60-Day episode payment rate to offset the change in coding practice that has resulted in significant growth in the national case-mix index since the inception of the HH PPS that is not related to ''real'' change in case-mix.

Our past experience establishing other prospective payment systems also led us to believe a proposal to make this adjustment for nominal change in case-mix was warranted. In other systems, Medicare payments were almost invariably found to be affected by nominal case-mix change. We considered several options for implementing this case-mix change adjustment. Those options included accounting for the entire −8.7 percent increase in case-mix with an 8.0% adjustment in CY 2008, incorporating an adjustment of −5.0 percent in CY 2008 and an adjustment of −2.7 percent in CY 2009, or incorporating an adjustment of −4.35 percent in CY 2008 and an adjustment of −4.35 percent in CY 2009. However, because of the potential impact our proposed adjustment might have on providers, we proposed and requested comment on whether to adjust for the nominal increase in national average CMI by gradually reducing the national standardized 60-day episode payment rate over 3 years. During that period we stated that we would continue to update our estimate of nominal case-mix change and adjust the national standardized 60-day episode payment rate accordingly for any nominal change in case-mix that might occur. We proposed to implement a 3-year phase-in of the total downward adjustment for nominal changes in case-mix by reducing the national standardized 60-day episode payment rate by 2.75 percent each year up to and including CY 2010. That annual reduction percent was based on the new current estimate of the nominal change in case-mix that occurred between the HH IPS baseline (+0.099) and 2003. However, we also stated that, if, at the time of publication of the final CY 2008 HH PPS rule, updates of the national claims data to 2005 indicated that the nominal change in case-mix between the HH IPS baseline and 2005 was not +0.099, we would revise the percentage reduction in the next year's update. The revision would be determined by the ratio of the updated 3-year annual reduction factor to the previous year's annual reduction factor. For example, the scheduled annual reduction factor was estimated to be 0.9725 (equivalent to a 2.75 percent reduction); for CY 2008 we would multiply this reduction factor by the ratio of the updated reduction factor to 0.9725. Therefore, for the CY 2010 rule, which would govern the third and final year of the proposed case-mix change adjustment transition period, we would obtain the CY 2007 national average CMI to compute the updated value for nominal case-mix change adjustment. Again, we would form the ratio of the updated adjustment factor to the previous year's effective adjustment factor. The annual updating procedure avoids a large reduction for the final year of the phase-in, in the event that the CY 2007 national average case-mix index reflects continued growth since CY 2005.

We stated our plan to continue to monitor changes in the national average CMI to determine if any adjustment for nominal change in case-mix is warranted in the future.

Comment: A number of commenters asked that we eliminate the 2.75 percent case-mix change adjustment. They argued that the acuity of home care patients is rising, citing earlier discharges from hospitals or skilled nursing facilities. A number of commenters argued that patient characteristics have changed, with more patients 85 and older receiving home health care, along with more patients with resource intensive diagnoses. Several commenters noted the increase in patients with knee or hip replacements. Another noted that if providers were inflating the case-mix, they would expect OASIS data shown in Table 10 of the proposed rule to change accordingly.

Response: Our identification of case-mix change was based on a number of factors that revealed coding changes to higher clinical, functional, or utilization severity without an actual change in the status of home health patients. These are described in detail in the HH PPS proposed rule (72 FR 25392–25422).

Since publication of the proposed rule, we updated our analysis to use 100 percent of the HH IPS file for our baseline and a 20-percent sample of 2005 claims data. We used all episodes rather than just initial episodes. This change in our sample selection approach does not materially change the estimate of case-mix change, whether comparing the baseline to HH PPS 2003 or HH PPS 2005. The 2005 data yielded an average CMI of 1.2361, as compared to the average CMI of 1.0960 from the 100 percent HH IPS sample. Therefore, the updated change measurement is $(1.2361 - 1.0960)/ 1.0960 = 12.78$ percent. As explained in the summary at the end of this section, where we describe the results of the Abt Associates model we used to identify real case-mix change, we adjusted this result downward by 8.03 percent to get a final case-mix change measure of 11.75 percent ($0.1278 * (1 - 0.0803) = 0.1175$). To account for the 11.75 percent increase in case-mix which is not due to a change in the underlying health status of Medicare home health patients, we are finalizing the proposed 2.75 percent reduction of the national standardized 60-day episode payment rate for 3 years beginning in 2008 and extending that adjustment period to a fourth year via a 2.71 percent reduction for 2011. We are seeking comment on the 2.71 percent case-mix change adjustment for 2011.

We have conducted several analyses to determine if any portion of the above case-mix change measurement could be considered real versus nominal, i.e. not related to real change in the essential underlying health status of the home health user population. First, Abt Associates developed a model to predict the case-mix weights on large samples which is described at the end of this section. The model accounted for changes in the age structure of the home health user population, and changes in the types of patients being admitted to home health. To account for changes in the types of patients, we used four main classes of variables: Variables describing (1) the utilization of Medicare Part A services in the 120 days leading up to home health, (2) the type of preadmission acute care stay when the

patient last had such a stay, (3) variables describing living situation, and (4) variables summarizing Part A expenditures in the 120 days leading to home health. The variables for changes in the type of acute care stay classified stays into APR DRG case-mix groups, a classification system that incorporates a severity classification for each case-mix group, basic type of stay (procedure versus medical) indicator, and risk of mortality indicators during the stay. We also incorporated a set of variables describing agency ownership and organizational form, to adjust for the large effect on measured case-mix from the change in the types of agencies that occurred since the HH IPS baseline. The model is described in detail at the end of this section.

The results of the analysis indicated that a small amount of measured case-mix change is real, but that most of it is unrelated to the underlying health status of home health users.

Second, some commenters suggested that HHA patients have more resource intensive diagnoses. We conducted analyses using FY 2000 through CY 2006 data for several conditions emblematic of home health patients. The analyses indicated that admissions to home health agencies were down slightly for persons with hip fractures, congestive heart failure, and cerebrovascular accidents. These results are shown in Table 8, ''Percent Share of Home Health Admissions and Mean Time Prior to Entering a Home Health Episode, for Five Conditions, FY 2000–CY 2005''. Estimates are based on a 10 percent random sample (n=388,684 to 522,973, depending on the calendar year; statistically these are considered large samples). The data for CY2006 come from the first quarter of the year only. We used total episodes, both initial and recertification episodes, for this analysis. As our previous analysis on the 1 percent HH IPS sample and the 20 percent CY 2003 sample indicated no significant shift in the balance between initial and non-initial episodes, we believe that the annual rates and means in the table are appropriately measured, and account for the complete mix of patients seen by agencies. For defining the type of acute discharge, we used the same definitions that were used in a CMS study cited by one commenter who noted that increases in knee replacement patients have occurred (CMS, ''Medicare Beneficiary Access to Rehabilitation Care,'' June 8, 2007). According to Table 8, the share of total patients admitted to HHAs with hip fracture acute discharges in the 14 days leading up to home health declined over the period, from .82 percent to .59 percent. The share of total patients admitted with CHF acute discharges declined from 3.31 percent to 2.62 percent, a decline of 21 percent. The share of total patients admitted with CVA acute discharges declined steadily, from 1.52 percent to .97 percent, a one-third decrease. Admissions for hip replacements exhibited no clear trend; the range of rates during the period is between 1.36 percent and 1.64 percent. For these conditions, the results are not clearly indicative of more severe case-mix.

We note that admissions for knee replacements are rising, from 1.89 percent to 2.75 percent in the years from HH IPS to 2005. However, the overall percent of knee replacement patients in the national home health caseload is not large, at less than 3 percent at any given time. We accounted for the change in the share of caseload due to knee replacement patients in the Abt Associates case-mix model using the APR DRG classifications, described above and at the end of this section. The results from the model indicated that this change, in combination with other changes that were offsetting, was not enough to move the real case-mix index more than a small amount beyond the baseline.

Third, we examined the length of time between discharge and the home health episode start, to develop evidence that, on average, patients enter home care in a more sickly condition than was the case in FY 2000. Table 8 shows the average number of days between acute care discharge and the first day of the home health episode for patients with acute discharges due to the same five conditions: Hip fracture, congestive heart failure, cerebrovascular accident, hip replacement, and knee replacement surgery. The results show no change in the mean time prior to entering a home health episode for the first three conditions. We believe this result partly reflects increased use of institutional post-acute care among the home health population. Specifically, there was an increased use of SNFs and LTCHs between the HH IPS baseline and CY 2000. SNF stays grew by 2.8 percent, and SNF days of stay grew by 8.5 percent. LTCH hospital days grew by 38 percent. IRF stays and days did not grow, but IRF use is only one-third that of SNF use among home health patients.

As shown in Table 8, days prior to entering home health declined for hip replacement and knee replacement patients. As commenters have suggested, these statistics may reflect less use of post-acute institutional care on average for these two groups. However, the increasing share of the home health caseload due to these groups is not large enough to drive the national case-mix nominal average to the CMI levels reached in our follow-up year, 2005. Further, we have taken the contribution of this effect into account in the Abt Associates case-mix model described above and at the end of this section.

While we have seen an increase in the proportion of patients with diabetes according to OASIS diagnosis coding information, our research showed that HHAs have reduced services while the case-mix index continued to rise. We identified a dramatic decline in the number of home health visits per 60 day episode (Table 6). The average number of visits per episode in 2005 was 20.53, compared to 26.88 during HH IPS.

After adjusting for wage and benefits growth (by holding wage and benefit estimates constant at FY 2000 levels), we find that average resource costs have declined slightly from 1999 to 2005, from $451.39 to $447.41 (see Table 7). For most of the calendar quarters displayed in Table 7, average resource costs after adjusting for wage growth were substantially below the HH IPS baseline. At the same time, the case-mix indexes at admission and for total episodes have increased (see Table 7). Resource costs are based on visit time reported on claims, and thus are labor-related. If the CMI is increasing, suggesting that patients are more clinically severe, have more functional impairments, and require more visits, we would have expected resource costs to increase as well. However, by 2005 average resources per episode were still below HH IPS levels, after adjusting for wage growth. Notably, it is not until 2005 (when, according to Bureau of Labor Statistics wage survey data, wages rose significantly), that unadjusted resources are significantly higher than the HH IPS baseline level.

Comment: Several commenters noted that the growth in Medicare Advantage (formerly known as Medicare + Choice) programs has shifted low acuity patients out of traditional Medicare, leaving those patients with higher needs in traditional Medicare. They felt this contributed to an increase in the average case-mix index.

Response: Medicare Advantage programs provide managed care benefits which are different from the traditional Medicare benefit. For further information on these managed care benefits, please refer to the Internet only manual 100–01, ''Medicare General Information, Eligibility, and Entitlement'', chapter 5, subsection 80. This manual is available on CMS' home health Web Site at *http://*

www.cms.hhs.gov/center/hha.asp. These managed care programs were not considered in our analysis of the case-mix change adjustment as they are separate benefits from traditional Medicare. We cannot make comparisons or draw conclusions based upon any benefit other than traditional Medicare.

Comment: Many commenters felt that the 2.75 percent case-mix change adjustment failed to account for OASIS training on accurate assessment and on OASIS use. The commenters felt this led to OASIS scores which reflect a more accurate picture of the home health patient rather than case-mix up-coding. Two commenters noted that there was systematic undercoding prior to training and guidance on OASIS and diagnosis coding. Some commenters argued that CMS has benefited from agency undercoding, resulting in agencies underpaying themselves.

Response: We agree that some of the changes seen in OASIS characteristics are partly due to emphasis on proper application of OASIS guidelines. We also believe that there were incentives driven by payment and quality program changes that interacted with the subjective aspects of the assessment process to cause nominal coding changes. Diagnosis coding entails some discretion by the Agency: In some cases more than one diagnosis could reasonably be called primary. Thus, we believe the significant growth, for example, in orthopedic diagnoses partly reflects the financial incentives that colored the diagnosis selection process. Our examination of National Claims History data revealed an increase in Medicare knee replacement patients. However, these patients account for only about 2.75 percent of the national home health caseload at any given time. With such a small share of the caseload, they do not drive the case-mix index by themselves. Hip replacement patients did not increase as a share of episodes by 2006, although their share appeared to increase slightly between HH IPS and CY 2003 (see Table 8). However, Medicare hip replacement patients also are not a large factor in the overall home health caseload, accounting for only between 1.36 percent and 1.64 percent of episodes in the years 2000 to 2006.

Further, ADL functioning can be difficult to assess due to variability within patients and the multiple dimensions of functional limitations. Quality measures and financial incentives may combine to bias agencies towards assessing a patient with a more-severe rating at the start of care. Incentives apparently led to high-therapy treatment plans, aided by the 10-therapy threshold.

Our analyses in the proposed rule reviewed information pertaining to changes in OASIS guidance and potential coding improvements that may have resulted. In August 2000 official guidance on OASIS coding affected a number of case-mix items. Functional items began to emphasize the patient's ability to perform the item safely. This may have caused several ADL statistics to shift away from the completely independent level. Another August 2000 change in OASIS instructions affected the pain item, M0420. Additional strategies for assessing pain were offered, and guidance on whether the pain was well controlled took into account patient adherence to pain medication. Many patients trade off pain control for diminution of medication-related side-effects. These changes likely increased the number of patients assessed with pain. The OASIS instructions regarding assessment of urinary incontinence were also expanded to consider mobility and cognition, which may have led to increased rates of reporting of this item.

Furthermore, in August 2000 there were two changes to the OASIS manual that could have increased the number of patients with surgical wounds. First, the definition of a surgical wound was expanded to include medi-port sites and other implanted infusion devices or venous access devices. Therefore more skin openings could be assessed as wounds under M0488, a case-mix item, provided the site is the most problematic. The second change allowed a muscle flap performed to surgically replace a pressure ulcer to be considered a surgical wound, and not a pressure ulcer. This again would have added to the number of surgical wounds.

All the above we believe indicates that the increased reporting rates seen in some OASIS items do not represent a change in underlying health status of HH PPS patients. Numerous commenters noted that they had changed OASIS coding as a result of training. This is consistent with nominal versus real change in patient characteristics.

Comment: A commenter wrote that in future, it would be beneficial to have a more systematic approach to measuring changes in OASIS coding practices. For example, CMS should consider efforts such as the collection of OASIS from independent entities for comparison to agency assessments or on-site visits to check agency coding practices. The commenter noted that the need for better data is particularly acute because this rule will present another opportunity for case-mix increases due to coding improvement, so there should be a prospective adjustment as well. The commenter suggested CMS consider a combined (retrospective and prospective) case-mix change adjustment for this rule that would be taken over a longer period of time. Furthermore, the commenter suggested CMS should also continue to evaluate coding changes in future years to determine if additional coding improvement is occurring.

Response: While we agree it would be beneficial to have a more systematic approach to measuring changes in OASIS coding practices, to do so in a manner suggested by the commenter would require significant new resources, especially since the methods involve primary data collection. We will explore methods to examine agency coding practices. To make the best use of administrative data, rather than expensive-to-collect primary data, we intend to analyze changes in relationships among types of resources used in the episode, by case-mix group and type of patient, controlling for the most reliable measures of patient condition available. This may provide evidence to supplement our monitoring of resources presented in the proposed rule and this regulation. We will continue to monitor average minutes per visit reported on claims. We will also monitor changes in the comorbidities reported alongside primary diagnoses, to assess changes in relationships among the diagnoses reported on OASIS. We will examine diagnosis coding and OASIS item coding for coding improvements as well as abuses.

We agree that the refinements will present another opportunity for case-mix change due to coding improvements. We did not pursue a prospective adjustment for nominal case-mix change because we believe it is subject to error. We believe our proposal to phase in adjustments based on retrospective analysis is an appropriate response. Phasing in adjustments limits the demands for operational adjustments by agencies. Our retrospective approach is consistent with this regulation's request for further comment from the public on the fourth year of case-mix change adjustment, which is based on results of our empirical analysis since the proposed rule was issued.

Comment: A commenter noted that the proportional increase in therapy services is due to both a decrease in other services and the underutilization of therapy services in past episodes of care prior to HH PPS. Additionally, the use of therapists in collaboration with nurses has helped ensure more accurate

coding of the OASIS, particularly in the functional component area.

Response: We agree that there has been a shift toward rehabilitative services, which increased the proportion of therapy services relative to skilled nursing or home health aide services. This suggests there may have been some substitution of therapy services for nursing services and perhaps for home health aide services. We have not identified any studies substantiating the idea that therapy was underutilized, nor have we identified studies indicating that the dramatic drop in aide services undoubtedly means that aides were overutilized. One unpublished study of the service reductions during HH IPS suggests that beneficiaries who were financially better off did increase their use of privately paid care services as a result of the reduction in services which came about during the HH IPS period. Whether this indicates that services were previously overprovided is unclear (McKnight, Robin, ''Home Care Reimbursement, Long-term Care Utilization, and Health Outcomes,'' NBER Working Paper Series, Working Paper #10414, National Bureau of Economic Research, Cambridge, MA April 2004). Accordingly, review of the studies does not enable us to draw a firm conclusion about which types of services could be characterized as under- or overutilized before HH PPS. However, the implications of the results of the Abt Associates model of case-mix change (described at the end of this section) are that during HH PPS agencies provided more therapy to patients than they did under HH IPS, and that most of this increase cannot be explained by changes in patient health status.

In response to this comment, we measured the growth in utilization of any therapy services and therapy services above the 10 visit threshold, among total episodes between HH IPS and HH PPS. We found during HH IPS that 39.90 percent of episodes involved therapy services, compared to 50.45 percent of episodes during CY 2005. However, the proportion of episodes using therapy services at a level of 10 visits or more changed from 17.0 percent to 26.4 percent. Thus, therapy utilization at or above the 10 visit threshold grew twice as fast as therapy utilization below the 10 visit threshold. These statistics show that the great bulk of the growth in therapy utilization was at or above the ten visit therapy threshold.

We believe the data indicate that agencies' therapy treatment plans were strongly influenced by financial incentives. Implications of the analysis of case-mix change performed by Abt Associates suggest the shift to more intensive therapy plans cannot be explained by changes in patient health status.

We recognize and appreciate the contribution of therapists in collaboration with nurses in ensuring OASIS coding accuracy. As noted previously, increases in coding accuracy contribute to nominal case-mix change. Improvement in coding accuracy has also occurred with the introduction of other prospective payment systems.

Comment: Several commenters felt the 2.75 percent case-mix change adjustment was based upon a flawed analysis, with an insufficient sample size. They cited the reduction in the model's R-squared along with MedPAC's report that the coefficient of variation was greater than 1 for 60 of the 80 case-mix groups.

Response: Based on the updated analysis, the final case-mix change measurement was based upon 100 percent of HH IPS claims and a 20-percent sample of 2005 HH PPS claims, a greater number of HH IPS claims than used in the proposed rule. Both absolute sample sizes are considered quite large in statistical terms. Therefore sample size can no longer be considered an issue in the case-mix change adjustment calculation. We did not use the regression model cited by the commenter to determine the amount of the case-mix change adjustment; however we used regression analysis to model the case-mix index, relying on a set of variables that were independent of agency coding incentives (see the analysis description at the end of this section).

We also note that the commenter's reliance on the MedPAC comments is misplaced as the MedPAC comments dealt with a review of the case-mix refinements and not of the case-mix change adjustment. MedPAC's comments, which are publicly available, state that MedPAC did not independently assess the case-mix and patient data in our analysis of case-mix change. However, MedPAC analyzed the refinements in the proposed rule, including an analysis of the coefficient of variation (CV). Their CV analysis found that the proposed system yields more internally homogeneous HHRGs with less within-in group variation in the number of visits provided. They reported that the average CV fell from 0.81 for the current system to 0.75 for the proposed system, and that the drop in CV meant that the new resource groups can better identify episodes with similar resource use than under the current system.

Comment: Several commenters wrote that the average annual per patient expenditures for home health services dropped from 2001 to 2003, and therefore do not suggest that case-mix weights are increasing.

Response: Data from the annual *Medicare & Medicaid Statistical Supplement* indicate that annual payments per user of home health services have actually increased from $2,936 in the year 2000 to $4,314 in 2005. Our analysis clearly shows that the average case-mix weights have increased. Generally, payments per user are affected by increases in the billed case-mix weights and by annual rate updates.

Comment: From 2000 to 2003, HHAs altered care practices to achieve improved patient outcomes, shifting from dependency-oriented care to care designed to achieve self-sufficiency and independence. The increased use of therapy services and decreased use of home health aides are indicative of this change. Changing to multiple therapy thresholds to align payment incentives with care and the use of a case-mix change adjustment that primarily reflects growth in therapy utilization is an unnecessary adjustment that ''double-dips'' on rate adjustments.

Response: One goal of the case-mix refinements is to better match payments with agency costs. Changing to multiple therapy thresholds with a gradual increase in payment better aligns costs and payments and avoids incentives for providers to distort patterns of good care that would occur at each proposed therapy threshold. As a disincentive for agencies to provide more care than is appropriate, we proposed that any per-visit increase incorporate a declining, rather than constant, amount per added therapy visit. The final case-mix change adjustment addresses nominal case-mix change that occurred between the HH IPS baseline and 2005, and our adjusted calculation of that nominal case-mix change allows for a real increase in case-mix that reduces the nominal measurement by 8.03 percent. The multiple therapy thresholds and the case-mix change adjustment are unrelated and do not doubly adjust the rate as each adjustment is clearly warranted by the data.

Comment: Some commenters stated their belief that incentives in HH PPS led many agencies to seek out higher case-mix cases and avoid lower case-mix cases to maximize reimbursement following HH PPS implementation. They agreed this would create real case-mix change versus nominal change.

Response: In the Abt Associates analysis of changes in the case-mix index, the model controlled for changes in health status of home health patients, measured independently of the OASIS. From that analysis, we identified a small amount of real case-mix change between the HH IPS baseline and 2005. An analysis by MedPAC in 2005 (''Home Health Agency Case-mix and Financial Performance,'' MedPAC, Washington, DC, December 2005) addressed the possibility that reductions in total visits per episode along with shifts in resources among the case-mix groups after HH PPS began gave agencies the ability to realize higher margins on some case-mix groups (particularly high-therapy case-mix groups, with their high weights) more than for others. However, while margins may have become advantageous among some of the case-mix groups after HH PPS began, we believe, based on the data, that the real case-mix of those groups changed very little.

Comment: A commenter argued that the underlying premise of the HH PPS system was to control Medicare home health utilization through an episodic payment because CMS was unable to define appropriate and efficient visit levels. Therefore, he believed it is inconsistent to recognize the expected reduction of visits under HH PPS but argued that real case-mix change did not occur during that period. He noted that such a position demonstrates that the HH PPS did not increase the efficiency of care delivery.

Response: Our initial analysis in the proposed rule indicated that agency coding practices changed for a variety of reasons, including improved coding, changes in OASIS instructions, specific issues (such as confusion about healing status of surgical wounds and effects of education in the proper use of trauma codes in the ICD–9–CM classification system), as well as financial incentives. The subsequent Abt Associates analysis of real case-mix change reinforced the conclusion that very little of the coding change reflected real case-mix change. The trend in resources diverged dramatically from the trend in the average case-mix weight, particularly through 2004 (see Table 7), without any commensurate link to evidence concerning home health cost of care.

Comment: A commenter felt that CMS assumes that all legitimate change in case-mix ended with the implementation of HH PPS because the HH IPS created sufficient incentives to maximize all real case-mix change. This rationale fails to consider that 20 percent of HHAs had such high cost limits under HH IPS that these agencies were not incentivized to create real case-mix change until after HH PPS implementation. The commenter believed that a review by CMS of its data during the HH IPS period would allow it to document the subset of HHAs whose case-mix was not responsive to HH IPS.

Response: CMS has done analysis that accounts for real case-mix change after HH PPS implementation, and only a small amount of real case-mix change occurred. The analysis takes the commenter's idea into account (see the end of this section for details). That is, the case-mix model we used to predict real change in case-mix measures the national level of real case-mix by CY 2005, using CY 2005 data on home health patients' characteristics. We compared these results to the national average from the HH IPS baseline year, and found that a small increase in real case-mix had occurred.

The commenter suggested that some agencies were not incentivized to make case-mix change until the implementation of the HH PPS. We believe that it is more appropriate to implement a nationwide approach to the issue of case-mix change adjustment. As noted previously, an individual agency approach would be administratively burdensome and difficult to implement. Policies to address the identity of agencies in light of changes to organizational structures and configurations would need to be developed. Furthermore, smaller agencies might have difficulty in providing accurate measures of real case-mix change because of their small caseloads.

Comment: A commenter noted that CMS asserts that OASIS items not used for payment were more stable than those used to increase HH PPS payment. The commenter stated that if these items reflect patient severity, then these items should be included in the HH PPS payment formula.

Response: Our process of selecting the case-mix items was explained in the HH PPS Final Rule, implementing the HH PPS (65 FR 41193). Essentially, not all items on the OASIS were equally important in explaining case-mix, and not all items on the OASIS were equally appropriate to use in a payment system. That does not mean such items are irrelevant in understanding the health status of the home health user population.

Comment: Several commenters wrote that by using the average case-mix weight, CMS is equally cutting payment to both high and low average case-mix agencies. This across-the-board cut would punish those who did not inflate the case-mix equally with those whose case-mix was inflated. A more equitable approach would be to reduce proportionally the proposed cut for those agencies whose individual case-mix weight was below the mean in the study period. Several commenters noted that their average case-mix remained stable or declined since HH IPS. Another commenter asked for a ''hold harmless'' provision for the non-profit or other efficient HHAs where the case-mix index is less than 1.

Response: We believe that it is more appropriate to implement a nationwide approach to the issue of case-mix change adjustment. An individual agency approach would be administratively burdensome and difficult to implement. Policies to address the identity of agencies in light of changes to organizational structures and configurations would need to be developed. Furthermore, smaller agencies might have difficulty in providing accurate measures of real case-mix change because of their small caseloads.

Comment: A commenter wrote that CMS's findings of coding ''creep'' among other provider types (long term care hospitals, inpatient rehabilitation facilities, and acute care hospitals) discredit the agency's conclusion that HHA case-mix change is due to nominal change rather than real change. Another commenter wrote that CMS' case-mix change findings were consistent with the prior experience of other prospective payment systems.

Response: We agree with the comment that our case-mix change findings are similar to those seen in other prospective payment systems. Our conclusion that case-mix change is almost completely due to nominal change is based upon multiple analyses of health characteristics, of resource costs, and consideration of other factors such as the effects of the Balanced Budget Act of 1997. Regardless of similar findings of nominal change among other provider types, the HH specific analyses utilized here show that a case-mix change adjustment in HH PPS is appropriate.

Comment: Several commenters noted that the proposed case-mix change adjustment will cripple home health agencies' ability to survive and compete at a time when home health is the only hope for an affordable national health approach. They noted that the nursing shortage and rising fuel costs have driven up agency costs and made it difficult for agencies to attract and retain staff. One commenter believed these costs more than compensate for

any coding ''creep'' that may have occurred.

Response: We share the commenters' concerns about the nursing shortage and rising fuel costs. However, case-mix change is based upon actual patient characteristics and is not to be used to compensate for cost differentials.

Comment: Several commenters noted that the shift to high therapy episodes (with 10 or more visits) accounts for over 70 percent of the change in case-mix from 1999 to 2003. This occurred because those patients requiring more therapy visits are in more clinically and functionally severe conditions than those who do not. The commenters recommended that this effect be excluded from the case-mix change adjustment calculation and that the remaining case-mix change adjustment be eliminated entirely to recognize the additional costs to HHAs for training staff and making operational modifications as a result of the refinements that are not reimbursed.

Response: Our analysis of OASIS items in Table 10 of the proposed rule indicated basic stability in the health characteristics of HHA patients. Our subsequent analysis of case-mix change found a small amount of real change, and therefore, we modified the case-mix change adjustment accordingly.

Given that more therapy sources were provided, the implication of our analysis of real change in case-mix is that more therapy was provided to substantially the same patient mix that agencies served in the HH IPS period. We consider the refinements to be evolutionary, not a paradigm shift in our payment methodology. For example, we have added only one new item from the OASIS, the item on injectable medication use. In addition, we dropped M0175 from the case-mix algorithm, in part due to the challenges faced by agencies in accurately ascertaining the information needed for M0175. Furthermore, we dropped other items because they are no longer useful in explaining resource use (see discussion of changes to the case-mix model scoring table, Table 2A, in section III.B.5). Thus, we believe the commenter overstated the impact on agencies of having to adjust to the refinements. While these case-mix refinements will entail staff training and operational modifications, we believe the refinements as implemented will result in a better alignment of costs to payments, which should benefit the agencies.

Comment: One commenter suggested that the case-mix change was due to clinicians determining the ICD–9 coding under the HH PPS, and suggested that more education and training would help bring about better coding. He noted there are differences in FI implementation, interpretation, or follow-up related to ICD–9 coding.

Response: We recognize that there have been improvements in coding practices, and we encourage home health agencies to follow ICD–9–CM guidelines in coding patient diagnoses. Home health coding guidance is available on CMS' Home Health Web Site at *http://www.cms.hhs.gov/center/hha.asp*, under ''Billing/Payment'' and then under ''Home Health Coding and Billing''. ICD–9–CM official coding guidance is available from the Centers for Disease Control Web Site at: *http://www.cdc.gov/nchs/datawh/ftpserv/ftpicd9/ftpicd9.htm*. CMS staff continues to meet regularly with FI representatives to resolve coding issues as they arise.

Comment: A commenter noted that CMS assumed relative stability of resource utilization that should have been already matched by a corresponding stability in the case-mix index. Thus, the commenter believed there is an assumption by CMS that agencies had perfect understanding and application of OASIS at the time HH PPS was implemented.

Response: CMS did not assume agencies possessed perfect understanding of OASIS or lesser understanding of OASIS. We based our case-mix change adjustment on the evidence that patient health status did not change substantially even though improved understanding of and application of OASIS occurred.

Comment: A commenter wrote that the 2.75 percent case-mix change adjustment rate is really higher because our calculation is based upon the 2007 base rate after adjusting it for the market basket increase and for outliers.

Response: The case-mix change adjustment was correctly applied in the process of determining the budget neutral expenditure target in our payment simulation for the refined HH PPS system. The statute provides that any case-mix change adjustment be applied to the national standardized 60-day episode payment amount, which includes the market basket update and adjustment for outliers.

Comment: Several commenters suggested that we evaluate the impact of the coding changes before implementing any case-mix change adjustment or that we use claims data to test the impact of the coding changes, and make this available.

Response: The case-mix change adjustment is designed to address the case-mix change which has already occurred. Implementation of a case-mix change adjustment does not depend on the effect of the HH PPS refinements proposed. We believe that the refinements will better match payments to costs and have already tested this using claims data.

Comment: Several commenters suggested that the case-mix change adjustment resulted from the FIs failing to do their jobs. One suggested that the appropriate way to resolve upcoding issues is through medical review. If medical review occurred and upcoded episodes were then adjusted, the case-mix change adjustment is essentially ''double-dipping'', taking back dollars a second time. Another commenter writes that there is no medical review data supporting an industry wide pattern of case-mix upcoding. One commenter suggested we focus on audits and recovery of inappropriate payments rather than implement a case-mix change adjustment. Another argued that therapy services increases in the case-mix weight change has the character of a retroactive claim denial without a claim review.

Response: Medical review affects such a small proportion of paid claims that we do not believe taking it into account would materially affect the estimate of nominal coding change, nor did we rely upon it in performing our case-mix change adjustment analysis. When we initially reviewed the National Claims History files to check for adjustments to HHRGs from medical review, we found error in the field containing the information. We decided not to use this field in correcting the HHRGs on paid claims in our research files. However, we did correct errors in OASIS item M0175 (concerning the patient's preadmission stay history) in our analyses. The statute provides authority to take into account and adjust for changes in case-mix coding not due to changes in the underlying health status of home health patients.

Comment: One commenter noted that the venipuncture patients who were no longer eligible for Medicare home health care due to BBA changes had a very low case-mix. Their loss from the Medicare home health patient population would cause the overall average case-mix to increase. This could account for some portion of the increase in case-mix seen. Another commenter asked if venipuncture patients were included in the baseline HH IPS sample.

Response: We accounted for the loss of venipuncture patients by using the last year of HH IPS as our baseline. At such time agencies would have complied with the changes in patient

eligibility requirements, and this would have been reflected in our claims data.

Comment: Several commenters noted that the cost reports do not reflect all agency costs, which included those for telehealth, that have improved care and outcomes. If all agency costs were included, CMS would see an increase in resource costs which corresponds to the increase in the case-mix index. Another commenter wrote that resource costs actually decreased early in HH PPS and then increased.

Response: The statute does not provide payment for Medicare home health services provided via a telecommunications system. Section 1895(e)(1) of the Act provides that telehealth services do not substitute for in-person home health services and are not considered a home health visit for the purposes of eligibility or payment under the Medicare home health benefit. As stated in 42 CFR 409.48(c), a visit is an episode of personal contact with the beneficiary by staff of the HHA, or others under arrangements with the HHA for the purposes of providing a covered HH service. The provision clarifies that there is nothing to preclude an HHA from adopting telemedicine or other technologies that they believe promote efficiency, but those technologies will not be specifically recognized or reimbursed by Medicare under the home health benefit.

Our measure of resource costs for home health is based upon total minutes of time reported on the claim for each discipline's visits. Resource costs result from weighting each minute by the national average labor market hourly rate for the individual discipline that provided the minutes of care. Bureau of Labor Statistics data are used to derive this hourly rate. The sum of the weighted minutes is the total resource cost estimate for the claim. This method standardizes the resource cost for all episodes in the analysis file. This method assumes that the non-labor costs per episode are proportional to the labor costs. Our payment rates with an annual market basket updates since the initial HH PPS final rule (July 3, 2000) are designed to reflect the agency's costs. Telehealth costs are not part of the home health market basket and thus do not contribute to the annual updates. Market basket updates are also intended to account for the changes in wages.

Table 7 indicates the trajectory of resource costs, with and without adjustment for wage growth. The data do indicate that resource costs did decrease at the beginning of HH PPS. Adjusted resources remained flat until approximately the last six quarters of the time period. Moreover, resources rose steadily throughout most of the time period, and these increases are compensated through market basket updates.

Comment: Several commenters were concerned about the absence of Abt's Technical Report, which made analysis of the proposed case-mix change adjustment and case-mix refinements difficult.

Response: We understand the commenter's desire for Abt's Technical Report, but note that due to unanticipated difficulties in completing a useful draft, we were unable to issue that report. We intend to issue the final report when it is completed and that the final draft to be useful to the lay reader. We expect that the results will be based on highly technical analyses that necessitate careful attention from the lay public. We will provide a link to Abt's report on our Web Site once the report is available.

Comment: Another commenter asserted that therapy utilization is the most important patient characteristic in the case-mix model, but that therapy utilization is discounted in the case-mix change adjustment analysis. The commenter contended that if therapy utilization were considered a patient characteristic, it would explain most of the increase in the average case-mix index, and thus the case-mix change adjustment could be reduced or eliminated. The commenter suggested that CMS withdraw its proposed case-mix change adjustment for 2008, 2009, and 2010. Furthermore, CMS should design and implement an evaluation method to analyze changes in case-mix weight that utilizes proper standards related to the home health relevant factors in the analysis such as changes in per patient annual expenditures, patient clinical, functional, and service utilization data, and dynamic factors in the Medicare system that impact the nature of patients served with home health care.

Response: We believe that the Abt Associates case-mix model was developed to measure real changes in case-mix addresses this critique. In response to the suggestion in the comments from the National Association for Home Care and Hospice, we used patient expenditures on Part A services in the 4 months leading to the home health episode, rather than the total of annual expenditures suggested in the comment. Studies in the field are not consistent in defining a time period for measuring this variable, which is used to serve as a proxy for health status. For example, a study by Mathematica Policy Research of the effects of the home health prospective payment demonstration used 6 months of data on expenditures to control for general health status [''The Impact of Home Health Prospective Payment on Medicare Service Use and Reimbursement'', Mathematica Policy Research, Princeton, N.J., December 2000]. We chose to use 4 months' of data on Part A expenditures in part because there is no consensus, and our available analysis files captured this measure. We decided to avoid using OASIS measures in the model (except for reported living situation) in favor of measurements external to the home health providers, namely irrefutable demographic measures, National Claims History Part A utilization measures, and hospitalization-related patient characteristics. As previously noted, we also adjusted for the change in types of Medicare agencies that followed the start of HH PPS. We believe that there is little useful analysis that can be garnered from separately measuring dynamic factors in the Medicare system that impact the nature of patients served in home health care. The model we use measures the actual characteristics of patients that are in the agency caseload, and is the best reflection of the case-mix in the HHA.

Comment: A commenter was concerned that because LUPA episodes retain their original case-mix, they may be contributing to the increase in the average case-mix index.

Response: LUPA episodes were not used in the measurement of case-mix change in either our analysis or in the Abt Associates model of real case-mix change.

Comment: A commenter wrote that if 1.233 actually represented average Medicare case-mix in 2003, then the average payment, per 60-day episode, would have been $2,856. The commenter asked that CMS disclose their average 2003 payment amounts for all paid episodes, inclusive of full term and those experiencing downcode adjustments.

Response: It is not clear how the commenter got the figure of $2,856. The standardized national rate per 60-day episode for CY 2003 was $2,159.39. If the commenter multiplies this figure by the average case-mix weight for 2003 of 1.233, the result is $2,663 before any wage adjustment. The $2,663 also does not include any adjustments for LUPAs, PEPs, or SCICs. The average case-mix weight, of 1.233 from the proposed rule, for 2003 is calculated after taking downcoding adjustments but is only calculated from initial episodes. Downcoding adjustments are taken when the Request for Anticipated

Payment (RAP) reports a high-therapy case-mix group, but the final claim does not. Using a 10 percent sample of 2003 paid claims data, the average payment per initial episode is estimated to be $2,614. This figure includes the effects of the wage adjustment, as well as the downward effect of adjustments for SCICs, PEPs, and outliers.

Comment: A commenter suggested that CMS re-evaluate the coding of M0488, surgical wounds, as the increased incidence of the early/partial granulation response is not an example of up-coding only. Rather, it is due to an increased understanding of how to appropriately code items per OASIS guidelines.

Response: This is an example of nominal coding change due to improved coding practices. As noted in the proposed rule, we recognized the contribution of such sources of change in determining and assessing the case-mix change adjustment.

Comment: A commenter disputed that the average case-mix weight of Abt model was 1.0, and argued that the timeframe includes a period in which real case-mix change occurred. Therefore, the commenter asserted that the statute does not allow an adjustment.

Response: By construction, the average case-mix weight of the original Abt model was equal to 1.0. This means that we used the case-mix group assignments in the original Abt case-mix study's sample of episodes, and divided each group's average resources by the overall sample average. Using this approach, the average case-mix weight from this procedure must then be 1.0. The sample was selected to be representative of home health agencies nationally, but we were reliant on volunteers for the study. According to statistical theory, it is highly likely that another sample of volunteer agencies selected to be nationally representative using the same selection procedure would have produced similar estimates of resource cost. It is impossible to know how different the 1998 to 2003 trajectory of the average case-mix weight might be had other agencies' data been available. That is, one reason why we selected a baseline other than the Abt Associates study sample. Choosing the HH IPS baseline allowed us to use a consistent sample of agencies and one that is nationally representative, irrespective of whether any agencies would be prepared to volunteer for a study.

Comment: A number of commenters felt that HH patient characteristics were not stable. One commenter noted that the baseline 1999 to 2000 HH IPS population excluded costly long-term patients who were embraced by HH PPS from 2000 to 2003. The commenter noted that the problem with the proposed refinements is the case-mix adjuster's inability to cope with therapy utilization by long term users, not the absence of these patients from the system. The commenter cited an April 2000 GAO report which contends that it has been difficult to develop a case-mix adjustment method that adequately described resource use, particularly for long term users.

The commenter noted that by statutory directive, HH PPS was crafted to ensure quality access to all eligible beneficiaries; by regulatory design, case-mix adjustment was engineered to remove incentives for providers to ostracize expensive patients. The commenter asserted that CMS' conclusion that patient characteristics remained essentially stable is in direct conflict with the goal of HH PPS to create a payment system which would allow equitable treatment of HH IPS-excluded patients and thus create a population that was fundamentally different than that which existed in the HH IPS baseline year.

Response: First, we noted that after the BBA, venipuncture-only patients, who were often the long-term users, were no longer eligible for the home health benefit. The exclusion of these patients helped stabilize the characteristics of the home health patient population. Second, we are unclear as to the commenter's statement that the intent of the HH PPS was to create a different population group. High-therapy patients were not absent from the national caseload during the final year of the HH IPS period. We note here again, as we did in the proposed rule, that the utilization of therapy was climbing rapidly during the last year of the HH IPS. Therapy utilization continued to climb after HH PPS began. Even if we were to agree that the goal of the HH PPS was to redress the possible exclusion of certain high-cost patients during the HH IPS, we also note that our model predicting change in the real case-mix accounts for a possible return of HH IPS-excluded patients to the system.

Comment: A commenter believed that errors built into the original case-mix adjuster are so large that it is impossible to reasonably carve out an 8.7 percent case-mix change adjustment. The commenter noted that service utilization accounted for 62.5 percent of the estimated predictive power of the original model, the actual R-squared factor for all episodes was 21.9, and several significant weighting factors were known to be unreliable (M0230, M0460). Additionally, the commenter noted that the OASIS instrument was a source of error because it was designed to measure outcomes by asking nurses to assess the ability of a patient to do a task, as compared to a performance-based measure.

Response: As we have noted, we refined the case-mix model to better address some of the concerns expressed by the commenter. In the proposed rule, we summarized the case-mix model's ability to predict resource use with the measure of model fit known as the R-squared statistic. We explained that the original HH PPS regulation's model was based on initial episodes only. We used initial episodes because of sample size limitations of the original Abt study sample of 90 agencies. When we began refinement research using claims from the National Claims History, we added later episodes to the analysis samples. We found that the overall R-squared statistic of the original HH PPS case-mix model after adding the later episodes to the HH PPS-period analysis samples was 0.21. Our data analyses indicate that the R-squared before adding later episodes to the sample is higher than 0.21; we reported in the proposed rule that the R-squared statistic on initial episodes was reduced to 0.29 by 2003. The R-squared statistic was originally 0.34 in the Abt study sample, as noted in the July 3, 2000 Final Rule (65 FR 41193). It should be understood that the later episodes are a minority of episodes (29 percent). Therefore, the model still adequately fits approximately 71 percent of all episodes.

Furthermore, we disagree with the suggestion that the OASIS instrument was a source of large error. The case-mix measure is based on OASIS items, and the scientific reliability of OASIS items has been studied. OASIS items used in the case-mix model generally have good reliability. Item M0460, Stage of most problematic pressure ulcer, and item M0230/M0240, Diagnoses and severity index, have ''substantial'' reliability, according to a report prepared for CMS by the Center for Health Services Research in Denver, Colorado (Volume 4, OASIS Chronicle and Recommendations, OASIS and Outcome-based Quality Improvement in Home Health Care, Feb. 2002). In this report, a rating system commonly used in reliability research was used. A ''substantial'' reliability rating was assigned if the weighted Kappa reliability statistic or percent agreement was at least 0.61. For these two items, the reliability values were at least 0.70.

In summary, the performance of the original case-mix model is strong

enough to define a case-mix change adjustment. The measure of model fit comparable to the original one from the Abt case-mix study has declined somewhat, as might be expected over time. Yet the model fit has remained adequate for a strong majority of episodes. The OASIS assessment items have acceptable reliability. So we disagree with the comment that errors built into the case-mix adjuster are too large to be the basis for a case-mix change adjustment.

Comment: The proposed rule stated that HHAs had no incentive to bring about nominal changes in case-mix pre-HH HH PPS. A commenter disputed this, noting that HHAs could have affected the case-mix weight in a manner not anticipated or not responded to by CMS.

Response: We based our proposal for adjusting payments for nominal case-mix change on the observed average weight from a statistically valid sample representing the last four quarters before HH PPS began. We believe it is the appropriate baseline from which to start measuring coding changes that Medicare did not intend to pay for under HH PPS. We explained the other reasons for using this as the baseline in the proposed rule (72 FR 25392–25393).

Comment: A commenter questioned the decision not to use the October 1997 through April 1998 study sample data as the baseline. CMS had noted that the agencies in the sample were volunteers, and the commenter noted that volunteer agencies represented less than 1 percent of the agencies in existence. The commenter also noted that the decrease in visits does not necessarily result in a decrease in resource costs. He stated that if the reduction in visits was weighted toward lower cost visits (such as home health aides), then that would imply that a greater portion of the visits done in subsequent years were higher cost visits (nursing, therapy, social worker). The average cost per visit would then be higher in those subsequent years, and therefore the total resource cost would be higher. The commenter gave the elimination of venipuncture as a qualifying skill as an example.

Response: The commenter may have confused an agency which volunteers to participate in a study with a voluntary, or non-profit, agency. The agencies used in the study sample included a mix of organizational types.

We accounted for the use of visits as a measure of resource costs by weighting the visit minutes according to the labor costs of the discipline involved. Thus, the resource cost measure summarizes the effects of both a shift to higher-cost visits and a general reduction in visits.

Comment: The proposed rule stated that CMS expected the growth in the case-mix index to be accompanied by more consumption of services, but that instead CMS measured slightly lower resource consumption. A commenter noted that this conclusion does not consider that payments to home health agencies during this period were not being fully adjusted for inflation, and therefore the natural reaction of agencies would be to improve efficiency and lower resource consumption when possible in order to survive.

Response: Margin analysis by MedPAC, CMS, and the Government Accountability Office has indicated that Medicare margins under HH PPS have generally exceeded 10 percent. Therefore, we find the commenter's conclusion that agencies responded to ensure survival counterintuitive, because it would appear that in general, the payments made under HH PPS covered their Medicare costs. We have not studied efficiency outcomes among Medicare home health agencies, but economic theory would suggest that entities become more efficient under bundled payment. We also note that experts who study health services have suggested there may be an incentive to stint on services under prospective payment.

To summarize our case-mix analysis, Abt Associates developed a case-mix prediction model designed to measure real change in case-mix. We used two data sets in applying this model. First, we estimated the model on an HH IPS sample. The HH IPS sample consisted of 394,479 non-LUPA episodes representative of total episodes during the last 12 months of HH IPS. The episodes were simulated from claims using the same methodology that we used to define episodes and link them to OASIS assessments for our case-mix change analysis noted in the proposed rule. We used the model coefficient estimates to predict case-mix on a HH PPS sample. The HH PPS sample consisted of 876,199 non-LUPA episodes representative of total episodes during CY 2005. Both samples were restricted to non-LUPA episodes with a matched OASIS assessment from the national OASIS repository.

The purpose of this case-mix model is to predict the average case-mix weight in the 2005 HH PPS year, based on a regression model estimated from the HH IPS baseline year. Then, only the home health population changes (as represented by the independent variables for the HH PPS year) affect the average case-mix weight predicted from the model. In effect, the model assumes that the population's real case-mix would have evolved to the predicted levels if HH IPS had continued beyond October 2000, or had HH PPS not been implemented. The independent variables (noted below) used to make the predictions purposely do not come from OASIS (with one exception, family situation variables) so that the model is not based on potentially up-coded variables from home health agency coding on OASIS. We use demographic and non-home health Part A claims history variables as the predictors. We also include agency type and organizational form variables which help explain the level of case-mix. The predictive ability of the full model, as indicated by the R-squared statistic, is 0.17.

With each successive stage of model development, new sets of variables were added to measure the effect on the average prediction in the sample representing the 2005 time period. The first phase of the model is based on demographic variables, consisting of a large set of age-by-race and age-by-sex groups. The predicted average case-mix weight did not change appreciably when using these variables alone to make predictions, although we noted that those beneficiaries in the 85-and-older age group grew in prevalence and contributed positively to the case-mix index. This effect was offset by changes in the prevalence of other demographic groups, to produce only minor change in the average case-mix weight during this model stage.

The second phase of the model added 12 variables representing inpatient utilization for acute hospitals, long-term care hospitals, IRF, and SNF, as identified in the National Claims History. Three variables captured the presence of any hospital, SNF, or IRF stays in the 14 days leading up to the beginning of the episode. A fourth variable represented episodes where there was no acute, IRF, or SNF stay in the 14 days before the home health episode. An additional 8 variables captured the number of inpatient days of stay by type of stay during the 14 days leading up to the beginning of the episode, and, before that, the number of inpatient days in the period 15 to 120 days leading up to the beginning of the episode. The days of stay categories were: Acute hospital, long-term care hospital, IRF, and SNF.

The results from adding these variables to the demographic variables were an increase in the average prediction of 0.6 percent beyond the average during the HH IPS baseline. The proportion of episodes preceded by

hospital stays in the 14 days leading up to the episode declined between HH IPS and HH PPS, 2005, from 38.5 percent to 33.4 percent. Since this variable was associated in the model with a 0.09 unit decline in case-mix weight, the lower prevalence of acute hospital use was an important factor in the increase in the average prediction. Another important contributor to these results was the growth in SNF days, including growth during the 14 day pre-episode period and the 15- to 120-day pre-episode period. These variables were associated with an increase in case-mix weight. The average number of IRF days declined during the 15- to 120-day pre-episode period, from 0.68 during HH IPS to 0.52 during HH PPS 2005. (We again included recertification episodes in the total episodes in this sample.) While the number of IRF days is associated in the model with higher case-mix, the decline in total IRF days between HH IPS and CY 2000 meant that this factor helped offset the case-mix increasing effect of the hospital and SNF days variables on the predictions.

The third phase of the model added family situation variables, including whether the patient during the episode lived alone, with a spouse, with other family members, with paid help or with others. The results from adding these variables moved the predicted average higher than the baseline by only 0.1 percent.

The fourth phase of the model added scores of variables representing the hospital case-mix group assignment for the last acute hospital stay for the patient in the National Claims History. We used the All-Patient-DRGs (APR DRG) classification algorithm to assign the case-mix group. We specified variables for all the APR DRG groups that met our sample size standards (minimum of 25 cases). Typically, the stays generating the APR DRG assignments occurred within six weeks, and overall three-quarters of the stays occurred within the previous 8.6 months. The purpose of using these variables was to incorporate more information about the patient's condition, especially some measure of case severity into the model. The APR DRG algorithm uses comorbidity data on the hospital claim to generate severity levels for each case-mix group. As an example, the model included four differing severity levels for knee replacement stays, which are included in APR DRG group 302. A general indicator that the stay was procedure-related was also included. This indicator had a large effect in the model, suggesting an increase in the HH case-mix weight of about 0.34 if the last acute stay was for a procedure. At the same time, the proportion of episodes associated with an acute procedure increased from HH IPS to HH PPS 2005 by only one percent, from 19 percent to 20 percent. This meant that the procedure effect would not be strong in moving the average prediction between the HH IPS sample and the HH PPS sample.

The net effect on the predictions from the model at this stage was to increase the level of the case-mix average relative to the HH IPS baseline, but the effect was very small. It is notable that the predictive power of the model increased by more than three percentage points. In addition, the model indicated various effects as expected, including substantially higher HH PPS case-mix weight associated with conditions such as intracranial hemorrhage; cerebrovascular accidents; other disorders of the nervous system; respiratory system diagnosis with ventilator support; respiratory infections and inflammations; pneumothorax and pleural effusion; respiratory system signs, symptoms, and other diagnoses; major esophageal disorders; hip fractures; electrolyte disorders except hypovolemia related; septicemia; pneumonia; and complications of treatment. The model did not indicate higher case-mix weights associated with many other hospital case-mix groups, such as hip and knee replacements, major and nonmajor respiratory procedures, cardiac defibrillator implant, cardiac valve procedures with cardiac catheterization, and coronary artery bypass graft. It should be noted again that these effects are estimated after controlling for whether the stay was procedure-related. Thus, the negative coefficient for knee replacements indicates that the effect of having had a knee replacement before home health reduces the size of the general positive effect from having had a procedure. One of the strongest impacts on the predictions came from the APR DRG for nonspecific cerebrovascular accident and precerebral occlusion without infarction; in the HH IPS sample, about 1.2 percent of the episodes were preceded by a stay of this type, but in the HH PPS 2005 sample the episode percentage was down to about 0.4 percent. The loss of this type of case was one of the important contributors that offset the case-mix increasing effects of some of the other changes.

The fifth phase of the model adjusted for the change in the types of home health agencies between HH IPS and CY 2005. This adjustment is analogous to the adjustment we made in the proposed rule estimate of the HH IPS baseline average case-mix weight. The adjustment in the proposed rule standardized the HH IPS baseline for the decline in episodes delivered by hospital-based agencies. At this stage, given the contribution of all variables added to this point, the increase in the predicted average case-mix weight compared to the HH IPS baseline was 0.7 percent.

Finally, we added expenditure variables for Part A utilization in the 120 days leading up to the home health episode. These variables, which were adjusted for price increases, subdivided the expenditures by type of stay. The expenditures related to long-term care hospital stays, SNF stays, and inpatient rehabilitation stays were associated with higher case-mix weights. Because the model controlled for stay events and days of stay, we believe these variables may proxy the intensity of care during the inpatient periods. The model estimates using all variables included by this final stage increased the average case-mix weight compared to the HH IPS baseline by 0.95 percent.

The unadjusted total measure of case-mix change was calculated by taking the difference between the 2005 actual average case-mix and the HH IPS actual average case-mix (our baseline). This unadjusted measure (12.78 percent) included both real and nominal change.

We used our full 6-phase model to derive the proportion of case-mix change which was real; the full model result yielded a predicted average case-mix for 2005. When we took the difference between this model result and the HH IPS actual average case-mix (our baseline), the result was the real case-mix change.

The resulting real case-mix change was then divided by the total measure of case-mix change (real plus nominal) to determine the proportion by which the total measure of case-mix change would need to be reduced in order to account for real case-mix change. That proportion was 8.03 percent. Therefore, we reduced the 12.78 percent measure of total case-mix change by 8.03 percent (real case-mix change) to derive the nominal case-mix change adjustment of 11.75 percent ($0.1278 * (1 - 0.0803) = 0.1175$). This 11.75 percent change in case-mix is 1.03 percentage points lower than the unadjusted total change in case-mix, which is 12.78 percent.

While the total measure of case-mix increase is 11.75 percent, it could be misinterpreted that the total of the adjustments to be made in each of the next four years equals 10.96 percent ($2.75 + 2.75 + 2.75 + 2.71 = 10.96$), if the adjustment were taken in one year.

This would be an incorrect method of solving for the total adjustment if taken in one year. If we accounted for the full 11.75 percent increase in case-mix in a single year, that percentage reduction to the rates would be 10.51 percent (1/(1 + .1175) = 0.894855; 1 − 0.894855 = .1051). Over the 4-year period, we are taking the same 10.51 percent adjustment ((1 − 0.0275) * (1 − 0.0275) * (1 − 0.0275)*(1 − 0.0271) = 0.894823; 1 − 0.894823 = 0.105177 = 10.52 percent; a difference of 0.01 percent from the single-year total adjustment of 10.51 percent is due to rounding). Note that the percentage reduction is less than the percentage increase; because the new baseline is higher, in percentage terms the reduction necessary to get back to the original baseline will be less than the percentage increase. In determining the yearly percentage reductions, we first opted to keep the 2.75 percent per year reduction which we had proposed. Accounting for the compounding effect of a 2.75 percent reduction in each of the first 3 years, the 4th year reduction necessary to bring about a total reduction of 10.51 percent is 2.71 percent. Note that the sum of the 4-year nominal reduction of 10.95 percent is only an approximation of the 10.51 percent since it does not account for the compounding effect of the annual reductions. For this final rule with comment period, we are finalizing the proposed 2.75 percent reduction of the national standardized 60-day episode payment rate for 3 years beginning in 2008 and extending that adjustment period to a fourth year via a 2.71 percent reduction for 2011, in order to fully address the 11.75 percent change in case-mix unrelated to real case-mix change. We are seeking comment on the 2.71 percent case-mix change adjustment for 2011. We will continue to monitor and measure the nominal change in case-mix. As we discussed in the proposed rule, if updates of the national claims data indicate that the nominal change in case-mix between the HH IPS baseline and the latest available national claims data show a change, we will revise the percentage reduction in future year's update of the annual reduction factor. Similar to how it was described in the proposed rule, the revision would be determined by the ratio of the updated 4-year annual reduction factor to the previous year's annual reduction factor. For the CY 2011 rule, which governs the fourth and final year of the case-mix change adjustment transition period, we would obtain the CY 2008 national average CMI to compute the updated value for the nominal case-mix change adjustment. Again, we would form the ratio of the updated adjustment factor to the previous year's effective adjustment factor. Depending on the growth of the nominal change in case-mix, measured in any given subsequent year, in future rulemaking, CMS may adjust the percentage reduction in the second and/or third year, elect to adjust the percentage reduction in only the fourth year, or adjust the percentage reduction in any combination of years. The annual updating procedure avoids a large reduction for the final year of the phase-in, in the event that the CY 2008 national average CMI reflects continued growth in the nominal change in case-mix since CY 2005. The calculation of the adjusted national prospective 60-day episode payment rate for case-mix and area wage levels is set forth in 42 CFR 484.220. We are revising 42 CFR 484.220 to address the annual percentage reductions due to changes in case-mix that are not a real change in case-mix. For this final rule with comment period, we are specifically soliciting comment on the 2.71 percent adjustment to the HH PPS 60-day episode payment rate in the fourth year to account for the change in case-mix that is not considered real, i.e., that is not related to an underlying change in patient health status.

The final versions of tables 6, 7, and 8, which are discussed in this section on case-mix change adjustment, are shown below.

TABLE 6.—AVERAGE NUMBER OF HOME HEALTH VISITS PER EPISODE

Year	Total home health visits (excluding LUPAs)
1997	36.04
1998	31.56
HH IPS	26.88
2001	21.67
2002	21.49
2003	21.01
2004	20.66
2005	20.53

Note: Excludes LUPAs, RAPs, episodes with data problems and no matched OASIS. The HH IPS data is from the 100 percent file for FY 2000.

TABLE 7.—AVERAGE RESOURCE COST AND CMI

Period	Resources		CMI	
	Average resource cost	Standardized to CY 2000 labor rates	Admissions	All
HH IPS				
1999Q4	$451.11	$451.39	1.1165	1.0796
2000Q1	468.27	468.27	1.1040	1.0822
2000Q2	475.34	475.34	1.1277	1.1026
2000Q3	471.64	471.64	1.1448	1.1186
HH PPS				
2000Q4	N/A	N/A	N/A	N/A
2001Q1	$432.14	$419.60	1.1855	1.1651
2001Q2	440.98	428.18	1.1930	1.1801
2001Q3	445.96	433.02	1.1980	1.1756
2001Q4	446.80	433.84	1.2025	1.1853
2002Q1	453.76	426.42	1.2086	1.1843
2002Q2	454.65	427.25	1.2027	1.1874
2002Q3	457.49	429.92	1.2127	1.1871
2002Q4	460.96	433.17	1.2243	1.1996
2003Q1	454.77	422.58	1.2182	1.1931
2003Q2	461.18	428.53	1.2326	1.2060

TABLE 7.—AVERAGE RESOURCE COST AND CMI—Continued

Period	Resources		CMI	
	Average resource cost	Standardized to CY 2000 labor rates	Admissions	All
2003Q3	460.15	427.58	1.2333	1.2044
2003Q4	464.71	431.81	1.2497	1.2178
2004Q1	462.26	427.31	1.2434	1.2117
2004Q2	473.42	437.63	1.2572	1.2239
2004Q3	476.77	440.72	1.2634	1.2252
2004Q4	479.90	443.61	1.2709	1.2314
2005Q1	487.19	417.40	1.2680	1.2298
2005Q2	509.91	436.87	1.2697	1.2341
2005Q3	518.92	444.58	1.2810	1.2358
2005Q4	522.22	447.41	1.2882	1.2443

Note: HH IPS data based on 100% National Claims History File. The averages reported in the proposed rule may differ slightly from averages reported here because of slight changes in methodology and further data cleaning.

TABLE 8.—PERCENT SHARE OF HOME HEALTH EPISODES AND MEAN TIME PRIOR TO ENTERING A HOME HEALTH EPISODE, FOR FIVE CONDITIONS, FY 2000–CY 2006

Condition	FY 2000	CY 2001	CY 2002	CY 2003	CY 2004	CY 2005	CY 2006*
Hip fracture:							
percent share	0.82	0.83	0.75	0.72	0.70	0.62	0.59
days prior to entering	7.19	7.12	7.18	7.21	7.30	7.09	7.12
Congestive heart failure:							
percent share	3.31	3.05	2.95	2.87	2.71	2.43	2.62
days prior to entering	3.38	3.28	3.35	3.33	3.36	3.40	3.37
Cerebrovascular accident:							
percent share	1.52	1.45	1.40	1.29	1.14	1.03	0.97
days prior to entering	4.32	4.23	4.21	4.29	4.20	4.33	4.31
Hip replacement:							
percent share	1.47	1.64	1.63	1.59	1.64	1.45	1.36
days prior to entering	6.45	6.32	6.26	6.28	5.91	5.58	5.40
Knee replacement:							
percent share	1.89	2.20	2.30	2.43	2.58	2.70	2.75
days prior to entering	5.40	5.30	5.41	5.18	4.92	4.60	4.15

Note: Time prior to entering is number of days between hospital discharge and beginning of home health episode, for discharges occurring within 14 days of the start of the home health episode.

For beneficiaries with more than 1 hospital discharge in the 14 day period leading up to the home health episode, time prior to entering is from the last hospital discharge immediately preceding the home health episode.

*CY 2006 data for first quarter of the year only.

7. Case-Mix Groups

Comment: Two commenters were concerned that the proposed case-mix model results in loss of all identifiable meaning from a case-mix group or HHRG. The commenters asked for a mechanism to produce a unique HHRG, Health Insurance Prospective Payment System (HIHH PPS) code, or other designation for each of the 153 case-mix groups and five NRS severity levels. They believed providers need a unique identifier for each case-mix group to facilitate communication, analysis, and financial comparison.

Response: While it is true that the HHRG code represents the severity levels in the clinical, functional and service domains, it no longer represents a one-to-one match with a case-mix weight under the proposed refined payment case-mix system. However, a code with this one-to-one relationship to a payment weight will exist in the form of the HIHH PPS code produced by the Grouper software. We plan that the first position of the five position HIHH PPS code will represent the payment grouping step that applies to the episode. The second, third and fourth positions will represent the clinical, functional and service domains arrived at under the payment equation that applies for that grouping step. The fifth position will represent the NRS severity level. The final code structure for these HIHH PPS codes and the complete list of codes will be published in Medicare instructions and on our Web site, shortly after the issuance of this final rule.

Comment: Several commenters remarked that the increase from 80 to 153 HHRGs was complex and would create an administrative burden. Additionally, it will require extensive training of staff. They asked that the implementation be postponed or be phased-in.

Response: As we noted previously, we have tried to strike a balance between simplicity and complexity. The refined system is more complex than the old system but this is a natural outgrowth of our attempt to pay more accurately for the range and intensity of home health services that can be provided to our beneficiaries.

A refined system may seem overly complex just because it is new. However, we believe the proposed refinements are clearly focused, and logically stem from the original case-mix payment system. We agree that any refined system will take time and training to learn. As explained in the response to a comment in section III.A.3, we have taken several measures to make the proposed refinements easier

to understand, and we trust that these measures will assist HHAs in implementing this refined system.

8. OASIS Reporting and Coding Practices

Comment: Several commenters expressed concern that some pressure ulcers are not stageable due to eschar. They noted that proper care includes debridement, which is costly due to supplies and clinician time. Once debridement occurs, the ulcer would be stageable, but the HHA would have no way to note the change in condition since the SCIC adjustment has been eliminated. The commenters recommended allowing staging of these ulcers in accordance with National Pressure Ulcer Advisory Panel guidelines.

Response: We are aware of recent revisions issued by the National Pressure Ulcer Advisory Panel (NPUAP). The NPUAP guidance is essentially permitting the assessment of a wound for staging when the wound bed is not completely covered with eschar or slough. If the bed of the ulcer is completely covered with eschar/slough, NPUAP guidance stipulates that the wound cannot be staged until some of the necrotic tissue is removed. After reviewing the NPUAP guidance we have revised the instructions accompanying the OASIS item to allow a wound to be staged if the bed of the wound is partially covered by necrotic tissue and if the presence of eschar does not obscure the depth of the tissue loss.

Comment: We received a number of comments supporting our decision to allow additional case-mix diagnoses for certain conditions and for allowing points for some comorbidities. One supported the scoring of secondary diagnoses to account for the cost-increasing effects of comorbidities. A few commenters suggested more rows for entering diagnoses in M0240 (''other'' diagnoses). They note that to follow ICD–9–CM coding guidance based on severity ranking, there will be many instances where the case-mix diagnoses that impact the plan of care and resource utilization will not be captured for patients with multiple co-morbidities, leading to underpayment for the sickest patients if coding rules are followed. It would also address OASIS diagnosis spaces fields in preparation for ICD–10, which will significantly increase the number of required diagnosis codes.

Response: We appreciate the comments supporting our decision to allow additional case-mix diagnoses and for allowing points for comorbidities/secondary diagnoses.

As we noted in the proposed rule (72 FR 25361, and 25362), scores were assigned to certain secondary diagnoses and used to account for the cost-increasing effects of comorbidities. However, with most diagnosis groups, we did not make a distinction in the final case-mix model between primary placement and secondary placement of a condition in the reported list of diagnoses. We made case-by-case decisions on this question based on differences in the impact on resource cost between the primary diagnosis and secondary diagnosis. If differences were small, we combined cases reporting the conditions, regardless of whether the listed position of the diagnosis was primary or secondary. We believe this is an important protection against unintended and undesirable incentive effects that could arise if agencies perceive opportunities to change the placement of the diagnosis due to non-clinical reasons.

Concerning the comment suggesting we add more lines for entering diagnoses in M0240, we disagree that more lines are needed for M0240. However, as noted in the proposed rule, we did make changes to the OASIS to enable agencies to report secondary case-mix diagnosis codes (see 72 FR 25362). Specifically, the addition of secondary diagnoses to the proposed case-mix system (see Table 2A of the proposed rule, case-mix adjustment variables and scores) requires that the OASIS allow for reporting of instances in which a V-code is coded in place of a case-mix diagnosis other than the primary diagnosis. A case-mix diagnosis is a diagnosis that determines the HH PPS case-mix group. Currently, the OASIS allows for reporting of instances of displacement involving primary diagnosis only for M0245. Consequently, because of the nature and significance of the changes needed, as noted in the proposed rule, we deleted the OASIS item M0245 and replaced it with a new OASIS item M0246.

We disagree with the comments suggesting that if ICD–9–CM coding guidance is based on severity ranking in the OASIS, there will be many instances where the case-mix diagnoses that impact the plan of care and resource utilization will not be captured for patients with multiple co-morbidities, leading to underpayment for the sickest patients. It is significant to note that the logic for determining both the primary and secondary diagnoses remains unchanged (see the OASIS Implementation Manual, Definition Section of M0230/240 as well as Attachment D to Chapter 8). The primary diagnosis is determined based on the condition most related to the current plan of care. This diagnosis may or may not be related to a patient's recent hospital stay but must relate to the services rendered by the HHA.

Comment: A commenter asked that we adopt ICD–10 guidelines, and study the impact of coding changes on HH PPS.

Response: We agree that it is important to have an accurate and precise coding system. The Department will continue to study whether or not to propose ICD–10–CM and ICD–10–PCS as the new HIPAA standard to replace ICD–9–CM.

Comment: A commenter suggests that M0826 be asked only if the patient is expected to be a higher need case.

Response: We disagree. Home health providers are expected to assess and document each patient's need for therapy. M0826 is required to be coded by providers regardless of the patient's expected case-mix assignment. The coding of M0826 should be in compliance with Medicare home health CoPs 42 CFR 484.55, 42 CFR 484.18, and 42 CFR 484.32.

Provider instructions for coding M0826 are provided in Chapter 8 of the OASIS Implementation Manual. Those instructions allow providers to answer ''000'' if no therapy services are needed, or answer with the total number of therapy visits indicated or planned for the Medicare payment episode for which this assessment will determine the case-mix group. Providers may also answer ''not applicable'' when this assessment will not be used to determine a Medicare case-mix group.

Comment: A commenter asked that we expand the wound section of the OASIS to include all wounds, especially diabetic ulcers and arterial ulcers.

Response: The diagnosis codes for diabetic and arterial ulcers were in the proposed rule for both the case-mix diagnosis and non-routine supply diagnosis tables. As a result of further research, we are also adding two additional arterial ulcer codes to final tables 2B and 10B (see ICD–9–CM codes 447.2 and 447.8).

However, such review and expansion of OASIS is beyond the scope of this rule. OASIS will continue to capture diabetic and arterial ulcers in both the diagnosis section and the basic wound-related section (M0440). OASIS item M0440 measures the presence of a skin lesion or open wound.

OASIS items are only part of a comprehensive assessment and include only those items that have proven useful for outcome measurement and risk factor adjustment. Therefore only the types of wounds that are relevant to

these OASIS purposes or outcome measurement or risk factor adjustment have been included in OASIS, though other types of wounds such as diabetic and arterial ulcers are extremely important to assess and document in the patient's clinical record.

Comment: A commenter wrote that changes to the OASIS items M0230/240/246 are complex, and the instructions need to be clearer for column 4. The commenter suggested that the instructions read, ''Complete ONLY IF the V-code in Column 2 is reported in place of a case-mix diagnosis that is a multiple coding situation.''

Response: The commenter has literally repeated the precise instructions we have issued in Column 4 of the OASIS, M0230/240/246 as a suggestion for clearer instructions. It is significant to note that Column 4 does stipulate the following: ''Complete ONLY if the V-code in Column 2 is reported in place of a case-mix diagnosis that is a multiple coding situation.''

In reference to assigning V-codes on the OASIS, a case-mix diagnosis is a diagnosis that gives a patient a score for Medicare Home health HH PPS case-mix group assignment. A case-mix diagnosis may be the primary diagnosis, ''other'' diagnosis, or a manifestation associated with a primary or other diagnosis. Diagnoses listed under columns 3 and 4 of OASIS, M0230/240/246 should be documented on the patient's Plan of Care in compliance with 42 CFR 484.18(a). V-code reporting on the OASIS became effective in October 2003 in compliance with HIPAA. Providers assigning V-codes on the OASIS are expected to comply with all of the following long-standing home health diagnosis coding requirements, which can be found in the document entitled ''Medicare Home Health Diagnosis Coding'' on the CMS Home Health Web site at: *http://www.cms.hhs.gov/HomeHealthPPS/03_coding&billing.asp.*

Comment: Another commenter suggested that we revise the instructions for M0080 and M0090 to recognize the new complexities of completing M0230/240/246 correctly.

Response: Chapter 8 of the OASIS Implementation Manual will be updated to accommodate changes to the OASIS items.

C. Payment Adjustments

1. The Partial Episode Payment (PEP) Adjustment

Currently, HH PPS provides for an adjusted proportional payment for 60-day episodes interrupted by a beneficiary elected transfer or a discharge and return to the same HHA within the 60-day period. The PEP adjusted episode is paid based on the span of days including start of care date or first billable service date and including the last billable service date under the original plan of care before the intervening event. As noted in the proposed rule, descriptive analysis was conducted to better understand the patient characteristics associated with PEP-adjusted episodes and the circumstances under which PEP-adjusted episodes occurred. Analysis of patient characteristics revealed no appreciable differences between patients in normal episodes (that is, no HH PPS payment adjustments, such as LUPA, PEPs, or SCICs) and patients in PEP episodes with regard to conditions or clinical characteristics. The mix of visits in PEP episodes was found to be similar to that of normal episodes.

The descriptive analyses conducted by Abt Associates also looked at the different components that make up PEP episodes. The analysis showed that PEP episodes have significantly shorter service periods on average than all episodes other than LUPA and SCIC episodes. The number of visits in a PEP episode, on average, represented 75 percent of the average number of visits for normal episodes. We have used the span of billable visits in the PEP payment adjustment because of the HHA's involvement in decisions influencing the intervening events for a beneficiary who elected to transfer or discharge and returned to the same HHA during the same 60-day episode period. Agencies have some flexibility in discharge decisions that affect the likelihood of incurring a partial episode, whether or not a hospital stay intervenes. They also have indirect influence on a beneficiary's decision to transfer to another home care provider through the quality of care they provide. Data suggested that PEP episodes are rare and, therefore, the current PEP policy may be serving as a deterrent to premature discharge. Consequently, we did not propose to change the PEP policy.

Comment: Several commenters raised concerns about a specific situation that can arise under the existing PEP policy. In the specific situation mentioned, the second provider in the PEP can admit a beneficiary whose plan of care goals were already met by the first provider. The commenter suggests that the FIs) review those admissions to determine if the care provided by second agency was medically necessary. A PEP can occur because of transfer to another agency.

Response: We will share this concern with our fiscal intermediaries and suggest that they direct medical review activities for PEP episodes as appropriate.

Comment: A commenter noted that when a PEP occurs due to a transfer to another agency, the first agency is often surprised. The commenter asks CMS to automatically check for proper protocol by the second agency to ensure that the first agency is not caught off guard.

Response: We appreciate this comment. Our analysis of a 20-percent sample of 2003 episodes showed that approximately 3 percent of all episodes were PEP adjusted. Of those PEP episodes, approximately 55 percent of PEP-adjusted episodes involved a discharge and return to the same HHA, about 42 percent involved a transfer to another agency, and approximately 3 percent involved a move to managed care.

Chapter 10 (Section 10.1.13) of the Medicare claims processing manual does provide a process for the initial HHA and the receiving (new) HHA to follow in when a transfer to another HHA results in a PEP situation. In order for a receiving (new) HHA to accept a beneficiary elected transfer, the receiving HHA must document that the beneficiary has been informed that the initial HHA will no longer receive Medicare payment on behalf of the patient and will no longer provide Medicare covered services to the patient after the date of the patient's elected transfer in accordance with current patient rights requirements at 42 CFR 484.10(e). The receiving HHA must also document in its records that it accessed the RHHI inquiry system to determine whether or not the patient was under an established home health plan of care and contacted the initial HHA on the effective date of transfer. In such cases, the previously open episode will be automatically closed in the Medicare claims processing systems as of the date services began at the HHA the beneficiary transferred to, as reported in the RAP; and the new episode for the ''transfer to'' agency will begin on that same date.

Comment: Several commenters noted that PEP episodes are underpaid. Two commenters said that agencies are especially concerned with PEP situations where patients are discharged when the plan of care goals are met but return to the same agency within the 60-day period, often for a condition that was not related to the first plan of care. In those cases, agencies can receive a significant reduction in payment for the first episode despite provision of all visits authorized under a plan of care.

Similarly, two commenters recommended that CMS not apply PEP to cases where the patient is discharged with the plan of care goals met yet returns to the same HHA with a new medical issue. The commenters believed maintenance of the PEP policy in its current form also raises questions regarding how ''early'' and ''later'' episodes will be defined in the proposed payment system.

Response: As discussed in the proposed rule, the PEP adjustment provides a simplified approach to the episode definition and accounts for key intervening events in a patient's care defined as a beneficiary elected transfer, or a discharge and return to the same HHA that warrants a new start of care for payment purposes, OASIS, and physician certification of the new plan of care (72 FR 25422, 25423). The discharge and return to the same HHA during the 60-day episode period is only recognized when a beneficiary reached the treatment goals in the original plan of care. The original plan of care must be terminated with no anticipated need for additional home health services for the balance of the 60-day period. This policy ensures that we do not provide full payment for two episodes at any time during a given certified 60-day episode. Results from our refinement research provided evidence that there is some front-loading of visits compared to normal episodes, causing PEP episodes to have a faster average rate of visits during the span of days used to prorate the episode payment.

Early episodes are defined to include not only the initial episode in a sequence of adjacent episodes, but also the next adjacent episode, if any, that followed the initial episode as the first two episodes in a sequence of adjacent episodes. Later episodes are defined as all adjacent episodes beyond the second episode. Episodes are considered to be ''adjacent'' if they are separated by no more than a 60-day period between episodes. This holds true regardless of the type of episode. The end of a PEP episode is denoted as the last billable visit date. The gap in days between an episode with a PEP adjustment and the next episode would be calculated using the last billable visit of the PEP and the from-date of the subsequent episode.

Comment: A commenter asked that PEPs be considered from the beginning of the episode rather than the first visit due to care coordination activities. The commenter asserted that agencies should receive at least the LUPA rate if the episodic payment under PEP would be lower than the LUPA. Moreover, the commenter noted that since the inception of HH PPS, the PEP has been implemented in such a way that an initial home health agency does not receive appropriate recognition from the beginning of the episode, recognizing that currently the PEP begins at the first visit rather than the beginning of the episode.

Response: We do not believe that it is appropriate to generate another episode type based upon a per-visit basis. At the inception of the HH PPS, we decided that paying for LUPA episodes on a per-visit basis was appropriate due to the extremely low number of visits provided in such an episode. One of the goals of a PPS for home heath was to move away from a system that pays on a per-visit basis.

Comment: A commenter suggested that CMS eliminate the PEP due to its adverse clinical, administrative, and financial impact. The commenter stated PEP adjustments require significant resource utilization for agencies with minimal reimbursement as HHAs front-load costs. Additionally, the commenter further noted while HHAs have developed strategies to minimize hospitalizations and SNF admissions, the HHAs often cannot affect the patient's level of acuity or social situation, which can result in a PEP episode.

Response: We disagree with the commenter. We believe the PEP adjustment is provided in a manner that maintains the opportunity for Medicare patients to choose the provider with which they feel most comfortable while ensuring that the Medicare Trust Funds are protected by a policy that ensures adequate payment levels that reflect the care provided by each HHA to a beneficiary in a transfer situation.

Comment: A commenter was disappointed that CMS did not make changes in the PEP adjustment to more accurately allocate costs, believing that the current methodology often underpays in the case of PEP transfers. Specifically, the commenter felt it is particularly troubling when the PEP occurs without the first agency's knowledge as often the patient has had an intervening hospital stay and is advised by the hospital that it is preferable or required that the patient use a hospital-based HHA upon discharge, thus generating the PEP. There are cases where the patient or family is confused and seeks care from a second agency, believing that using two HHAs is allowable and is better than having just one. The commenter again noted that these visits tend to be front-loaded, and prorating from first to last billable visit systematically underpays the initiating agency and penalizes agencies who follow QIO advice on front-loading visits to avoid re-hospitalization. The commenter suggested that CMS prorate the initial PEP episode based on the ratio of days between the first billable visit and discharge to the subsequent agency.

Response: As stated in the proposed rule, we believe that HHAs have some flexibility in discharge decisions that affect the likelihood of incurring a partial episode (72 FR 25423), whether or not a hospital stay intervenes (72 FR 25423). HHAs also have indirect influence on a beneficiary's decision to transfer to another HHA through the quality of care they provide. Additionally, current data suggest that PEP episodes are rare, and therefore, the current PEP policy may be serving as a deterrent to premature discharge. We believe that the PEP adjustment is provided in a manner that maintains the opportunity for Medicare patients to choose the provider with which they feel most comfortable. We also note that, as we did in the proposed rule, in many cases an HHA received payment for an additional full episode which it might not have received had the first episode not been subject to a PEP adjustment (72 FR 25423). We do recognize that PEP episodes provide, on average, 75 percent of the average number of visits for normal episodes, which parallels the QIO's advice to HHAs to provide more visits early in an episode of care to prevent re-hospitalizations.

Comment: A commenter asked that we reopen the episode if a patient returns to the HHA within 60 days, and only pay for the time services were given.

Response: HHAs have some flexibility in discharge decisions that affect the likelihood of incurring a partial episode, whether or not a hospital stay intervenes. They also have indirect influence on a beneficiary's decision to transfer to another home care provider through the quality of care they provide. Whether or not a given episode remains open is subject to whether or not the goals of the plan of care have been met and a particular HHAs's discharge policy. We believe that it would be inappropriate for CMS to dictate whether or not or when an HHA should discharge a patient, as we believe those sorts of decisions are best left up to the HHA. Consequently we do not believe that a policy to reopen an episode if the patient returns to the HHA within the 60 days would be an appropriate policy. In addition, we believe that prorating an episode, as the commenter suggests, would unnecessarily further complicate the PEP payment policy.

In summary, there are several methods that could be used to refine the

PEP adjustment methodology, as recommended by commenters. Another possible approach could involve weighting the payment to reflect the front-loading of visits, but it is not clear at this time what an appropriate approach to refinement of the PEP policy would be. We intend to study the comments provided, continue public discussion on this issue, and look towards the possible refinement of this adjustment in future rulemaking.

2. The Low-Utilization Payment Adjustment (LUPA)

The low utilization payment adjustment (LUPA) reduces the 60-day episode payment when minimal services are provided during a 60-day episode. LUPAs are episodes with four or fewer visits and receive a wage-adjusted average per visit amount per home health discipline, instead of a full 60-day episode payment. The home health industry suggests that the LUPA payment rates do not adequately account for the front-loading of costs in an episode. In performing our refinement research, we found that the average visit lengths in these initial LUPAs are 16 to 18 percent higher than the average visit lengths in initial non-LUPA episodes. For a complete description of the LUPA review, analysis, and research performed, we refer to the CY 2008 HH PPS proposed rule (72 FR 25423–27). In the proposed rule, we proposed to increase payment by $92.63 for LUPA episodes that occur as the first or only episode in a sequence of adjacent episodes.

Comment: Several commenters asked that NRS supplies, particularly catheters and ostomy supplies, be reimbursed as part of the LUPA payment. One suggested that we develop a NRS add-on using diagnostic categories. Others noted that some LUPAs require wound care supplies or chest drains. Several commenters believed that we proposed to remove the NRS payment from LUPAs and asked that we reconsider this proposal. One suggested we reimburse HHAs 200 percent of the supply cost to cover overhead or establish a fee schedule that lists out reimbursement rates for medical supplies.

Response: LUPA episodes are paid on a per-visit basis. Currently LUPA payments include NRS paid under a home health plan of care, NRS possibly unbundled to Part B, and a per-visit ongoing OASIS reporting adjustment. Moreover, contrary to the commenters' statements, the original 2000 NRS amount of $1.94 included in the LUPA per visit rates has been updated annually and has not been removed. Furthermore, our analysis of NRS showed that NRS charges for non-LUPA episodes are almost 3 times higher than for LUPA episodes. In the proposed rule, we expressed concerns that adding an additional amount to LUPA payments for NRS could promote increases in medically unnecessary home health episodes, and therefore did not propose any additional payments for NRS costs for LUPA episodes (72 FR 25430.)

An analysis of a 20-percent sample of home health episodes covering more than 3 years of experience with HH PPS revealed that there were approximately 179,845 LUPA episodes. While some LUPA patients were in high severity groups, overall LUPA patients had somewhat lower clinical and functional severity. These data indicated that LUPAs are serving as a low-end outlier payment for certain episodes that incur unexpectedly low costs. Other LUPA episodes result from expected care patterns for patients with particular conditions (for example, neurogenic bladder).

Section 1861(m)(5) of the Act, specifically, includes catheters, catheter supplies, and ostomy bags and supplies as a covered home health supply. They are considered to be non-routine in nature, and are bundled into the HH PPS payment rates. Catheters and catheter supplies are on our list of NRS codes subject to consolidated billing which is posted on CMS's home health Web Site at *http://www.cms.hhs.gov/center/hha.asp* (go to ''Billing/Payment'', and then ''Home Health Coding and Billing'').

Comment: While there was widespread support for the revised LUPA payment, many commenters asked that the additional $92.63 apply to all LUPAs and not just to the first and only LUPA or the initial LUPA in a series of adjacent episodes. A number of commenters noted that the reimbursement still does not cover the costs of LUPA episodes and suggested increasing the payments further.

Response: The proposed additional payment of $92.63 was intended to cover the front-loading of costs which occurs in an initial assessment in a LUPA episode. We analyzed LUPA episodes and found that the average visit length for nursing for an initial assessment averaged twice as long as the length of other visits. Similarly, the initial assessment visit made by a physical therapist was 25 percent longer than other physical therapy visits. We did not find that all visits in LUPA episodes were longer than average, and as such, we proposed to provide the additional $92.63 only for those LUPAs that are the first in a series of adjacent episodes or the only episode. After updating the payment model using 2005 data and re-analyzing the characteristics of all LUPAs, the results continue to support providing a revised payment for LUPA episodes, but only for those that occur as the first episode in a sequence of adjacent episodes or the only episode. Using the updated 2005 data, the additional revised payment for first episode LUPAs or the only episode is $87.93.

Comment: We received universal support for the revised LUPA payment, but several commenters noted that due to treatment timing, HHA clinicians often must make an additional, non-chargeable visit for the sole purpose of completing an OASIS follow-up assessment in the required 5-day window or for a recertification visit. These can occur with catheter and vitamin B–12 patients. The commenters claimed the costs for these visits are not captured in claims data as HHAs are prohibited from billing for assessment-only visits. Again, this claim often occurs with catheter patients. Another commenter noted that CMS only included an estimate of additional minutes of direct service cost for assessment in its LUPA cost calculation, rather than the entire administrative cost the agency bears. Another noted that our analysis may have been influenced by data issues in industry cost reports. One commenter asked for higher reimbursement for acute patients who cannot remain at home and become a LUPA patient through no fault of the HHA.

Response: We derived a revised final value for the increase to LUPA episodes that occur as the only episode or the initial episode during a sequence of adjacent episodes from a new data base consisting of visit line items from a large, representative sample of claims in 2005. This method enabled us to measure the entire excess of minutes due to both OASIS and administrative activities of the type cited in the comment. This database showed that the average excess of minutes for the first visit in episodes that were single LUPAs or initial LUPAs in a sequence of episodes was 38.5 for the first visit if skilled nursing, 25.1 for the first visit if physical therapy, and 22.6 for the first visit if speech therapy. We then expressed these excess values as a proportion of the average number of minutes for all nonfirst visits in non-LUPA episodes (42.5, 45.6, and 48.6 for skilled nursing, physical therapy, and speech therapy, respectively). We then proportionately inflated the per-visit payment, using LUPA per-visit payment

rates, in accordance with these excess values. Finally, using an appropriate set of weights representing the share of LUPA first visits for skilled nursing (77.8 percent), physical therapy (21.7 percent), and speech therapy (0.5 percent), respectively, we calculated the revised increase of $87.93 for LUPA episodes that occur as the only episode or the initial episode during a sequence of adjacent episodes. We did not use cost reports in computing the LUPA revised payment amount. We also do not take into account the underlying reasons leading to a LUPA.

Comment: Several commenters were unclear about how we propose to identify the timing of a LUPA episode as an only episode or initial episode in a series of adjacent episodes. Another noted commenter believed that the LUPA continuing episode will be determined from claims data where the start-of-care date is the same as the ''from'' date.

Response: A LUPA episode is 60 days long. An initial episode is an episode in which a gap of greater than 60 days exists before the from-date of that LUPA episode. A LUPA episode that exists as an only episode is an episode with a gap of greater than 60 days both before the beginning and after the end of the LUPA episode. LUPAs, other than only episodes, would be considered as adjacent episodes to other episodes if no more than 60 days occur between the end of one episode and the beginning of the next, except for those episodes that have been PEP-adjusted.

Comment: A commenter noted that the LUPA payments cover about half the costs of rural agencies, and asked that we increase LUPA payment rates, particularly for rural agencies.

Response: The per-visit rates used for payment of LUPA episodes and used in the outlier calculation are based on visit cost data from audited cost reports. We believe this to be the most appropriate and accurate data on which to base these rates. Currently, there exists no rural add-on for home health services provided in a rural area. However, LUPA payments are wage adjusted to account for geographic differences.

Comment: Several commenters noted that the home health industry had not billed for supplies or kept good records of supplies used, and that this contributed to the difficulty in analyzing NRS use in general and in LUPA episodes. One commenter suggested that billing for non-routine medical supplies, specifying the type of supply and quantity, should be made mandatory for all episodes and LUPAs to gather data for future evaluation of diagnosis and rates of payment. The commenter also wanted it made mandatory for all episodes and LUPAs to support any request for payment based upon severity scores and severity levels, or such payment will be negated. Another commenter suggested we require that supplies be charged on claims in order to receive NRS payment.

Response: We will continue to study supply use, and will make improvements to our method of accounting for NRS costs as the data warrant. We encourage HHAs to develop in-house mechanisms to improve their supply tracking, and to report supplies used on their claims. In section III.C.4, we address the mandatory reporting of supplies.

Comment: A commenter noted that CMS has determined that later episodes cost 7 percent more, but has chosen not to differentiate early and later LUPA episodes. The commenter questioned data that increases payment for one payment type and does not do the same for another payment type.

Response: Providing for an additional payment for initial and only LUPA episodes is actually similar to the concept of early and later episodes proposed for the full 60-day episode payment. The results of data analysis done on LUPA episodes did not support providing a revised payment for LUPA episodes that exist as the second or subsequent LUPA episode in a sequence of adjacent episodes, as the case-mix model does for all other types of episodes. Instead, data do support a revised payment for initial and only LUPA episodes.

Comment: While we received widespread support for the revised LUPA payment, a commenter noted that the analysis focused principally on nursing and physical therapy visits for LUPAs. The commenter encouraged CMS to examine the presence of other home health service visits (social service, occupational or speech therapy) to ensure that the proposed payment amount recognizes all service costs incurred with these initial visits.

Response: LUPA episodes average approximately 2.5 visits. In an initial or only LUPA episode, the first billable visit for the episode must be a skilled visit. Consequently, the first visits of an initial or only LUPA episode would be either nursing or physical or speech therapy visits. It is these start of care nursing and physical or speech therapy visits that occur when the case is opened and the initial assessment takes place, that are longer than the average visit length. Consequently, we believe it appropriate to base the revised payment for initial and only LUPA episodes on nursing and physical or speech therapy visit rates.

To summarize, additional analysis did not support that all LUPA episodes are negatively impacted by the front-loading of assessment costs and administrative costs. Consequently, for this final rule, we are implementing the proposed provision of paying a revised payment amount to LUPA episodes that occur as the only episode or the first episode in a sequence of adjacent episodes. That additional amount has been calculated to be $87.93, for CY 2008. To account for the additional payment to LUPA episodes that occur as the first episode in a sequence of adjacent episodes or as the only episode, and maintain budget neutrality, we reduce the national standardized 60-day episode payment rate.

3. The Significant Change in Condition (SCIC) Adjustment

In the proposed rule, for 2008, we proposed to eliminate our SCIC policy, which allowed an HHA to adjust payment when a beneficiary experiences a SCIC during the 60-day episode that was not envisioned in the original plan of care. The SCIC policy was designed and implemented primarily to protect HHAs from receiving a lower, inadequate payment for a beneficiary who unexpectedly got worse and became more expensive to the agency during the course of a 60-day episode. Our margin analysis suggested that, on average, SCIC episodes had negative margins. We proposed to eliminate the SCIC policy based on the findings of our analysis and the apparent difficulty the industry had in interpreting when to apply the SCIC adjustment policy. For a full description of the SCIC review and analysis, see CY 2008 HH PPS proposed rule (72 FR 25425–25426).

Comment: Several commenters were concerned that with the elimination of the SCIC, there would be no avenue for reimbursement of supplies that were needed as a result of a change in condition. Some commenters used the example of a home health patient admitted with an unobservable pressure ulcer or surgical wound. The ulcer or wound cannot be staged if it is unobservable, leaving the HHA with a minimum HHRG and large supply expenses; the care needs greatly increase when stageable. One commenter asked for a simplified supply SCIC to cover unanticipated supply costs that occur when a patient's condition changes.

Response: As noted in a response to a comment in section III.B.8, currently, the OASIS guidelines for M0460 do not

allow a pressure ulcer with any eschar to be staged. We are aware of recent revisions issued by the National Pressure Ulcer Advisory Panel, (NPUAP). Essentially, the NPUAP guidance permits the assessment of a wound for staging when the wound bed is not completely covered with eschar or slough. If the bed of the ulcer is completely covered with eschar/slough, NPUAP guidance stipulates that the wound cannot be staged until some of the necrotic tissue is removed. After reviewing the NPUAP guidance, we have revised the instructions accompanying this OASIS item to allow a wound to be staged if the bed of the wound is partially covered by necrotic tissue and if the presence of eschar does not obscure the depth of the tissue loss. We hope this encourages HHAs to properly treat pressure ulcers and promote their healing. We believe this will allow for accurate payment for home health patients with wounds that are partially covered with eschar/slough.

Comment: A majority of commenters appreciated the concept behind the SCIC, but supported our decision to eliminate the SCIC, citing complexity and administrative burden.

Response: We appreciate the support for our proposal to eliminate the SCIC adjustment.

Comment: Several commenters noted that if the SCIC is eliminated, completion of an ''Other Follow-up'' OASIS will not be necessary for payment purposes. However, the Medicare home health CoPs requires completion of the ''Other Follow-up'' OASIS when there is a SCIC. The commenters stated that completion of these assessments has been problematic, inconsistent, and burdensome for HHAs, partly because of limited guidance from CMS regarding the kinds of clinical changes that require a new comprehensive assessment. Specifically, when a patient does have a change in condition, the plan of care is updated by contacting the physician and recording verbal/phone orders. This action by HHAs is not dependent on completion of the OASIS. Additionally, collection and submission of OASIS data at this time point often masks improvement made in the patient's condition before the SCIC. Outcomes measures based on the follow-up comprehensive assessment are likely to show less improvement than a comparison of the patient at start of care and discharge. The commenters recommended that this Condition of Participation be eliminated.

Response: We appreciate the comments regarding the significant change in condition (SCIC) assessment. We note our proposal was limited to eliminating the SCIC payment adjustment from the HH PPS. Currently, the assessment used in SCIC situations is used in the quality monitoring aspect of the OASIS. This assessment is a requirement integrated into the CoPs, found at § 484.18(b), and therefore any change to the CoP requirement is beyond the scope of this payment rule.

Comment: A commenter suggested that the adjustment to the national standardized 60-day episode payment of $15.71 for the elimination of the SCIC was incorrect. The commenter suggested that since SCICs have little impact on outlays (0.5 percent of total payments regardless of urban/rural status, ownership, or size) the calculation should have been $2,521.17 × 0.5 percent = $12.64 rather than the $15.71 quoted in the proposed rule and asked that the national standardized 60-day episode payment be adjusted.

Response: The adjustments to the national standardized amount reflect our best estimates of the amount of the budget-neutral target that is allocated in order to account for elimination of the SCIC, the LUPA add-on, and other refinements that are taken as offsets to the national standardized amount. The estimates of the cost of these adjustments also reflect the interaction of the outlier payments with other payment elements during the simulation.

Comment: A commenter suggested that the SCIC adjustment not be eliminated. Another asked that we withdraw our proposal to remove the SCIC until there had been time to review the other changes resulting from the refinement.

Response: The SCIC policy was designed and implemented primarily to protect HHAs from receiving a lower, inadequate payment for a beneficiary that unexpectedly got worse and became more expensive to the agency during the course of a 60-day episode. Our examination of the SCIC adjustment confirmed industry comments that HHAs have had difficulty applying the SCIC policy, and that margin analysis, on average, shows that SCIC episodes have negative margins. We believe that it is now appropriate to remove the SCIC payment adjustment from HH PPS and that the proposed refinement changes would not have had a significant impact on the SCIC payment policy.

In summary, based in part, upon comments received, as well as our continued analysis of this issue, we are finalizing our proposal to eliminate the SCIC adjustment policy. To account for the elimination of the SCIC adjustment, and to maintain budget neutrality, we reduce the national standardized 60-day episode payment rate. As such, we are revising 42 CFR 484.205, 484.237, and 484.240 to remove all references to the SCIC adjustment.

4. Non-Routine Medical Supplies (NRS)

To ensure that the variation in non-routine supplies is more appropriately reflected in HH PPS, we proposed to replace the original portion ($43.54) of the HH PPS base rate that accounted for NRS, with a system that pays for non-routine supplies based on 5 severity groups. The classification algorithm is based on selected OASIS assessment items, similar to the way the clinical model was developed. We noted we believed the original amount of $43.54 (updated through 2008) per episode that accounts for NRS does not accurately reflect the large variation in non-routine medical supplies use across patient type. In general, use of non-routine medical supplies is unevenly distributed across episodes of care in home health. Specifically, we found that patients with certain conditions, many of them related to skin conditions, were more likely to require high non-routine medical supply utilization. For a complete description of our analysis and research, we refer readers to the CY 2008 HH PPS proposed rule (72 FR 25426–25434).

Comment: Several commenters noted that conditions that generate high NRS costs are not accounted for in the NRS weights. They asked that NRS diagnoses include catheters, enteral nutrition, chest drains, gastrointestinal tubes, and an expanded list of ostomy supplies. Some commenters noted that wound supply payments are still inadequate. Commenters asked that the proposed case-mix model be changed to allow scoring for these items, and that payment for these items be increased beyond what is proposed in the rule.

Response: Section 1861(m)(5) of the Act defines home health services and specifically lists catheters, catheter supplies, ostomy bags and ostomy supplies as medical supplies. Accordingly, catheters and catheter supplies and bowel ostomy supplies are already included as covered NRS in the proposed rule. We also expanded the NRS listing of ostomy supplies to include those for cystostomy, tracheostomy, and urostomy.

The proposed rule notes that enteral and parenteral nutrition are Part B services not covered by the home health benefit and not defined as non-routine supplies. The Medicare coverage guidelines for enteral nutrition are

included in the proposed rule, along with a table of ''Enteral Items and Services'' which includes the HCPCS codes needed for billing. The table includes codes for tubing and other supplies needed for administering enteral nutrition. If a home health patient needs enteral nutrition and meets the criteria for coverage, providers may claim reimbursement by using the UB–92 claim form. Payment is then made by the RHHI under the Part B Medicare Fee Schedule, rather than through the home health benefit.

Comment: Most commenters believed that NRS supplies are underreported; the industry is grappling with an efficient mechanism to consistently capture the supplies used. While most commenters appreciated our proposed increase in our approach to better account for NRS payments, many noted that the analysis was based on incomplete information that inadequately reflects the providers' true costs. One commenter suggested that CMS consider requiring agencies to report supply costs if they wish to receive reimbursement above the first severity level. Without such a requirement, agencies that fail to make the effort to identify and report these costs will receive the same advantages as those that do, and would have an unfair result.

CMS was also encouraged to continue studying the NRS issue as the compensation can fall far short of what agencies expend for their most supply-intensive patients.

Response: We appreciate the commenter's concern that without a requirement for HHAs to report NRS on the claim, those agencies that fail to make the effort to identify and report NRS costs will receive the same considerations for payment as those that do report NRS. We believe that it is imperative that HHAs report these supplies on their claims so that we can improve the accuracy of our system and better reflect costs when paying for NRS.

We have consistently encouraged home health agencies to develop in-house mechanisms to improve their supply tracking, and to report supplies used on their claims. Our data for 2003 indicate that the percentages of agencies not reporting supplies on claims to be similar to percentages that existed during the HH IPS baseline. We are concerned with the commenter's assertion that NRS supplies are underreported, and the limitations this underreporting puts on any future work towards refining payment to HHAs for providing NRS. To adequately account for and pay for NRS costs, we expect that HHAs will report NRS costs on their claims. To ensure that NRS costs are being reported, claims that do not report NRS costs, unless explicitly noted by the HHA that NRS was not provided, will be returned to the provider (RTP). For episodes in which NRS was provided, the provider will need to resubmit the claim with NRS reported. For episodes in which NRS was not provided, the HHA will need to explicitly note that fact on the claim. We will allow a grace period, which will be determined and communicated in instructions from CMS. This will provide stronger incentives to HHAs to report NRS, resulting in more accurate NRS data for possible future refinements to this aspect of the HH PPS. We will continue to study supply use, and will make improvements to how we account for and pay for NRS as the data warrant.

Comment: A commenter is concerned that the bundling of NRS in a budget-neutral system will continue to create a growing payment disparity as new and more expensive technologies are applied to home care. Each year, new supplies are added to the HH PPS bundle that did not exist when the baseline was established for HH PPS. The commenter urged CMS to freeze NRS codes that are currently bundled and unbundle new NRS technology from HH PPS as it emerges. Another commenter asked that NRS be reimbursed through the DME fee schedule.

Response: We appreciate the concern about supply costs and particularly about the cost of new technologies. If agencies will report these supplies on their claims, the costs of supplies, including new technologies, will be captured in future data analyses. Section 1895 of the Act, as added by section 4603(a) of the Balanced Budget Act of 1997, provided the authority for the development of a HH PPS for all Medicare-covered home health services paid on a reasonable cost basis. Section 1895(b)(1) of the Act requires the Secretary to establish a HH PPS for all costs of home health services, including medical supplies. Therefore, medical supplies are bundled into the HH PPS payment, as required by the statute, and are subject to consolidated billing. DME, on the other hand, was explicitly statutorily excluded from consolidated billing.

Comment: Several commenters were concerned that the proposed model for reimbursing NRS has poor performance and a low R-squared of 13.7 percent. The commenter cited industry difficulties in reporting supply costs, and high supply costs for particular diagnoses. One commenter noted that their RHHI could not process supply lines on claims for an unspecified period of time. Several commenters mentioned high supply costs for particular items, such as chest drains, which can cost $500 to $600 per month. Commenters asked that CMS abandon the NRS supply model as proposed as it would underpay HHAs for supplies used.

Response: In general, we acknowledge NRS use is unevenly distributed across episodes of care in home health. While most patients do not use NRS, many use a small amount, and a small number of patients use a large amount. It is important to note that while Durable Medical Equipment (DME) is covered under the home health benefit, such items are not included in the HH PPS payment and thus can be billed for separately either by the HHA or a DME supplier and are not subject to home health consolidated billing. In developing the proposed approach for NRS payment, we sought to more accurately match Medicare payments for NRS to agency costs. The proposed and final regression models were developed after creating additional variables from OASIS items and targeting certain conditions expected to be predictors of NRS use based on clinical considerations. The sample only included HHAs whose total charges on claims matched their total charges on their cost reports for that same year, and thus, any issues with RHHI processing did not impede the analysis.

Since the proposed rule, we updated our data base for the NRS analysis to be representative of episodes from 2004 and 2005. This analysis relies on cost reports to derive cost-to-charge ratios for estimating NRS costs on claims, and the latest data available incorporated 2004 cost reports. The results of modeling the NRS costs are shown in the scoring table, Table 10A. Since updating the data base, we have added several new variables, such as diabetic ulcers, and re-specified the treatment of certain wound variables (for example, counts and stages of pressure ulcers) in the final model.

We explored the concern that the proposed 5th severity group level did not provide adequate reimbursement for episodes with a high-utilization of NRS. In response to those comments, and as a result of further analysis, we are implementing a system that pays for non-routine supplies based on 6 severity groups. The 6th group is a subset of the previously proposed 5th group. Our analysis revealed that a small percentage of cases in the proposed 5th severity group may not have adequately reflected the resources required for

providing care in this group. Consequently, in recognizing that a small percentage of episodes incur higher costs than the majority of episodes in the 5th severity group, we split the small percentage of high cost NRS cases from the 5th severity group to form a 6th severity group. Under the final 6 severity NRS approach, the 6th severity level is associated with a higher score and higher payment than any of the severity levels in the proposed rule.

The R-squared for this final model is 16.6 percent. The sample was trimmed to eliminate outliers, where outliers were defined to be episodes with NRS costs estimated to be $3,500 or higher. The trimming procedure resulted in a small loss from the total sample size. A total of 2,653 episodes were excluded (less than 0.09 percent) out of a total sample of 2,974,678 episodes. Our sample for the NRS analysis consisted of all agencies whose total charges reported on claims matched their total charges reported in the cost reports, but as these trimming requirements show, the resulting sample included a relative few questionable sample data points. We believe the final regression model represents the relationships between case-mix and NRS cost among a highly representative sample of episodes and agencies nationally.

While we have not yet developed a statistical model that has performed with a high degree of predictive accuracy, we believe this may due to the limited data available to model NRS costs, and the likelihood that OASIS does not have any measures available for some kinds of NRS. Notwithstanding these concerns, we are changing the payment system because the majority of episodes do not incur any NRS costs, and the current payment system overcompensates these episodes. The final NRS approach better matches NRS payments with NRS costs incurred in the episode. We will continue to look for ways to improve our approach to account for NRS.

Comment: Several commenters noted that the NRS analysis was based on 1997 costs rather than more recent data; one suggested using 2005 data. Another suggested that we tie annual increases in supply costs to a medical supply inflation index.

Response: The analysis file used to develop the proposed NRS case-mix model for the proposed rule was based on 2001 cost reports. The cost reports were then linked to claims to determine the cost-to-charge ratios, which were used to estimate NRS costs for the episodes in the sample. For this final rule, we updated the database upon which our payment proposal for NRS was based to use 2004 and 2005 data. Again, to refine payments for NRS will depend on the quality of the data available in claims and costs reports for succeeding years. We note we are revising our NRS policy to require HHAs to specifically note on submitted claims NRS in any episode in which a NRS is provided.

Comment: A commenter asked that HHAs only be responsible for providing NRS for those conditions that are included in the plan of care.

Response: The plan of care is to be established and periodically reviewed by the patient's physician. The CoPs for HHAs in 42 CFR 484.18 state that ''the plan of care developed in consultation with the agency staff covers all pertinent diagnoses, including mental status, types of services and equipment required, frequency of visits, prognosis, rehabilitation potential, functional limitations, activities permitted, nutritional requirements, medications and treatments, any safety measures to protect against injury, instructions for timely discharge or referral, and any other appropriate items.'' Accordingly, because the CoPs require that all pertinent diagnoses are included on the plan of care, the plan of care should include any conditions for which NRS is necessary for the treatment of those diagnoses, and NRS should be provided and reported being supplied.

Comment: Several commenters asked for additional diagnoses codes to be included in the NRS supply list. A few asked for V44.0–V.44.9 specifically. While they appreciate the attempt to improve NRS payment, several commenters noted that the payments are still inadequate.

Response: We tested selected stoma V-codes mentioned by the commenter. We selected codes for testing that were not already represented by other variables in the model. The final NRS model reflects additional conditions for scoring, when reported using the selected V-codes. We also believe under our final 6 severity group methodology, HH PPS will better reflect the NRS costs and usage.

In summary, we are implementing a 6 severity group methodology for the paying of NRS in the HH PPS, as shown in Table 9 below. We believe that adding a 6th severity group better recognizes episodes with higher NRS costs. To account for paying of NRS through the implementation of a 6-severity group methodology, and to maintain budget neutrality, we reduce the national standardized 60-day episode payment rate.

TABLE 9. RELATIVE WEIGHTS FOR NON-ROUTINE MEDICAL SUPPLIES—SIX-GROUP APPROACH

Severity level	Percentage of episodes	Points (scoring)	Relative weight	Payment amount
1	63.7	0	0.2698	$14.12
2	20.6	1 to 14	0.9742	51.00
3	6.7	15 to 27	2.6712	139.84
4	5.4	28 to 48	3.9686	207.76
5	3.2	49 to 98	6.1198	320.37
6	0.3	99+	10.5254	551.00

Note: NRS conversion factor = $52.35. The NRS conversion factor is the market-basket-updated amount CMS originally included in the HH PPS episode base rate ($49.62), after adjustment for nominal change in case-mix.

We have also included the final versions of Table 10A and Table 10B below.

TABLE 10A.—NRS CASE-MIX ADJUSTMENT VARIABLES AND SCORES

Item	Description	Score
	SELECTED SKIN CONDITIONS	
1	Primary diagnosis = Anal fissure, fistula and abscess	15
2	Other diagnosis = Anal fissure, fistula and abscess	13
3	Primary diagnosis = Cellulitis and abscess	14
4	Other diagnosis = Cellulitis and abscess	8
5	Primary or other diagnosis = Diabetic ulcers	20
6	Primary diagnosis = Gangrene	11
7	Other diagnosis = Gangrene	8
8	Primary diagnosis = Malignant neoplasms of skin	15
9	Other diagnosis = Malignant neoplasms of skin	4
10	Primary or Other diagnosis = Non-pressure and non-stasis ulcers	13
11	Primary diagnosis = Other infections of skin and subcutaneous tissue	16
12	Other diagnosis = Other infections of skin and subcutaneous tissue	7
13	Primary diagnosis = Post-operative Complications	23
14	Other diagnosis = Post-operative Complications	15
15	Primary diagnosis = Traumatic Wounds and Burns	19
16	Other diagnosis = Traumatic Wounds and Burns	8
17	Primary or other diagnosis = V code, Cystostomy care	16
18	Primary or other diagnosis = V code, Tracheostomy care	23
19	Primary or other diagnosis = V code, Urostomy care	24
20	OASIS M0450 = 1 or 2 pressure ulcers, stage 1	4
21	OASIS M0450 = 3+ pressure ulcers, stage 1	6
22	OASIS M0450 = 1 pressure ulcer, stage 2	14
23	OASIS M0450 = 2 pressure ulcers, stage 2	22
24	OASIS M0450 = 3 pressure ulcers, stage 2	29
25	OASIS M0450 = 4+ pressure ulcers, stage 2	35
26	OASIS M0450 = 1 pressure ulcer, stage 3	29
27	OASIS M0450 = 2 pressure ulcers, stage 3	41
28	OASIS M0450 = 3 pressure ulcers, stage 3	46
29	OASIS M0450 = 4+ pressure ulcers, stage 3	58
30	OASIS M0450 = 1 pressure ulcer, stage 4	48
31	OASIS M0450 = 2 pressure ulcers, stage 4	67
32	OASIS M0450 = 3+ pressure ulcers, stage 4	75
33	OASIS M0450e = 1 (unobserved pressure ulcer(s))	17
34	OASIS M0470 = 2 (2 stasis ulcers)	6
35	OASIS M0470 = 3 (3 stasis ulcers)	12
36	OASIS M0470 = 4 (4+ stasis ulcers)	21
37	OASIS M0474 = 1 (unobservable stasis ulcers)	9
38	OASIS M0476 = 1 (status of most problematic stasis ulcer: fully granulating)	6
39	OASIS M0476 = 2 (status of most problematic stasis ulcer: early/partial granulation)	25
40	OASIS M0476 = 3 (status of most problematic stasis ulcer: not healing)	36
41	OASIS M0488 = 2 (status of most problematic surgical wound: early/partial granulation)	4
42	OASIS M0488 = 3 (status of most problematic surgical wound: not healing)	14
	OTHER CLINICAL FACTORS	
43	OASIS M0550 = 1 (ostomy not related to inpt stay/no regimen change)	27
44	OASIS M0550 = 2 (ostomy related to inpt stay/regimen change)	45
45	Any 'Selected Skin Conditions' (rows 1–42 above) AND M0550 = 1 (ostomy not related to inpt stay/no regimen change).	14
46	Any 'Selected Skin Conditions' (rows 1–42 above) AND M0550 = 2 (ostomy related to inpt stay/ regimen change).	11
47	OASIS M0250 (Therapy at home) =1 (IV/Infusion)	5
48	OASIS M0520 = 2 (patient requires urinary catheter)	9
49	OASIS M0540 = 4 or 5 (bowel incontinence, daily or >daily)	10

Note: Points are additive, however points may not be given for the same line item in the table more than once. Points are not assigned for a secondary diagnosis if points are already assigned for a primary diagnosis from the same diagnosis/condition group. See Table 12b for definitions of diagnosis/condition groups.

Please see Medicare Home Health Diagnosis Coding guidance at *http://www.cms.hhs.gov/HomeHealthPPS/03_coding&billing.asp* for definitions of primary and secondary diagnoses.

TABLE 10B.—ICD–9–CM DIAGNOSES INCLUDED IN THE DIAGNOSTIC CATEGORIES FOR THE NONROUTINE SUPPLIES (NRS) CASE-MIX ADJUSTMENT MODEL

Diagnostic Category	ICD–9–CM Code*	Manifestation	Short Description of ICD–9–CM Code
Anal fissure, fistula and abscess	565		ANAL FISSURE AND FISTULA.

TABLE 10B.—ICD–9–CM DIAGNOSES INCLUDED IN THE DIAGNOSTIC CATEGORIES FOR THE NONROUTINE SUPPLIES (NRS) CASE-MIX ADJUSTMENT MODEL—Continued

Diagnostic Category	ICD–9–CM Code*	Manifestation	Short Description of ICD–9–CM Code
	566		ABSCESS OF ANAL AND RECTAL REGIONS.
Cellulitis and abscess	681.00		FINGER—CELLULITIS AND ABSCESS, UNSPECIFIED.
	681.01		FELON.
	681.10		TOE—CELLULITIS AND ABSCESS, UNSPECIFIED.
	681.9		CELLULITIS AND ABSCESS OF UNSPECIFIED DIGIT.
	682		OTHER CELLULITIS AND ABSCESS.
Diabetic Ulcers	250.8x & 707.10–707.9.		(PRIMARY OR FIRST OTHER DIAGNOSIS = 250.8x AND PRIMARY OR FIRST OTHER DIAGNOSIS = 707.10- 707.9).
Gangrene	440.24		ATHERSCLER-ART EXTREM W/GANGRENE.
	785.4	M	GANGRENE.
Malignant neoplasms of skin	172		MALIGNANT MELANOMA OF SKIN.
	173		OTHER MALIGNANT NEOPLASM OF SKIN.
Non-pressure and non-stasis ulcers (other than diabetic).	440.23		ATHEROSCLER-ART EXTREM W/ULCERATION.
	447.2		RUPTURE OF ARTERY.
	447.8		OTHER SPECIFIED DISORDERS OF ARTERIES AND ARTERIOLES.
	707.10		ULCER OF LOWER LIMB, UNSPECIFIED.
	707.11		ULCER OF THIGH.
	707.12		ULCER OF CALF.
	707.13		ULCER OF ANKLE.
	707.14		ULCER OF HEEL AND MIDFOOT.
	707.15		ULCER OF OTHER PART OF FOOT.
	707.19		ULCER OF OTHER PART OF LOWER LIMB.
	707.8		CHRONIC ULCER OTHER SPECIFIED SITE.
	707.9		CHRONIC ULCER OF UNSPECIFIED SITE.
Other infections of skin and subcutaneous tissue.	680		CARBUNCLE AND FURUNCLE.
	683		ACUTE LYMPHADENITIS.
	685		PILONIDAL CYST.
	686		OTH LOCAL INF SKIN&SUBCUT TISSUE.
Post-operative Complications	998.11		HEMORRHAGE COMPLICATING A PROCEDURE.
	998.12		HEMATOMA COMPLICATING A PROCEDURE.
	998.13		SEROMA COMPLICATING A PROCEDURE.
	998.2		ACC PUNCT/LACERATION DURING PROC NEC.
	998.4		FB ACC LEFT DURING PROC NEC.
	998.6		PERSISTENT POSTOPERATIVE FIST NEC.
	998.83		NON-HEALING SURGICAL WOUND NEC.
Traumatic wounds, burns and post-operative complications.	870		OPEN WOUND OF OCULAR ADNEXA.
	872		OPEN WOUND OF EAR.
	873		OTHER OPEN WOUND OF HEAD.
	874		OPEN WOUND OF NECK.
	875		OPEN WOUND OF CHEST.
	876		OPEN WOUND OF BACK.
	877		OPEN WOUND OF BUTTOCK.
	878		OPEN WND GNT ORGN INCL TRAUMAT AMP.
	879		OPEN WOUND OTH&UNSPEC SITE NO LIMBS.
	880		OPEN WOUND OF SHOULDER&UPPER ARM.
	881		OPEN WOUND OF ELBOW, FOREARM&WRIST.
	882		OPEN WOUND HAND EXCEPT FINGER ALONE.
	883		OPEN WOUND OF FINGER.
	884		MX&UNSPEC OPEN WOUND UPPER LIMB.
	885		TRAUMATIC AMPUTATION OF THUMB.
	886		TRAUMATIC AMPUTATION OTHER FINGER.
	887		TRAUMATIC AMPUTATION OF ARM&HAND.
	890		OPEN WOUND OF HIP AND THIGH.
	891		OPEN WOUND OF KNEE, LEG, AND ANKLE.
	892		OPEN WOUND OF FOOT EXCEPT TOE ALONE.
	893		OPEN WOUND OF TOE.
	894		MX&UNSPEC OPEN WOUND LOWER LIMB.
	895		TRAUMATIC AMPUTATION OF TOE.
	896		TRAUMATIC AMPUTATION OF FOOT.
	897		TRAUMATIC AMPUTATION OF LEG.
	941 except 941.0x and 941.1x.		BURN OF FACE, HEAD, AND NECK.
	942 except 942.0x and 942.1x.		BURN OF TRUNK.

TABLE 10B.—ICD–9–CM DIAGNOSES INCLUDED IN THE DIAGNOSTIC CATEGORIES FOR THE NONROUTINE SUPPLIES (NRS) CASE-MIX ADJUSTMENT MODEL—Continued

Diagnostic Category	ICD–9–CM Code*	Manifestation	Short Description of ICD–9–CM Code
	943 except 943.0x and 943.1x.		BURN OF UPPER LIMB, EXCEPT WRIST AND HAND.
	944 except 944.0x and 944.1x.		BURN OF WRIST(S) AND HAND(S).
	945 except 945.0x and 945.1x.		BURN OF LOWER LIMB(S).
	946.2		BURNS OF MULTIPLE SPECIFIED SITES, BLISTERS, EPIDERMAL LOSS [SECOND DEGREE].
	946.3		BURNS OF MULTIPLE SPECIFIED SITES, FULL-THICKNESS SKIN LOSS [THIRD DEGREE NOS].
	946.4		BURNS OF MULTIPLE SPECIFIED SITES, DEEP NECROSIS OF UNDERLYING TISSUES [DEEP THIRD DEGREE] WITHOUT MENTION OF LOSS OF A BODY PART.
	946.5		BURNS OF MULTIPLE SPECIFIED SITES, DEEP NECROSIS OF UNDERLYING TISSUES [DEEP THIRD DEGREE] WITH LOSS OF A BODY PART.
	998.31		DISRUPTION OF INTERNAL OPERATION WOUND.
	998.32		DISRUPTION OF EXTERNAL OPERATION WOUND.
	998.51		INFECTED POSTOPERATIVE SEROMA.
	998.59		OTHER POSTOPERATIVE INFECTION.
V-code, Cystostomy Care	V55.5		CYSTOSTOMY—CARE.
V-code, Tracheostomy Care	V55.0		TRACHEOSTOMY—CARE.
V-code, Urostomy Care	V55.6		OTHER ARTIFICIAL OPENING OF URINARY TRACT-NEPHROSTOMY, URETEROSTOMY, URETHROSTOMY.

To ensure that NRS costs are being reported, claims that do not report NRS costs, unless explicitly noted by the HHA that NRS was not provided, will be returned to the provider (RTP). For episodes in which NRS was provided, the provider will need to resubmit the claim with NRS reported. For episodes in which NRS was not provided, the HHA will need to explicitly note that fact on the claim. We will allow a grace period, which will be determined and communicated in instructions from CMS. This will improve data on NRS, in the home health setting, providing us with better data with which to analyze and evaluate payment to HHAs for NRS in the future. We will monitor the accuracy of the 6-severity group methodology for payment of NRS. We will continue to monitor the accuracy and completeness of the reporting of NRS costs. Finally, we will explore alternative methods for accounting for NRS costs and payments in the future.

D. The Outlier Policy

As noted in section II, of this final rule with comment period, outlier payments are made for episodes for which the estimated cost exceeds a threshold amount and are intended to address home health episodes that incur unusually high costs due to patient health care needs. Section 1895(b)(5) of the Act requires that the estimated total outlier payments are no more than 5 percent of total estimated HH PPS payments. For a full description of our outlier policy, we refer to the CY 2008 HH PPS proposed rule (72 FR 25434–25435).

The wage adjusted fixed dollar loss (FDL) amount represents the amount of loss that an agency must bear before an episode becomes eligible for outlier payments. The loss sharing ratio is 0.80. As noted in the proposed rule, when the HH PPS system was implemented, we chose a value of 0.80 for the loss-sharing ratio and an FDL ratio of 1.13. In the October 2004 final rule, we revised the FDL ratio to 0.70, based on analysis of CY 2003 HH PPS data. We believed this updated FDL ratio of 0.70 preserved a reasonable degree of cost sharing, allowed a greater number of episodes to qualify for outlier payments, and yet did not result in a projected target percentage of estimated outlier payments of more than 5 percent.

Our CY 2006 update to the HH PPS rates, which was based upon CY 2004 HH claims data, again revised the FDL ratio from 0.70 to 0.65 to allow even more home health episodes to qualify for outlier payments and to better meet the estimated 5 percent target of outlier payments as a percentage of total HH PPS payments. In our CY 2007 update, we again changed the FDL ratio from 0.65 to 0.67 to better meet the 5 percent target of outlier payments to total HH PPS payments, and based the change on analysis of CY 2005 HH claims.

In the proposed rule (72 FR 25434), we stated that preliminary analysis showed that outlier payments, as a percentage of total HH PPS payments, have increased on a yearly basis. With outlier payments having increased in recent years, and given the unknown effects that the proposed refinements may have on outliers, we proposed to maintain the FDL ratio at 0.67. We believed that this would continue to meet the statutory requirement of having an outlier payment outlay that does not exceed 5 percent of total HH PPS payments, while still providing for an adequate number of episodes to qualify for outlier payments. We stated in the proposed rule that we would rely on the latest data and best analysis available at the time to estimate outlier payments and update the FDL ratio in the final rule if appropriate.

Comment: A commenter supported our proposed outlier policy but does not understand why it needs to be capped at 5 percent.

Response: The statute, at section 1895(b)(5) of the Act, limits estimated outlier payments to no more than 5 percent of the total estimated HH PPS payments during a given year.

Comment: Commenters stated that the fixed dollar loss (FDL) ratio should be

reduced since the 0.67 FDL ratio will not result in CMS spending the targeted 5 percent for outlier payments as a percentage of total estimated HH PPS payments. CMS should adjust its technique for calculating the FDL ratio by using its historical data on actual outlays.

Response: Given that outlier payments as a percentage of total HH PPS payments have increased in recent years and given the unknown effects of the proposed refinements, we proposed to maintain the FDL ratio at 0.67. At the time of the proposed rule, data indicated that by maintaining the FDL ratio at 0.67 we would continue to meet the statutory requirement that estimated outlier payments be no more than 5 percent of total estimated HH PPS payments, yet an adequate number of episodes would qualify for outlier payments. In the proposed rule, we indicated that preliminary analysis, which was based on 2003 data, showed the FDL ratio could be as low as 0.42.

The 2003 data used in Abt's modeling of the refined HH PPS for the proposed rule was somewhat limited in that it was not able to take into account more recent trends in actual outlier expenditures. Similarly, Abt's modeling of the refined HH PPS for this final rule is still somewhat limited in that it is not able to take into account the latest available data on actual outlier expenditures. Consequently, as we stated in the proposed rule, in the interest of using the latest data and best analysis available, we have performed supplemental analysis on more recent data in order to best estimate the FDL ratio.

When we revised the FDL from 1.13 to .70 in CY 2005, we expected to observe an increase in outlier payments as a percent of total payments to better meet our projected target percentage of not more than 5 percent. In addition, for CY 2006 and CY 2007 (with relatively stable FDLs of .65 and .67), we would have anticipated that outlier payments would have remained relatively stable and not exceed 5 percent of estimated HH PPS payments for each given year. Instead, experience has shown that outlier payments have been increasing as a percent of total payments from 4.1 percent in CY 2005 to 4.97 percent in CY 2006 and, we estimate, 5.33 percent in CY 2007. These increasing percents imply that the cost distribution of episodes is changing and that our estimates of the FDL need to account for these changes in order to better match experience and to not exceed the statutory limit of not more than 5 percent as a percentage of total estimated HH PPS payments.

The current model's estimate of the FDL ratio, using CY 2005 data, is 0.47. This is higher than the estimate from the FY 2003 data, which was 0.42, reflecting growth in the outlier percentage, as noted earlier. Given current trends, we estimate that we would exceed the 5 percent statutory limit on outlier payments using either the model's FDL ratio of 0.47, or the proposed FDL ratio of 0.67. In order to capture the most recent trends in the increase of outlier payments, and to appropriately account for seasonal differences that may exist in outlier episodes, we compared the percentage of outlier payments as a percentage of total HH PPS payments from the first quarter of CY 2006 (4.52 percent) and the first quarter of CY 2007 (4.85 percent). That estimated annual percentage increase in outlier payments is calculated to be 7.3 percent. We estimate the percentage of outlier payments for CY 2007 by multiplying 4.97 percent (the percentage of outlier payments for CY 2006) by 1.073 (the estimated annual percentage increase in outlier payments noted above) for an estimated percentage of outlier payments as a percent of total estimated HH PPS payments for CY 2007 of 5.33 percent. We multiply the 5.33 percent by 1.073, to estimate the percentage of outlier payments as a percent of total estimated HH PPS payments for CY 2008. That calculation results in an estimated percentage of outlier payments as a percent of total estimated HH PPS payments for CY 2008 of 5.7 percent.

We then analyzed the sensitivity of the percent of outlier payments to total payments to variations in the FDL ratio. Using simulations of the values of FDLs consistent with alternative outlier payment percents based on CY 2005 data (the latest data available for such an analysis), we used linear regression to estimate the change in the FDL ratio associated with a 1 percentage point change in the percent of outlier payments. That linear regression analysis shows that a one percentage point change in the outlier payment percentage is associated with a negative 0.31 change in the FDL ratio. That is, to reduce the percent of outlier payments by one percentage point, it would be necessary to increase the FDL ratio by 0.31.

Using this analysis we looked to see what adjustment, to the FDL ratio, would be appropriate in estimating outlier payments of up to but not more than 5 percent of total estimated HH PPS payments in CY 2008. As also mentioned above, we have estimated that with an FDL ratio of 0.67, outlier payments as a percentage of total estimated HH PPS payments are estimated to be approximately 5.7 percent. We take the 0.7 percent (the percentage amount in excess of the 5 percent target) and multiply it by 0.31 (the estimated amount of change in the FDL ratio for every one percentage point change in the outlier payment percentage), (0.7 * 0.31), resulting in a change in the FDL ratio of 0.22. We add that 0.22 change in the FDL ratio to the FDL ratio in effect in 2007 (0.67), arriving at a final FDL ratio of 0.89.

Based on this analysis, we believe that setting the FDL ratio at 0.89 would be the most prudent course given these trends and the unknown effects of the refinements on outliers. As previously stated, we further believe that a FDL ratio of 0.89 will continue to meet the statutory requirement of having an estimated outlier payment outlay that does not exceed the 5 percent of total estimated HH PPS payments, while still providing for an adequate number of episodes to qualify for outlier payments. As our best estimate is that an FDL of 0.89 is consistent with outlier payments of no more than 5.0 percent of total estimated HH PPS payments, we will account for the estimated 5 percent outlier payments in our updating of the HH PPS rates. We will continue to monitor the trends in outlier payments and the effects of the refinements, and will adjust the FDL ratio as needed.

Comment: Several commenters supported eliminating the outlier policy and redistributing the 5 percent outlier allocation, which has never been fully distributed anyway, in order to increase the standardized payment rates. The commenters believed that the outlier policy is disadvantageous to efficient and effective HHAs. Despite caring for very sick, resource intensive patients, some HHAs have never received any benefit from the outlier policy. The commenters suggested that redistributing the outlier allocation to the standardized payment rates would ensure a more effective use of the budgeted Medicare home health funds.

Another commenter suggested we reduce the maximum outlier payments as a percentage of total HH PPS payment from 5 percent to 1 percent.

Response: We appreciate the comment. However, we continue to believe that maintaining an outlier policy is beneficial to the home health community. We have set the loss sharing ratio and the fixed dollar loss amount in such a way to preserve a reasonable degree of cost sharing while allowing an appropriate number of episodes to qualify for outlier payments.

We disagree with the suggestion that we reduce the maximum outlier

percentage from 5 percent of total HH PPS payments to 1 percent. We believe that the current policy is more equitable, and that reducing the percentage could result in reducing access to home health care by high needs patients.

Comment: A commenter stated that the outlier policy is fiscally punitive to the HH industry and that it appears to be a back door mechanism to reduce payments to the industry. The commenter suggested eliminating the outlier policy and revising the standardized rates to include the 5 percent outlier allocation.

Response: Section 1895(b)(5) of the Act allows the Secretary to provide an adjustment to the case-mix and wage adjusted national 60-day episode payment amount when episodes incur unusually large costs due to patient home care needs. Section 1895(b)(5) of the Act further stipulates that the total outlier payments in a given year may not exceed 5 percent of total projected estimated HH PPS payments. Again, as stated above, we continue to believe that the benefit to the home health community of maintaining an outlier policy is consistent with the statute and outweighs not having an outlier policy.

Comment: One commenter asked that standards for the outlier provision be changed to allow agencies to recover their costs for those most expensive, high needs patients. This would encourage agencies to accept these cases and provide appropriate care.

Response: We appreciate the comment. Again, we believe we have set the loss sharing ratio and the fixed dollar loss amount in such a way as to preserve a reasonable degree of cost sharing while allowing an appropriate number of episodes to qualify for outlier payments. We also believe the FDL ratio will allow us to better meet the statutory percentage imposed on outlier payments.

Comment: A commenter wrote that it was unwise to dismiss the need to adjust the outlier threshold at the same time that an increase in HH PPS predictive power was being implemented via the refinements.

Response: Our proposal to keep the FDL at 0.67 for CY 2007 was based upon the most recent data analysis at that time, and the unknown effects of the HH PPS refinements on outlier payments. As noted above, further analysis and use of more recent and updated data has led us to revise the outlier FDL ratio.

In summary, since the publication of the CY 2008 HH PPS proposed rule, we have updated our analysis file, on which the Abt model is based, to include 2005 data. Using the best analysis and data available, including trend analysis and linear regression analysis described above, we have adjusted the current FDL ratio of 0.67 to 0.89. We believe that we have accounted for the latest observed trends in outlier payments, and incorporated the best analysis available to determine that an increase in the FDL ratio is necessary in order to continue to meet the statutory requirement of having an outlier payment outlay that does not exceed 5 percent of total HH PPS payments, while still providing for an adequate number of episodes to qualify for outlier payments.

Therefore, in this final rule we are implementing a FDL ratio of 0.89 for FY 2008. To account for an outlier policy that estimates outlier payments to be no more than 5 percent of total HH PPS payments, and to maintain budget neutrality, we reduce the national standardized 60-day episode payment rate. We are revising 42 CFR 484.240(b) (''Methodology used for the calculation of the outlier payment'') to remove references to the SCIC adjustment. We will continue to monitor trends in the data, along with the effects of the refinements, on outlier payments, and will update the FDL as needed. We will also continue to review the outlier payments using the administrative data we monitor yearly. Future reviews will consider the appropriateness of outlier payments in the entire context of the refinements being finalized in this regulation.

E. The Update of the HH PPS Rates

1. The Home Health Market Basket Update

Section 1895(b)(3)(B) of the Act, as amended by section 5201 of the DRA, requires for CY 2008 that the standard prospective payment amounts be increased by a factor equal to the applicable home health market basket percentage increase. The proposed rule contained a home health market basket percentage increase of 2.9 percent. Using revised updated data, we now estimate a home health market basket percentage increase of 3.0 percent for CY 2008.

2. The Rebasing and Revising of the Home Health Market Basket

In the proposed rule, we proposed to rebase and revise the home health market basket to ensure it continues to adequately reflect the price changes of efficiently providing home health services. Specifically, we proposed to update the home health market basket base year from 2000 to 2003. We also proposed to revise the home health market basket. For full description of our proposal to revise and rebase the home health market basket, we refer to the CY 2008 HH PPS proposed rule (72 FR 25435–25442). In the proposed revised and rebased home health market basket, the labor-related share would be 77.082 percent. The labor-related share includes wages and salaries and employee benefits. The proposed non labor-related share would be 22.918 percent. The increase in the labor-related share using the 2003-based home health market basket is primarily due to the increase in the benefit cost weight.

Comment: Several commenters objected to our proposal to change the labor-related share to 77.082 percent and requested that CMS maintain a labor-related share of 76.775 percent. One commenter noted that the higher labor-related share would have an adverse impact on reimbursement particularly for rural home health care providers who have wage indices of less than 1.0. The commenter proposed that CMS should withdraw its proposal to increase the labor-related share of the HH PPS rate.

Response: Since the inception of HH PPS, the home health labor-related share has been based on the sum of the weights for wages and salaries and fringe benefits of the home health market basket index. We also note the wage index is estimated independently from the labor-related share. The labor-related share is calculated based on data submitted on the home health Medicare cost reports for both rural and urban freestanding home health care facilities. The proposed change in the labor-related share is primarily attributable to the rebasing of the market basket from base year 2000 to 2003. The 2003 data, the most recent and comprehensive data available at the time of this rebasing, reflect that labor-related costs are increasing faster than aggregate non labor-related costs. Based on the submitted cost report data from 2001 to 2003, the weight for wages and salaries has been declining while the weight for fringe benefits has been increasing, thus driving the labor-related share higher overall. We believe the proposed 77.082 percent to be the most technically accurate measure of labor-related costs. We will continue to analyze HH cost report data on a regular basis to ensure it accurately reflects the cost structures facing HH providers serving Medicare beneficiaries.

Comment: Several commenters disagreed with the proposed market basket update for home health providers of 2.9 percent for CY 2008, which is lower than the proposed FY inpatient hospital and skilled nursing facility

(SNF) market basket updates. One commenter noted that the lower market basket update relative to other providers will have an adverse impact on the industry's ability to attract health care workers.

Response: The final HH market basket update for CY 2008 is 3.0 percent, which is based on Global Insight Inc.'s (GII) 2007 2nd quarter forecast, the most current forecast available at the time of publication of the final rule. The update in the proposed rule was based on GII's 2006 3rd quarter forecast. GII is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of the market baskets. CMS calculates each market basket (both weight composition and price proxy selection) specific to the respective industry and independent of the other market baskets.

The HH PPS market basket measures the change in prices for an exhaustive list of categories that represent the inputs required to provide services to Medicare beneficiaries. The HH index weights are based on data reported on the Medicare cost report forms which provide actual cost share data specific to home health agencies. Likewise, the hospital and SNF market baskets are based on actual cost shares reported on their respective cost reports. Each cost category in all market baskets is matched to a price proxy that is determined to be the most technically appropriate price proxy for that category. For example, the HH wage price proxy measures price pressures specific to the occupational skill mix within the HH industry while the SNF wage price proxy measures price pressures specific to the skilled nursing facility industry.

We believe that HH compensation costs are accurately captured within the HH market basket. The associated weight is derived directly from the Medicare cost report data, which indicates that compensation in the HH industry is higher relative to that of other market industries. We believe this reflects the labor-intensive nature of the home health industry. Moreover, the indices used to proxy changes in the price of labor reflect the occupational mix of the laborers in the HH industry and are thus also technically appropriate.

Comment: Several commenters stated that HH providers face higher transportation costs than other types of providers which should be reflected in a higher market basket update.

Response: We believe HH transportation costs are accurately captured within the HH market basket. The transportation base year cost weight is derived from the data reported on the 2003 HHA Medicare cost reports. In determining the market basket percentage increase, these costs are proxied using the CPI for private transportation. Forecasts of this price proxy reflect the price changes of fuel, as well as other transportation costs such as vehicle purchase/lease, maintenance, repair, and insurance. We believe this is the most appropriate price proxy to use for transportation as home health providers face all aspects of vehicle expenses and as such, these costs are appropriately captured in the rebased and revised home health market basket.

Comment: Several commenters stated that the present wage structure does not provide adequate reimbursement for increased nursing and therapist wages. Additionally, one commenter suggested CMS should use data from the Bureau of Labor Statistics (BLS) for clinician costs.

Response: The current price proxy used for the compensation portion of the home health market basket was designed based on the occupational skill mix specific to the home health industry. The proxy accounts for all related compensation expenditures for an exhaustive list of occupations within the home health industry, including but not limited to, nurses, therapists, and clinicians. These three occupations fall into the cost category for skilled nursing, therapists, and other professional/technical workers, a cost category accounting for 50.506 percent of the total home health wage proxy (72 FR 25440). These wages are proxied by a 50/50 blend of the employment cost index (ECI) for professional & technical (P&T) workers and the ECI for hospital workers. Accordingly, we believe that the home health occupational wage and salary index is the most representative measure of home health wage pressures.

We are implementing the revised and rebased HH market basket as proposed.

3. Wage Index

The statute at sections 1895(b)(4)(A)(ii) and 1895(b)(4) of the Act requires the Secretary to establish wage adjustment factors that reflect the relevant level of wages and wage-related costs applicable to the furnishing of home health services and to provide appropriate adjustment to the episode payment amount under the HH PPS to account for area wage differences. Section 1895(b)(4)(C) of the Act further provides that the wage adjustment factors may be the factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustment factors. We apply the appropriate wage index value to the proposed labor portion (77.082 percent; see Table 22 of the proposed rule) of the HH PPS rates based on the geographic area where the beneficiary received the home health services. As implemented under the HH PPS in the July 3, 2000 HH PPS final rule, each HHA's labor market area is based on definitions of Metropolitan Statistical Areas (MSAs) issued by the OMB. We have consistently used and proposed again in the CY 2008 HH PPS proposed rule to use the pre-floor and pre-reclassified hospital wage index data to adjust the labor portion of the HH PPS rates based on the geographic area where the beneficiary receives home health services (72 FR 25448). We believe the use of the pre-floor and pre-reclassified hospital wage index data results in the appropriate adjustment to the labor portion of the costs as required by statute.

In the August 11, 2004 IPPS final rule [69 FR 49206], revised labor market area definitions were adopted at § 412.64(b), which were effective October 1, 2004 for acute care hospitals. The new standards, Core Based Statistical Areas (CBSAs), were announced by OMB in late 2000 and were also discussed in greater detail in the July 14, 2005 HH PPS proposed rule. For the purposes of the HH PPS, the term ''MSA-based'' refers to wage index values and designations based on the previous MSA designations. Conversely, the term ''CBSA-based'' refers to wage index values and designations based on the new OMB revised MSA designations which now include CBSAs. In the November 9, 2005 HH PPS final rule (70 FR 68132), we implemented a 1-year transition policy using a 50/50 blend of the CBSA-based wage index values and the Metropolitan Statistical Area (MSA)-based wage index values for CY 2006. The 1-year transition policy ended in CY 2006. Currently, wage index values for CY 2007 are based on CBSA designations. For CY 2008, we will continue to use a wage index based on the CBSA designations.

As implemented under the HH PPS in the July 3, 2000 HH PPS final rule, each HHA's labor market is determined based on definitions of MSAs issued by OMB. In general, an urban area is defined as an MSA or New England County Metropolitan Area (NECMA) as defined by OMB. Under § 412.64(b)(1)(ii)(C), a rural area is defined as any area outside of the urban area. The urban and rural area geographic classifications are defined in § 412.64(b)(1)(ii)(A) and § 412.64(b)(1)(II)(C) respectively, and have been used under the HH PPS since implementation.

Under the HH PPS, the wage index value used is based upon the location of the beneficiary's home. As has been our longstanding practice, any area not included in an MSA (urban area) is considered to be non-urban § 412.64(b)(1)(ii)(C) and receives the statewide rural wage index value (see, for example, 65 FR 41173).

As discussed previously and set forth in the July 3, 2000 final rule, the statute provides that the wage adjustment factors may be the factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustment factors. As discussed in the July 3, 2000 final rule, we proposed to again use the pre-floor and pre-reclassified hospital wage index data to adjust the labor portion of the HH PPS rates based on the geographic area where the beneficiary receives home health services. We believe the use of the pre-floor and pre-reclassified hospital wage index data results in the appropriate adjustment to the labor portion of the costs as required by statute. For the CY 2008 update to home health payment rates, we would continue to use the most recent pre-floor and pre-reclassified hospital wage index available at the time of publication.

In adopting the CBSA designations, we identified some geographic areas where there are no hospitals, and thus no hospital wage data on which to base the calculation of the home health wage index. Beginning in CY 2006, we adopted a policy that, for urban labor markets without an urban hospital from which a hospital wage index can be derived, all of the urban CBSA-wage index values within the State would be used to calculate a statewide urban average wage index to use as a reasonable proxy for these areas. Currently, the only CBSA that would be affected by this policy is CBSA 25980, Hinesville, Georgia. We proposed to continue this policy for CY 2008.

Currently, the only rural areas where there are no hospitals from which to calculate a hospital wage index are Massachusetts and Puerto Rico. For CY 2006, we adopted a policy in the HH PPS November 9, 2005 final rule (70 FR 68138) of using the CY 2005 pre-floor, pre-reclassified hospital wage index value. In the August 3, 2006 proposed rule, we again proposed to apply the CY 2005 pre-floor/pre-reclassified hospital wage index to rural areas where no hospital wage data is available. In response to commenters' concerns and in recognition that, in the future, there may be additional rural areas impacted by a lack of hospital wage data from which to derive a wage index, we adopted, in the November 9, 2006 final rule (71 FR 65905), the following methodology for imputing a rural wage index for areas where no hospital wage data are available as an acceptable proxy. The methodology that we implemented for CY 2007 imputed an average wage index value by averaging the wage index values from contiguous CBSAs as a reasonable proxy for rural areas with no hospital wage data from which to calculate a wage index. We believe this methodology best met our criteria for imputing a rural wage index as well as representing an appropriate wage index proxy for rural areas without hospital wage data. Specifically, such a methodology uses pre-floor, pre-reclassified hospital wage data, is easy to evaluate, is updateable from year to year, and uses the most local data available. In determining an imputed rural wage index, we define ''contiguous'' as sharing a border. For Massachusetts, rural Massachusetts currently consists of Dukes and Nantucket Counties. We determined that the borders of Dukes and Nantucket counties are ''contiguous'' with Barnstable and Bristol counties. We again proposed to apply this methodology for imputing a rural wage index for those rural areas without rural hospital wage data.

However, as we noted in the HH PPS final rule for CY 2007, we did not believe that this policy was appropriate for Puerto Rico. As noted in the August 3, 2006 proposed rule, there are sufficient economic differences between the hospitals in the United States and those in Puerto Rico, including the fact that hospitals in Puerto Rico are paid on blended Federal/Commonwealth-specific rates, that a separate, distinct policy for Puerto Rico is necessary. Consequently, any alternative methodology for imputing a wage index for rural Puerto Rico would need to take into account those differences. Our policy of imputing a rural wage index by using an averaged wage index of CBSAs contiguous to that rural area does not recognize the unique circumstances of Puerto Rico. For CY 2008, we again proposed to continue to use the most recent wage index previously available for Puerto Rico which is 0.4047.

Comment: A commenter supported ensuring that the hospital cost reports that are used to calculate the wage index are accurate. The commenter stated that CMS should not accept or utilize faulty cost report data.

Response: We appreciate the comment and note CMS utilizes efficient means to ensure and review the accuracy of the cost report data and resulting wage index. The home health wage index is derived from the pre-floor, pre-reclassified hospital wage index which is calculated based on cost report data from hospitals paid under the hospital inpatient prospective payment system (IPPS). All IPPS hospitals must complete the wage index survey (Worksheet S–3, Parts II and III) as part of their Medicare cost reports. Cost reports will be rejected if Worksheet S–3 is not completed. In addition, our intermediaries perform desk reviews on all hospitals' Worksheet S–3 wage data, and we run edits on the wage data to further ensure the accuracy and validity of the wage data. Furthermore, HHAs have the opportunity to submit comments on the hospital wage index data during the annual IPPS rulemaking period. Therefore, we believe our review processes result in an accurate reflection of the applicable wages for the areas given.

Comment: Several commenters expressed concerns about using the pre-floor, pre-reclassified hospital wage index for the home health wage index. These commenters believe that CMS has the regulatory authority to replace the current wage index with one that achieves parity with hospitals in order to compete in the same geographic labor markets. Further, these commenters support stabilizing the wage index through limits on year-to-year changes. Specific recommendations include applying a rural floor in addition to allowing HHAs to apply for the type of geographic reclassification that IPPS hospitals are provided.

Response: The commenters are referring to rural floor and geographic reclassification provisions in the IPPS which are only applicable to hospital payments. The rural floor provision is provided at section 4410 of Public Law 105–33 and is specific to hospitals. The reclassification provision provided at section 1886(d)(10) of the Act is also specific to hospitals. Because these floors and reclassifications apply only to hospitals, and not to HHAs, we believe the use of the most recent available pre-floor and pre-reclassified hospital wage index data results in the most appropriate adjustment to the labor portion of home health costs as required at 1895(b)(4)(C). We also note that the HH PPS wage adjustment is based on the geographic area where the beneficiary is located, not where the HHA is located.

Comment: One commenter recommended that CMS adopt a ''rural floor'' policy for the home health wage index, comparable to the policy that exists for hospitals. The commenter believed that CMS has the authority to

make the change in the regulation. The commenter expressed that its proposal would be the simplest, fairest, and most cost effective solution to the ''wage index problems'' and would serve as an important bridge to any legislative revision to the wage index provisions, which is likely to take years to enact.

Response: Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require the Secretary to establish area wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services and to provide appropriate adjustments to the episode payment amounts under the HH PPS to account for area wage differences. The wage adjustment factors may be the factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act. We believe the use of the hospital wage data, without application of a rural floor, results in appropriate adjustment to the labor portion of costs based on an appropriate wage index as required under section 1895(b)(3)(A)(i), (b)(4)(A)(ii), and (b)(4)(C) of the Act. Additionally, as stated above, the rural floor provision provided at section 4410 of Pub. L. 105–33 is specific to hospital payments.

Comment: Several commenters expressed concern that in FY 2004, we dropped Critical Access Hospitals (CAHs) from our calculation of the hospital wage index. Commenters stated that wage cost data from over 1,000 CAHs are no longer included in the calculation of the hospital wage index. These hospitals are located in rural areas and therefore impact the calculation of the rural wage indexes. The commenters believed not including CAH cost report data in the wage index calculation has had a significant impact on HHAs that serve beneficiaries in rural areas.

Response: As noted previously, we adopted the pre-floor, pre-classified hospital wage index data as we believe they most appropriately reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services and provide appropriate adjustments to the episode payment amounts under the HH PPS to account for area wage differences. Therefore, for this final rule, we are adopting the pre-floor, pre-reclassified hospital wage index. Comments as to how the IPPS should construct that wage index are beyond the scope of this rule.

Comment: One commenter stated that we should use the HHA wage data that we collected and analyzed to rebase the labor share of the home health market basket in order to develop a home health specific wage index. Similarly, other commenters recommended that CMS develop a home health specific wage index to reflect the true costs of HHAs.

Response: While we appreciate the commenters' desire to use a home health specific wage index, we note that our previous attempts at either proposing or developing a home health specific wage index were not well received by commenters or the industry. Generally, the volatility of the home health wage data and the resources needed to audit and verify that data, make it difficult to ensure that such a wage index accurately reflects the wages and wage-related costs applicable to the furnishing of services. Thus, we are not adopting a home health specific wage index at this time. We believe it is important that a home health specific wage index be more reflective of the wages and salaries paid in a specific area, be based upon a stable data source, and significantly improve our ability to determine home health payments without being overly burdensome. We continue to believe that using the most recent available pre-floor, pre-reclassified hospital wage index results in the appropriate adjustment to the labor portion of the costs as required by the statute.

Comment: Several commenters proposed that CMS adopt MedPAC's proposed method for calculating the hospital wage index and apply it to the HH PPS. Chapter 6 of MedPAC's June 2007 Report to Congress, entitled ''Promoting Greater Efficiency in Medicare'' discusses MedPAC's proposed methodology. Under MedPAC's system, HHAs and hospitals in the same market would have the same wage index. The new methodology would be available for all labor areas, eliminating the need for imputing an index for agencies in areas with no hospital wage data. One commenter urged CMS to begin implementing MedPAC's proposed wage index methodology for home health in CY 2009.

Response: Section 106(b)(1) of the MIEA–TRHCA (Pub. L. 109–432) requires MedPAC to submit to Congress, not later than June 30, 2007, a report on the Medicare wage index classification system applied under the Medicare Prospective Payment System. Section 106(b) of MIEA–TRHCA requires the report to include any alternatives that MedPAC recommends to the method used to compute the wage index under section 1886(d)(3)(E) of the Act.

We thank the commenters for their ideas and suggestions on the wage index in response to the statutory requirements under Pub. L. 109–432. We are reviewing MedPAC's Report to Congress and the wage index methodology recommended therein. We will carefully consider MedPAC's recommendations as they apply to the HH PPS. Finally, we note that MedPAC released its June 2007 report to Congress on June 15, 2007. As the statute requires, the report includes MedPAC's analysis and recommendations on alternatives to the method to compute the wage index. The full report can be downloaded from MedPAC's Web Site at *http://www.medpac.gov/documents/Jun07_EntireReport.pdf.*

Comment: A commenter expressed concern because the wage index for CBSA 25180, Berkeley County, WV is lower than other nearby CBSAs in the Washington, DC area. In addition, the commenter stated that CBSA 25180 is one of the fastest growing areas in the nation, thereby increasing property values and hence labor costs.

Response: CBSA 25180 ''Hagerstown–Martinsburg, MD–WV'' includes not only Berkeley County, WV but also Morgan County, WV and Washington County, MD. Prior to our adoption of OMB's revised geographic area designations in CY 2006, Morgan County was classified as rural. Prior to CY 2006, Berkeley County was grouped with 24 other geographic areas (23 counties and the District of Columbia) in order to calculate a wage index for this area, which was classified as MSA 8840 ''Washington, DC–MD–VA–WV.'' After adopting OMB's revised geographic area designations, Morgan, Berkeley, and Washington counties' hospital wage data are now added together to calculate the wage index for CBSA 25180. We were aware that changes to wage index values might result from adopting the revised OMB designations. Therefore, we provided a one-year transition period in CY 2006 as a means to phase in the changes and to mitigate the resulting adverse impact of a CBSA-based wage index on certain HHAs. As to the appropriateness of what CBSA a particular area has been designated into, CBSA designations are determined by the Office of Management and Budget (OMB). This information is available at the following Web site address: *http://www.whitehouse.gov/omb/bulletins/b03–04.html.* We continue to believe that OMB's CBSA designations reflect the most recent available geographic classifications and are a reasonable and appropriate way to define geographic areas for purposes of determining wage index values.

Comment: A commenter pointed out that the CY 2007 wage index for rural

Massachusetts is listed as 1.0661 in the proposed rule but that it should be 1.1661.

Response: This was an inadvertent typographical error in the proposed rule. The HH PPS Pricer for CY 2007 contains the correct value of 1.1661. Accordingly, payments made to HHAs who serve patients residing in rural areas of Massachusetts are being paid based upon the correct wage index value of 1.1661.

For the CY 2008 update to home health payment rates, we are finalizing the wage index and associated policies in that we will continue to use the most recent pre-floor and pre-reclassified hospital wage index. In addition, we note that we plan to evaluate any policies adopted in the FY 2008 IPPS final rule that affect the wage index, including how we treat certain New England hospitals under § 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21). We continue to believe that the use of the pre-floor and pre-reclassified hospital wage index data for HH PPS results in the appropriate adjustment to the labor portion of the costs as required by statute.

4. Home Health Care Quality Improvement

Section 5201(c)(2) of the DRA added section 1895(b)(3)(B)(v)(II) to the Act, requiring that ''each home health agency shall submit to the Secretary such data that the Secretary determines are appropriate for the measurement of health care quality. Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this clause.'' In addition, section 1895(b)(3)(B)(v)(I) of the Act, as also added by section 5201(c)(2) of the DRA, dictates that ''for 2007 and each subsequent year, in the case of a home health agency that does not submit data to the Secretary in accordance with subclause (II) with respect to such a year, the home health market basket percentage increase applicable under such clause for such year shall be reduced by 2 percentage points.''

The OASIS data currently provide consumers and HHAs with 10 publicly-reported home health quality measures which have been endorsed by the National Quality Forum (NQF). Reporting these quality data has also required the development of several supporting mechanisms such as the HAVEN software used to encode and transmit data using a CMS standard electronic record layout, edit specifications, and data dictionary. The HAVEN software includes the required OASIS data set that has become a standard part of HHA operations. These early investments in data infrastructure and supporting software that CMS and HHAs have made over the past several years in order to create this quality reporting structure have been successful in making quality reporting and measurement an integral component of the HHA industry. For CY 2007, we specified 10 OASIS quality measures as appropriate for measurements of health care quality. These measures were to be submitted by HHAs to meet their statutory requirement to submit quality data for a full increase in their market basket percentage increase amount. The 10 measures are:

(1) Improvement in ambulation/locomotion
(2) Improvement in bathing
(3) Improvement in transferring
(4) Improvement in management of oral medications
(5) Improvement in pain interfering with activity
(6) Acute care hospitalization
(7) Emergent care
(8) Improvement in dyspnea
(9) Improvement in urinary incontinence
(10) Discharge to community

For CY 2007, we specified 10 OASIS quality measures as appropriate for measurements of health care quality. These measures were to be submitted by HHAs to meet their statutory requirement to submit quality data for a full increase in their market basket percentage increase amount. For CY 2008, we proposed to expand the existing set of 10 quality measures by adding up to 2 NQF-endorsed measures. The proposed additional measures for 2008 were:

- Emergent Care for Wound Infections, Deteriorating Wound Status
- Improvement in the Status of Surgical Wounds (For a complete list and description of the quality measure requirements see the proposed rule (72 FR 25449–25452)).

Comment: Several commenters suggested that CMS continue to refine and enhance the OASIS assessment instrument and associated Quality Measures, and suggested item-specific or quality measure-specific items in use in the home health quality reporting requirement.

Response: CMS is constantly working to improve the OASIS instrument and the quality measures that are built upon it. We will continue to pursue improving the assessment instrument's accuracy in reflecting both the health status and improvements in condition of our beneficiaries. On July 27, 2007, a notice was published in the **Federal Register** (CMS–10238) which seeks public comment on a version of the OASIS that we plan to begin testing in early 2008 (72 FR 41328).

Comment: A number of commenters requested that we eliminate OASIS item M0175. Commenters also requested numerous item-specific revisions to the OASIS.

Response: We are presently unable to accommodate the request to delete OASIS item M0175. OASIS item M0175 has a critical role in risk adjusting many quality measures as it is used to determine the type of facility the patient was discharged from in the previous 14 days before HH admission. However, we will continue to look for ways to reduce the overall burden to providers and determine if this information can be obtained in a more simplified or automated manner as we re-examine the OASIS instrument.

The remainder of the item-specific comments received relate to data items that will be addressed in an upcoming notice concerning revisions of the OASIS mentioned above. These revisions are currently planned for an OASIS update in calendar year 2009. These changes are responsive to the comments we have received, and reflect months of development and analysis, as well as industry input and concerns.

On July 27, 2007, a notice was published in the **Federal Register** (CMS–10238) which seeks public comment on a version of the OASIS that we plan to begin testing in early 2008. Based on the finding from the testing, we may pursue adopting the commenter's suggested changes in future payment rule notices.

Comment: Some commenters were concerned about the proposed quality measure regarding emergent care for wound infections.

Response: We note that the title and description of the quality measure do not fully reflect the breadth of the issue being measured. Specifically, the quality measure entitled ''Emergent Care for Wound Infections, Deteriorating Wound Status'' is calculated using a data item that includes new pressure ulcers and lesions, and therefore the title of the measure may cause some confusion. Nonetheless, we feel that the quality measure is an important indicator and we intend to conform the title of the measure to more accurately reflect the concepts being measured.

Comment: Several commenters suggested that we delete two quality items to compensate for the two new quality items added. Some also suggested that we reduce the total number of OASIS items. Another suggested we develop quality measures for fall prevention.

Response: CMS is not adding new OASIS quality items to be reported in this rule. CMS is adding two quality measures to expand the number of measures currently being reported for quality reporting purposes by using existing OASIS data. The data elements used to calculate these measures are already captured by the OASIS instrument and do not require additional reporting or burden to HHAs. We believe that through this expansion of measures for the HH PPS quality reporting segment, we are providing the public with a wider array of comparable and consensus-based (endorsed by the National Quality Forum in 2005) information on health care quality.

CMS will continue to review the OASIS items collected for the purposes of quality to determine if any changes, additions, or deletions are appropriate, and the public will have the opportunity to comment on proposed changes to the OASIS items.

CMS agrees with the commenter that the domain of falls prevention is a critical aspect of health care quality. On July 27, 2007, a notice was published in the **Federal Register** (CMS–10238) which seeks public comment on a version of the OASIS that we plan to begin testing in early 2008. This version of OASIS incorporates several process measures, one of which is geared specifically toward fall prevention outcome measures in future updates of the OASIS instrument for the purpose of pay for reporting.

Comment: A commenter was in favor of adding Improvement of Status of Surgical Wound to the home health compare quality measures, but he felt adding an adverse event (Emergent Care for Wound Status) was not appropriate. Outcome Based Quality Management (OBQM) instructs the agency to audit the record to determine if an adverse event occurred. With the definition of emergent care being an unplanned physician visit within 24 hours, this reporting could be detrimental. In the commenter's area there is physician office availability that encourages appointments to be made within 24 hours. It is seen as good practice rather than an adverse event. The commenter recommended removing ''Emergent Care for Wound Infections, Deteriorating Wound Status'' from the home health quality measures. Another commenter suggested we revise the instructions so only visits to an emergency room or outpatient emergency clinic constitute emergent care. Two commenters noted that it is not appropriate to present outcomes that are not risk adjusted or Adverse Event Outcomes. One commenter asked that we clarify the intent of M0830, Emergent Care for Wound Infections, before publicly reporting data. If the focus is only on infections or deteriorating status, then the commenter suggested we revise the wording of the data element.

Response: This measure addresses high-risk, high-volume, high-cost conditions. These conditions are identifiable, preventable and serious in their consequences and they can cause serious harm to beneficiaries. Public reporting of the measure will continue to enable providers to investigate and take corrective actions to improve safety and quality of care delivered. In addition, it is responsive to the NQF proposed priority for measures associated with the frail elderly population. CMS continues to believe that the additional measures selected for the reporting of quality are appropriate.

On July 27, 2007, a notice was published in the **Federal Register** (72 FR 41328) which seeks public comment on a version of the OASIS that we plan to begin testing in early 2008. This new version of the OASIS addresses many of the item-specific and quality measure specific comments that we have received, including those of the commenters. A critical element of this testing will be the gathering of data necessary to make a more accurate estimate of the provider burden that the OASIS and the anticipated revisions would require.

Comment: Numerous commenters noted that data submitted for Home Health Compare reporting include both Medicare and Medicaid patients. They noted that inclusion of Medicaid data can skew the data as Medicaid and Medicare admission criteria are not the same. One commenter stated that many Medicaid patients are seen in lieu of more costly nursing home placement; therefore at discharge, their outcomes (especially those related to activities of daily living) have deteriorated.

Several commenters felt that HHAs with high Medicaid caseloads will most likely be damaged in the public reporting process because these patients are less likely to show marked improvement due to their chronic conditions. The public reporting does not give an accurate picture of the agency's performance or outcomes. When pay for performance begins, this negative impact could create issues of access to care for Medicaid patients. These commenters suggested only including Medicare patients in the publicly reported data and Home Health Compare.

Another commenter suggested that we stratify CMS Compare information into at least three categories: traditional Medicare, Medicare Advantage, and Medicaid. This commenter suggested we use the information to monitor outcomes from Medicare Advantage plans compared to traditional Medicare, or require Medicare Advantage plans to pay agencies according to the HH PPS rule, thereby putting the physician and agency back in control of managing the patient. This commenter also suggested removing ''private duty'' Medicaid patients, such as ventilator dependent patients, from the CMS Compare data.

Response: We appreciate the comment and we will consider this with regard to future changes to the Home Health Compare site. However, it is beyond the scope of this rule to address specific issues concerning Home Health Compare.

Comment: Numerous commenters wrote that many of the Medicaid waiver programs authorize ''skilled nursing services'' based on their payment terminology, when in reality, the services are not ''skilled'' by Medicare's definition. Clients on waiver programs tend to be chronically ill and show no improvement in outcomes, but rather show stabilization in their condition. Under current regulations, these waiver clients are required to have OASIS collection performed. With the inclusion of these waiver clients, the data skews provider outcomes as well as aggregate state outcomes. The commenters suggested eliminating the requirement to complete OASIS assessments on non-Medicare clients. OASIS should be for traditional Medicare only.

Response: The request to change the regulation in § 484.55 concerning OASIS collection requirements is beyond the scope of this rule and will not be addressed here.

Comment: One commenter wrote that in New York, there is a 1915 waiver program called the Long Term Home Health Care Program (LTHHCP), which provides an intensive array of Medicaid home and community-based services to nursing home eligible patients. The majority of patients in LTHHCP are dually eligible, but Medicaid is the appropriate payer of services approximately 90 percent of the time. Patients must also meet the requirements of a mandatory state assessment every 120 days, which is separate from the federal OASIS requirements. The commenter is concerned that CMS does not differentiate between LTHHP and traditional Medicare providers regarding submitted OASIS data. The commenter urges CMS to exclude LTHHCPs and any Special Needs Certified Home Health Agencies from the OASIS

Quality Reporting and Pay for Reporting Initiative.

Response: For the purposes of the Home Health quality reporting requirements, HHAs are required to submit quality measures to CMS through the OASIS instrument. CMS has also specified the circumstances under which home health agencies would be excluded from the HH PPS quality reporting requirement (72 FR 25449). The existing LTHHCP does not fall under any of those exclusions.

Comment: A commenter is concerned that the OASIS was designed to measure outcomes by asking nurses to assess the ability of the patient to perform a task, rather than by using performance based measures. The commenter gave the example of activities of daily living (ADL) measures.

Response: The instrument was designed to collect the information needed to measure changes in health status over several designated time points. The OASIS data set was designed for the purpose of enabling rigorous and systematic measurement of patient home health outcomes. We believe that the quality measures selected from the OASIS accurately reflect measures of quality, and that those measures meet the statutory requirement to report quality data.

Comment: A commenter wrote that pay for performance would have a negative effect on whether high acuity patients would be able to find agencies willing to help them.

Response: Currently, CMS only requires reporting of the specified quality measures for the HH PPS quality report for reporting. At this time, there is no ''Pay for Performance'' requirement in HH PPS. However, we believe the current reporting requirements and any future work on ''Pay for Performance'' initiatives will help ensure that Medicare beneficiaries continue to have access to the highest quality care possible.

Comment: A few commenters were concerned that the estimates of burden on reporting the reporting burden have been underestimated.

Response: We believe our determination of the collection burden is based upon our best estimates given the information and data available to us at this time. CMS published a notice in the **Federal Register** that begins the process of testing a new version of the OASIS instrument which addresses many of the item-specific and quality measure specific comments that we have received. A critical element of this testing will be the gathering of data necessary to make a more accurate estimate of the provider burden that the OASIS and the anticipated revisions would require.

We are adopting, as final, the two quality measures and note that a total of 12 quality measures are necessary to meet the statutory submission of quality data to maintain the full home health market basket percentage increase.

Additionally, section 1895(b)(3)(B)(v)(II) of the Act provides the Secretary with the discretion to submit the required data in a form, manner, and time specified by him/her. We proposed, for CY 2008, to consider OASIS data submitted by HHAs to CMS for episodes beginning on or after July 1, 2006 and before July 1, 2007 as meeting the reporting requirement for calendar year 2008. This reporting time period will allow 12 full months of data and will provide CMS the time necessary to analyze and make any necessary payment adjustments to the CY 2008 payment rates. HHAs that meet the reporting requirement shall be eligible for the full home health market basket percentage increase. We received no comments and are adopting this proposal as final.

As noted in the proposed rule (72 FR 25449), the home health CoPs (part 484) that require OASIS submission also provide for exclusions from this requirement. Generally, agencies excluded from the OASIS submission requirement do not receive Medicare payments as they either do not provide services to Medicare beneficiaries or the patients are not receiving Medicare-covered home health services. Under the CoP, agencies are excluded from the OASIS reporting requirement on individual patients if:

- Those patients are receiving only non-skilled services,
- Neither Medicare nor Medicaid is paying for home health care (patients receiving care under a Medicare or Medicaid Managed Care Plan are not excluded from the OASIS reporting requirement),
- Those patients are receiving pre-or post-partum services, and
- Those patients are under the age of 18 years.

We believe that the rationale behind the exclusion of these agencies from submission of OASIS on patients which are excluded from OASIS submission as a CoP is equally applicable to HHAs for quality purposes. Therefore, we again proposed for CY 2008 that if an agency is not submitting OASIS for patients excluded from OASIS submission for purposes of a CoP, that the submission of OASIS for quality measures for Medicare purposes is likewise not necessary.

We received no comments on this proposal. Accordingly, we are adopting, as final, that those agencies do not need to submit quality measures for reporting purposes for those patients who are excluded from OASIS submission as a CoP.

We also proposed that agencies newly certified (on or after May 31, 2007 for payments to be made in CY 2008) be excluded from the quality reporting requirement as data submission and analysis will not be possible for an agency certified this late in the reporting time period. In future years, agencies that certify on or after May 31 of the preceding year involved would be excluded from any payment penalty for quality reporting purposes for the following CY. We note, these exclusions only affect quality reporting requirements and do not affect the agency's OASIS reporting responsibilities under the CoP (72 FR 25449). We received no comments on this proposal, and are adopting it as final.

We note that all HHAs, unless covered by these specific exclusions, must meet the reporting requirement, or be subject to a 2 percent reduction in the home health market basket percentage increase in accordance with section 1895(b)(3)(B)(v)(I) of the Act.

Section 1895(b)(3)(B)(v)(III) of the Act further requires that the ''Secretary shall establish procedures for making data submitted under subclause (II) available to the public.'' Additionally, the statute requires that ''such procedures shall ensure that a home health agency has the opportunity to review the data that is to be made public with respect to the agency prior to such data being made public.'' To meet the requirement for making such data public, we proposed, to continue for CY 2008 to use the *Home Health Compare* Web site whereby HHAs are listed geographically. Currently the 10 quality measures are posted on the Home Health Compare Web site, and this site would be updated to reflect the performance level of the proposed 2 additional quality measures. Consumers can search for all Medicare-approved home health providers that serve their city or zip code and then find the agencies offering the types of services they need as well as the proposed quality measures. See *http://www.medicare.gov/HHCompare/Home.asp*. HHAs currently have access (through the Home Health Compare contractor) to their own agency's quality data (updated periodically), thus enabling each agency to know how it is performing before public posting of data on Home Health Compare (72 FR 25452). We received no comments on

the proposed process and are adopting it in the final rule with comment period for CY 2008.

5. CY 2008 Payment Updates

The Medicare HH PPS has been effective since October 1, 2000. As set forth in the final rule published July 3, 2000 in the **Federal Register** (65 FR 41128), the unit of payment under the Medicare HH PPS is a national standardized 60-day episode payment rate. As set forth in § 484.220, we adjust the national standardized 60-day episode payment rate by a case-mix grouping and a wage index value based on the site of service for the beneficiary. The CY 2008 HH PPS rates use the case-mix methodology discussed in the proposed rule (72 FR 25395), incorporating the changes discussed in III.B of this rule and application of the wage index adjustment to the labor portion of the HH PPS rates as set forth in the July 3, 2000 final rule. As stated in section III.E.2. of this rule, we are rebasing and revising the home health market basket, resulting in a revised and rebased labor related share of 77.082 percent and a non-labor portion of 22.918 percent. We multiply the national standardized 60-day episode payment rate by the patient's applicable case-mix weight. We divide the case-mix adjusted amount into a labor and non-labor portion. We multiply the labor portion by the applicable wage index based on the site of service of the beneficiary. For CY 2008, we are basing the wage index adjustment to the labor portion of the HH PPS rates on the most recent pre-floor and pre-reclassified hospital wage index as discussed in section III.E.3. of this rule (not including any reclassifications under section 1886(d)(8)(B) of the Act).

As discussed in the July 3, 2000 HH PPS final rule, for episodes with four or fewer visits, Medicare pays the national per-visit amount by discipline, referred to as a LUPA. We update the national per-visit amounts by discipline annually by the applicable home health market basket percentage. We adjust the national per-visit amount by the appropriate wage index based on the site of service for the beneficiary as set forth in § 484.230. We adjust the labor portion of the updated national per-visit amounts by discipline used to calculate the LUPA by the most recent pre-floor and pre-reclassified hospital wage index, as discussed in section III.E.3. of this rule.

Medicare pays the 60-day case-mix and wage-adjusted episode payment on a split percentage payment approach. The split percentage payment approach includes an initial percentage payment and a final percentage payment as set forth in § 484.205(b)(1) and (b)(2). We may base the initial percentage payment on the submission of a request for anticipated payment and the final percentage payment on the submission of the claim for the episode, as discussed in § 409.43. The claim for the episode that the HHA submits for the final percentage payment determines the total payment amount for the episode and whether we make an applicable adjustment to the 60-day case-mix and wage-adjusted episode payment. The end date of the 60-day episode as reported on the claim determines which CY rates Medicare will use to pay the claim.

We may also adjust the 60-day case-mix and wage-adjusted episode payment based on the information submitted on the claim to reflect the following:

- A LUPA provided on a per-visit basis as set forth in § 484.205(c) and § 484.230.
- A PEP adjustment as set forth in § 484.205(d) and § 484.235.
- An outlier payment as set forth in § 484.205(f) and § 484.240.

As discussed in section III.C.3 of this final rule with comment period, we are implementing the removal of the SCIC adjustment from the HH PPS.

This rule reflects the updated CY 2008 rates that will become effective January 1, 2008.

Section 1895(b)(3)(B) of the Act, as amended by section 5201 of the DRA, requires for CY 2008 that the standard prospective payment amounts be increased by a factor equal to the applicable home health market basket update for those HHAs that submit quality data as required by the Secretary. The applicable home health market basket update will be reduced by 2 percentage points for those HHAs that fail to submit the required quality data.

- CY 2008 Adjustments.

In calculating the annual update for the CY 2008 national standardized 60-day episode payment rates, we first look at the CY 2007 rates as a starting point. The CY 2007 national standardized 60-day episode payment rate is $2,339.00.

In order to calculate the CY 2008 national standardized 60-day episode payment rate, we first increase the CY 2007 national standardized 60-day episode payment rate ($2,339.00) by the rebased and revised home health market basket update of 3.0 percent for CY 2008.

Given this updated rate, we would then take a reduction of 2.75 percent to account for change in case-mix not related to actual change in case-mix. We would multiply the resulting value by 1.05 and 0.95 to account for the estimated percentage of outlier payments for CY 2008 (that is, $2,339.00 * 1.030 * 0.9725 * 1.05 * 0.95), to yield a CY 2008 national standardized 60-day episode payment rate of $2,337.06 for episodes that begin in CY 2007 and end in CY 2008 (see Table 11A below). For episodes that begin in CY 2007 and end in CY 2008, the new 153 HHRG case-mix model (and associated Grouper) would not yet be in effect. For that reason, episodes that begin in CY 2007 and end in CY 2008 will be paid at the rate of $2,337.06, and be further adjusted for wage differences and for case-mix, based on the current 80 HHRG case-mix model. We recognize that the annual update for CY 2008 is for all episodes that end on or after January 1, 2008 and before January 1, 2009. By paying this rate ($2,337.06) for episodes that begin in CY 2007 and end in CY 2008, we will have appropriately recognized that these episodes are entitled to receive the CY 2008 home health market, even though the new case-mix model will not yet be in effect.

TABLE 11A.—NATIONAL 60-DAY EPISODE AMOUNTS UPDATED BY THE HOME HEALTH MARKET BASKET UPDATE FOR CY 2008, BEFORE CASE-MIX ADJUSTMENT, WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY OR APPLICABLE PAYMENT ADJUSTMENT FOR EPISODES BEGINNING IN CY 2007 AND ENDING IN CY 2008

Total CY 2007 national standardized 60-day episode payment rate	Multiply by the home health market basket update (3.0 percent) [1]	Reduce by 2.75 percent for nominal change in case-mix	Adjusted to account for the 5 percent outlier policy	National standardized 60-day episode payment rate for episodes beginning in CY 2007 and ending in CY 2008
$2,339.00	× 1.030	× 0.9725	× 1.05 × 0.95	$2,337.06

[1] The estimated home health market basket update of 3.0 percent for CY 2008 is based on Global Insight, Inc, 2nd Qtr, 2007 forecast with historical data through 1st Qtr, 2007.

Next, in order to establish new rates based on a new case-mix system, we again start with the CY 2007 national standardized 60-day episode payment rate and increase that rate by the rebased and revised home health market basket update (3.0 percent) ($2,339.00 * 1.030 = $2,409.17). We next have to put dollars associated with the outlier targeted estimates back into the base rate. In the 2000 HH PPS final rule (65 FR 41184), we divided the base rate by 1.05 to account for the outlier target policy. Therefore, we proposed to multiply the $2,409.17 by 1.05, resulting in $2,529.63. Next, we need to reduce this amount to pay for each of our final policies. As noted previously, based upon our change to the LUPA payment, the NRS redistribution, and the elimination of the SCIC policy, the amounts needed to account for outlier payments, and the reduction to account for the 2.75 percent case-mix change adjustment, we reduce the national standardized 60-day episode payment rate by $5.70, $45.87, $10.96, $127.22, and $69.56, respectively. This results in a CY 2008 updated national standardized 60-day episode payment rate, for episodes beginning and ending in CY 2008, of $2,270.32 (see Table 11B). These episodes would be further adjusted for case-mix based on the 153 HHRG case-mix model for episodes beginning and ending in CY 2008. As we noted in section II.A.2.d. of the proposed rule, we increased the case-mix weights by a budget neutrality factor of 1.194227193. In this final rule, the case-mix weights were increased by a budget neutrality factor of 1.238848031.

TABLE 11B.—NATIONAL 60-DAY EPISODE AMOUNTS UPDATED BY THE HOME HEALTH MARKET BASKET UPDATE FOR CY 2008, BEFORE CASE-MIX ADJUSTMENT, WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY OR APPLICABLE PAYMENT ADJUSTMENT FOR EPISODES BEGINNING AND ENDING IN CY 2008

Total CY 2007 national standardized 60-day episode payment rate	Multiply by the home health market basket update (3.00 percent) [1]	Adjusted to return the outlier funds to the national standardized 60-day episode payment rate	Updated and outlier adjusted national standardized 60-day episode payment	Changes to account for LUPA adjustment ($5.70), NRS payment ($45.87), elimination of SCIC policy ($10.96), outlier policy ($127.22), and 2.75 percent reduction for nominal change in case-mix (69.56) for episodes beginning and ending in CY 2008	CY 2008 national standardized 60-day episode payment rate for episodes beginning and ending in CY 2008
$2,339.00	X 1.030	X 1.05	$2,529.63	−$259.31	$2,270.32

[1] The estimated home health market basket update of 3.0 percent for CY 2008 is based on Global Insight, Inc, 2nd Qtr, 2007 forecast with historical data through 1st Qtr, 2007.

Under the HH PPS, NRS payment, which was $49.62 at the onset of the HH PPS, has been updated yearly as part of the national standardized 60-day episode payment rate. As discussed previously in section III.C.4., we are removing the current NRS payment amount portion from the national standardized 60-day episode payment rate and adding a severity-adjusted NRS payment amount subject to case-mix and wage adjustment to the national standardized 60-day episode payment rate. To calculate an episode's prospective payment amount, take the non-adjusted national standardized 60-day episode payment rate and multiply it by the appropriate case-mix weight from Table 5 of this rule. Next, multiply the case-mix adjusted national standardized 60-day episode payment by the labor portion (77.082 percent); multiply this result by the appropriate wage index factor listed in Addendum A or B to wage-adjust the 60-day episode payment. Next multiply the case-mix adjusted national standardized 60-day episode payment by 22.918 percent to compute the non-labor portion. Add this result to the wage-adjusted labor portion to get the case-mix and wage adjusted national 60-day episode payment without NRS.

To calculate the NRS amount, multiply the episode's NRS weight (taken from Table 9 of this rule) by the NRS conversion factor ($52.35). This adjusted NRS payment is added to the case-mix and wage-adjusted national standardized 60-day episode payment. The resulting amount is the case-mix and wage-adjusted national standardized 60-day episode payment rate including NRS for that particular episode.

The following example illustrates the computation described above:

Example 1. An HHA is providing services to a Medicare beneficiary in Grand Forks, ND; the episode begins and ends in 2008. The national standardized payment rate is $2,270.32 (see Table 11B). The HHA determines that the beneficiary is in his or her 3rd episode and thus falls under the C1F3S3 HHRG for 3rd+ episodes with 0 to 13 therapy visits (Case-Mix Weight = 1.4674). It is also determined that the beneficiary falls under NRS severity level #4. The NRS Severity Level #4 weight = 3.9686 and the NRS Conversion Factor = $52.35 (see Table 9).

BILLING CODE 4120–01–P

Calculate the Case-Mix Rate:

Case-mix weight from Table 5 for HHRG C1F3S3 for 3rd+ episodes with 0-13 therapy visits | 1.4674

National Standardized 60-Day Episode Payment Rate without NRS Amount for CY 2008 | $2,270.32

Calculate the Case-Mix Rate:

($2,270.32 * 1.4674) | **$3,331.47**

Calculate the Wage-Adjusted Labor and Non-Labor Portions of the Payment:

Case-Mix adjusted National Standardized 60-Day Episode Payment Rate without NRS Amount: | $3,331.47

Labor Portion | 0.77082

Non-labor Portion | 0.22918

Wage Index Value for Grand Forks, North Dakota | 0.7881

Calculate the labor portion of the Case-Mix adjusted National Standardized 60-Day Episode Payment without NRS Amount:

($3,331.47 * .77082) | $2,567.96

Apply the wage index factor for Grand Forks to the labor potion

($2,567.96.47 * 0.7881) | **$2,023.81**

Calculate the non-labor portion of the Case-Mix adjusted National Standardized 60-Day Episode Payment without NRS Amount:

($3,331.47 * 0.22918) | **$ 763.51**

Calculate the Total Prospective Payment Rate:

Case-Mix adjusted Wage Adjusted Labor Portion of the Rate without NRS Amount | $2,023.81

Case-Mix Adjusted Non-Labor Portion of the Rate without NRS Amount | $ 763.51

Calculate the Total Case-Mix and Wage Adjusted National Standardized 60-Day Episode Payment Rate without NRS Amount

($) | **$2,787.32**

Calculate the NRS Amount:

NRS Conversion Factor | $ 52.35

NRS Severity Level #4 Relative Weight | 3.9686

Calculate the NRS Amount

($52.35* 3.9686) | **$ 207.76**

Calculate the Total Case-Mix and Wage Adjusted National Standardized 60-Day Episode Payment Rate including NRS Amount

($2,787.32+ $207.76) | $2,995.08

BILLING CODE 4120–01–C

National Per-Visit Amounts Used To Pay LUPAs and Compute Imputed Costs Used in Outlier Calculations

As discussed previously in the CY 2008 HH PPS proposed rule, the policies governing LUPAs and the outlier calculations set forth in the July 3, 2000 HH PPS final rule will continue (65 FR 41128) with an increase of $87.93 for initial and only episode LUPAs during CY 2008. In calculating the CY 2008 national per-visit amounts used to calculate payments for LUPA episodes and to compute the imputed costs in outlier calculations, we start with the CY 2007 per-visit amounts. We increase the CY 2007 per-visit amounts for each home health discipline for CY 2008 by the rebased and revised home health market basket update (3.0 percent), then multiply by 1.05 and 0.95 to account for the estimated percentage of outlier payments (see Table 12 below). LUPA rates are not being reduced due to the increase in case-mix since they are per-visit rates and hence are not subject to changes in case-mix.

TABLE 12.—NATIONAL PER-VISIT AMOUNTS FOR LUPAS (NOT INCLUDING THE INCREASE IN PAYMENT FOR A BENEFICIARY'S ONLY EPISODE OR THE INITIAL EPISODE IN A SEQUENCE OF ADJACENT EPISODES) AND OUTLIER CALCULATIONS UPDATED BY THE HOME HEALTH MARKET BASKET UPDATE FOR CY 2008, BEFORE WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY

Home health discipline type	Final CY 2007 per-visit amounts per 60-day episode for LUPAs	Multiply by the home health market basket (3.0 percent) [1]	Adjusted to account for the 5 percent outlier policy	CY 2008 per-visit payment amount per discipline
Home Health Aide	$46.24	× 1.030	× 1.05 × 0.95	$47.51
Medical Social Services	163.68	× 1.030	× 1.05 × 0.95	168.17
Occupational Therapy	112.40	× 1.030	× 1.05 × 0.95	115.48
Physical Therapy	111.65	× 1.030	× 1.05 × 0.95	114.71
Skilled Nursing	102.11	× 1.030	× 1.05 × 0.95	104.91
Speech-Language Pathology	121.22	× 1.030	× 1.05 × 0.95	124.54

[1] The estimated home health market basket update of 3.0 percent for CY 2008 is based on Global Insight, Inc, 2nd Qtr, 2007 forecast with historical data through 2nd Qtr, 2007.

Payment for LUPA episodes is changed in that for LUPAs that occur as initial episodes in a sequence of adjacent episodes or as the only episode, a revised payment amount (see our proposal in section II.A.5. of the CY 2008 HH PPS proposed rule and final amount in section III.C.2. of this rule) is to be added to the LUPA payment. Table 12 rates below are before that adjustment and are the rates paid to all other LUPA episodes. LUPA episodes that occur as the only episode or initial episode in a sequence of adjacent episodes are adjusted by adding $87.93 to the LUPA payment before adjusting for wage index.

Example 2. An HHA is providing services to a Medicare beneficiary in rural New Hampshire. During the 60-day episode the beneficiary receives only 3 visits. It is the initial episode during a sequence of adjacent episodes for this beneficiary. The HHA submits all its required quality data.

Number of Visits, Visit Type, and Per-Visit Payment Amounts

1 Skilled Nursing Visit	(per-visit payment amount from Table 12)	$104.91
2 Home Health Aide Visits	(per-visit payment amount from Table 12)	$ 47.51
Wage Index Value for Rural New Hampshire		1.0863
Increase in LUPA episode payment for only or initial episodes in a sequence of adjacent episodes		$ 87.93

Calculate the total wage adjusted adjustment amount for only or initial episodes in a sequence of Adjacent episodes:

Calculate the wage adjusted portion of the $87.93 adjustment for only or initial episodes in a sequence of adjacent episodes: (0.77082 * $87.93)	**$ 67.78**
Apply the wage index factor from rural New Hampshire from Addendum A: (1.0863 * $67.78)	**$ 73.63**
Calculate the non-labor portion of the $87.93 adjustment for only or initial episodes in a sequence of adjacent episodes: (0.22918 * $87.93)	**$ 20.15**
Calculate the total wage adjusted adjustment amount for only or initial episodes in a sequence of Adjacent episodes: ($73.63 + $20.15)	**$ 93.78**

Calculate the wage adjusted LUPA payment amount for the skilled nursing portion of the payment:

Calculate the labor portion of the per-visit payment amount for 1 skilled nursing visit:

(0.77082 * $104.91)	$ 80.87

Apply the wage index factor from rural New Hampshire from Addendum A	(1.0863 * $80.87)	$ 87.85
Calculate the non-labor portion of the per-visit payment amount for 1 skilled nursing visit (0.22918 * 104.91)		$ 24.04
Calculate the wage adjusted LUPA payment amount for 1 skilled nursing visit ($87.85 + $24.04)		$111.89
Calculate the wage adjusted LUPA payment amount for the home health aide portion of the payment		
Calculate the labor portion of the per-visit payment amount for 2 home health aide visits: (0.77082 * ($47.51 + $47.51))		$ 73.24
Apply the wage index factor from rural New Hampshire from Addendum A	(1.0863 * $73.24)	$ 79.56
Calculate the non-labor portion of the per-visit payment amount for 2 home health aide visits (0.22918 * ($47.51 + $47.51))		$ 21.78
Calculate the wage adjusted LUPA payment amount for 2 home health aide visits ($79.56 + $21.78)		$101.34
Calculate the LUPA amount for 1-skilled nursing/2-home health aide episode, before applying any increase for the only episode or initial episode in a sequence of adjacent episodes ($111.89 + $101.34)		$213.23
Calculate the Total LUPA payment amount (with proposed increase for an only episode or initial episode in a sequence of adjacent episodes)	**($213.23 + $93.78)**	**$307.01**

BILLING CODE 4120–01–C

Outlier payments are determined and calculated using the same methodology that has been used since the implementation of the HH PPS. Example 3 details the calculation of an outlier payment.

Example 3. Calculation of an Outlier Payment

The outlier payment amount is the product of the imputed amount in excess of the outlier threshold absorbed by the HHA and the loss sharing ratio. The outlier payment is added to the sum of the wage and case-mix adjusted 60-day episode amount. The steps to calculate the total episode payment, including an outlier payment, are given below.

For this example, assume that a beneficiary lives in Greenville, SC and that the episode in question began and ended in CY 2008. The episode has a case-mix severity = C3F3S5, and is a second episode with 63 visits (30 skilled nursing, 20 home health aide visits, and 13 physical therapy visits). The beneficiary had 105 NRS points, for an NRS severity level = 6. Therefore,

from Table 9, the NRS payment amount = $551.00

from Table 5, the case-mix weight = 1.9413

from Addendum B, the wage index = 0.9860

1. Calculate case-mix and wage-adjusted 60-day episode payment, including NRS.

National standardized 60-day episode payment amount for episodes beginning and ending in CY 2008:

= $2,270.32

Calculate the case-mix adjusted episode payment:

Multiply the national standardized 60-day episode payment by the applicable case-mix weight:

$2,270.32 × 1.9413 = $4,407.37

Divide the case-mix adjusted episode payment into the labor and non-labor portions:

Labor portion: 0.77082 × $4,407.37 = $3,397.29
Non-labor portion: 0.22918 × $4,407.37 = $1,010.08

Wage-adjust the labor portion by multiplying it by the wage index factor for Greenville, SC:

0.9860 × $3,397.29 = $3,349.73

Add wage-adjusted labor portion to the non-labor portion to calculate the total case-mix and wage-adjusted 60-day episode payment before NRS added:

$3,349.73 + $1,010.08 = $4,359.81

Add NRS amount to get the total case-mix and wage-adjusted 60-day episode payment, including NRS:

$551.00 + $4,359.81 = $4,910.81

2. Calculate wage-adjusted outlier threshold.

Fixed dollar loss amount = national standardized 60-day episode payment multiplied by 0.89 FDL:

$2,270.32 × 0.89 = $2,020.58

Divide fixed dollar loss amount into labor and non-labor portions:

Labor portion: 0.77082 × $2,020.58 = $1,557.50
Non-labor portion: 0.22918 × $2,020.58 = $463.08

Wage-adjust the labor portion by multiplying the labor portion of the fixed dollar loss amount by the wage index:

$1,557.50 × 0.9860 = $1,535.70

Calculate the wage-adjusted fixed dollar loss amount without NRS by adding the wage-adjusted portion of the fixed dollar loss amount to the non-labor portion of the fixed dollar loss amount:

$1,535.70 + $463.08 = $1,998.78

Calculate the fixed dollar loss amount of NRS by multiplying the NRS payment amount by the FDL ratio:

$551.00 × 0.89 = $490.39

Divide NRS fixed dollar loss amount into labor and non-labor portions:

Labor portion: 0.77082 × $490.39 = $378.00
Non-labor portion: 0.22918 × $490.39 = $112.39

Wage-adjust the labor portion by multiplying the labor portion of the NRS fixed dollar loss amount by the wage index:

$378.00 × 0.9860 = $372.71

Add the wage-adjusted labor portion to the non-labor portion for the total NRS amount:

$372.71 + $112.39 = $485.10

Calculate the total wage-adjusted fixed dollar loss amount including NRS by adding the wage-adjusted fixed dollar loss amount of NRS to the wage-adjusted fixed dollar loss amount without NRS:

$485.10 + $1,998.78 = $2,483.88

Add the case-mix and wage-adjusted 60-day episode amount including NRS and the wage-adjusted fixed dollar loss amount including NRS to get the wage-adjusted outlier threshold:

$4,910.81 + $2,483.88 = $7,394.69

3. Calculate the wage-adjusted imputed cost of the episode.

Multiply the total number of visits by the national average per-visit amounts listed in Table 12:

30 skilled nursing visits × $104.91 = $3,147.30
20 home health aide visits × $47.51 = $950.20
13 physical therapy visits × $114.71 = $1,491.23

Calculate the wage-adjusted labor and non-labor portions for the imputed skilled nursing visit costs:

Labor portion: 0.77082 × $3,147.30 = $2,426.00
Non-labor portion: 0.22918 × $3,147.30 = $721.30

Adjust the labor portion of the skilled nursing visits by the wage index:

0.9860 × $2,426.00 = $2,392.04

Add the wage-adjusted labor portion of the skilled nursing visits to the non-labor portion for the total wage-adjusted imputed costs for skilled nursing visits:

$2,392.04 + $721.30 = $3,113.34

Calculate the wage-adjusted labor and non-labor portions for the imputed home health aide visits:

Labor portion: 0.77082 × $950.20 = $732.43
Non-labor portion: 0.22918 × $950.20 = $217.77

Adjust the labor portion of the home health aide visits by the wage index:

0.9860 × $732.43 = $722.18

Add the wage-adjusted labor portion of the home health aide visits to the non-labor portion for the total wage-adjusted imputed costs for home health aide visits:

$722.18 + $217.77 = $939.95

Calculate the wage-adjusted labor and non-labor portions for the imputed physical therapy visits:

Labor portion: 0.77082 × $1,491.23 = $1,149.47
Non-labor portion: 0.22918 × $1,491.23 = $341.76

Adjust the labor portion of the home health aide visits by the wage index:

0.9860 × $1,149.47 = $1,133.38

Add the wage-adjusted labor portion of the home health aide visits to the non-labor portion for the total wage-adjusted imputed costs for home health aide visits:

$1,133.38 + $341.76 = $1,475.14

Total wage adjusted imputed per-visit costs for skilled nursing, home health aide, and physical therapy visits during the 60-day episode:

$3,113.34 + $939.95 + $1,475.14 = $5,528.43

4. Calculate the amount absorbed by the HHA in excess of the outlier threshold.

Subtract the outlier threshold from (2) from the total wage-adjusted imputed per-visit costs for the episode from (3).

$5,528.43 − $4,910.81 = $617.62

5. Calculate the outlier payment and total episode payment.

Multiply the imputed amount in excess of the outlier threshold absorbed by the HHA from (4) by the loss sharing ratio of 0.80:

$617.62 × 0.80 = $494.10 = outlier payment

Add the outlier payment to the case-mix and wage-adjusted 60-day episode payment, including NRS, calculated in (1):

$494.10 + $4,910.81 = $5,404.91

$5,404.91 equals the total payment for the episode, including the outlier payment.

For episodes that begin in CY 2007 and end in CY 2008, the new 153 HHRG case-mix model (and associated Grouper) would not yet be in effect. For that reason, for HHAs that do not submit required quality data (for episodes that begin in CY 2007 and end in CY 2008), HH PPS rates are calculated as follows (see section III.E.4., of this rule, for an explanation of the DRA requirement for submission of quality data and the minus 2 percentage points for failure to submit that quality data): First, we update the CY 2007 rate of $2,339.00 by the home health market basket percentage update (3.0 percent) minus 2 percent, reduced by 2.75 percent to account for the case-mix change adjustment, and multiplied by 1.05 and 0.95 to account for the estimated percentage of outlier payments ($2,339.00 * 1.010 * 0.9725 * 1.05 * 0.95), to yield an updated CY 2008 national standardized 60-day episode payment rate of $2,291.68 for episodes that begin in CY 2007 and end in CY 2008 for HHAs that do not submit required quality data (see Table 13A).

As stated in the CY 2008 HH PPS proposed rule, these episodes would be further adjusted for case-mix based on the 80 HHRG case-mix model for episodes beginning in CY 2007 and ending in CY 2008 (72 FR 25450).

TABLE 13A.—FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA—NATIONAL 60-DAY EPISODE AMOUNTS UPDATED BY THE HOME HEALTH MARKET BASKET UPDATE FOR CY 2008, MINUS 2 PERCENTAGE POINTS, FOR EPISODES THAT BEGIN IN CY 2007 AND END IN CY 2008 BEFORE CASE-MIX ADJUSTMENT, WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY OR APPLICABLE PAYMENT ADJUSTMENT

Total CY 2007 national standardized 60-day episode payment rate	Multiply by the home health market basket update (3.0 percent) [1] minus 2 percent	Reduce by 2.75 percent for nominal change in case-mix	Adjusted to account for the 5 percent outlier policy	National standardized 60-day episode payment rate for episodes beginning in CY 2007 and ending in CY 2008 for HHAs that do not submit required quality data
$2,339.00	× 1.010	× 0.9725	× 1.05 × 0.95	$2,291.68

[1] The estimated home health market basket update of 3.0 percent for CY 2008 is based on Global Insight, Inc, 2nd Qtr, 2007 forecast with historical data through 1st Qtr, 2007.

Next, in order to establish new rates based on a new case-mix system, we again start with the CY 2007 national standardized 60-day episode payment rate and increase that rate by the rebased and revised home health market basket update (3.0 percent) minus 2 percent ($2,339.00 * 1.010 = $2,362.39). We next have to put dollars associated with the outlier target estimate back into the base rate. In the 2000 HH PPS final rule (65 FR 41184), we divided the base rate by 1.05 to account for outlier payments. Therefore, we proposed to multiply the $2,362.39 by 1.05, resulting in $2,480.51. Next, we need to reduce this amount to pay for each of our final policy changes. To do this, we take the payment adjustment amount to pay for our policy changes of this rule, determined in Table 11A of $259.31, multiply it by (1/1.030) to take away the 3.0 percent increase, and multiply that number by 1.010 to impose the 1.0 percent update for episodes where HHAs have not submitted the required quality data. This results in a payment adjustment amount of $254.27. Finally, subtract the payment adjustment amount of $254.27 from $2,480.51, for a final rate of $2,226.24 for HHAs that do not submit quality data, for episodes that begin and end in CY 2008 (see Table 13B).

These episodes would be further adjusted for case-mix based on the 153 HHRG case-mix model for episodes beginning and ending in CY 2008. We increase the case-mix weights by a budget neutrality factor of 1.238848031.

TABLE 13B.—FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA—NATIONAL 60-DAY EPISODE AMOUNTS UPDATED BY THE HOME HEALTH MARKET BASKET UPDATE FOR CY 2008, MINUS 2 PERCENTAGE POINTS, FOR EPISODES THAT BEGIN AND END IN CY 2008, BEFORE CASE-MIX ADJUSTMENT, WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY OR APPLICABLE PAYMENT ADJUSTMENT

Total CY 2007 national standardized 60-day episode payment rate	Multiply by the home health market basket update (3.0 percent) [1] minus 2.0 percent	Adjusted to return the outlier funds to the national standardized 60-day episode payment rate	Updated and outlier adjusted national standardized 60-day episode payment	Changes to account for LUPA adjustment ($5.70), NRS payment ($45.87), elimination of SCIC policy ($10.96), outlier policy ($127.22), and 2.75 percent reduction for nominal change in case-mix ($69.56) = $259.31; minus 2 percentage points off of the home health market basket update (3.0 percent) [1] for episodes beginning and ending in CY 2008	CY 2008 national standardized 60-day for episode payment rate for episodes beginning and ending in CY 2008 that do not submit required quality data
$2,339.00	× 1.010	× 1.05	$2,480.51	− $254.27	$2,226.24

[1] The estimated home health market basket update of 3.0 percent for CY 2008 is based on Global Insight, Inc, 2nd Qtr, 2007 forecast with historical data through 1st Qtr, 2007.

In calculating the CY 2008 national per-visit amounts used to calculate payments for LUPA episodes for HHAs that do not submit required quality data and to compute the imputed costs in outlier calculations for those episodes, we start with the CY 2007 per-visit rates. We multiply those amounts by the home health market basket update (3.0 percent) minus 2 percentage points, then multiply by 1.05 and 0.95 to account for the estimated percentage of outlier payments, to yield the updated per-visit amounts for each home health discipline for CY 2008 for HHAs that do not submit required quality data (see Table 14).

TABLE 14.—FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA—NATIONAL PER-VISIT AMOUNTS FOR LUPAS (NOT INCLUDING THE INCREASE IN PAYMENT FOR A BENEFICIARY'S ONLY EPISODE OR THE INITIAL EPISODE IN A SEQUENCE OF ADJACENT EPISODES) AND OUTLIER CALCULATIONS UPDATED BY THE HOME HEALTH MARKET BASKET UPDATE FOR CY 2008, MINUS 2 PERCENTAGE POINTS, BEFORE WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY

Home health discipline type	Final CY 2007 per-visit amounts per 60-day episode for LUPAs	Multiply by the home health market basket (3.0 percent) [1] minus 2.0 percent	Adjusted to account for the 5 percent outlier policy	CY 2008 per-visit payment amount per discipline for a beneficiary who resides in a non-MSA for HHAs that do not submit required quality data
Home Health Aide	$46.24	× 1.010	× 1.05 × 0.95	$46.59
Medical Social Services	163.68	× 1.010	× 1.05 × 0.95	164.90
Occupational Therapy	112.40	× 1.010	× 1.05 × 0.95	113.24
Physical Therapy	111.65	× 1.010	× 1.05 × 0.95	112.48
Skilled Nursing	102.11	× 1.010	× 1.05 × 0.95	102.87
Speech-Language Pathology	121.22	× 1.010	× 1.05 × 0.95	122.13

[1] The estimated home health market basket update of 3.0 percent for CY 2008 is based on Global Insight, Inc, 2nd Qtr, 2007 forecast with historical data through 1st Qtr, 2007.

IV. Provisions of the Final Rule With Comment Period

In this final rule with comment period, we are adopting the provisions as set forth in the CY 2008 HH PPS proposed rule, except as noted in the specific response to comments in the applicable sections of this rule (for example, case-mix refinements; payment adjustments to include the LUPA, SCIC, and NRS; outlier policy; and the update of the HH PPS rates to include the home health market basket and the wage index). We are specifically soliciting comments on the 2.71 percent reduction to the HH PPS payment rates schedule in 2011, to account for changes in coding that were not related to an underlying change in patient health status (see Section III.B.6.)

V. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We solicited public comments on each of aforementioned issues for the information collection requirements discussed below. In this final rule with comment period, we are restating the discussion of the information collection requirements as it appeared in the HH PPS proposed rule that published on May 4, 2007 (72 FR 25356).

To implement the OASIS changes discussed in sections II.A.(2)(a), II.A.(2)(b), and II.A.(2)(c) of the proposed rule, and further discussed and clarified in sections III.B.2, III.B.3, and III.B.4 of this rule in the analysis of and public response to public comments on the proposed rule, which are currently approved in § 484.55, § 484.205, and § 484.250, a few items in the OASIS will need to be modified, deleted, or added. The requirements and burden associated with the OASIS are currently approved under OMB control number 0938–0760 with an expiration date of August 31, 2007. We solicited public comment on each of the proposed changes for the information collection requirements (ICRs) as summarized and discussed below. For the purposes of soliciting public review and comment, we also placed a draft of the proposed changes to the OASIS on the CMS Web site at:

http://www.cms.hhs.gov/PaperworkReductionActof1995/PRAL/list.asp#TopOfPage.

As discussed in section II.A.(2)(a) of the proposed rule, and further clarified in section III.B.2 of this rule, in order for the OASIS to have the information necessary to allow the grouper to price-out the claim, we proposed to make the following changes to the OASIS to capture whether an episode is an early or later episode.

The creation of a new OASIS item to capture whether a particular assessment is for an episode considered to be an early episode or a later episode in the patient's current sequence of adjacent Medicare home health payment episodes. As defined in section II.A.1. of the proposed rule, and further clarified in section III.B.2 of this rule, we define a sequence of adjacent episodes for a beneficiary as a series of claims with no more than 60 days without home care between the end of one episode, which is the 60th day (except for episode that have been PEP-adjusted), and the beginning of the next episode. This definition holds true regardless of

whether or not the same HHA provided care for the entire sequence of adjacent episodes. The HHA will chose from the options: ''Early'' for single episodes or the first or second episode in a sequence of adjacent episodes, ''Later'' for third or later episodes, ''UK'' for unknown if the HHA is uncertain as to whether the episode is an early or later episode (the payment grouper software will default to the definition of an ''early'' episode), and ''NA'' for not applicable (no Medicare case-mix group to be defined by this assessment).

As discussed in section II.A.(2)(b) of the proposed rule, we proposed to make changes to the OASIS in order to enable agencies to report secondary case-mix diagnosis codes. The proposed changes clarify how to appropriately fill out OASIS items M0230 and M0240, using ICD–9–CM sequencing requirements if multiple coding is indicated for any diagnosis. Additionally, if a V-code is reported in place of a case-mix diagnosis for OASIS item M0230 or M0240, then the new optional OASIS item (which is replacing existing OASIS item M0245) may then be completed. A case-mix diagnosis is a diagnosis that determines the HH PPS case-mix group. Further discussion or clarification of these proposed changes can be found in section III.B.3 of this rule.

As discussed in section II.A.(2)(c) of the proposed rule, we proposed to make changes to the OASIS to capture the projected total number of therapy visits for a given episode. With the projected total number of therapy visits, the payment grouper would be able to group that episode into the appropriate case-mix group for payment. The existing OASIS item M0825 asks an HHA if the projected number of therapy visits would meet the therapy threshold or not. As noted previously, we proposed to delete OASIS item M0825 and replace it with a new OASIS item. The OASIS item would ask the following: ''In the plan of care for the Medicare payment episode for which this assessment will define a case-mix group, what is the indicated need for therapy visits (total of reasonable and necessary physical, occupational, and speech-pathology visits combined)?'' The HHA would provide the total number of projected therapy visits for that Medicare payment episode, unless not applicable (that is, no case-mix group defined by this assessment). The HHA would enter ''000'' if no therapy visits were projected for that particular episode. Further discussion and clarification of these proposed changes can be found in section III.B.4 of this rule.

The burden associated with the proposed changes discussed in sections II.A.(2)(a), II.A.(2)(b), and II.A.(2)(c) of the proposed rule, and further discussed and clarified in section III.B.2, III.B.3, and III.B.4 of this rule, includes possible training of staff, the time and effort associated with downloading a new form and replacing previously pre-printed versions of the OASIS, and utilizing updated vendor software. However, as stated above, CMS is removing or modifying existing questions in the OASIS data set to accommodate the proposed requirements referenced above. In addition, as a result of the proposed changes, we expect that the claims processing system will automatically adjust the therapy visits both upward and downward on the final claim, according to the information on the final claim. Consequently, the HHA would no longer have to withdraw and resubmit a revised claim when the number of therapy visits delivered to the patient is higher than the level report on the RAP. Therefore, CMS believes the burden increase associated with these changes is negated by the removal or modification of several current data items.

We have submitted a copy of this final rule to OMB for its review of the information collection requirements described above. These requirements are not effective until OMB has approved them.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Attn.: Melissa Musotto, CMS–1541–FC, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Carolyn Lovett, CMS Desk Officer, (CMS–1541–FC), *carolyn_lovett@omb.eop.gov.* Fax (202) 395–6974.

VI. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This final rule will be a major rule, as defined in Title 5, United States Code, section 804(2), because we estimate the impact to the Medicare program, and the annual effects to the overall economy, will be more than $100 million. The update set forth in this proposed rule would apply to Medicare payments under the HH PPS in CY 2008.

Accordingly, the following analysis describes the impact in CY 2008 only. We estimate that the net impact in this rule, including a 2.75 percent reduction to the payment rate to account for the case-mix change adjustment in case-mix, is estimated to be approximately $20 million in CY 2008 expenditures. That estimate incorporates the 3.0 percent home health market basket increase (an estimated additional $430 million in CY 2008 expenditures attributable only to the CY 2008 home health market basket update), and the 2.75 percent decrease (−$410 million for the first year of a 4-year phase-in) to the HH PPS national standardized 60-day episode rate to account for the case-mix change adjustment under the HH PPS. The $20 million is reflected in column 7 of Table 15 as a 0.2 percent increase in expenditures when comparing the current CY 2007 system to the revised CY 2008 system. In the proposed rule, the difference between the proposed 2.9 percent update ($410 million) and the 2.75 percent decrease ($400 million) was $10 million. The additional $130 million difference, in the proposed rule, between estimated CY 2007 and CY 2008 total payments resulted from the differential treatment of the outlier offsets to the payment rates and the percent of outlier payments between the two simulations. Specifically, the $130 million difference reflected the lower payments estimated for CY 2007 resulting from the estimated outlier payments of only 4.14 percent rather than 5 percent. Our analysis of more recent data than the CY 2005 data available for both the CY 2007 and CY

2008 impact analysis simulations strongly suggests that outlier payments in CY 2007 and CY 2008 are or will be greater than 5 percent of total payments. Since the CY 2005 data show outlier payments of only about 4.1 percent, the CY 2005 data are not informative about actual outlier experience in CY 2007 and CY 2008. For the final rule impact analysis, we have set the FDLs in the CY 2007 and CY 2008 simulations to be consistent with outlier payments of 5 percent so that outlier payments have similar effects in all of the impact simulations. We believe that this approach comes as close as possible to estimating the desired impacts in a comparable manner, given the recent changes in outlier payments.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. For purposes of the RFA, approximately 75 percent of HHAs are considered small businesses according to the Small Business Administration's size standards with total revenues of $11.5 million or less in any 1 year. Individuals and States are not included in the definition of a small entity. As stated above, this final rule will have an estimated positive effect upon small entities that are HHAs.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this final rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We believe this final rule will not mandate expenditures in that amount.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this final rule will not have substantial direct effects on the rights, roles, and responsibilities of States.

B. Anticipated Effects

This final rule with comment period updates the HH PPS rates contained in the CY 2007 final rule (71 FR 65884, November 9, 2006). The impact analysis of this final rule presents the refinement related policy changes in this rule. We use the latest data and best analysis available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as days or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare home health benefit, based on the latest available Medicare claims from 2005. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly-legislated general Medicare program funding changes made by the Congress, or changes specifically related to HHAs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, the MMA, the DRA, or new statutory provisions. Although these changes may not be specific to the HH PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon HHAs.

Table 15 represents how home health agencies are likely to be affected by the policy changes described in this rule. For each agency type listed below, Table 15 displays the average case-mix index, both under the current HH PPS case-mix system and the CY 2008 HH PPS case-mix system. For this analysis, we used the most recent data available that linked home health claims and OASIS assessments, a 20-percent sample of episodes occurring in CY 2005. In Table 15, the average case-mix is the same, in the aggregate, between the current HH PPS system and the proposed revised HH PPS system, due to our application of a budget neutrality factor for the case-mix weights. Column one of this table classifies HHAs according to a number of characteristics including provider type, geographic region, and urban versus rural location. Column two displays the average case-mix weight for each type of agency under the current payment system. Column three displays the average case-mix weight for each type of agency incorporating all of the changes/refinements discussed above. The average case-mix weight for proprietary (for profit) agencies is estimated to decrease from 1.2821 to 1.2620. Comparatively, the average case-mix weight for voluntary non-profit agencies is estimated to increase from 1.1875 to 1.2334. Rural agencies are estimated to experience a decrease in their average case-mix from 1.2047 to 1.1798. It is estimated that urban agencies would see a slight increase in their average case-mix weight from 1.2520 to 1.2616. In particular, the New England, Mid-Atlantic, South Atlantic, East North Central, West North Central, and Mountain areas of the country are estimated to see their average case-mix increase under the proposed refinements of this rule. Conversely, the East South Central, West South Central, and Pacific areas of the country are estimated to see their average case-mix decrease as a result of refinements of this rule. Both small and large agencies are estimated to see decreases in their average case-mix under the new proposed case-mix system, the only exception being much larger agencies (200+ first episodes), which are estimated to see an increase of their average case-mix from 1.2376 to 1.2398.

For the purposes of analyzing impacts on payments, we performed five simulations and compared them to each other.

Based on our estimate that outliers, as a percentage of total HH PPS payments, will be at least 5 percent in CY 2007, the 2007 baseline, for the purposes of these simulations, we assumed that the full 5 percent outlay for outliers will be paid. The first simulation estimates 2008 payments under the current system (to include the 2007 wage index and labor share). The second simulation estimates 2008 payments under the current system, but with the 2008 wage index and the new 2008 labor share. The second simulation produces an estimate of what total payments using the sample data will be in 2008 without making any of the refinement-related changes described in this final rule. The third simulation estimates 2008 payment with the old, 2007 labor share and a 2008 wage index. The fourth simulation

estimates 2008 payments with a new 2008 labor share and a 2007 wage index.

These first four simulations allow us to demonstrate the effects of a new 2008 wage index and a new 2008 labor share as a percentage change in estimated expenditures. Specifically, the fourth column of Table 15 shows the percent change due to the combined effects of the new 2008 labor share and the 2008 wage index. Column five shows the percent change due to the effects of the new labor share. And finally, column 6 shows us the percent change due to the effects of updated wage data (2008 wage index).

The fifth, and final, simulation estimates what total payments would be in 2008, using the final case-mix model, the additional payment for initial and only episode LUPA episodes, the removal of SCIC adjustments, and the revised approach to making NRS payments. The fifth simulation also assumes payments will incorporate the rebased and revised home health market basket increase of 3.0 percent, the new outlier threshold determined by an updated FDL ratio of 0.89, and the 2.75 percent reduction in the national standardized 60-day episode payment rate to account for the case-mix change adjustment. All five simulations use a CBSA-based wage index (we used a crosswalk from the MSA reported on the 2005 claims to the CBSA to determine the appropriate wage index).

Column seven shows the percentage change in estimated total payments in moving from the current CY 2007 to the revised CY 2008 system outlined in this final rule. As a result of changes in our approach to the impact analysis simulations between the proposed rule and this rule, our estimate of the change in total payments between CY 2007 and CY 2008 is substantially less than what we presented in the proposed rule. The percentage change in estimated total payments from CY 2007 to the revised CY 2008 system is now the difference between the 3.0 percent update and the 2.75 percent reduction in the rates for an increase of $20 million, or approximately 0.2 percent).

In the proposed rule, we stated that the estimated additional $130 million yielding the $140 million in estimated spending for CY 2008 is due to the fixed dollar loss ratio at 0.67 (72 FR 25454). What that means is that the CY 2008 simulation compensated for fixing the FDL at 0.67 by raising all the payment rates to meet the target expenditure total. In the CY 2008 simulation, this compensatory adjustment raised total payments by an amount that would have been equivalent to spending the entire outlier target of 5% of total expenditures. However, the CY 2007 payment simulation in our proposed rule predicted outlier payments of only 4.14 percent with the CY 2007 FDL of 0.67. Since in the CY 2007 simulation we made no upward adjustment to the rates similar to the offsetting adjustment we made in the CY 2008 simulation, estimated CY 2007 total payments with the .67 FDL were lower than they would have been had outlier payments been 5 percent of total payments. This asymmetrical approach to the comparative simulations for CY 2007 and CY 2008 yielded an estimated $130 million in additional payments from moving to the new system.

We have revised the final rule's impact analysis by simulating CY 2007 and CY 2008 payments in a consistent manner with respect to outlier policy. We made no adjustment to the rates in either simulation of the kind we made to the proposed regulation's CY 2008 simulation. In other words, both sets of rates and the FDL ratios assume outlier payments reach the 5 percent target. The basis for taking this approach is that our supplementary analysis of more recent data than the CY 2005 data available for both the CY 2007 and CY 2008 simulations strongly suggests that outlier payments in CY 2007 and CY 2008 are or will be greater than 5 percent of total payments. Since the CY 2005 data show outlier payments of only about 4.1 percent, the CY 2005 data are not informative about actual outlier experience in CY 2007 and CY 2008. For the final rule impact analysis, we have set the FDLs in the CY 2007 and CY 2008 simulations to be consistent with outlier payments of 5 percent so that outlier payments have similar effects in all of the impact simulations. We believe that this approach comes as close as possible to estimating the desired impacts in a comparable manner, given the recent changes in outlier payments. As a result of these changes in approach, our estimate of the change in total payments between CY 2007 and CY 2008 is an increase of $20 million or approximately 0.1 to 0.2 percent.

In general, voluntary non-profit HHAs (3.60 percent), facility-based HHAs (3.66 percent), and government owned HHAs (3.04 percent) are estimated to see an increase in the percentage change in estimated total payments from CY 2007 to the revised CY 2008 system. Proprietary and freestanding HHAs, on the other hand, are estimated to see decreases of 2.37 percent and 0.64 percent, respectively, in estimated total payments from CY 2007 to the proposed revised CY 2008 system. As it was in the proposed rule, the major contributor to the decrease 2.37 percent for proprietary HHAs is the free-standing proprietary HHAs, which are estimated to see a decrease of 2.49 percent in the percentage change in estimated total payment from CY 2007 to the revised CY 2008 system.

We note that some of these impacts are partly explained by practice patterns associated with certain types of agencies. For example, LUPA episodes are relatively common among nonprofit agencies and freestanding government-owned agencies. Our implementing an additional payment for certain LUPA episodes would tend to increase payments for such classes of agencies with higher-than-average LUPA rates, while tending to decrease payments for agencies with comparatively low LUPA rates. Similarly, the elimination of the SCIC policy would tend to favorably affect total payments for agencies with relatively high rates of SCIC episodes, such as facility-based proprietary agencies and facility-based government agencies.

The percentage change in estimated total payments from CY 2007 to a CY 2008 system that incorporates all of the refinements to the HH PPS for rural HHAs is a decrease of 1.77 percent, while for urban HHAs an increase of 0.80 percent is expected. Urban agencies have somewhat higher LUPA rates than rural agencies, so urban agencies would be expected to benefit, relative to rural agencies, from the proposal to make an additional payment for certain LUPA episodes. Urban agencies are also more likely to benefit from elimination of the SCIC policy. Urban agencies are less likely to bill a SCIC episode than rural agencies. However, when urban agencies do bill a SCIC episode the payment is reduced more, on average, than when rural agencies bill a SCIC. The net effect of these two components (relative frequency and payment impact per SCIC episode) is a larger expected reduction for urban agencies under the SCIC adjustment policy. Therefore, while both urban and rural agencies benefit from eliminating the SCIC policy, urban agencies benefit more.

HHAs in the North are expected to experience a percentage change increase of 4.57 percent in estimated total payments from CY 2007 to the revised CY 2008 system. One region, the South, is estimated to experience a decrease in the percentage change in estimated total payments from CY 2007 to the revised CY 2008 system. That percentage change is an estimated decrease of 2.91 percent.

It is estimated that New England and Mid Atlantic area HHAs will experience percentage change increases

approaching 4 or 5 percent, respectively (New England, 3.83 percent and the Mid-Atlantic, 4.96 percent) in estimated total payments from CY 2007 to the revised CY 2008 system. Conversely, West South Central HHAs are expected to experience a decrease (−6.32 percent) in the percentage change in estimated total payments from CY 2007 to the revised CY 2008 system. In general, HHAs with less than 200 Medicare home health initial episodes per year are expected to experience a decrease (ranging from −0.78 percent to 1.93 percent) for their percentage change in estimated total payments from CY 2007 to the revised CY 2008 system. Conversely, the largest HHAs (those with 200 or more Medicare home health initial episodes per year) are estimated to experience a slight increase of 0.36 percent change in estimated total payments from CY 2007 to the CY 2008 system.

TABLE 15.—IMPACT BY AGENCY TYPE

Group	Case-Mix		Comparisons			
	Case-Mix Index Current 80 HHRGs	Case-Mix Index, Revised 153 HHRGs	Percent Change Due to the Combined Effects of the New Labor Share (0.77082) and the Updated Wage Data (2008 Wage Index)	Percent Change Due to the Effects of the New Labor Share (0.77082)	Percent Change Due to the Effects of the Updated Wage Data (2008 Wage Index)	Percent Change from the Current CY 2007 System to the Revised CY 2008 System
Type of Facility						
Unknown	1.5011	1.4848	0.10	0.02	0.07	−1.64
Free-Standing/Other Vol/NP	1.1982	1.2467	0.09	0.00	0.08	3.47
Free-Standing/Other Proprietary	1.2841	1.2625	−0.06	−0.02	−0.04	−2.49
Free-Standing/Other Government	1.2038	1.2576	0.04	−0.05	0.09	2.84
Facility-Based Vol/NP	1.1736	1.2162	0.04	−0.02	0.05	3.78
Facility-Based Proprietary	1.2145	1.2439	−0.03	−0.05	0.01	2.79
Facility-Based Government	1.1513	1.1857	−0.10	−0.05	−0.05	3.28
Subtotal: Freestanding	1.2551	1.2576	−0.02	−0.02	0.00	−0.64
Subtotal: Facility-based	1.1737	1.2146	0.02	−0.02	0.04	3.66
Subtotal: Vol/PNP	1.1875	1.2334	0.07	−0.01	0.07	3.60
Subtotal: Proprietary	1.2821	1.2620	−0.06	−0.02	−0.04	−2.37
Subtotal: Government	1.1796	1.2244	−0.02	−0.05	0.03	3.04
TOTAL	1.2388	1.2388	−0.01	−0.02	0.00	0.20
Type of Facility (Rural* Only)						
Unknown	0.8205	0.8221	0.05	0.05	0.00	−0.15
Free-Standing/Other Vol/NP	1.1746	1.1895	0.09	−0.05	0.14	1.14
Free-Standing/Other Proprietary	1.2429	1.1936	−0.14	−0.08	−0.06	−5.57
Free-Standing/Other Government	1.1883	1.2490	0.08	−0.07	0.14	2.74
Facility-Based Vol/NP	1.1588	1.1790	−0.04	−0.06	0.02	2.12
Facility-Based Proprietary	1.2073	1.2242	−0.09	−0.08	−0.01	1.98
Facility-Based Government	1.1440	1.1701	−0.10	−0.07	−0.04	2.67
Type of Facility (Urban* Only)						
Unknown	1.5025	1.4861	0.10	0.02	0.07	−1.64
Free-Standing/Other Vol/NP	1.2037	1.2598	0.09	0.01	0.07	3.92
Free-Standing/Other Proprietary	1.2983	1.2836	−0.04	−0.01	−0.04	−1.67
Free-Standing/Other Government	1.2312	1.2749	−0.01	−0.02	0.00	2.99
Facility-Based Vol/NP	1.1803	1.2332	0.07	0.00	0.06	4.41
Facility-Based Proprietary	1.2225	1.2655	0.02	−0.02	0.03	3.54
Facility-Based Government	1.1737	1.2336	−0.09	−0.02	−0.08	4.86
Type of Facility: Urban* or Rural*						
Rural*	1.2047	1.1798	−0.06	−0.07	0.00	−1.77
Urban*	1.2520	1.2616	0.01	0.00	0.01	0.80
TOTAL	1.2388	1.2388	−0.01	−0.02	0.00	0.20
Type of Facility: Region						
North	1.1499	1.2090	0.12	0.02	0.10	4.57
South	1.2761	1.2351	−0.19	−0.04	−0.15	−2.91
Midwest	1.2249	1.2645	0.16	−0.02	0.18	3.12
West	1.2423	1.2382	0.18	0.02	0.15	0.03
Other	1.2716	1.2933	−0.04	−0.06	0.02	2.13
TOTAL	1.2388	1.2388	−0.01	−0.02	0.00	0.20

TABLE 15.—IMPACT BY AGENCY TYPE—Continued

Group	Case-Mix		Comparisons			
	Case-Mix Index Current 80 HHRGs	Case-Mix Index, Revised 153 HHRGs	Percent Change Due to the Combined Effects of the New Labor Share (0.77082) and the Updated Wage Data (2008 Wage Index)	Percent Change Due to the Effects of the New Labor Share (0.77082)	Percent Change Due to the Effects of the Updated Wage Data (2008 Wage Index)	Percent Change from the Current CY 2007 System to the Revised CY 2008 System
Type of Facility: Area of the Country						
New England	1.1106	1.1611	0.10	0.02	0.07	3.83
Mid Atlantic	1.1706	1.2343	0.14	0.01	0.12	4.96
South Atlantic	1.2862	1.2877	−0.09	−0.03	−0.07	0.44
East South Central	1.2897	1.2667	−0.22	−0.07	−0.16	−1.99
West South Central	1.2618	1.1781	−0.27	−0.05	−0.23	−6.32
East North Central	1.2409	1.2818	0.22	−0.01	0.23	3.14
West North Central	1.1705	1.2055	−0.04	−0.04	−0.01	3.04
Mountain	1.2660	1.3161	−0.06	−0.04	−0.03	3.22
Pacific	1.2305	1.1992	0.28	0.05	0.22	−1.21
Other	1.2716	1.2933	−0.04	−0.06	0.02	2.13
TOTAL	1.2388	1.2388	−0.01	−0.02	0.00	0.20
Type of Facility: Size (Number of First Episodes/Year)						
Unknown	1.0130	0.8895	−0.27	−0.03	−0.24	−7.85
1 to 5	1.2056	1.1866	−0.02	−0.02	0.00	−1.05
6 to 9	1.2145	1.1806	0.00	−0.03	0.02	−1.83
10 to 14	1.2297	1.2128	−0.07	−0.02	−0.05	−0.78
15 to 19	1.2335	1.2186	−0.05	−0.02	−0.03	−1.10
20 to 29	1.2412	1.2065	−0.05	−0.02	−0.03	−1.93
30 to 49	1.2463	1.2335	−0.05	−0.02	−0.03	−0.86
50 to 99	1.2505	1.2360	−0.04	−0.02	−0.02	−0.84
100 to 199	1.2489	1.2334	−0.03	−0.02	−0.01	−0.92
200 or More	1.2376	1.2398	−0.01	−0.02	0.01	0.36
TOTAL	1.2388	1.2388	−0.01	−0.02	0.00	0.20

Note: Based on a 20 percent sample of CY 2005 claims linked to OASIS assessment. Due to sample differences, national average case-mix weight in this table differs slightly from national average for CY 2005 reported in the text (1.2361).

*Urban/rural status, for the purposes of these simulations, is based on the wage index on which episode payment is based. The wage index is based on the site of service of the beneficiary.

C. Accounting Statement

As Required by OMB Circular A-4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 16 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 HH PPS as a result of the changes presented in this final rule with comment period based on the data for 8,164 HHAs in our database. All expenditures are classified as transfers to Medicare providers (that is, HHAs).

TABLE 16.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM CY 2007 TO CY 2008

[In millions]

Category	Transfers
Annualized Monetized Transfers	$20.
From Whom to Whom	Federal Government to HHAs.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 484

Health facilities, Health professions, Medicare, and Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 484—HOME HEALTH SERVICES

■ 1. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

Subpart E—Prospective Payment System for Home Health Agencies

§ 484.205 [Amended]

■ 2. Amend § 484.205 by—

■ A. Removing paragraph (a)(3).

■ B. Redesignating paragraph (a)(4) as paragraph (a)(3).

■ C. Revising paragraph (b) introductory text.

■ D. Removing paragraph (e).

■ E. Redesignating paragraph (f) as paragraph (e).

The revisions read as follows:

§ 484.205 Basis of payment.

* * * * *

(b) *Episode payment.* The national prospective 60-day episode payment represents payment in full for all costs associated with furnishing home health services previously paid on a reasonable cost basis (except the osteoporosis drug listed in section 1861(m) of the Act as defined in section 1861(kk) of the Act) as of August 5, 1997 unless the national 60-day episode payment is subject to a low-utilization payment adjustment set forth in § 484.230, a partial episode payment adjustment set forth at § 484.235, or an additional outlier payment set forth in § 484.240. All payments under this system may be subject to a medical review adjustment reflecting beneficiary eligibility, medical necessity determinations, and HHRG assignment. DME provided as a home health service as defined in section 1861(m) of the Act continues to be paid the fee schedule amount.

* * * * *

■ 3. Revise § 484.220 to read as follows:

§ 484.220 Calculation of the adjusted national prospective 60-day episode payment rate for case-mix and area wage levels.

CMS adjusts the national prospective 60-day episode payment rate to account for the following:

(a) HHA case-mix using a case-mix index to explain the relative resource utilization of different patients. To address changes to the case-mix that are a result of changes in the coding or classification of different units of service that do not reflect real changes in case-mix, the national prospective 60-day episode payment rate will be adjusted downward as follows:

(1) For CY 2008, the adjustment is 2.75 percent.

(2) For CY 2009 and CY 2010, the adjustment is 2.75 percent in each year.

(3) For CY 2011, the adjustment is 2.71 percent.

(b) Geographic differences in wage levels using an appropriate wage index based on the site of service of the beneficiary.

■ 4. Amend § 484.230 by adding a third, fourth, and fifth sentence after the second sentence to read as follows:

§ 484.230 Methodology used for the calculation of the low-utilization payment adjustment.

* * * For 2008 and subsequent calendar years, an amount will be added to low-utilization payment adjustments for low-utilization episodes that occur as the beneficiary's only episode or initial episode in a sequence of adjacent episodes. For purposes of the home health PPS, a sequence of adjacent episodes for a beneficiary is a series of claims with no more than 60 days without home care between the end of one episode, which is the 60th day (except for episodes that have been PEP-adjusted), and the beginning of the next episode. This additional amount will be updated annually after 2008 by a factor equal to the applicable home health market basket percentage.

§ 484.237 [Removed]

■ 5. Remove § 484.237.

■ 6. Amend § 484.240 by revising paragraph (b) to read as follows:

§ 484.240 Methodology used for the calculation of the outlier payment.

* * * * *

(b) The outlier threshold for each case-mix group is the episode payment amount for that group, the PEP adjustment amount for the episode plus a fixed dollar loss amount that is the same for all case-mix groups.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 17, 2007.

Herb. B. Kuhn,

Acting Deputy Administrator, Centers for Medicare & Medicaid Services.

Approved: August 20, 2007.

Michael O. Leavitt,

Secretary.

Note: The following addenda will not be published in the Code of Federal Regulations.

BILLING CODE 4120–01–P

ADDENDUM A. CY 2008 WAGE INDEX FOR RURAL AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX

CBSA Code	Nonurban Area	Wage Index
01	Alabama	0.7533
02	Alaska	1.2109
03	Arizona	0.8479
04	Arkansas	0.7371
05	California	1.2023
06	Colorado	0.9704
07	Connecticut	1.1283
08	Delaware	0.9727
10	Florida	0.8465
11	Georgia	0.7659
12	Hawaii	1.0612
13	Idaho	0.7920
14	Illinois	0.8335
15	Indiana	0.8576
16	Iowa	0.8566
17	Kansas	0.7981
18	Kentucky	0.7793
19	Louisiana	0.7373
20	Maine	0.8476
21	Maryland	0.9034

CBSA Code	Nonurban Area	Wage Index
22	Massachusetts[1]	1.1644
23	Michigan	0.8953
24	Minnesota	0.9079
25	Mississippi	0.7700
26	Missouri	0.7930
27	Montana	0.8379
28	Nebraska	0.8849
29	Nevada	0.9272
30	New Hampshire	1.0863
31	New Jersey[1]	------
32	New Mexico	0.8940
33	New York	0.8268
34	North Carolina	0.8603
35	North Dakota	0.7182
36	Ohio	0.8714
37	Oklahoma	0.7492
38	Oregon	0.9906
39	Pennsylvania	0.8385
40	Puerto Rico[1]	0.4047
41	Rhode Island[1]	------
42	South Carolina	0.8656
43	South Dakota	0.8549
44	Tennessee	0.7723
45	Texas	0.7968
46	Utah	0.8116

1 All counties within the State are classified as urban, with the exception of Massachusetts and Puerto Rico. Massachusetts and Puerto Rico have areas designated as rural, however, no short-term, acute care hospitals are located in the area(s) for CY 2007.

CBSA Code	Nonurban Area	Wage Index
47	Vermont	0.9919
48	Virgin Islands	0.6830
49	Virginia	0.7896
50	Washington	1.0259
51	West Virginia	0.7454
52	Wisconsin	0.9667
53	Wyoming	0.9287
65	Guam	0.9611

ADDENDUM B.- CY 2008 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX

CBSA Code	Urban Area (Constituent Counties)	Wage Index
10180	Abilene, TX Callahan County, TX Jones County, TX Taylor County, TX	0.7957
10380	Aguadilla-Isabela-San Sebastián, PR Aguada Municipio, PR Aguadilla Municipio, PR Añasco Municipio, PR Isabela Municipio, PR Lares Municipio, PR Moca Municipio, PR Rincón Municipio, PR San Sebastián Municipio, PR	0.3448
10420	Akron, OH Portage County, OH Summit County, OH	0.8794

CBSA Code	Urban Area (Constituent Counties)	Wage Index
10500	Albany, GA Baker County, GA Dougherty County, GA Lee County, GA Terrell County, GA Worth County, GA	0.8514
10580	Albany-Schenectady-Troy, NY Albany County, NY Rensselaer County, NY Saratoga County, NY Schenectady County, NY Schoharie County, NY	0.8588
10740	Albuquerque, NM Bernalillo County, NM Sandoval County, NM Torrance County, NM Valencia County, NM	0.9554
10780	Alexandria, LA Grant Parish, LA Rapides Parish, LA	0.7979
10900	Allentown-Bethlehem-Easton, PA-NJ Warren County, NJ Carbon County, PA Lehigh County, PA Northampton County, PA	0.9865
11020	Altoona, PA Blair County, PA	0.8618
11100	Amarillo, TX Armstrong County, TX Carson County, TX Potter County, TX Randall County, TX	0.9116
11180	Ames, IA	1.0046

CBSA Code	Urban Area (Constituent Counties)	Wage Index
	Story County, IA	
11260	Anchorage, AK Anchorage Municipality, AK Matanuska-Susitna Borough, AK	1.1913
11300	Anderson, IN Madison County, IN	0.8827
11340	Anderson, SC Anderson County, SC	0.9086
11460	Ann Arbor, MI Washtenaw County, MI	1.0539
11500	Anniston-Oxford, AL Calhoun County, AL	0.7926
11540	Appleton, WI Calumet County, WI Outagamie County, WI	0.9598
11700	Asheville, NC Buncombe County, NC Haywood County, NC Henderson County, NC Madison County, NC	0.9185
12020	Athens-Clarke County, GA Clarke County, GA Madison County, GA Oconee County, GA Oglethorpe County, GA	1.0517

CBSA Code	Urban Area (Constituent Counties)	Wage Index
12060	Atlanta-Sandy Springs-Marietta, GA Barrow County, GA Bartow County, GA Butts County, GA Carroll County, GA Cherokee County, GA Clayton County, GA Cobb County, GA Coweta County, GA Dawson County, GA DeKalb County, GA Douglas County, GA Fayette County, GA Forsyth County, GA Fulton County, GA Gwinnett County, GA Haralson County, GA Heard County, GA Henry County, GA Jasper County, GA Lamar County, GA Meriwether County, GA Newton County, GA Paulding County, GA Pickens County, GA Pike County, GA Rockdale County, GA Spalding County, GA Walton County, GA	0.9828
12100	Atlantic City, NJ Atlantic County, NJ	1.2198
12220	Auburn-Opelika, AL Lee County, AL	0.8090

CBSA Code	Urban Area (Constituent Counties)	Wage Index
12260	Augusta-Richmond County, GA-SC Burke County, GA Columbia County, GA McDuffie County, GA Richmond County, GA Aiken County, SC Edgefield County, SC	0.9645
12420	Austin-Round Rock, TX Bastrop County, TX Caldwell County, TX Hays County, TX Travis County, TX Williamson County, TX	0.9544
12540	Bakersfield, CA Kern County, CA	1.1051
12580	Baltimore-Towson, MD Anne Arundel County, MD Baltimore County, MD Carroll County, MD Harford County, MD Howard County, MD Queen Anne's County, MD Baltimore City, MD	1.0134
12620	Bangor, ME Penobscot County, ME	0.9978
12700	Barnstable Town, MA Barnstable County, MA	1.2603

CBSA Code	Urban Area (Constituent Counties)	Wage Index
12940	Baton Rouge, LA Ascension Parish, LA East Baton Rouge Parish, LA East Feliciana Parish, LA Iberville Parish, LA Livingston Parish, LA Pointe Coupee Parish, LA St. Helena Parish, LA West Baton Rouge Parish, LA West Feliciana Parish, LA	0.8034
12980	Battle Creek, MI Calhoun County, MI	1.0179
13020	Bay City, MI Bay County, MI	0.8897
13140	Beaumont-Port Arthur, TX Hardin County, TX Jefferson County, TX Orange County, TX	0.8531
13380	Bellingham, WA Whatcom County, WA	1.1474
13460	Bend, OR Deschutes County, OR	1.0942
13644	Bethesda-Frederick-Gaithersburg, MD Frederick County, MD Montgomery County, MD	1.0511
13740	Billings, MT Carbon County, MT Yellowstone County, MT	0.8666
13780	Binghamton, NY Broome County, NY Tioga County, NY	0.8949

CBSA Code	Urban Area (Constituent Counties)	Wage Index
13820	Birmingham-Hoover, AL Bibb County, AL Blount County, AL Chilton County, AL Jefferson County, AL St. Clair County, AL Shelby County, AL Walker County, AL	0.8898
13900	Bismarck, ND Burleigh County, ND Morton County, ND	0.7225
13980	Blacksburg-Christiansburg-Radford, VA Giles County, VA Montgomery County, VA Pulaski County, VA Radford City, VA	0.8192
14020	Bloomington, IN Greene County, IN Monroe County, IN Owen County, IN	0.8915
14060	Bloomington-Normal, IL McLean County, IL	0.9325
14260	Boise City-Nampa, ID Ada County, ID Boise County, ID Canyon County, ID Gem County, ID Owyhee County, ID	0.9465
14484	Boston-Quincy, MA Norfolk County, MA Plymouth County, MA Suffolk County, MA	1.1639

CBSA Code	Urban Area (Constituent Counties)	Wage Index
14500	Boulder, CO Boulder County, CO	1.0426
14540	Bowling Green, KY Edmonson County, KY Warren County, KY	0.8159
14740	Bremerton-Silverdale, WA Kitsap County, WA	1.0904
14860	Bridgeport-Stamford-Norwalk, CT Fairfield County, CT	1.2735
15180	Brownsville-Harlingen, TX Cameron County, TX	0.8914
15260	Brunswick, GA Brantley County, GA Glynn County, GA McIntosh County, GA	0.9475
15380	Buffalo-Niagara Falls, NY Erie County, NY Niagara County, NY	0.9568
15500	Burlington, NC Alamance County, NC	0.8747
15540	Burlington-South Burlington, VT Chittenden County, VT Franklin County, VT Grand Isle County, VT	0.9660
15764	Cambridge-Newton-Framingham, MA Middlesex County, MA	1.1215
15804	Camden, NJ Burlington County, NJ Camden County, NJ Gloucester County, NJ	1.0411
15940	Canton-Massillon, OH Carroll County, OH Stark County, OH	0.8935

CBSA Code	Urban Area (Constituent Counties)	Wage Index
15980	Cape Coral-Fort Myers, FL Lee County, FL	0.9396
16180	Carson City, NV Carson City, NV	0.9353
16220	Casper, WY Natrona County, WY	0.9385
16300	Cedar Rapids, IA Benton County, IA Jones County, IA Linn County, IA	0.8852
16580	Champaign-Urbana, IL Champaign County, IL Ford County, IL Piatt County, IL	0.9392
16620	Charleston, WV Boone County, WV Clay County, WV Kanawha County, WV Lincoln County, WV Putnam County, WV	0.8289
16700	Charleston-North Charleston, SC Berkeley County, SC Charleston County, SC Dorchester County, SC	0.9124
16740	Charlotte-Gastonia-Concord, NC-SC Anson County, NC Cabarrus County, NC Gaston County, NC Mecklenburg County, NC Union County, NC York County, SC	0.9520

CBSA Code	Urban Area (Constituent Counties)	Wage Index
16820	Charlottesville, VA Albemarle County, VA Fluvanna County, VA Greene County, VA Nelson County, VA Charlottesville City, VA	0.9277
16860	Chattanooga, TN-GA Catoosa County, GA Dade County, GA Walker County, GA Hamilton County, TN Marion County, TN Sequatchie County, TN	0.8994
16940	Cheyenne, WY Laramie County, WY	0.9308
16974	Chicago-Naperville-Joliet, IL Cook County, IL DeKalb County, IL DuPage County, IL Grundy County, IL Kane County, IL Kendall County, IL McHenry County, IL Will County, IL	1.0735
17020	Chico, CA Butte County, CA	1.1290

CBSA Code	Urban Area (Constituent Counties)	Wage Index
17140	Cincinnati-Middletown, OH-KY-IN	0.9784
	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	0.8251
	Christian County, KY	
	Trigg County, KY	
	Montgomery County, TN	
	Stewart County, TN	
17420	Cleveland, TN	0.8052
	Bradley County, TN	
	Polk County, TN	
17460	Cleveland-Elyria-Mentor, OH	0.9339
	Cuyahoga County, OH	
	Geauga County, OH	
	Lake County, OH	
	Lorain County, OH	
	Medina County, OH	

CBSA Code	Urban Area (Constituent Counties)	Wage Index
17660	Coeur d'Alene, ID Kootenai County, ID	0.9532
17780	College Station-Bryan, TX Brazos County, TX Burleson County, TX Robertson County, TX	0.9358
17820	Colorado Springs, CO El Paso County, CO Teller County, CO	0.9719
17860	Columbia, MO Boone County, MO Howard County, MO	0.8658
17900	Columbia, SC Calhoun County, SC Fairfield County, SC Kershaw County, SC Lexington County, SC Richland County, SC Saluda County, SC	0.8800
17980	Columbus, GA-AL Russell County, AL Chattahoochee County, GA Harris County, GA Marion County, GA Muscogee County, GA	0.8729
18020	Columbus, IN Bartholomew County, IN	0.9537

CBSA Code	Urban Area (Constituent Counties)	Wage Index
18140	Columbus, OH Delaware County, OH Fairfield County, OH Franklin County, OH Licking County, OH Madison County, OH Morrow County, OH Pickaway County, OH Union County, OH	1.0085
18580	Corpus Christi, TX Aransas County, TX Nueces County, TX San Patricio County, TX	0.8588
18700	Corvallis, OR Benton County, OR	1.0959
19060	Cumberland, MD-WV Allegany County, MD Mineral County, WV	0.8294
19124	Dallas-Plano-Irving, TX Collin County, TX Dallas County, TX Delta County, TX Denton County, TX Ellis County, TX Hunt County, TX Kaufman County, TX Rockwall County, TX	0.9915
19140	Dalton, GA Murray County, GA Whitfield County, GA	0.8760
19180	Danville, IL Vermilion County, IL	0.8957

CBSA Code	Urban Area (Constituent Counties)	Wage Index
19260	Danville, VA Pittsylvania County, VA Danville City, VA	0.8240
19340	Davenport-Moline-Rock Island, IA-IL Henry County, IL Mercer County, IL Rock Island County, IL Scott County, IA	0.8830
19380	Dayton, OH Greene County, OH Miami County, OH Montgomery County, OH Preble County, OH	0.9190
19460	Decatur, AL Lawrence County, AL Morgan County, AL	0.7885
19500	Decatur, IL Macon County, IL	0.8074
19660	Deltona-Daytona Beach-Ormond Beach, FL Volusia County, FL	0.9031
19740	Denver-Aurora, CO Adams County, CO Arapahoe County, CO Broomfield County, CO Clear Creek County, CO Denver County, CO Douglas County, CO Elbert County, CO Gilpin County, CO Jefferson County, CO Park County, CO	1.0718

CBSA Code	Urban Area (Constituent Counties)	Wage Index
19780	Des Moines, IA Dallas County, IA Guthrie County, IA Madison County, IA Polk County, IA Warren County, IA	0.9226
19804	Detroit-Livonia-Dearborn, MI Wayne County, MI	0.9999
20020	Dothan, AL Geneva County, AL Henry County, AL Houston County, AL	0.7270
20100	Dover, DE Kent County, DE	1.0099
20220	Dubuque, IA Dubuque County, IA	0.9058
20260	Duluth, MN-WI Carlton County, MN St. Louis County, MN Douglas County, WI	0.9975
20500	Durham, NC Chatham County, NC Durham County, NC Orange County, NC Person County, NC	0.9816
20740	Eau Claire, WI Chippewa County, WI Eau Claire County, WI	0.9475
20764	Edison, NJ Middlesex County, NJ Monmouth County, NJ Ocean County, NJ Somerset County, NJ	1.1181

CBSA Code	Urban Area (Constituent Counties)	Wage Index
20940	El Centro, CA Imperial County, CA	0.8914
21060	Elizabethtown, KY Hardin County, KY Larue County, KY	0.8711
21140	Elkhart-Goshen, IN Elkhart County, IN	0.9611
21300	Elmira, NY Chemung County, NY	0.8264
21340	El Paso, TX El Paso County, TX	0.8989
21500	Erie, PA Erie County, PA	0.8495
21660	Eugene-Springfield, OR Lane County, OR	1.0932
21780	Evansville, IN-KY Gibson County, IN Posey County, IN Vanderburgh County, IN Warrick County, IN Henderson County, KY Webster County, KY	0.8662
21820	Fairbanks, AK Fairbanks North Star Borough, AK	1.1050
21940	Fajardo, PR Ceiba Municipio, PR Fajardo Municipio, PR Luquillo Municipio, PR	0.4375
22020	Fargo, ND-MN Cass County, ND Clay County, MN	0.8042
22140	Farmington, NM San Juan County, NM	0.9587

CBSA Code	Urban Area (Constituent Counties)	Wage Index
22180	Fayetteville, NC Cumberland County, NC Hoke County, NC	0.9368
22220	Fayetteville-Springdale-Rogers, AR-MO Benton County, AR Madison County, AR Washington County, AR McDonald County, MO	0.8742
22380	Flagstaff, AZ Coconino County, AZ	1.1687
22420	Flint, MI Genesee County, MI	1.1220
22500	Florence, SC Darlington County, SC Florence County, SC	0.8249
22520	Florence-Muscle Shoals, AL Colbert County, AL Lauderdale County, AL	0.7680
22540	Fond du Lac, WI Fond du Lac County, WI	0.9667
22660	Fort Collins-Loveland, CO Larimer County, CO	0.9897
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Broward County, FL	1.0229
22900	Fort Smith, AR-OK Crawford County, AR Franklin County, AR Sebastian County, AR Le Flore County, OK Sequoyah County, OK	0.7933
23020	Fort Walton Beach-Crestview-Destin, FL Okaloosa County, FL	0.8743

CBSA Code	Urban Area (Constituent Counties)	Wage Index
23060	Fort Wayne, IN Allen County, IN Wells County, IN Whitley County, IN	0.9284
23104	Fort Worth-Arlington, TX Johnson County, TX Parker County, TX Tarrant County, TX Wise County, TX	0.9693
23420	Fresno, CA Fresno County, CA	1.0993
23460	Gadsden, AL Etowah County, AL	0.8159
23540	Gainesville, FL Alachua County, FL Gilchrist County, FL	0.9196
23580	Gainesville, GA Hall County, GA	0.9216
23844	Gary, IN Jasper County, IN Lake County, IN Newton County, IN Porter County, IN	0.9224
24020	Glens Falls, NY Warren County, NY Washington County, NY	0.8256
24140	Goldsboro, NC Wayne County, NC	0.9288
24220	Grand Forks, ND-MN Polk County, MN Grand Forks County, ND	0.7881
24300	Grand Junction, CO Mesa County, CO	0.9864

CBSA Code	Urban Area (Constituent Counties)	Wage Index
24340	Grand Rapids-Wyoming, MI Barry County, MI Ionia County, MI Kent County, MI Newaygo County, MI	0.9315
24500	Great Falls, MT Cascade County, MT	0.8675
24540	Greeley, CO Weld County, CO	0.9658
24580	Green Bay, WI Brown County, WI Kewaunee County, WI Oconto County, WI	0.9727
24660	Greensboro-High Point, NC Guilford County, NC Randolph County, NC Rockingham County, NC	0.9010
24780	Greenville, NC Greene County, NC Pitt County, NC	0.9402
24860	Greenville, SC Greenville County, SC Laurens County, SC Pickens County, SC	0.9860
25020	Guayama, PR Arroyo Municipio, PR Guayama Municipio, PR Patillas Municipio, PR	0.3064
25060	Gulfport-Biloxi, MS Hancock County, MS Harrison County, MS Stone County, MS	0.8773
25180	Hagerstown-Martinsburg, MD-WV	0.9013

CBSA Code	Urban Area (Constituent Counties)	Wage Index
	Washington County, MD Berkeley County, WV Morgan County, WV	
25260	Hanford-Corcoran, CA Kings County, CA	1.0499
25420	Harrisburg-Carlisle, PA Cumberland County, PA Dauphin County, PA Perry County, PA	0.9280
25500	Harrisonburg, VA Rockingham County, VA Harrisonburg City, VA	0.8867
25540	Hartford-West Hartford-East Hartford, CT Hartford County, CT Litchfield County, CT Middlesex County, CT Tolland County, CT	1.0937
25620	Hattiesburg, MS Forrest County, MS Lamar County, MS Perry County, MS	0.7366
25860	Hickory-Lenoir-Morganton, NC Alexander County, NC Burke County, NC Caldwell County, NC Catawba County, NC	0.9028
25980[2]	Hinesville-Fort Stewart, GA Liberty County, GA Long County, GA	0.9187
26100	Holland-Grand Haven, MI Ottawa County, MI	0.9006
26180	Honolulu, HI Honolulu County, HI	1.1556

CBSA Code	Urban Area (Constituent Counties)	Wage Index
26300	Hot Springs, AR Garland County, AR	0.9109
26380	Houma-Bayou Cane-Thibodaux, LA Lafourche Parish, LA Terrebonne Parish, LA	0.7892
26420	Houston-Baytown-Sugar Land, TX Austin County, TX Brazoria County, TX Chambers County, TX Fort Bend County, TX Galveston County, TX Harris County, TX Liberty County, TX Montgomery County, TX San Jacinto County, TX Waller County, TX	0.9939
26580	Huntington-Ashland, WV-KY-OH Boyd County, KY Greenup County, KY Lawrence County, OH Cabell County, WV Wayne County, WV	0.9041
26620	Huntsville, AL Limestone County, AL Madison County, AL	0.9146
26820	Idaho Falls, ID Bonneville County, ID Jefferson County, ID	0.9264

CBSA Code	Urban Area (Constituent Counties)	Wage Index
26900	Indianapolis, IN Boone County, IN Brown County, IN Hamilton County, IN Hancock County, IN Hendricks County, IN Johnson County, IN Marion County, IN Morgan County, IN Putnam County, IN Shelby County, IN	0.9844
26980	Iowa City, IA Johnson County, IA Washington County, IA	0.9568
27060	Ithaca, NY Tompkins County, NY	0.9630
27100	Jackson, MI Jackson County, MI	0.9329
27140	Jackson, MS Copiah County, MS Hinds County, MS Madison County, MS Rankin County, MS Simpson County, MS	0.8011
27180	Jackson, TN Chester County, TN Madison County, TN	0.8676
27260	Jacksonville, FL Baker County, FL Clay County, FL Duval County, FL Nassau County, FL St. Johns County, FL	0.9021

CBSA Code	Urban Area (Constituent Counties)	Wage Index
27340	Jacksonville, NC Onslow County, NC	0.8079
27500	Janesville, WI Rock County, WI	0.9702
27620	Jefferson City, MO Callaway County, MO Cole County, MO Moniteau County, MO Osage County, MO	0.8478
27740	Johnson City, TN Carter County, TN Unicoi County, TN Washington County, TN	0.7677
27780	Johnstown, PA Cambria County, PA	0.7543
27860	Jonesboro, AR Craighead County, AR Poinsett County, AR	0.7790
27900	Joplin, MO Jasper County, MO Newton County, MO	0.8951
28020	Kalamazoo-Portage, MI Kalamazoo County, MI Van Buren County, MI	1.0433
28100	Kankakee-Bradley, IL Kankakee County, IL	1.0238

CBSA Code	Urban Area (Constituent Counties)	Wage Index
28140	Kansas City, MO-KS Franklin County, KS Johnson County, KS Leavenworth County, KS Linn County, KS Miami County, KS Wyandotte County, KS Bates County, MO Caldwell County, MO Cass County, MO Clay County, MO Clinton County, MO Jackson County, MO Lafayette County, MO Platte County, MO Ray County, MO	0.9504
28420	Kennewick-Richland-Pasco, WA Benton County, WA Franklin County, WA	1.0075
28660	Killeen-Temple-Fort Hood, TX Bell County, TX Coryell County, TX Lampasas County, TX	0.8249
28700	Kingsport-Bristol-Bristol, TN-VA Hawkins County, TN Sullivan County, TN Bristol City, VA Scott County, VA Washington County, VA	0.7658
28740	Kingston, NY Ulster County, NY	0.9556

CBSA Code	Urban Area (Constituent Counties)	Wage Index
28940	Knoxville, TN Anderson County, TN Blount County, TN Knox County, TN Loudon County, TN Union County, TN	0.8036
29020	Kokomo, IN Howard County, IN Tipton County, IN	0.9591
29100	La Crosse, WI-MN Houston County, MN La Crosse County, WI	0.9685
29140	Lafayette, IN Benton County, IN Carroll County, IN Tippecanoe County, IN	0.8869
29180	Lafayette, LA Lafayette Parish, LA St. Martin Parish, LA	0.8247
29340	Lake Charles, LA Calcasieu Parish, LA Cameron Parish, LA	0.7777
29404	Lake County-Kenosha County, IL-WI Lake County, IL Kenosha County, WI	1.0315
29420	Lake Havasu City-Kingman, AZ	0.9333
29460	Lakeland, FL Polk County, FL	0.8661
29540	Lancaster, PA Lancaster County, PA	0.9252
29620	Lansing-East Lansing, MI Clinton County, MI Eaton County, MI	1.0119

CBSA Code	Urban Area (Constituent Counties)	Wage Index
	Ingham County, MI	
29700	Laredo, TX Webb County, TX	0.8093
29740	Las Cruces, NM Dona Ana County, NM	0.8676
29820	Las Vegas-Paradise, NV Clark County, NV	1.1799
29940	Lawrence, KS Douglas County, KS	0.8227
30020	Lawton, OK Comanche County, OK	0.8025
30140	Lebanon, PA Lebanon County, PA	0.8192
30300	Lewiston, ID-WA Nez Perce County, ID Asotin County, WA	0.9454
30340	Lewiston-Auburn, ME Androscoggin County, ME	0.9193
30460	Lexington-Fayette, KY Bourbon County, KY Clark County, KY Fayette County, KY Jessamine County, KY Scott County, KY Woodford County, KY	0.9191
30620	Lima, OH Allen County, OH	0.9424
30700	Lincoln, NE Lancaster County, NE Seward County, NE	1.0051

CBSA Code	Urban Area (Constituent Counties)	Wage Index
30780	Little Rock-North Little Rock, AR Faulkner County, AR Grant County, AR Lonoke County, AR Perry County, AR Pulaski County, AR Saline County, AR	0.8863
30860	Logan, UT-ID Franklin County, ID Cache County, UT	0.9183
30980	Longview, TX Gregg County, TX Rusk County, TX Upshur County, TX	0.8717
31020	Longview, WA Cowlitz County, WA	1.0827
31084	Los Angeles-Long Beach-Glendale, CA Los Angeles County, CA	1.1771
31140	Louisville, KY-IN Clark County, IN Floyd County, IN Harrison County, IN Washington County, IN Bullitt County, KY Henry County, KY Jefferson County, KY Meade County, KY Nelson County, KY Oldham County, KY Shelby County, KY Spencer County, KY Trimble County, KY	0.9065

CBSA Code	Urban Area (Constituent Counties)	Wage Index
31180	Lubbock, TX Crosby County, TX Lubbock County, TX	0.8680
31340	Lynchburg, VA Amherst County, VA Appomattox County, VA Bedford County, VA Campbell County, VA Bedford City, VA Lynchburg City, VA	0.8732
31420	Macon, GA Bibb County, GA Crawford County, GA Jones County, GA Monroe County, GA Twiggs County, GA	0.9541
31460	Madera, CA Madera County, CA	0.8069
31540	Madison, WI Columbia County, WI Dane County, WI Iowa County, WI	1.0935
31700	Manchester-Nashua, NH Hillsborough County, NH Merrimack County, NH	1.0063
31900	Mansfield, OH Richland County, OH	0.9271
32420	Mayagüez, PR Hormigueros Municipio, PR Mayagüez Municipio, PR	0.3711
32580	McAllen-Edinburg-Pharr, TX Hidalgo County, TX	0.9123

CBSA Code	Urban Area (Constituent Counties)	Wage Index
32780	Medford, OR Jackson County, OR	1.0318
32820	Memphis, TN-MS-AR Crittenden County, AR DeSoto County, MS Marshall County, MS Tate County, MS Tunica County, MS Fayette County, TN Shelby County, TN Tipton County, TN	0.9250
32900	Merced, CA Merced County, CA	1.2120
33124	Miami-Miami Beach-Kendall, FL Miami-Dade County, FL	1.0002
33140	Michigan City-La Porte, IN LaPorte County, IN	0.8914
33260	Midland, TX Midland County, TX	1.0017
33340	Milwaukee-Waukesha-West Allis, WI Milwaukee County, WI Ozaukee County, WI Washington County, WI Waukesha County, WI	1.0214

CBSA Code	Urban Area (Constituent Counties)	Wage Index
33460	Minneapolis-St. Paul-Bloomington, MN-WI Anoka County, MN Carver County, MN Chisago County, MN Dakota County, MN Hennepin County, MN Isanti County, MN Ramsey County, MN Scott County, MN Sherburne County, MN Washington County, MN Wright County, MN Pierce County, WI St. Croix County, WI	1.1093
33540	Missoula, MT Missoula County, MT	0.8953
33660	Mobile, AL Mobile County, AL	0.8033
33700	Modesto, CA Stanislaus County, CA	1.1962
33740	Monroe, LA Ouachita Parish, LA Union Parish, LA	0.7832
33780	Monroe, MI Monroe County, MI	0.9414
33860	Montgomery, AL Autauga County, AL Elmore County, AL Lowndes County, AL Montgomery County, AL	0.8088
34060	Morgantown, WV Monongalia County, WV Preston County, WV	0.8321

CBSA Code	Urban Area (Constituent Counties)	Wage Index
34100	Morristown, TN Grainger County, TN Hamblen County, TN Jefferson County, TN	0.7388
34580	Mount Vernon-Anacortes, WA Skagit County, WA	1.0529
34620	Muncie, IN Delaware County, IN	0.8214
34740	Muskegon-Norton Shores, MI Muskegon County, MI	0.9836
34820	Myrtle Beach-Conway-North Myrtle Beach, SC Horry County, SC	0.8634
34900	Napa, CA Napa County, CA	1.4476
34940	Naples-Marco Island, FL Collier County, FL	0.9487
34980	Nashville-Davidson--Murfreesboro, TN Cannon County, TN Cheatham County, TN Davidson County, TN Dickson County, TN Hickman County, TN	0.9689
	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 Nassau County, NY Suffolk County, NY	1.2640

CBSA Code	Urban Area (Constituent Counties)	Wage Index
35084	Newark-Union, NJ-PA Essex County, NJ Hunterdon County, NJ Morris County, NJ Sussex County, NJ Union County, NJ Pike County, PA	1.1862
35300	New Haven-Milford, CT New Haven County, CT	1.1871
35380	New Orleans-Metairie-Kenner, LA Jefferson Parish, LA Orleans Parish, LA Plaquemines Parish, LA St. Bernard Parish, LA St. Charles Parish, LA St. John the Baptist Parish, LA St. Tammany Parish, LA	0.8897
35644	New York-Wayne-White Plains, NY-NJ Bergen County, NJ Hudson County, NJ Passaic County, NJ Bronx County, NY Kings County, NY New York County, NY Putnam County, NY Queens County, NY Richmond County, NY Rockland County, NY Westchester County, NY	1.3115
35660	Niles-Benton Harbor, MI Berrien County, MI	0.9141
35980	Norwich-New London, CT New London County, CT	1.1432

CBSA Code	Urban Area (Constituent Counties)	Wage Index
36084	Oakland-Fremont-Hayward, CA Alameda County, CA Contra Costa County, CA	1.5685
36100	Ocala, FL Marion County, FL	0.8627
36140	Ocean City, NJ Cape May County, NJ	1.0988
36220	Odessa, TX Ector County, TX	1.0042
36260	Ogden-Clearfield, UT Davis County, UT Morgan County, UT Weber County, UT	0.9000
36420	Oklahoma City, OK Canadian County, OK Cleveland County, OK Grady County, OK Lincoln County, OK Logan County, OK McClain County, OK Oklahoma County, OK	0.8815
36500	Olympia, WA Thurston County, WA	1.1512
36540	Omaha-Council Bluffs, NE-IA Harrison County, IA Mills County, IA Pottawattamie County, IA Cass County, NE Douglas County, NE Sarpy County, NE Saunders County, NE Washington County, NE	0.9561

CBSA Code	Urban Area (Constituent Counties)	Wage Index
36740	Orlando, FL Lake County, FL Orange County, FL Osceola County, FL Seminole County, FL	0.9226
36780	Oshkosh-Neenah, WI Winnebago County, WI	0.9551
36980	Owensboro, KY Daviess County, KY Hancock County, KY McLean County, KY	0.8652
37100	Oxnard-Thousand Oaks-Ventura, CA Ventura County, CA	1.1852
37340	Palm Bay-Melbourne-Titusville, FL Brevard County, FL	0.9325
37380	Palm Coast, FL Flagler County, FL	0.8945
37460	Panama City-Lynn Haven, FL Bay County, FL	0.8313
37620	Parkersburg-Marietta, WV-OH Washington County, OH Pleasants County, WV Wirt County, WV Wood County, WV	0.8105
37700	Pascagoula, MS George County, MS Jackson County, MS	0.8647
37764	Peabody, MA Essex County, MA	1.0650
37860	Pensacola-Ferry Pass-Brent, FL Escambia County, FL Santa Rosa County, FL	0.8281

CBSA Code	Urban Area (Constituent Counties)	Wage Index
37900	Peoria, IL Marshall County, IL Peoria County, IL Stark County, IL Tazewell County, IL Woodford County, IL	0.9299
37964	Philadelphia, PA Bucks County, PA Chester County, PA Delaware County, PA Montgomery County, PA Philadelphia County, PA	1.0925
38060	Phoenix-Mesa-Scottsdale, AZ Maricopa County, AZ Pinal County, AZ	1.0264
38220	Pine Bluff, AR Cleveland County, AR Jefferson County, AR Lincoln County, AR	0.7839
38300	Pittsburgh, PA Allegheny County, PA Armstrong County, PA Beaver County, PA Butler County, PA Fayette County, PA Washington County, PA Westmoreland County, PA	0.8525
38340	Pittsfield, MA Berkshire County, MA	1.0091
38540	Pocatello, ID Bannock County, ID Power County, ID	0.9465

CBSA Code	Urban Area (Constituent Counties)	Wage Index
38660	Ponce, PR Juana Díaz Municipio, PR Ponce Municipio, PR Villalba Municipio, PR	0.4450
38860	Portland-South Portland-Biddeford, ME Cumberland County, ME Sagadahoc County, ME York County, ME	1.0042
38900	Portland-Vancouver-Beaverton, OR-WA Clackamas County, OR Columbia County, OR Multnomah County, OR Washington County, OR Yamhill County, OR Clark County, WA Skamania County, WA	1.1498
38940	Port St. Lucie-Fort Pierce, FL Martin County, FL St. Lucie County, FL	1.0016
39100	Poughkeepsie-Newburgh-Middletown, NY Dutchess County, NY Orange County, NY	1.0982
39140	Prescott, AZ Yavapai County, AZ	1.0020
39300	Providence-New Bedford-Fall River, RI-MA Bristol County, MA Bristol County, RI Kent County, RI Newport County, RI Providence County, RI Washington County, RI	1.0685
39340	Provo-Orem, UT Juab County, UT	0.9557

CBSA Code	Urban Area (Constituent Counties)	Wage Index
	Utah County, UT	
39380	Pueblo, CO Pueblo County, CO	0.8851
39460	Punta Gorda, FL Charlotte County, FL	0.9254
39540	Racine, WI Racine County, WI	0.9498
39580	Raleigh-Cary, NC Franklin County, NC Johnston County, NC Wake County, NC	0.9839
39660	Rapid City, SD Meade County, SD Pennington County, SD	0.8811
39740	Reading, PA Berks County, PA	0.9356
39820	Redding, CA Shasta County, CA	1.3541
39900	Reno-Sparks, NV Storey County, NV Washoe County, NV	1.0959

CBSA Code	Urban Area (Constituent Counties)	Wage Index
40060	Richmond, VA Amelia County, VA Caroline County, VA Charles City County, VA Chesterfield County, VA Cumberland County, VA Dinwiddie County, VA Goochland County, VA Hanover County, VA Henrico County, VA King and Queen County, VA King William County, VA Louisa County, VA New Kent County, VA Powhatan County, VA Prince George County, VA Sussex County, VA Colonial Heights City, VA Hopewell City, VA Petersburg City, VA Richmond City, VA	0.9425
40140	Riverside-San Bernardino-Ontario, CA Riverside County, CA San Bernardino County, CA	1.1100
40220	Roanoke, VA Botetourt County, VA Craig County, VA Franklin County, VA Roanoke County, VA Roanoke City, VA Salem City, VA	0.8691

CBSA Code	Urban Area (Constituent Counties)	Wage Index
40340	Rochester, MN Dodge County, MN Olmsted County, MN Wabasha County, MN	1.0755
40380	Rochester, NY Livingston County, NY Monroe County, NY Ontario County, NY Orleans County, NY Wayne County, NY	0.8858
40420	Rockford, IL Boone County, IL Winnebago County, IL	0.9814
40484	Rockingham County-Strafford County, NH Rockingham County, NH Strafford County, NH	1.0111
40580	Rocky Mount, NC Edgecombe County, NC Nash County, NC	0.9001
40660	Rome, GA Floyd County, GA	0.9042
40900	Sacramento--Arden-Arcade--Roseville, CA El Dorado County, CA Placer County, CA Sacramento County, CA Yolo County, CA	1.3505
40980	Saginaw-Saginaw Township North, MI Saginaw County, MI	0.8812
41060	St. Cloud, MN Benton County, MN Stearns County, MN	1.0549
41100	St. George, UT Washington County, UT	0.9358

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41140	St. Joseph, MO-KS Doniphan County, KS Andrew County, MO Buchanan County, MO DeKalb County, MO	0.8762
41180	St. Louis, MO-IL Bond County, IL Calhoun County, IL Clinton County, IL Jersey County, IL Macoupin County, IL Madison County, IL Monroe County, IL St. Clair County, IL Crawford County, MO Franklin County, MO Jefferson County, MO Lincoln County, MO St. Charles County, MO St. Louis County, MO Warren County, MO Washington County, MO St. Louis City, MO	0.9024
41420	Salem, OR Marion County, OR Polk County, OR	1.0572
41500	Salinas, CA Monterey County, CA	1.4775
41540	Salisbury, MD Somerset County, MD Wicomico County, MD	0.8994

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41620	Salt Lake City, UT Salt Lake County, UT Summit County, UT Tooele County, UT	0.9399
41660	San Angelo, TX Irion County, TX Tom Green County, TX	0.8579
41700	San Antonio, TX Atascosa County, TX Bandera County, TX Bexar County, TX Comal County, TX Guadalupe County, TX Kendall County, TX Medina County, TX Wilson County, TX	0.8834
41740	San Diego-Carlsbad-San Marcos, CA San Diego County, CA	1.1492
41780	Sandusky, OH Erie County, OH	0.8822
41884	San Francisco-San Mateo-Redwood City, CA Marin County, CA San Francisco County, CA San Mateo County, CA	1.5195
41900	San Germán-Cabo Rojo, PR Cabo Rojo Municipio, PR Lajas Municipio, PR Sabana Grande Municipio, PR San Germán Municipio, PR	0.4729
41940	San Jose-Sunnyvale-Santa Clara, CA San Benito County, CA Santa Clara County, CA	1.5735
41980	San Juan-Caguas-Guaynabo, PR	0.4528

CBSA Code	Urban Area (Constituent Counties)	Wage Index
	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	

CBSA Code	Urban Area (Constituent Counties)	Wage Index
	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 San Luis Obispo County, CA	1.2488
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA	1.1766
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara County, CA	1.1714
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA	1.6122
42140	Santa Fe, NM Santa Fe County, NM	1.0734
42220	Santa Rosa-Petaluma, CA Sonoma County, CA	1.4696
42260	Sarasota-Bradenton-Venice, FL Manatee County, FL Sarasota County, FL	0.9933
42340	Savannah, GA Bryan County, GA Chatham County, GA Effingham County, GA	0.9131
42540	Scranton--Wilkes-Barre, PA Lackawanna County, PA Luzerne County, PA Wyoming County, PA	0.8457
42644	Seattle-Bellevue-Everett, WA	1.1572

CBSA Code	Urban Area (Constituent Counties)	Wage Index
	King County, WA Snohomish County, WA	
42680	Sebastian-Vero Beach, FL	0.9412
43100	Sheboygan, WI Sheboygan County, WI	0.8975
43300	Sherman-Denison, TX Grayson County, TX	0.8320
43340	Shreveport-Bossier City, LA Bossier Parish, LA Caddo Parish, LA De Soto Parish, LA	0.8476
43580	Sioux City, IA-NE-SD Woodbury County, IA Dakota County, NE Dixon County, NE Union County, SD	0.9251
43620	Sioux Falls, SD Lincoln County, SD McCook County, SD Minnehaha County, SD Turner County, SD	0.9563
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN Cass County, MI	0.9617
43900	Spartanburg, SC Spartanburg County, SC	0.9422
44060	Spokane, WA Spokane County, WA	1.0455
44100	Springfield, IL Menard County, IL Sangamon County, IL	0.8944
44140	Springfield, MA Franklin County, MA	1.0366

CBSA Code	Urban Area (Constituent Counties)	Wage Index
	Hampden County, MA Hampshire County, MA	
44180	Springfield, MO Christian County, MO Dallas County, MO Greene County, MO Polk County, MO Webster County, MO	0.8695
44220	Springfield, OH Clark County, OH	0.8694
44300	State College, PA Centre County, PA	0.8768
44700	Stockton, CA San Joaquin County, CA	1.1855
44940	Sumter, SC Sumter County, SC	0.8599
45060	Syracuse, NY Madison County, NY Onondaga County, NY Oswego County, NY	0.9910
45104	Tacoma, WA Pierce County, WA	1.1055
45220	Tallahassee, FL Gadsden County, FL Jefferson County, FL Leon County, FL Wakulla County, FL	0.9025
45300	Tampa-St. Petersburg-Clearwater, FL Hernando County, FL Hillsborough County, FL Pasco County, FL Pinellas County, FL	0.9020

CBSA Code	Urban Area (Constituent Counties)	Wage Index
45460	Terre Haute, IN Clay County, IN Sullivan County, IN Vermillion County, IN Vigo County, IN	0.8805
45500	Texarkana, TX-Texarkana, AR Miller County, AR Bowie County, TX	0.7770
45780	Toledo, OH Fulton County, OH Lucas County, OH Ottawa County, OH Wood County, OH	0.9431
45820	Topeka, KS Jackson County, KS Jefferson County, KS Osage County, KS Shawnee County, KS Wabaunsee County, KS	0.8538
45940	Trenton-Ewing, NJ Mercer County, NJ	1.0699
46060	Tucson, AZ Pima County, AZ	0.9245
46140	Tulsa, OK Creek County, OK Okmulgee County, OK Osage County, OK Pawnee County, OK Rogers County, OK Tulsa County, OK Wagoner County, OK	0.8340

CBSA Code	Urban Area (Constituent Counties)	Wage Index
46220	Tuscaloosa, AL Greene County, AL Hale County, AL Tuscaloosa County, AL	0.8303
46340	Tyler, TX Smith County, TX	0.9114
46540	Utica-Rome, NY Herkimer County, NY Oneida County, NY	0.8486
46660	Valdosta, GA Brooks County, GA Echols County, GA Lanier County, GA Lowndes County, GA	0.8098
46700	Vallejo-Fairfield, CA Solano County, CA	1.4666
47020	Victoria, TX Calhoun County, TX Goliad County, TX Victoria County, TX	0.8302

CBSA Code	Urban Area (Constituent Counties)	Wage Index
47220	Vineland-Millville-Bridgeton, NJ Cumberland County, NJ	1.0133
47260	Virginia Beach-Norfolk-Newport News, VA-NC Currituck County, NC Gloucester County, VA Isle of Wight County, VA James City County, VA Mathews County, VA Surry County, VA York County, VA Chesapeake City, VA Hampton City, VA Newport News City, VA Norfolk City, VA Poquoson City, VA Portsmouth City, VA Suffolk City, VA Virginia Beach City, VA Williamsburg City, VA	0.8818
47300	Visalia-Porterville, CA Tulare County, CA	1.0091
47380	Waco, TX McLennan County, TX	0.8518
47580	Warner Robins, GA Houston County, GA	0.9128
47644	Warren-Farmington Hills-Troy, MI Lapeer County, MI Livingston County, MI Macomb County, MI Oakland County, MI St. Clair County, MI	1.0001

CBSA Code	Urban Area (Constituent Counties)	Wage Index
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV District of Columbia, DC Calvert County, MD Charles County, MD Prince George's County, MD Arlington County, VA Clarke County, VA Fairfax County, VA Fauquier County, VA Loudoun County, VA Prince William County, VA Spotsylvania County, VA Stafford County, VA Warren County, VA Alexandria City, VA Fairfax City, VA Falls Church City, VA Fredericksburg City, VA Manassas City, VA Manassas Park City, VA Jefferson County, WV	1.0855
47940	Waterloo-Cedar Falls, IA Black Hawk County, IA Bremer County, IA Grundy County, IA	0.8519
48140	Wausau, WI Marathon County, WI	0.9679
48260	Weirton-Steubenville, WV-OH Jefferson County, OH Brooke County, WV Hancock County, WV	0.7924

CBSA Code	Urban Area (Constituent Counties)	Wage Index
48300	Wenatchee, WA Chelan County, WA Douglas County, WA	1.1469
48424	West Palm Beach-Boca Raton-Boynton Beach, FL Palm Beach County, FL	0.9728
48540	Wheeling, WV-OH Belmont County, OH Marshall County, WV Ohio County, WV	0.6961
48620	Wichita, KS Butler County, KS Harvey County, KS Sedgwick County, KS Sumner County, KS	0.9062
48660	Wichita Falls, TX Archer County, TX Clay County, TX Wichita County, TX	0.7920
48700	Williamsport, PA Lycoming County, PA	0.8043
48864	Wilmington, DE-MD-NJ New Castle County, DE Cecil County, MD Salem County, NJ	1.0824
48900	Wilmington, NC Brunswick County, NC New Hanover County, NC Pender County, NC	0.9410
49020	Winchester, VA-WV Frederick County, VA Winchester City, VA Hampshire County, WV	0.9913

CBSA Code	Urban Area (Constituent Counties)	Wage Index
49180	Winston-Salem, NC Davie County, NC Forsyth County, NC Stokes County, NC Yadkin County, NC	0.9118
49340	Worcester, MA Worcester County, MA	1.1287
49420	Yakima, WA Yakima County, WA	1.0267
49500	Yauco, PR Guánica Municipio, PR Guayanilla Municipio, PR Peñuelas Municipio, PR Yauco Municipio, PR	0.3284
49620	York-Hanover, PA York County, PA	0.9359
49660	Youngstown-Warren-Boardman, OH-PA Mahoning County, OH Trumbull County, OH Mercer County, PA	0.9002
49700	Yuba City, CA Sutter County, CA Yuba County, CA	1.0756
49740	Yuma, AZ Yuma County, AZ	0.9488

[2]At this time, there are no hospitals in these urban areas on which to base a wage index. Therefore, the urban wage index value is based on the average wage index of all urban areas within the State.

ADDENDUM C. - COMPARISON OF THE CY 2007 HH PPS WAGE INDEX AND THE CY 2008 HH PPS WAGE INDEX

CBSA Code	Nonurban Area	CY07 Wage Index	CY08 Wage Index	Percent Change CY07-CY08
01	Alabama	0.7591	0.7533	-0.76
02	Alaska	1.0661	1.2109	13.58
03	Arizona	0.8908	0.8479	-4.82
04	Arkansas	0.7307	0.7371	0.88
05	California	1.1454	1.2023	4.97
06	Colorado	0.9325	0.9704	4.06
07	Connecticut	1.1709	1.1283	-3.64
08	Delaware	0.9705	0.9727	0.23
10	Florida	0.8594	0.8465	-1.50
11	Georgia	0.7593	0.7659	0.87
12	Hawaii	1.0448	1.0612	1.57
13	Idaho	0.8120	0.7920	-2.46
14	Illinois	0.8320	0.8335	0.18
15	Indiana	0.8538	0.8576	0.45
16	Iowa	0.8681	0.8566	-1.32
17	Kansas	0.7998	0.7981	-0.21
18	Kentucky	0.7768	0.7793	0.32
19	Louisiana	0.7438	0.7373	-0.87
20	Maine	0.8443	0.8476	0.39
21	Maryland	0.8926	0.9034	1.21
22	Massachusetts	1.1661	1.1644	-0.15
23	Michigan	0.9062	0.8953	-1.20
24	Minnesota	0.9153	0.9079	-0.81
25	Mississippi	0.7738	0.7700	-0.49
26	Missouri	0.7927	0.7930	0.04
27	Montana	0.8590	0.8379	-2.46
28	Nebraska	0.8677	0.8849	1.98
29	Nevada	0.8944	0.9272	3.67
30	New Hampshire	1.0853	1.0863	0.09
31	New Jersey	------	------	------
32	New Mexico	0.8332	0.8940	7.30
33	New York	0.8232	0.8268	0.44
34	North Carolina	0.8588	0.8603	0.17
35	North Dakota	0.7215	0.7182	-0.46
36	Ohio	0.8658	0.8714	0.65
37	Oklahoma	0.7629	0.7492	-1.80
38	Oregon	0.9753	0.9906	1.57
39	Pennsylvania	0.8320	0.8385	0.78
40	Puerto Rico	0.4047	0.4047	0.00
41	Rhode Island	------	------	------
42	South Carolina	0.8566	0.8656	1.05

CBSA Code	Nonurban Area	CY07 Wage Index	CY08 Wage Index	Percent Change CY07-CY08
43	South Dakota	0.8480	0.8549	0.81
44	Tennessee	0.7827	0.7723	-1.33
45	Texas	0.7965	0.7968	0.04
46	Utah	0.8140	0.8116	-0.29
47	Vermont	0.9744	0.9919	1.80
48	Virgin Islands	0.8467	0.6830	-19.33
49	Virginia	0.7940	0.7896	-0.55
50	Washington	1.0263	1.0259	-0.04
51	West Virginia	0.7607	0.7454	-2.01
52	Wisconsin	0.9553	0.9667	1.19
53	Wyoming	0.9295	0.9287	-0.09
65	Guam	0.9611	0.9611	0.00

CBSA Code	Urban Area	CY07 Wage Index	CY08 Wage Index	Percent Change CY07-CY08
10180	Abilene, TX	0.8000	0.7957	-0.54
10380	Aguadilla-Isabela-San Sebastián, PR	0.3915	0.3448	-11.93
10420	Akron, OH	0.8654	0.8794	1.62
10500	Albany, GA	0.8991	0.8514	-5.31
10580	Albany-Schenectady-Troy, NY	0.8720	0.8588	-1.51
10740	Albuquerque, NM	0.9458	0.9554	1.02
10780	Alexandria, LA	0.8006	0.7979	-0.34
10900	Allentown-Bethlehem-Easton, PA-NJ	0.9947	0.9865	-0.82
11020	Altoona, PA	0.8812	0.8618	-2.20
11100	Amarillo, TX	0.9169	0.9116	-0.58
11180	Ames, IA	0.9760	1.0046	2.93
11260	Anchorage, AK	1.2023	1.1913	-0.91
11300	Anderson, IN	0.8681	0.8827	1.68
11340	Anderson, SC	0.9017	0.9086	0.77
11460	Ann Arbor, MI	1.0826	1.0539	-2.65
11500	Anniston-Oxford, AL	0.7770	0.7926	2.01
11540	Appleton, WI	0.9455	0.9598	1.51
11700	Asheville, NC	0.9216	0.9185	-0.34
12020	Athens-Clarke County, GA	0.9856	1.0517	6.71
12060	Atlanta-Sandy Springs-Marietta, GA	0.9762	0.9828	0.68
12100	Atlantic City, NJ	1.1831	1.2198	3.10
12220	Auburn-Opelika, AL	0.8096	0.8090	-0.07
12260	Augusta-Richmond County, GA-SC	0.9667	0.9645	-0.23
12420	Austin-Round Rock, TX	0.9344	0.9544	2.14
12540	Bakersfield, CA	1.0725	1.1051	3.04
12580	Baltimore-Towson, MD	1.0088	1.0134	0.46
12620	Bangor, ME	0.9711	0.9978	2.75
12700	Barnstable Town, MA	1.2539	1.2603	0.51
12940	Baton Rouge, LA	0.8084	0.8034	-0.62
12980	Battle Creek, MI	0.9762	1.0179	4.27
13020	Bay City, MI	0.9251	0.8897	-3.83
13140	Beaumont-Port Arthur, TX	0.8595	0.8531	-0.74
13380	Bellingham, WA	1.1104	1.1474	3.33
13460	Bend, OR	1.0743	1.0942	1.85
13644	Bethesda-Frederick-Gaithersburg, MD	1.0903	1.0511	-3.60
13740	Billings, MT	0.8712	0.8666	-0.53

CBSA Code	Urban Area	CY07 Wage Index	CY08 Wage Index	Percent Change CY07-CY08
13780	Binghamton, NY	0.8786	0.8949	1.86
13820	Birmingham-Hoover, AL	0.8894	0.8898	0.04
13900	Bismarck, ND	0.7240	0.7225	-0.21
13980	Blacksburg-Christiansburg-Radford, VA	0.8213	0.8192	-0.26
14020	Bloomington, IN	0.8533	0.8915	4.48
14060	Bloomington-Normal, IL	0.8944	0.9325	4.26
14260	Boise City-Nampa, ID	0.9401	0.9465	0.68
14484	Boston-Quincy, MA	1.1679	1.1639	-0.34
14500	Boulder, CO	1.0350	1.0426	0.73
14540	Bowling Green, KY	0.8148	0.8159	0.14
14740	Bremerton-Silverdale, WA	1.0913	1.0904	-0.08
14860	Bridgeport-Stamford-Norwalk, CT	1.2659	1.2735	0.60
15180	Brownsville-Harlingen, TX	0.9430	0.8914	-5.47
15260	Brunswick, GA	1.0164	0.9475	-6.78
15380	Buffalo-Niagara Falls, NY	0.9424	0.9568	1.53
15500	Burlington, NC	0.8674	0.8747	0.84
15540	Burlington-South Burlington, VT	0.9474	0.9660	1.96
15764	Cambridge-Newton-Framingham, MA	1.0970	1.1215	2.23
15804	Camden, NJ	1.0392	1.0411	0.18
15940	Canton-Massillon, OH	0.9031	0.8935	-1.06
15980	Cape Coral-Fort Myers, FL	0.9342	0.9396	0.58
16180	Carson City, NV	1.0025	0.9353	-6.70
16220	Casper, WY	0.9145	0.9385	2.62
16300	Cedar Rapids, IA	0.8888	0.8852	-0.41
16580	Champaign-Urbana, IL	0.9644	0.9392	-2.61
16620	Charleston, WV	0.8542	0.8289	-2.96
16700	Charleston-North Charleston, SC	0.9145	0.9124	-0.23
16740	Charlotte-Gastonia-Concord, NC-SC	0.9554	0.9520	-0.36
16820	Charlottesville, VA	1.0125	0.9277	-8.38
16860	Chattanooga, TN-GA	0.8948	0.8994	0.51
16940	Cheyenne, WY	0.9060	0.9308	2.74
16974	Chicago-Naperville-Joliet, IL	1.0751	1.0735	-0.15
17020	Chico, CA	1.1053	1.1290	2.14
17140	Cincinnati-Middletown, OH-KY-IN	0.9601	0.9784	1.91
17300	Clarksville, TN-KY	0.8436	0.8251	-2.19

CBSA Code	Urban Area	CY07 Wage Index	CY08 Wage Index	Percent Change CY07-CY08
17420	Cleveland, TN	0.8109	0.8052	-0.70
17460	Cleveland-Elyria-Mentor, OH	0.9400	0.9339	-0.65
17660	Coeur d'Alene, ID	0.9344	0.9532	2.01
17780	College Station-Bryan, TX	0.9045	0.9358	3.46
17820	Colorado Springs, CO	0.9701	0.9719	0.19
17860	Columbia, MO	0.8542	0.8658	1.36
17900	Columbia, SC	0.8933	0.8800	-1.49
17980	Columbus, GA-AL	0.8239	0.8729	5.95
18020	Columbus, IN	0.9318	0.9537	2.35
18140	Columbus, OH	1.0107	1.0085	-0.22
18580	Corpus Christi, TX	0.8564	0.8588	0.28
18700	Corvallis, OR	1.1546	1.0959	-5.08
19060	Cumberland, MD-WV	0.8446	0.8294	-1.80
19124	Dallas-Plano-Irving, TX	1.0075	0.9915	-1.59
19140	Dalton, GA	0.9093	0.8760	-3.66
19180	Danville, IL	0.9266	0.8957	-3.33
19260	Danville, VA	0.8451	0.8240	-2.50
19340	Davenport-Moline-Rock Island, IA-IL	0.8846	0.8830	-0.18
19380	Dayton, OH	0.9037	0.9190	1.69
19460	Decatur, AL	0.8159	0.7885	-3.36
19500	Decatur, IL	0.8172	0.8074	-1.20
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.9263	0.9031	-2.50
19740	Denver-Aurora, CO	1.0930	1.0718	-1.94
19780	Des Moines, IA	0.9214	0.9226	0.13
19804	Detroit-Livonia-Dearborn, MI	1.0281	0.9999	-2.74
20020	Dothan, AL	0.7381	0.7270	-1.50
20100	Dover, DE	0.9847	1.0099	2.56
20220	Dubuque, IA	0.9133	0.9058	-0.82
20260	Duluth, MN-WI	1.0042	0.9975	-0.67
20500	Durham, NC	0.9826	0.9816	-0.10
20740	Eau Claire, WI	0.9630	0.9475	-1.61
20764	Edison, NJ	1.1190	1.1181	-0.08
20940	El Centro, CA	0.9076	0.8914	-1.78
21060	Elizabethtown, KY	0.8697	0.8711	0.16
21140	Elkhart-Goshen, IN	0.9426	0.9611	1.96
21300	Elmira, NY	0.8240	0.8264	0.29
21340	El Paso, TX	0.9053	0.8989	-0.71
21500	Erie, PA	0.8827	0.8495	-3.76
21660	Eugene-Springfield, OR	1.0876	1.0932	0.51

CBSA Code	Urban Area	CY07 Wage Index	CY08 Wage Index	Percent Change CY07-CY08
21780	Evansville, IN-KY	0.9071	0.8662	-4.51
21820	Fairbanks, AK	1.1059	1.1050	-0.08
21940	Fajardo, PR	0.4036	0.4375	8.40
22020	Fargo, ND-MN	0.8250	0.8042	-2.52
22140	Farmington, NM	0.8589	0.9587	11.62
22180	Fayetteville, NC	0.8945	0.9368	4.73
22220	Fayetteville-Springdale-Rogers, AR-MO	0.8865	0.8742	-1.39
22380	Flagstaff, AZ	1.1601	1.1687	0.74
22420	Flint, MI	1.0969	1.1220	2.29
22500	Florence, SC	0.8388	0.8249	-1.66
22520	Florence-Muscle Shoals, AL	0.7843	0.7680	-2.08
22540	Fond du Lac, WI	1.0063	0.9667	-3.94
22660	Fort Collins-Loveland, CO	0.9544	0.9897	3.70
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach,FL	1.0133	1.0229	0.95
22900	Fort Smith, AR-OK	0.7731	0.7933	2.61
23020	Fort Walton Beach-Crestview-Destin, FL	0.8643	0.8743	1.16
23060	Fort Wayne, IN	0.9517	0.9284	-2.45
23104	Fort Worth-Arlington, TX	0.9569	0.9693	1.30
23420	Fresno, CA	1.0943	1.0993	0.46
23460	Gadsden, AL	0.8066	0.8159	1.15
23540	Gainesville, FL	0.9277	0.9196	-0.87
23580	Gainesville, GA	0.8958	0.9216	2.88
23844	Gary, IN	0.9334	0.9224	-1.18
24020	Glens Falls, NY	0.8324	0.8256	-0.82
24140	Goldsboro, NC	0.9171	0.9288	1.28
24220	Grand Forks, ND-MN	0.7949	0.7881	-0.86
24300	Grand Junction, CO	0.9668	0.9864	2.03
24340	Grand Rapids-Wyoming, MI	0.9455	0.9315	-1.48
24500	Great Falls, MT	0.8598	0.8675	0.90
24540	Greeley, CO	0.9602	0.9658	0.58
24580	Green Bay, WI	0.9787	0.9727	-0.61
24660	Greensboro-High Point, NC	0.8866	0.9010	1.62
24780	Greenville, NC	0.9432	0.9402	-0.32
24860	Greenville, SC	0.9804	0.9860	0.57
25020	Guayama, PR	0.3235	0.3064	-5.29
25060	Gulfport-Biloxi, MS	0.8915	0.8773	-1.59
25180	Hagerstown-Martinsburg, MD-WV	0.9038	0.9013	-0.28
25260	Hanford-Corcoran, CA	1.0282	1.0499	2.11

CBSA Code	Urban Area	CY07 Wage Index	CY08 Wage Index	Percent Change CY07-CY08
25420	Harrisburg-Carlisle, PA	0.9402	0.9280	-1.30
25500	Harrisonburg, VA	0.9073	0.8867	-2.27
25540	Hartford-West Hartford-East Hartford, CT	1.0894	1.0937	0.39
25620	Hattiesburg, MS	0.7430	0.7366	-0.86
25860	Hickory-Lenoir-Morganton, NC	0.9010	0.9028	0.20
25980	Hinesville-Fort Stewart, GA	0.9178	0.9187	0.10
26100	Holland-Grand Haven, MI	0.9163	0.9006	-1.71
26180	Honolulu, HI	1.1096	1.1556	4.15
26300	Hot Springs, AR	0.8782	0.9109	3.72
26380	Houma-Bayou Cane-Thibodaux, LA	0.8082	0.7892	-2.35
26420	Houston-Baytown-Sugar Land, TX	1.0008	0.9939	-0.69
26580	Huntington-Ashland, WV-KY-OH	0.8997	0.9041	0.49
26620	Huntsville, AL	0.9007	0.9146	1.54
26820	Idaho Falls, ID	0.9088	0.9264	1.94
26900	Indianapolis, IN	0.9895	0.9844	-0.52
26980	Iowa City, IA	0.9714	0.9568	-1.50
27060	Ithaca, NY	0.9928	0.9630	-3.00
27100	Jackson, MI	0.9560	0.9329	-2.42
27140	Jackson, MS	0.8271	0.8011	-3.14
27180	Jackson, TN	0.8853	0.8676	-2.00
27260	Jacksonville, FL	0.9165	0.9021	-1.57
27340	Jacksonville, NC	0.8231	0.8079	-1.85
27500	Janesville, WI	0.9655	0.9702	0.49
27620	Jefferson City, MO	0.8332	0.8478	1.75
27740	Johnson City, TN	0.8043	0.7677	-4.55
27780	Johnstown, PA	0.8620	0.7543	-12.49
27860	Jonesboro, AR	0.7662	0.7790	1.67
27900	Joplin, MO	0.8605	0.8951	4.02
28020	Kalamazoo-Portage, MI	1.0704	1.0433	-2.53
28100	Kankakee-Bradley, IL	1.0083	1.0238	1.54
28140	Kansas City, MO-KS	0.9495	0.9504	0.09
28420	Kennewick-Richland-Pasco, WA	1.0343	1.0075	-2.59
28660	Killeen-Temple-Fort Hood, TX	0.8901	0.8249	-7.33
28700	Kingsport-Bristol-Bristol, TN-VA	0.7985	0.7658	-4.10

CBSA Code	Urban Area	CY07 Wage Index	CY08 Wage Index	Percent Change CY07-CY08
28740	Kingston, NY	0.9367	0.9556	2.02
28940	Knoxville, TN	0.8249	0.8036	-2.58
29020	Kokomo, IN	0.9669	0.9591	-0.81
29100	La Crosse, WI-MN	0.9426	0.9685	2.75
29140	Lafayette, IN	0.8931	0.8869	-0.69
29180	Lafayette, LA	0.8289	0.8247	-0.51
29340	Lake Charles, LA	0.7914	0.7777	-1.73
29404	Lake County-Kenosha County, IL-WI	1.0570	1.0315	-2.41
29420	Lake Havasu City-Kingman, AZ	------	0.9333	------
29460	Lakeland, FL	0.8879	0.8661	-2.46
29540	Lancaster, PA	0.9589	0.9252	-3.51
29620	Lansing-East Lansing, MI	1.0088	1.0119	0.31
29700	Laredo, TX	0.7811	0.8093	3.61
29740	Las Cruces, NM	0.9273	0.8676	-6.44
29820	Las Vegas-Paradise, NV	1.1430	1.1799	3.23
29940	Lawrence, KS	0.8365	0.8227	-1.65
30020	Lawton, OK	0.8065	0.8025	-0.50
30140	Lebanon, PA	0.8679	0.8192	-5.61
30300	Lewiston, ID-WA	0.9853	0.9454	-4.05
30340	Lewiston-Auburn, ME	0.9126	0.9193	0.73
30460	Lexington-Fayette, KY	0.9181	0.9191	0.11
30620	Lima, OH	0.9042	0.9424	4.22
30700	Lincoln, NE	1.0092	1.0051	-0.41
30780	Little Rock-North Little Rock, AR	0.8890	0.8863	-0.30
30860	Logan, UT-ID	0.9022	0.9183	1.78
30980	Longview, TX	0.8788	0.8717	-0.81
31020	Longview, WA	1.0011	1.0827	8.15
31084	Los Angeles-Long Beach-Glendale, CA	1.1760	1.1771	0.09
31140	Louisville, KY-IN	0.9118	0.9065	-0.58
31180	Lubbock, TX	0.8613	0.8680	0.78
31340	Lynchburg, VA	0.8694	0.8732	0.44
31420	Macon, GA	0.9519	0.9541	0.23
31460	Madera, CA	0.8154	0.8069	-1.04
31540	Madison, WI	1.0840	1.0935	0.88
31700	Manchester-Nashua, NH	1.0243	1.0063	-1.76
31900	Mansfield, OH	0.9271	0.9271	0.00
32420	Mayagüez, PR	0.3848	0.3711	-3.56
32580	McAllen-Edinburg-Pharr, TX	0.8773	0.9123	3.99
32780	Medford, OR	1.0818	1.0318	-4.62

CBSA Code	Urban Area	CY07 Wage Index	CY08 Wage Index	Percent Change CY07-CY08
32820	Memphis, TN-MS-AR	0.9373	0.9250	-1.31
32900	Merced, CA	1.1471	1.2120	5.66
33124	Miami-Miami Beach-Kendall, FL	0.9812	1.0002	1.94
33140	Michigan City-La Porte, IN	0.9118	0.8914	-2.24
33260	Midland, TX	0.9786	1.0017	2.36
33340	Milwaukee-Waukesha-West Allis, WI	1.0218	1.0214	-0.04
33460	Minneapolis-St. Paul-Bloomington, MN-WI	1.0946	1.1093	1.34
33540	Missoula, MT	0.8928	0.8953	0.28
33660	Mobile, AL	0.7913	0.8033	1.52
33700	Modesto, CA	1.1729	1.1962	1.99
33740	Monroe, LA	0.7997	0.7832	-2.06
33780	Monroe, MI	0.9707	0.9414	-3.02
33860	Montgomery, AL	0.8009	0.8088	0.99
34060	Morgantown, WV	0.8423	0.8321	-1.21
34100	Morristown, TN	0.7933	0.7388	-6.87
34580	Mount Vernon-Anacortes, WA	1.0517	1.0529	0.11
34620	Muncie, IN	0.8562	0.8214	-4.06
34740	Muskegon-Norton Shores, MI	0.9941	0.9836	-1.06
34820	Myrtle Beach-Conway-North Myrtle Beach, SC	0.8810	0.8634	-2.00
34900	Napa, CA	1.3374	1.4476	8.24
34940	Naples-Marco Island, FL	0.9941	0.9487	-4.57
34980	Nashville-Davidson--Murfreesboro, TN	0.9847	0.9689	-1.60
35004	Nassau-Suffolk, NY	1.2662	1.2640	-0.17
35084	Newark-Union, NJ-PA	1.1892	1.1862	-0.25
35300	New Haven-Milford, CT	1.1953	1.1871	-0.69
35380	New Orleans-Metairie-Kenner, LA	0.8831	0.8897	0.75
35644	New York-Wayne-White Plains, NY-NJ	1.3177	1.3115	-0.47
35660	Niles-Benton Harbor, MI	0.8915	0.9141	2.54
35980	Norwich-New London, CT	1.1932	1.1432	-4.19
36084	Oakland-Fremont-Hayward, CA	1.5819	1.5685	-0.85
36100	Ocala, FL	0.8867	0.8627	-2.71
36140	Ocean City, NJ	1.0472	1.0988	4.93
36220	Odessa, TX	1.0073	1.0042	-0.31
36260	Ogden-Clearfield, UT	0.8995	0.9000	0.06
36420	Oklahoma City, OK	0.8843	0.8815	-0.32

CBSA Code	Urban Area	CY07 Wage Index	CY08 Wage Index	Percent Change CY07-CY08
36500	Olympia, WA	1.1081	1.1512	3.89
36540	Omaha-Council Bluffs, NE-IA	0.9450	0.9561	1.17
36740	Orlando, FL	0.9452	0.9226	-2.39
36780	Oshkosh-Neenah, WI	0.9315	0.9551	2.53
36980	Owensboro, KY	0.8748	0.8652	-1.10
37100	Oxnard-Thousand Oaks-Ventura, CA	1.1546	1.1852	2.65
37340	Palm Bay-Melbourne-Titusville, FL	0.9443	0.9325	-1.25
37380	Palm Coast, FL	------	0.8945	------
37460	Panama City-Lynn Haven, FL	0.8027	0.8313	3.56
37620	Parkersburg-Marietta, WV-OH	0.7977	0.8105	1.60
37700	Pascagoula, MS	0.8215	0.8647	5.26
37764	Peabody, MA	------	1.0650	------
37860	Pensacola-Ferry Pass-Brent, FL	0.8000	0.8281	3.51
37900	Peoria, IL	0.8982	0.9299	3.53
37964	Philadelphia, PA	1.0996	1.0925	-0.65
38060	Phoenix-Mesa-Scottsdale, AZ	1.0287	1.0264	-0.22
38220	Pine Bluff, AR	0.8383	0.7839	-6.49
38300	Pittsburgh, PA	0.8674	0.8525	-1.72
38340	Pittsfield, MA	1.0266	1.0091	-1.70
38540	Pocatello, ID	0.9400	0.9465	0.69
38660	Ponce, PR	0.4842	0.4450	-8.10
38860	Portland-South Portland-Biddeford, ME	0.9908	1.0042	1.35
38900	Portland-Vancouver-Beaverton, OR-WA	1.1416	1.1498	0.72
38940	Port St. Lucie-Fort Pierce, FL	0.9833	1.0016	1.86
39100	Poughkeepsie-Newburgh-Middletown, NY	1.0911	1.0982	0.65
39140	Prescott, AZ	0.9836	1.0020	1.87
39300	Providence-New Bedford-Fall River, RI-MA	1.0783	1.0685	-0.91
39340	Provo-Orem, UT	0.9537	0.9557	0.21
39380	Pueblo, CO	0.8753	0.8851	1.12
39460	Punta Gorda, FL	0.9405	0.9254	-1.61
39540	Racine, WI	0.9356	0.9498	1.52
39580	Raleigh-Cary, NC	0.9864	0.9839	-0.25

CBSA Code	Urban Area	CY07 Wage Index	CY08 Wage Index	Percent Change CY07-CY08
39660	Rapid City, SD	0.8833	0.8811	-0.25
39740	Reading, PA	0.9622	0.9356	-2.76
39820	Redding, CA	1.3198	1.3541	2.60
39900	Reno-Sparks, NV	1.1963	1.0959	-8.39
40060	Richmond, VA	0.9177	0.9425	2.70
40140	Riverside-San Bernardino-Ontario, CA	1.0904	1.1100	1.80
40220	Roanoke, VA	0.8647	0.8691	0.51
40340	Rochester, MN	1.1408	1.0755	-5.72
40380	Rochester, NY	0.8994	0.8858	-1.51
40420	Rockford, IL	0.9989	0.9814	-1.75
40484	Rockingham County-Strafford County, NH	1.0159	1.0111	-0.47
40580	Rocky Mount, NC	0.8854	0.9001	1.66
40660	Rome, GA	0.9193	0.9042	-1.64
40900	Sacramento--Arden-Arcade--Roseville, CA	1.3372	1.3505	0.99
40980	Saginaw-Saginaw Township North, MI	0.8874	0.8812	-0.70
41060	St. Cloud, MN	1.0362	1.0549	1.80
41100	St. George, UT	0.9265	0.9358	1.00
41140	St. Joseph, MO-KS	1.0118	0.8762	-13.40
41180	St. Louis, MO-IL	0.9005	0.9024	0.21
41420	Salem, OR	1.0438	1.0572	1.28
41500	Salinas, CA	1.4337	1.4775	3.06
41540	Salisbury, MD	0.8953	0.8994	0.46
41620	Salt Lake City, UT	0.9402	0.9399	-0.03
41660	San Angelo, TX	0.8362	0.8579	2.60
41700	San Antonio, TX	0.8844	0.8834	-0.11
41740	San Diego-Carlsbad-San Marcos, CA	1.1354	1.1492	1.22
41780	Sandusky, OH	0.9302	0.8822	-5.16
41884	San Francisco-San Mateo-Redwood City, CA	1.5165	1.5195	0.20
41900	San Germán-Cabo Rojo, PR	0.4885	0.4729	-3.19
41940	San Jose-Sunnyvale-Santa Clara, CA	1.5543	1.5735	1.24
41980	San Juan-Caguas-Guaynabo, PR	0.4452	0.4528	1.71
42020	San Luis Obispo-Paso Robles, CA	1.1598	1.2488	7.67
42044	Santa Ana-Anaheim-Irvine, CA	1.1473	1.1766	2.55

CBSA Code	Urban Area	CY07 Wage Index	CY08 Wage Index	Percent Change CY07-CY08
42060	Santa Barbara-Santa Maria-Goleta, CA	1.1091	1.1714	5.62
42100	Santa Cruz-Watsonville, CA	1.5457	1.6122	4.30
42140	Santa Fe, NM	1.0824	1.0734	-0.83
42220	Santa Rosa-Petaluma, CA	1.4464	1.4696	1.60
42260	Sarasota-Bradenton-Venice, FL	0.9868	0.9933	0.66
42340	Savannah, GA	0.9351	0.9131	-2.35
42540	Scranton--Wilkes-Barre, PA	0.8347	0.8457	1.32
42644	Seattle-Bellevue-Everett, WA	1.1434	1.1572	1.21
42680	Sebastian-Vero Beach, FL	0.9573	0.9412	-1.68
43100	Sheboygan, WI	0.9026	0.8975	-0.57
43300	Sherman-Denison, TX	0.8502	0.8320	-2.14
43340	Shreveport-Bossier City, LA	0.8865	0.8476	-4.39
43580	Sioux City, IA-NE-SD	0.9200	0.9251	0.55
43620	Sioux Falls, SD	0.9559	0.9563	0.04
43780	South Bend-Mishawaka, IN-MI	0.9842	0.9617	-2.29
43900	Spartanburg, SC	0.9174	0.9422	2.70
44060	Spokane, WA	1.0447	1.0455	0.08
44100	Springfield, IL	0.8890	0.8944	0.61
44140	Springfield, MA	1.0079	1.0366	2.85
44180	Springfield, MO	0.8469	0.8695	2.67
44220	Springfield, OH	0.8593	0.8694	1.18
44300	State College, PA	0.8784	0.8768	-0.18
44700	Stockton, CA	1.1442	1.1855	3.61
44940	Sumter, SC	0.8083	0.8599	6.38
45060	Syracuse, NY	0.9691	0.9910	2.26
45104	Tacoma, WA	1.0789	1.1055	2.47
45220	Tallahassee, FL	0.8942	0.9025	0.93
45300	Tampa-St. Petersburg-Clearwater,FL	0.9144	0.9020	-1.36
45460	Terre Haute, IN	0.8765	0.8805	0.46
45500	Texarkana, TX-Texarkana, AR	0.8104	0.7770	-4.12
45780	Toledo, OH	0.9586	0.9431	-1.62
45820	Topeka, KS	0.8730	0.8538	-2.20
45940	Trenton-Ewing, NJ	1.0835	1.0699	-1.26
46060	Tucson, AZ	0.9202	0.9245	0.47
46140	Tulsa, OK	0.8103	0.8340	2.92
46220	Tuscaloosa, AL	0.8542	0.8303	-2.80

CBSA Code	Urban Area	CY07 Wage Index	CY08 Wage Index	Percent Change CY07-CY08
46340	Tyler, TX	0.8811	0.9114	3.44
46540	Utica-Rome, NY	0.8396	0.8486	1.07
46660	Valdosta, GA	0.8369	0.8098	-3.24
46700	Vallejo-Fairfield, CA	1.5137	1.4666	-3.11
47020	Victoria, TX	0.8560	0.8302	-3.01
47220	Vineland-Millville-Bridgeton, NJ	0.9832	1.0133	3.06
47260	Virginia Beach-Norfolk-Newport News, VA-NC	0.8790	0.8818	0.32
47300	Visalia-Porterville, CA	0.9968	1.0091	1.23
47380	Waco, TX	0.8633	0.8518	-1.33
47580	Warner Robins, GA	0.8380	0.9128	8.93
47644	Warren-Farmington Hills-Troy, MI	1.0054	1.0001	-0.53
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	1.1054	1.0855	-1.80
47940	Waterloo-Cedar Falls, IA	0.8408	0.8519	1.32
48140	Wausau, WI	0.9722	0.9679	-0.44
48260	Weirton-Steubenville, WV-OH	0.8063	0.7924	-1.72
48300	Wenatchee, WA	1.0346	1.1469	10.85
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	0.9649	0.9728	0.82
48540	Wheeling, WV-OH	0.7010	0.6961	-0.70
48620	Wichita, KS	0.9063	0.9062	-0.01
48660	Wichita Falls, TX	0.8311	0.7920	-4.70
48700	Williamsport, PA	0.8139	0.8043	-1.18
48864	Wilmington, DE-MD-NJ	1.0684	1.0824	1.31
48900	Wilmington, NC	0.9835	0.9410	-4.32
49020	Winchester, VA-WV	1.0091	0.9913	-1.76
49180	Winston-Salem, NC	0.9276	0.9118	-1.70
49340	Worcester, MA	1.0722	1.1287	5.27
49420	Yakima, WA	0.9847	1.0267	4.27
49500	Yauco, PR	0.3854	0.3284	-14.79
49620	York-Hanover, PA	0.9397	0.9359	-0.40
49660	Youngstown-Warren-Boardman, OH-PA	0.8802	0.9002	2.27
49700	Yuba City, CA	1.0730	1.0756	0.24
49740	Yuma, AZ	0.9109	0.9488	4.16

[FR Doc. 07–4184 Filed 8–22–07; 4:00 pm]
BILLING CODE 4120–01–C

Federal Register

Wednesday,
August 29, 2007

Part III

Federal Trade Commission

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and other Products Required Under the Energy Policy and Conservation Act (“Appliance Labeling Rule”); Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 305

[RIN 3084-AB03]

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Final rule.

SUMMARY: Section 137 of the Energy Policy Act of 2005 (Pub. L. 109-58) requires the Commission to conduct a rulemaking to examine the effectiveness of current energy efficiency labeling requirements for consumer products covered by the Energy Policy and Conservation Act. The Commission has completed the required rulemaking and is publishing final amendments to the Appliance Labeling Rule (16 CFR Part 305).

DATES: The amendments published in this notice will become effective February 29, 2008.

ADDRESSES: Requests for copies of this document should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including this document, are available at *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326-2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room NJ-2122, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Table Of Contents

I. Introduction
II. Energy Policy and Conservation Act Labeling Requirements
III. FTC's Appliance Labeling Rule
IV. Procedural History
V. Section-by-Section Description of Final Amendments
VI. Effectiveness and Benefits of the Current Label
VII. Discussion of Comments and Final Amendments
A. New Label Designs
B. ENERGY STAR Logo Placement
C. Requirements for Heating and Cooling Equipment
D. Refrigerator Categories
E. Revisions to Ranges of Comparability and Energy Price Information
F. MEF Descriptor for Clothes Washers
G. Placement of the EnergyGuide Label on Covered Products
H. Catalog Requirements
I. Fuel Cycle Energy Consumption
J. Clothes Washer Labels
L. Television Labeling
M. Miscellaneous Amendments and Issues
VIII. Paperwork Reduction Act
IX.Regulatory Flexibility Act
X. Final Rule Language

I. Introduction

Section 137 of the Energy Policy Act of 2005 (EPACT 2005) (Pub. L. 109-58) amends the Energy Policy and Conservation Act of 1975 (EPCA)[1] to require the Commission to initiate a rulemaking to consider ''the effectiveness of the consumer products labeling program in assisting consumers in making purchasing decisions and improving energy efficiency.'' As part of this effort, the Act directs the Commission to consider ''changes to the labeling rules (including categorical labeling) that would improve the effectiveness of consumer product labels.'' The Act directs the Commission to complete the rulemaking within two years. Following that law's enactment on August 8, 2005, the Commission published an Advance Notice of Proposed Rulemaking (ANPR), held a workshop, conducted consumer research, and published a Notice of Proposed Rulemaking (NPRM).[2] Based on comments received and the FTC's own consumer research, the Commission is now publishing final amendments to the Appliance Labeling Rule (16 CFR Part 305). The amendments implement a new design for EnergyGuide labels and make several other changes to update and improve the Rule.

II. Energy Policy and Conservation Act Labeling Requirements

Section 324 of EPCA requires the FTC to prescribe labeling rules for: (1) the disclosure of estimated annual energy cost or alternative energy consumption information for a variety of products covered by the statute, including home appliances (*e.g.*, refrigerators, dishwashers, air conditioners, and furnaces), and lighting products, and (2) the disclosure of water use information for certain plumbing products.[3] Labels for appliances covered under EPCA must disclose the estimated annual operating cost of such products, as determined by the Department of Energy (DOE) test procedures (42 U.S.C. 6294(c)).[4] The Commission, however, may require a different measure of energy consumption if DOE determines that a cost disclosure is not technologically feasible, or if the Commission determines a cost disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible (42 U.S.C. 6294(c)(1)). Section 324(c) also requires that the label for appliances contain information about the range of estimated annual operating costs (or energy consumption) for covered products. The Commission may require the disclosure of energy information found on the label in any printed material displayed or distributed at the point of sale (42 U.S.C. 6294(c)(4)). In addition, the Commission may direct manufacturers to provide additional energy-related disclosures on the label (or information shipped with the product) including instructions for the maintenance, use, or repair of the covered product (42 U.S.C. 6294(c)(5)).

III. FTC's Appliance Labeling Rule

The Commission's Appliance Labeling Rule implements the requirements of EPCA by directing manufacturers to disclose energy information about major household appliances. This information enables consumers to compare the energy use or efficiency of competing models.[5] When initially published in 1979,[6] the Rule applied to eight appliance categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. Subsequently, the Commission expanded the Rule's coverage to include central air conditioners, heat pumps, fluorescent lamp ballasts, plumbing products,

[1] 42 U.S.C. 6291 *et seq.*

[2] ANPR (66 FR 66307 (Nov. 2, 2005)); Workshop Notice (71 FR 18023 (April 10, 2006)); Research Notice (71 FR 36088 (June 23, 2006)); and NPRM (72 FR 6836 (Feb. 13, 2007)).

[3] 42 U.S.C. 6294. For most products, the Commission must prescribe labeling rules unless it determines that labeling is not technologically or economically feasible (42 U.S.C. 6294(a)(1)). The statute requires labels for central air conditioners, heat pumps, furnaces, and clothes washers unless the Commission finds that labeling is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions (42 U.S.C. 6294(a)(2)(A)). Pursuant to § 6294(a)(1), the Commission previously determined not to require labeling for television sets, kitchen ranges, ovens, clothes dryers, humidifiers, dehumidifiers, and certain home heating equipment other than furnaces. *See* 44 FR 66466, 66468-66469 (Nov. 19, 1979).

[4] Section 323 of EPCA (42 U.S.C. 6293) directs DOE to develop test procedures for major household appliances. Manufacturers must follow these test procedures to determine their products' compliance with DOE's energy conservation standards (required by 42 U.S.C. 6295) and to derive the energy consumption or efficiency values to disclose on required labels.

[5] More information about the Rule can be found at: *http://www.ftc.gov/appliances.*

[6] 44 FR 66466 (Nov. 19, 1979).

lighting products, and certain types of water heaters.[7]

Under the Rule, manufacturers must disclose specific energy information about their appliances at the point of sale in the form of a yellow EnergyGuide label affixed to each unit. The information on the label also must appear in catalogs from which covered products can be ordered. Manufacturers of furnaces, central air conditioners, and heat pumps also must provide energy information in either fact sheets or an industry directory.

Required labels for appliances contain three key pieces of information. First, the labels disclose the energy consumption or energy efficiency rating of the appliance, as determined from standard DOE tests. Second, some labels include a ''range of comparability'' (published by the Commission) that shows the highest and lowest energy consumption or efficiencies for all similar models. Third, labels for most appliances must provide the product's estimated annual operating cost. Manufacturers calculate these costs using national average energy cost (*i.e.*, representative average energy cost) figures published by DOE.

The Rule contains specific requirements for the content and format of the EnergyGuide labels. Manufacturers must use a yellow label with the EnergyGuide headline and must provide information in the format and type prescribed. Additionally, manufacturers cannot place any information on the label other than that specifically allowed by the Rule. In 2000, the Commission issued an exemption allowing manufacturers to include the ''ENERGY STAR'' logo on the EnergyGuide label for covered appliances (65 FR 17554 (Apr. 3, 2000)).[8]

The Commission's Rule also requires certain reporting requirements that direct manufacturers of most covered products to file reports with the FTC both annually and when they begin manufacturing new models. These reports must contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests conducted pursuant to the DOE procedures (16 CFR § 305.8(b)). Energy information submitted pursuant to these requirements is available on the Commission's website at *http://www.ftc.gov/appliances.*

Finally, the Rule has different labeling requirements for non-appliance consumer products (16 CFR § 305.11(d), (e), & (f)). Manufacturers of showerheads, faucets, toilets, and urinals must disclose water usage information on their products, packaging, and labeling. Manufacturers of certain incandescent bulbs, spot and flood bulbs, and screw-base compact fluorescent bulbs must disclose light output in lumens, energy used in watts, voltage, average life, and number of bulbs on their packaging. They also must explain how purchasers can select the most energy efficient bulb for their needs.

IV. Procedural History

The Commission initiated this proceeding on November 2, 2005 with the publication of an ANPR that sought comments on the effectiveness of the FTC's energy labeling regulations. (70 FR 66307). The ANPR also announced that the Commission would conduct its periodic regulatory review as part of this rulemaking. In response, the Commission received 28 comments.[9] Following the receipt of ANPR comments, the Commission announced plans to conduct consumer research on various label designs to examine the effectiveness of the current label and to obtain information about alternatives (March 15, 2006 (71 FR 13398)). Based on the comments received in response to the ANPR, the Commission then conducted a Public Workshop (''Workshop'') on May 3, 2006 to discuss a variety of issues associated with the labeling program, including: (1) EnergyGuide label design, (2) refrigerator comparability ranges, (3) labels for heating and cooling equipment, and (4) television labeling. After conducting the Workshop, the Commission received ten additional written comments.[10]

Using information adduced at the workshop, the Commission published an additional notice containing details about its planned consumer research project, including drafts of the appliance labels that the Commission planned to use in the project. (June 23, 2006 (71 FR 36088)). The Commission received eight comments in response to that notice.[11] Armed with all this information, the FTC staff conducted consumer research on various label designs in October 2006.

Based on all the comments, the Workshop, and the FTC's consumer research, the Commission published a NPRM.[12] The NPRM contained a variety of proposed amendments, including a new EnergyGuide label design and significant changes to the disclosure requirements for heating and cooling equipment. The NPRM also contained detailed information about the design and the results of the FTC's consumer research.[13] The Commission received 17 comments in response to the NPRM.[14] Based on our review of these comments and all other information submitted during the course of this rulemaking, the Commission is now issuing final amendments to the Rule.

V. Section-by-Section Description of Final Amendments

The following are brief descriptions of the final amendments set out in this Notice.

Section 305.2 Definitions: To make section 305.2 more user-friendly, the Final Rule places the definitions in alphabetical order. In addition, the *definition of catalog* has been amended to clarify that the term covers both paper and Internet-based catalogs.

Section 305.3 Description of covered products: The Final Rule amends the description of refrigerators and refrigerator freezers to make it consistent with DOE regulations.

Section 305.4 Prohibited acts: The Final Rule contains nonsubstantive, conforming changes to several citations in this section.

Section 305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, energy efficiency rating, and water use rate: The Final Rule clarifies that this section does not apply to covered appliances for which DOE has not issued test procedures.

Section 305.7 Determinations of capacity: Under the Final Rule, manufacturers must determine refrigerator and refrigerator-freezer

[7] *See* 52 FR 46888 (Dec. 10, 1987) (central air conditioners and heat pumps); 54 FR 28031 (July 5, 1989) (fluorescent lamp ballasts); 58 FR 54955 (Oct. 25, 1993) (certain plumbing products); 59 FR 25176 (May 13, 1994) (lighting products); and 59 FR 49556 (Sept. 28, 1994) (pool heaters).

[8] ENERGY STAR, which is administered by the Environmental Protection Agency (EPA) and DOE, is a voluntary U.S. Government labeling program to identify and promote energy-efficient products. *See http://www.energystar.gov.*

[9] Comments on the ANPR are available at: *http://www.ftc.gov/os/comments/energylabeling/index.htm.*

[10] The Commission announced the Workshop in an April 10, 2006 **Federal Register** notice (71 FR 18023). Written comments related to the Workshop are available at: *http://www.ftc.gov/os/comments/energylabeling-workshop/index.htm.* A copy of the Workshop transcript is available at: *http://www.ftc.gov/os/comments/energylabeling-workshop/060503wrkshoptrnscript.pdf.*

[11] Comments submitted in response to the June notice are available at: *http://www.ftc.gov/os/comments/appliancelabelingresearch/index.htm.*

[12] 72 FR 6836 (Feb. 13, 2007).

[13] This information can be found at: *http://www.ftc.gov/opa/2007/01/fyi0714.htm.*

[14] Comments submitted in response to the NPRM are available at: *http://www.ftc.gov/os/comments/appliancelabel-energyguidereview/index.shtm.*

capacity using DOE standards.[15] Manufacturers must report this information to the FTC pursuant to section 305.8 of the Rule.

Section 305.8 Submission of data: The Final Rule clarifies that required reports for appliances include the brand name of the reported model, if it is different from the name of the manufacturer.

Section 305.9 Representative average unit energy cost: The Final Rule removes and reserves this section. The information previously provided by section 305.9 is now published in Appendix K of the Final Rule.

Section 305.10 Ranges of comparability on the required labels: The Final Rule changes this section to direct the Commission to amend range of comparability and representative average energy cost information every five years.

Redesignation of sections 305.13, 305.14, 305.15, 305.16, 305.17, 305.18 and 305.19: The Final Rule divides section 305.11 into several smaller, less cluttered sections. To make room for these new sections, the Final Rule redesignates these sections as 305.19, 305.20, 305.21, 305.22, 305.23, 305.24 and 305.25, respectively.

Requirements for lighting and plumbing products (newly designated sections 305.15 and 305.16): Under the Final Rule, the labeling and marking requirements for lighting and plumbing products previously in section 305.11 have been moved to redesignated sections 305.15 (lighting) and 305.16 (plumbing). The Final Rule contains no substantive change to existing requirements for these products.

Section 305.11 Labeling for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, and pool heaters: The Final Rule amends this section to require operating cost as the primary disclosure on the EnergyGuide label for all these products except pool heaters. The Final Rule also requires new language to clarify the scope of the comparison ranges on the labels. Additionally, the Final Rule modifies and clarifies requirements related to the label placement on covered products.

Sections 305.12 (newly designated) Labeling for Central Air Conditioners, Heat Pumps, and Furnaces[16]: The Final Rule requires manufacturers to label heating and cooling equipment with energy efficiency information using a new label design.

Section 305.14 (newly designated) Energy information disclosures for heating and cooling equipment: The Final Rule streamlines requirements related to the disclosure and distribution of energy information for central air conditioners and furnaces.[17]

§ 305.19 (newly designated) Promotional material displayed or distributed at point of sale: The Final Rule contains a conforming change related to operating costs in the required disclosures in paragraph (a)(1) of section 305.19.

Section 305.20 (newly designated) Paper catalogs and websites: The Final Rule requires the disclosure of annual estimated operating costs for certain products in paper and Internet-based catalogs. Under the Final Rule, catalog sellers are no longer required to provide range of comparability information. The Final Rule also contains conforming changes to cross-references in this section.

Section 305.24 (newly designated) Exemptions: The Final Rule incorporates the exemption permitting the inclusion of ENERGY STAR logos on EnergyGuide labels into section 305.11. Section 305.24 is, therefore, reserved.

Appendices: The Final Rule amends the Appendices to include range of comparability information in the form of estimated yearly operating costs for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, room air conditioners, and water heaters. The amendments also eliminate fact sheet information in the Appendices for heating and cooling equipment. In addition, we have eliminated the sample reporting format in Appendix K. The Final Rule redesignates the remaining appendices accordingly. Finally, the amendments add a new Appendix K that contains national average energy cost information for use on EnergyGuide labels.[18]

VI. Effectiveness and Benefits of the Current Label

In our ANPR, the Commission asked a series of questions related to the effectiveness of the current EnergyGuide label. As discussed in more detail in the NPRM (72 FR 6840-6841 (Feb. 13, 2007)), most comments indicated that the current label provides consumer benefits. At the same time, many commenters thought that there was room for improvement in the label's design. A few commenters urged the Commission to consider changes to increase the label's effectiveness, such as improving its readability. Others identified specific concerns such as the ''directionality'' of the label's comparison graphic and the division of some products into multiple categories.

Several comments on the ANPR suggested the Commission consider changes to the label in light of the policy goals of the EnergyGuide program. The nature of those policy goals, however, was a point of disagreement among commenters. According to some industry members, the FTC's labeling program should provide useful information about the energy usage of home appliance products. (*See, e.g.,* Association of Home Appliance Manufacturers (AHAM) (#522148-00007)). They questioned, however, the role the label should play in promoting energy savings and in creating incentives for market transformation. Whirlpool (#522148-00005), for example, pointed to DOE's efficiency standards program and the ENERGY STAR program as the appropriate entities for energy efficiency promotion. It urged the FTC to focus instead on providing ''meaningful, helpful information to consumers to assist them in the purchase decision'' through ''clear, fair, and unbiased'' disclosures.

Other commenters believed that the label's effectiveness should be judged in part by its effectiveness in encouraging consumers to purchase high-efficiency products and manufacturers to bring more high efficiency products to the marketplace. (*See, e.g.,* American Council for an Energy-Efficient Economy (ACEEE) #519870-00021 and Payne #519870-00024). As ACEEE (#519870-00021) observed, amendments to EPCA set forth in the Energy Policy Act of 2005 direct the FTC to initiate a rulemaking to consider the effectiveness of the appliance labeling program ''in assisting consumers in making purchasing decisions and improving energy efficiency.''

In our NPRM (72 FR 6841 (Feb. 13, 2007)), the Commission responded to these various comments by noting the following Commission statement when we first promulgated the Rule (44 FR 66466 (Nov. 19, 1979)): ''The primary purpose of the Commission's Rule is to encourage consumers to comparison-shop for energy-efficient household appliances. By mandating a uniform disclosure scheme for energy

[15] The Rule will continue to require only the disclosure of total refrigerated volume for the EnergyGuide label.

[16] We note that the Final Rule eliminates existing section 305.12 (''Additional information relating to energy consumption''). This provision was unnecessary because it contained no substantive requirements and was simply a placeholder for future disclosure requirements.

[17] The Final Rule also removes an incorrect reference to ''energy cost'' in section 305.14(a)(8) of the Proposed Rule.

[18] The Final Rule also removes an incorrect cross-reference to section 305.14 in the cost table at Appendix K.

consumption information, the Rule will permit consumers to compare the energy efficiency of competing appliances and to weigh this attribute against other product features in making their purchasing decisions. If the labeling program works as expected, the availability of this new information should enhance consumer demand for appliances that save energy. In turn, competition should be generated among manufacturers to meet this demand by producing more energy-efficient appliances.'' In the NPRM, the Commission stated that we continue to believe this 1979 statement accurately describes the role of the FTC's energy labeling program. The Commission further explained that the label serves two important purposes. First, the detailed operating cost and energy consumption information on the label allows consumers to compare the total cost of competing models. Second, the label aids consumers who are seeking to buy high-efficiency products that reduce energy use and thus help the environment. (72 FR 6841). No comments have altered our views on this issue.

In addition to providing this general guidance, the Commission, in our NPRM, also discussed some of the results of the FTC's 2006 consumer research related to the label's effectiveness. In brief, the research indicated that consumers find the label much more useful than has been suggested by past research. More than 85% of recent appliance purchasers who visited a retail showroom recalled seeing a label with energy characteristics. Of those respondents, 58% correctly recalled that the label was yellow with black letters. Fifty-nine percent of respondents who recalled seeing a label scored the usefulness of the label at a seven or higher on a scale of zero to ten.

In the NPRM, the Commission also proposed several changes to improve the effectiveness of the label. Section VII. of this Notice contains a discussion of comments received in response to these proposals and the final amendments to the Rule.

VII. Discussion of Comments and Final Amendments

A. New Label Design

Background: In our NPRM, the Commission proposed a new design for the EnergyGuide label, prominently featuring yearly operating cost. The proposed label's comparison range disclosed energy cost information in dollars per year. The draft label also provided consumers with information about the product's energy use (*e.g.*, kWh/year) as a secondary disclosure.

Energy-related labels generally fall into one of two categories: ''continuous'' bar graph and ''categorical'' designs. Labels using a continuous design, such as the current EnergyGuide label, graphically display information without discrete ranks or categories. Labels under a categorical approach employ discrete categories, using a step ranking system such as stars or letters to indicate relative energy use.

The Commission's 2006 consumer research, therefore, tested four label designs: the existing continuous label, a modified version of the existing label, a categorical (star-based) label, and a continuous label that used yearly operating cost as the main descriptor. The results yielded several general conclusions. First, all four designs performed well in the objective tasks of identifying and ranking operating costs (in dollars) and energy use (in kilowatt-hours), suggesting that any of the designs should help consumers compare operating costs and energy use. The categorical label, however, was somewhat more effective for some objective tasks, particularly when compared to the modified version of the current energy use label. Second, the categorical label, which was the only label to include the term ''energy efficient,'' was generally more effective at aiding respondents in ranking products by energy efficiency than the labels more prominently featuring operating costs or energy use. Third, respondents viewing the categorical design were much more likely to identify models as ENERGY STAR-qualified when none of those viewed contained ENERGY STAR logos. Fourth, the results suggest that respondents viewing the categorical labels were somewhat more likely to misidentify quality differences between models. Fifth, the research indicated that the categorical label had a substantially greater impact on respondents' reported willingness to pay for differences in energy performance between models. Finally, the study suggested that the respondents under all label conditions have a preference for the communication of energy characteristics in the form of operating costs over either electricity usage or a five-star categorical scale.[19]

After considering ANPR and Workshop comments, as well as the results of both previous consumer research (*see* 72 FR 6838-6839) and the FTC's own study, the Commission proposed changing the label design to require operating costs as the primary disclosure. Section 324(a) of EPCA directs the Commission to require annual operating costs on the label, unless the Commission determines that such disclosures are not likely to assist consumers in making purchasing decisions. (42 U.S.C. § 6294(c)). The FTC's consumer research clearly indicates that cost information is likely to assist consumers in making purchasing decisions. While each of the designs considered has strengths and weaknesses, on balance, the Commission believed that the adoption of a design that presents cost as the primary disclosure would best serve consumers. In addition, the research indicated that respondents clearly identified operating costs as the preferred method for communicating energy performance in the marketplace. The NPRM, therefore, proposed requiring the operating cost design for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, room air conditioners, pool heaters,[20] and water heaters.

The Commission also explained why it was not proposing a categorical label. Although the research identified some benefits associated with the categorical label, the results strongly suggested that the five-star categorical label design would confuse a significant number of consumers with regard to the well-established ENERGY STAR program and tended to convey inaccurate product quality messages more often than other tested designs. The Commission explained that, in its view, the EnergyGuide label should complement, not detract from, the ENERGY STAR program. (72 FR 6844-6845).

In our NPRM, we also requested comment on the conclusions derived from the consumer research, including the operating cost label proposal and the Commission's concerns with the categorical label. Additionally, we sought comment on questions related to the proposed operating cost label. In particular, we asked whether frequent changes to average energy cost figures could lead to inconsistent labels for models displayed in the showroom. In addition, we asked whether the regional variability of energy costs is a

[19] *See* 72 FR 6841-6851 for a detailed discussion of the consumer research results and conclusions.

[20] When the Commission first issued pool heater label requirements in 1994, the DOE test procedure did not contain a final procedure for measuring annual operating costs for these products. (*See* 10 CFR Part 430, Appendix P; and 59 FR 49556,49558 (Sept. 28, 1994)). DOE amended the procedure to allow manufacturers to calculate annual energy use and operating cost for pool heaters. (62 FR 26140 (May 12, 1997)). Accordingly, in the NPRM, the Commission proposed to require the disclosure of estimated annual operating costs on pool heaters.

significant issue for implementing the energy cost label. The NPRM also sought comments on a variation of the operating cost label that would display energy costs over a five-year period as the primary disclosure.

Comments: Several commenters supported the FTC's proposal to require annual operating cost as the primary disclosure on the label.[21] For example, Consumers Union (#527896-00012) stated that it ''strongly supported'' the proposed label. Whirlpool (#527896-00004) explained that ''estimated annual operating cost is the factor that consumers are most interested in when comparing models.'' In its view, it is unrealistic to expect consumers ''to understand some other 'alphabet soup' (kWh, AFUE, MEF, EF, etc.) and to know if a higher value or a lower value is better.'' AHAM (#527896-00006) added that an ''average national energy cost estimate will permit consumers to easily compare products by using one specific measurement.''

Some commenters, however, argued that the use of operating cost as the primary disclosure would not be helpful for many consumers.[22] ACEEE (#527896-00015) explained that energy costs vary widely across the country and that many ''consumers may find the range of operating costs displayed on the label to be unrealistic and unreasonable based on their experience and discount the label altogether.'' ACEEE (#527896-00015) also indicated that the results of FTC's research did not provide information on the ability of consumers ''to relate the reported cost values to the specific circumstances of their own appliance purchase or how relevant and believable they would find the information when shopping for appliances.'' According to ACEEE (#527896-00015), research on vehicle labeling has demonstrated that consumers' stated preferences for label information do not often correspond to information that exhibits the highest levels of comprehension in practice. ACEEE (#527896-00015) recommended that the FTC retain the current label format which provides energy consumption as the primary disclosure. CEE (#527896-00016) echoed ACEEE's concerns, adding that wide fluctuations in energy prices across the country could lead to consumer confusion and create the potential for ''misrepresentations'' on the label.

Other commenters did not believe that regional variability in energy prices created a decisive obstacle to the proposed label. According to Whirlpool (#527896-00004), shoppers are primarily concerned about ''the relative, not the absolute, operating cost.'' In its view, consumers understand that the energy costs on the EnergyGuide label are ''estimates and national averages'' and ''that their own experience will vary.'' AHAM (#527896-00006) indicated that employing national average energy cost information allows consumers to compare products according to energy usage despite the fact that actual costs for individual consumers may vary across the country. Similarly, Consumers Union (#527896-00012) argued that ''the value of the EnergyGuide to consumers stems from the fact that it is for comparative purposes'' and ''not necessarily to reflect the product's actual cost to the consumer.'' At the same time, Consumers Union (#527896-00012) suggested that the label should provide a better explanation that the displayed cost may not reflect a consumer's actual cost.

Several commenters supported the Commission's decision to discontinue its consideration of a categorical design in light of the FTC's consumer research. EPA (#527896-00018) concurred with the FTC's conclusion regarding the significant concerns the categorical design raises for the ENERGY STAR program, including the confusion such a design could cause consumers in identifying ENERGY STAR products. EPA (#527896-00018) also agreed with the FTC's concerns about the tendency of the categorical label to convey inaccurate product quality messages. Whirlpool (#527896-00004) echoed EPA comments, indicating that the FTC's study clearly demonstrated that the categorical label frequently conveys messages to the consumer about product quality and that the ''opportunity for confusion with the ENERGY STAR program is significant.'' CEE (#527896-00016) expressed appreciation for the FTC's efforts to research and analyze the interaction between the ENERGY STAR and EnergyGuide labels.

Other comments raised concerns with the Commission's decision not to pursue a categorical label. ACEEE (#527896-00015) concluded that the FTC's research confirmed earlier work indicating that ''categorical labels rate well in terms of consumer comprehension, appeal, and motivating ability.'' In its view, ''the categorical label outperformed other label designs.'' At the same time, ACEEE (#527896-00015) acknowledged that more effort is necessary to develop and implement a categorical labeling program. It suggested that the FTC ''work together [with stakeholders] to develop a categorical EnergyGuide label that coordinates well with the ENERGY STAR label.'' Christopher Payne (#527896-00014) argued that the analysis in the NPRM understated the performance of the categorical label on key questions related to consumer understanding. He noted that small increments of consumer comprehension improvement can have significant effects on total energy use. In his view, ''even a 1% difference in comprehension among consumers can have substantial energy and cost savings nationwide.'' He estimated that, for refrigerators alone, such a difference in comprehension could lead to a cumulative impact of $100,000 annually in energy use. Payne urged the Commission to continue consideration of the categorical label.

Though comments varied on the adoption of annual operating cost as the primary disclosure, almost all commenters opposed disclosing operating costs over a multi-year period. Brand Source (#527896-00003), an appliance buying group, warned that any type of life expectancy figure on the label will be unrealistic and undesirable for manufacturers and retailers. Whirlpool (#527896-00004) indicated that the ''use of a five or 10 year time frame may imply a product lifetime or even a warranty commitment-items which are not within the scope of this label (in addition to being inaccurate in this case).''[23] AHAM (#527896-00006) suggested that a change to a five-year operating cost may confuse consumers, making them think that costs have risen abruptly. Christopher Payne (#527896-00014) concluded that more research would be necessary to adopt a multi-year label. ACEEE (#527896-00015) commented that a multi-year label would require ''yet another set of assumptions, thereby introducing additional opportunities for consumer confusion and skepticism about the label.'' It also indicated that a multi-year label would require more explanatory language, and noted that ''[r]esearch conducted by ACEEE and many others show that consumers are less likely to read and/or believe labels with extensive text, too many technical details, or multiple levels of assumptions.'' CEE (#527896-00016) raised similar concerns and also urged the Commission not to use a five-year

[21] *See* Consumers Union (#527896-00012), AHAM (#527896-00006), Whirlpool (#527896-00004), EEI (#527896-00005), and EPA (#527896-00018) (''EPA is supportive of FTC's decision to develop a modified version of the current Energy Guide label . . .'').

[22] *See* ACEEE (#527896-00015), CEE (#527896-00016), and Brand Source (#527896-00003).

[23] *See also* EEI (#527896-00005).

operating cost and a single year energy use figure on the same label.[24]

Finally, we note that several commenters[25] expressed support for the Commission's efforts to change the general appearance of the label by clearly grouping information and changing the font size of some of the disclosures. AHAM (#527896-00006), for example, indicated that the ''changes to the *EnergyGuide* label make it easier for consumers to identify the information most important to them and provide a better presentation of relevant information in an easier to read format.'' One commenter (Deumling (#527896-00002)), however, asked why the statement ''Compare the Energy Use of this [product] with Others Before You Buy?'' had been eliminated from the proposed label.

Discussion: In response to commenters' concerns, the final version of the label contains a number of wording and format changes, but retains operating cost as the primary descriptor for most labeled products. The research suggests that the operating cost disclosure provides a clear, understandable tool to allow consumers to compare the energy performance of different models. The operating cost design not only performed well on objective tasks in the research but research participants identified the design as the most useful method for communicating energy information. The disclosure also provides a clear context from which consumers can compare the energy efficiency of various appliances, and allows them to assess trade-offs between energy efficiency and other expenditures. An operating cost range also provides an energy efficiency descriptor that is consistent across appliance types appearing together in showrooms (*e.g.*, refrigerators, dishwashers, clothes washers, and room air conditioners), and addresses the ''directionality'' problem identified by comments (*i.e.*, more efficient models are always lower on the range across appliance types).[26]

For all of these reasons, the Commission continues to believe that consumers are best served with operating cost as the primary descriptor on the EnergyGuide label. We recognize commenter concerns about the variability of energy costs, but we agree with Consumers Union (#527896-00012) and other commenters that ''the value of the EnergyGuide to consumers stems from the fact that it is for comparative purposes.'' The EnergyGuide label's ability to predict an individual's actual energy use is limited. Regardless of its design, the label only can provide consumers with a general idea of the energy they will consume. Any model-specific energy use disclosure, whether in dollars, kilowatt-hours, or a star rating, is merely an estimate based on assumptions regarding use conditions and patterns.[27] The lack of uniformity in energy prices across the country is another factor added to this set of existing variables. On balance, we believe that the benefits of having a prominent, simple operating cost to allow consumers to compare the relative energy use of various product models outweigh concerns raised by the variability in regional energy prices.

Although we have decided to use operating cost as the primary disclosure, we agree with commenters that the label provide a more prominent explanation that consumers' actual operating costs will vary. Accordingly, in the final version of the label, we increased the size and prominence of the statement informing consumers that their own operating cost will depend on their utility rates and product use. This change should help consumers understand that the operating cost figure on the label is simply an estimate based on national averages.[28]

Given our decision to adopt operating cost as the label's primary disclosure, the Commission does not plan to pursue the categorical label further at this time. Our consumer research suggests that there are significant benefits to the categorical label design, and we recognize, as Christopher Payne (#527896-00014) explained, that even small differences in comprehension may affect consumer buying behavior. The magnitude of such effects, however, is extremely difficult to quantify because rates of label comprehension do not necessarily translate directly into buying behavior. Most important, however, the FTC's study identified substantial problems with the categorical design, particularly as it may impact consumer comprehension of the ENERGY STAR program. As explained in the NPRM, this problematic interaction with the ENERGY STAR program and the quality-related results for the categorical design convinced us not to adopt the categorical label at this time.[29]

Although we have adopted operating cost as the primary descriptor, the Commission does not plan to pursue a multi-year cost disclosure on the label. We agree with the commenters that such a design raises a host of unresolved questions. The final label, therefore, mandates a one year cost figure.

The Final Rule requires an operating cost label for most appliances including refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, room air conditioners, and water heaters. The appendices to the Final Rule contain updated range information based on the most recent annual reports submitted by manufacturers to the Commission.[30] In drafting the new labels, manufacturers must use the range information and the 2007 national average energy cost information at Appendix K.

We note that the NPRM also proposed to require an operating cost disclosure for pool heaters (*see* 72 FR 6846, n. 54). The current DOE test procedure (10 CFR Part 430, Appendix P) contains a method for calculating annual energy consumption for pool heaters. This method, however, does not take into account a model's energy performance (*i.e.*, thermal efficiency), but instead provides annual energy consumption information based on a model's capacity. As a result, the annual energy

[24]Consumers Union (#527896-00012) did not object to a multi-year label but noted that most appliances have an average life of about ten years.

[25]ACEEE (#527896-00015), EEI (#527896-00005), and AHAM (#527896-00006).

[26]As explained in Section VII.C. of this Notice, the Rule will continue to require the disclosure of efficiency ratings on labels for heating and cooling equipment.

[27]Manufacturers must derive the energy information provided on the label from standard DOE test procedures which mandate specific test conditions (*e.g.*, air temperature, water temperature) and usage assumptions (*e.g.*, number of washloads per week) that will not necessarily apply to all consumers.

[28]Based on recommendations by ACEEE, we have sought to minimize the amount of text on the label (see, *e.g.*, Thorne, Jennifer and Egan, Christine, ''An Evaluation of the Federal Trade Commission's EnergyGuide Label: Final Report and Recommendations,'' ACEEE, August 2002). As proposed in the NPRM, we have eliminated phrases such as ''Compare the Energy Use of this . . .'' because such language is either redundant or unnecessary to the label's effectiveness.

[29]Other concerns also exist with the categorical label. For example, the FTC's study did not test conditions in which categorical labels had the same number of stars but different energy use and operating cost figures. We expect such a scenario would be quite common under a categorical labeling scheme. The inclusion of such a scenario in any future research may provide additional information about the performance of a categorical design on the types of objective tasks involved in the study. In addition, the FTC's study did not address the feasibility (*i.e.*, the technical and administrative considerations) of implementing a categorical label, including the alignment of FTC energy rating categories with ENERGY STAR criteria, a concern raised by commenters earlier in the proceeding (see, *e.g.*, EPA (#519870-00007)).

[30]The range data in the appendices excludes models identified as ''discontinued'' in manufacturer reports. In addition, given the staggered annual reporting dates set out in the Rule section 305.8, the new range data for clothes washers and refrigerators is based on the annual reports submitted in 2006 and new model reports submitted since that time.

consumption derived from the test procedure does not reflect relative energy efficiency differences among models. Without information about the relative energy performance of similar capacity models, it is unclear whether such disclosures would be helpful to consumers. Accordingly, the pool heater label will continue to disclose the thermal efficiency of each model as required under the current rule.

B. ENERGY STAR Logo Placement

Background: In the NPRM, the Commission proposed directing manufacturers to place the ENERGY STAR logo in the lower right-hand corner of the label for qualified products, instead of above the range of comparability bar as currently required. Under the proposal, the logo would be up to one inch by one inch in size.

Comments: Comments were generally supportive of a change to the ENERGY STAR logo placement. For example, EEI (#527896-00005) indicated that placement of the logo in the bottom corner of the label will ''help customers who are looking for more energy efficient appliances.'' Some commenters, however, suggested changes in the placement and prominence of the ENERGY STAR logo. AHAM (#527896-00006), for instance, asked the Commission to consider allowing placement of the logo in the top third of the label. EPA supported any changes that would ''improve the prominence and visibility of the ENERGY STAR logo without undermining the general purpose of the EnergyGuide label.''

A few commenters believed the Commission should allow a larger ENERGY STAR logo than the one inch by one inch size proposed in the NPRM. Whirlpool (#527896-00004) supported the placement of the logo in the lower right corner, but commented that the proposed size would be ''fairly small'' and suggested that the FTC allow a larger logo (*e.g.*, 1.25 to 1.5-inches square). AHAM (#527896-00006) also suggested an increase in the logo's allowable size. EPA (#527896-00018) indicated that the proposed logo size of ''one inch by one inch is the minimum effective size for use of the ENERGY STAR logo for qualifying products on the EnergyGuide label.''

Discussion: Under the final amendments, manufacturers using the ENERGY STAR logo on their labels must place it in the lower right-hand corner. The Commission has decided to retain this proposed placement requirement because it will ensure that the ENERGY STAR logo is presented consistently across all labels in a location away from other energy performance measures. The Final Rule also requires a uniform one inch size for the logo on all applicable labels. This will provide the ENERGY STAR logo with a consistent size and location across all EnergyGuide labels. We do not believe that the label can reasonably accommodate a larger logo and still clearly provide all the information necessary to serve its purpose. We note that although the Proposed Rule indicated the logo could be ''up to'' one inch in size, the logo appearing on Sample Label 2 of the NPRM was approximately 1/2 inch in size (on an actual size label).

C. Requirements for Heating and Cooling Equipment

Background: The current labeling requirements for furnaces, boilers, central air conditioners, and heat pumps provide little value to consumers prior to purchase because these products generally do not appear in showrooms. At the same time, the record indicated that the information on the label provides benefits to consumers and energy auditors in the use of existing, installed units and in the purchase of replacement products. The labels may also provide information allowing consumers to confirm that the model they ordered is the model that has been installed by the contractor. The Commission, therefore, proposed requiring manufacturers to mark their units permanently with certain energy information in lieu of labeling. The Commission expected that marking requirements would be a more durable and less expensive means of making information available to consumers. Under the proposal, the Rule would have continued to require EnergyGuide labeling for water heaters because these products appear in showrooms.

In addition to the marking proposal, the Commission sought to streamline and improve the Rule's fact sheet and directory provisions (*i.e.*, pre-purchase disclosure requirements) by removing complicated equations and charts from fact sheets, eliminating operating cost calculation information, and providing manufacturers and contractors with new options, such as online sources, for providing energy information. The Proposed Rule would have required manufacturers to provide the following pre-purchase disclosures in fact sheets, directories, or another medium: (1) the name of manufacturer or private labeler; (2) the trade (brand) name; (3) model number(s); (4) capacity determined in accordance with section 305.7; (5) energy efficiency rating as determined in accordance with section 305.5; (6) a statement that the energy efficiency ratings are based on U.S. Government standard tests; and (7) in the case of, information about efficiency ratings of split system central air conditioners for specific condenser/coil combinations or, alternatively, for the ''most common'' condenser-evaporator coil combinations, as currently required by the Rule. The Commission also asked whether the Rule should require manufacturers to provide an estimated national average operating cost for their models.

Comments: The comments addressed both the permanent marking and pre-purchase information requirements proposed in the NPRM.

Marking

The comments contained mixed views on the proposed permanent marking requirements. Several supported the proposal.[31] For example, EEI (#527896-00005) indicated that paper labels can be lost or discarded and that permanent marking will ''allow consumers and entities offering incentive programs to be sure that they are 'getting what they paid for.''' First Company (#527896-00008), a manufacturer of air handling systems and evaporator coils, supported the marking proposal, but suggested the Rule clarify that marking should be placed on the condenser (or outdoor heating pump) as currently required for EnergyGuide labeling. Burnham (#527896-00001), a boiler manufacturer, agreed with the proposal, but requested that the Commission provide manufacturers with at least six months to implement the change.

GAMA (#527896-00007) did not oppose marking for boilers, but raised concerns with such a requirement for furnaces. It explained that current multi-position furnaces allow installers to select particular airflow configurations that affect the product's actual Annual Fuel Utilization Efficiency (AFUE). Because manufacturers cannot determine the configuration of the equipment installed in the field, GAMA (#527896-00011) contended that a single rating on the product would be ''problematic.'' As GAMA has explained in the past, the disclosure of more than one rating for multi-positions provides more precise information to consumers about the expected efficiency of the product under different airflow configurations.[32] As GAMA (#527896-00011) noted in its

[31] *See* Consumers Union (#527896-00012), EEI (#527896-00005), and First Company (#527896-00008).

[32] *See* FTC Staff Opinion Letter from James G. Mills, FTC, to Joseph M. Mattingly, GAMA, April 13, 1999.

comments, the FTC staff has interpreted the Appliance Labeling Rule to permit the disclosure of multiple ratings for multi-position furnaces on the current EnergyGuide label.[33] GAMA (#527896-00011) implied that space constraints on the nameplate may make it difficult to provide such multiple ratings. GAMA (#527896-00011) also raised concerns about the efficacy of placing the efficiency information on the furnace nameplate because the nameplates generally appear on the product's interior.

ARI (#527896-00010), which concluded that a marking requirement would not be more effective than the current label, also raised a series of concerns.[34] First, it stated that, because energy ratings only reflect the performance of the most common condenser/coil combination, the rated information on a permanent mark may be different from the actual system purchased by the consumer. Moreover, ARI (#527896-00010) asserts this information is best provided through fact sheets or industry directories. Second, ARI (#527896-00010) indicated that a permanent mark is not necessary to allow consumers to confirm that the model ordered is the one that has been installed. ARI (#527896-00010) argued that this ''can easily be verified today by checking the model number on the product nameplate against the manufacturer's fact sheet or the information in the ARI directory of certified products.'' Third, ARI (#527896-00010) argued that the Commission should not consider the needs of energy auditors because, in its view, the intent of EPCA is to aid consumers in their purchasing decisions, not energy auditors in conducting audits. Moreover, ARI (#527896-00010) believes the needs of auditors are best met by industry fact sheets and directories. Fourth, ARI (#527896-00010) stated that a permanent marking requirement would be more expensive to implement than the current EnergyGuide label. It noted that California's marking requirements do not apply to residential heating and cooling products. Therefore, manufacturers are not currently marking these products, contrary to the discussion in the NPRM.[35] Finally, ARI (#527896-00010) indicated that it would support maintaining the current EnergyGuide label ''if FTC strongly believes that a label of some sort is necessary.''

No commenter opposed the proposal to retain EnergyGuide labels for water heaters. GAMA (#527896-00011) supported the Commission's decision to maintain separate range categories for storage and tankless water heaters.

Pre-Purchase Information Disclosures

The comments presented a variety of opinions regarding the Commission's proposal to simplify the requirements for the disclosure of efficiency information. Several commenters generally supported the Commission's proposal to simplify the fact sheet requirements and provide more flexibility to manufacturers.[36] For example, First Company (#527896-00008) explained that it supports ''giving manufacturers the flexibility to provide energy information to distributors and retailers through fact sheets, directories or product brochures and to make the information available electronically via websites or e-mails.''

While no commenters opposed the Commission's proposal in its entirety, some urged the Commission to require the disclosure of additional information. For example, ACEEE (#527896-00015) suggested capacity should be added to the labeling or marking requirements and that, for furnaces and boilers, capacity should be based on ''output,'' not ''input'' as required by current regulations.

ACEEE (#527896-00015) also raised concerns about disclosures for split system central air conditioners. Such systems contain two components: a condenser (usually installed outdoors) and a coil (installed indoors). Different combinations of condensers and coils usually yield different efficiency ratings. Manufacturers under the FTC's current Rule must label only the condenser. In addition, the Rule requires that the rating for a particular condenser be either: 1) the system efficiency rating using the most common coil sold with that condenser; or 2) the system efficiency ratings of each separate coil/condenser combination sold by the manufacturer. To help consumers and installers with matching condensers and coils at the time of purchase, ACEEE (#527896-00015) urged the Commission to require a table of information designating the capacity or other performance parameters required so that the system will provide the certified performance promised by the condenser label. Similarly, Consumers Union (#527896-00012) urged the Commission to require comparative energy information online noting that most consumers do not go to showrooms to compare these products. CEE (#527896-00016) also recommended that the FTC require equipment manufacturers to disclose the energy efficiency range of ratings of a given condenser when combined with various matching coils (and furnaces, if applicable). It also urged the Commission to require a statement about the importance of matched systems in achieving energy efficiency. In addition, CEE (#527896-00016) urged the Commission to work with ARI and GAMA to ensure that efficiency information (*e.g.*, the Seasonal Energy Efficiency Ratio (the ''SEER'' rating)) is available online.

Some comments addressed whether operating cost information disclosures should be required for central air conditioners and furnaces. In particular, Rheem (#527896-00013) supported the FTC's proposal to eliminate required cost disclosures and noted that ''the determination of operating costs is complicated by regional climate and energy costs.'' First Company (#527896-00008) also indicated that operating cost information for these particular products is ''of little value to consumers because these costs are highly dependent on a number of variables . . . .'' ARI (#527896-00010) agreed that average cost information for heating and cooling equipment would be of limited use to consumers on labels. ARI (#527896-00010), however, plans to provide average operating cost information as part of its online directory. Neither ARI nor other entities provided any detailed comments on whether the FTC should require some sort of national average cost information (and what methodology should be used for such calculations).

Several commenters addressed how sellers should provide the required information. Some supported the Commission's proposal to provide sellers with more flexibility in the dissemination of this information, including electronic distribution.[37] Fujitsu (#527896-00007) supported allowing the provision of information over the Internet. CEE (#527896-00016), however, raised concerns with the proposal. It suggested that the FTC require contractors to present energy information at the time of sale to consumers because not all consumers have access to the Internet.

Discussion: The comments addressed the two primary issues raised in the NPRM: the proposed marking

[33] *Id.*

[34] *See* GAMA (#527896-00011), Fujitsu (#527896-00007), and CEE (#527896-00016).

[35] *See* also Fujitsu (#527896-00007) and GAMA (#527896-00007).

[36] Fujitsu (#527896-00007), GAMA (#527896-00011), Rheem (#527896-00013), EEI (#527896-00005), and First Company (#527896-00008).

[37] *See* GAMA (#527896-00011), Fujitsu (#527896-00007), and Burnham (#527896-00001).

requirements and the proposed pre-purchase information requirements. With regard to the marking requirements, the Final Rule continues to require manufacturers of central air conditioners and furnaces to place EnergyGuide labels on their products. The Rule also will continue to require EnergyGuide labeling for water heaters. With regard to pre-purchase energy information, the Final Rule contains the simplified point of sale information requirements contained in the Proposed Rule. The Final Rule does not require the dissemination of operating costs information for these products because it is unlikely that such information can presented in a manner that provides benefit to consumers.

Marking

The Commission has considered the comments submitted on the proposed marking requirement and has determined to retain the existing labeling requirements for these products. Under EPCA, the Commission may require additional energy information on the product, such as the proposed marking requirements, if such information would ''assist consumers in making purchasing decisions or in using the product and such requirements would not be unduly burdensome to manufacturers.'' (42 U.S.C. 6294(c)(5)). As discussed above, the comments raised significant concerns about the feasibility and cost of the proposed marking requirements. At the same time, some industry members indicated the continued labeling would not pose such problems.

As discussed in the NPRM, the record demonstrates that the information on labels provides a benefit to consumers in both their use of existing equipment and their purchasing decisions for replacement products. The Commission also suggested that the label may help consumers confirm that the model they have purchased is the one that has been installed. The record developed since the NPRM does not alter these findings. We, therefore, continue to believe that some form of disclosure is necessary to help consumers with purchasing decisions and with their use of the product. We recognize that permanent marking may achieve these benefits. However, given the comments we cannot rule out the possibility that such marking would be unduly burdensome. The Final Rule, therefore, continues to require EnergyGuide labels for this products. We note that nothing in the Rule prohibits manufacturers from providing energy information on their product nameplates or elsewhere on the product.

Under the Final Rule, the EnergyGuide labels will continue to provide efficiency ratings and efficiency range information as the only energy-related disclosures. However, we have changed the appearance and content of the label to make it consistent with the new label format for other products. In addition, we have amended the format and placement requirements to require that the label be affixed to the product in the form of an adhesive label. Such labels will increase the likelihood that the label will remain on the product after purchase, and be available to aid consumers in their equipment purchasing decisions and use of the product.

Pre-Purchase Information Disclosures

The Final Rule eliminates the detailed, prescriptive requirements currently applicable to fact sheets for these products and replaces them with a requirement to provide consumers with basic energy performance information.[38] The new, simplified requirements should make it easier for manufacturers and installers to ensure consumers have the energy information they need while reducing the burden on manufacturers. The Commission also has considered four additional issues raised by the commenters: comparability range information, ratings for split system central air conditioner combinations, cost disclosures, and Internet availability. Each of these issues is discussed in turn as follows.

Contrary to the proposal in our NPRM, the Rule will continue to require ranges of comparability for heating and cooling equipment in fact sheets, directories, and online databases covered under section 305.14 of the Final Rule. Our NPRM suggested that such information may have a reduced value in directories and online databases where data for comparative models is readily available. However, both CEE (#527896-00016) and Consumers Union (#527896-00012), two commenters with significant expertise on these issues, argued that such information is important for consumers before purchase. Consumers Union (#527896-00012) noted that most consumers do not visit showrooms where they can compare different models of these products. Because many consumers may not have access to the EnergyGuide label prior to purchase, this range information should be useful to them in their buying decisions.

The current Rule (§ 305.11(a)(5)(iii)) requires that manufacturers disclose the actual ratings of the various combinations sold by the manufacturer or disclose the rating for the most common combination.[39] Several commenters suggested that the Commission require manufacturers to provide efficiency ratings for all condenser/coil combinations of split system central air conditioners. Such a proposal raises two concerns. First, a requirement to disclose the ratings for all possible combinations may not be practical for labeling or fact sheet-type disclosures where space is limited. Second, such matching information for split system units is already available through the ARI directory.[40] Accordingly, the Commission is not amending the disclosure rules to require disclosure of ratings for all condenser/coil combinations for split systems. The Final Rule clarifies that manufacturers may provide either the ratings for specific condenser/coil combinations or the rating for the most common combination. We note that nothing in the Final Rule prohibits the manufacturers from providing the ratings for multiple combinations, if such disclosures are feasible for them.

As proposed in the NPRM, the Final Rule does not require the disclosure of cost information for these products in labels or in fact sheets. As the comments suggested, operating costs for this type of equipment are highly dependent on regional weather conditions. This would add a layer of variability to the operating costs estimates beyond individual use and utility rates already applicable to most of the other labeled products like refrigerators.[41] In addition, consumers generally purchase heating and cooling equipment through a knowledgeable professional (such as a contractor) and do not select the models themselves in showrooms or online. As a result, consumers may have less need for operating cost information to help them compare products. Accordingly, the Final Rule does not require disclosure of operating cost information. At the same time, we recognize that operating cost may be beneficial to some consumers. The Final Rule does not

[38] As explained earlier, several commenters supported this overall change. No commenter challenged our assertion that the equations and charts on the current fact sheets are not particularly helpful to the average consumer.

[39] The current Rule does not require the publication of such information in fact sheets or directories.

[40] Under DOE regulations (10 CFR § 430.24(m)), split system manufacturers must certify the various condenser/coil combinations through testing and/or the use of an alternative rating method. Accordingly, the ratings for various condenser/coil combinations sold by the manufacturers are available to the public through the ARI directory (*see http://www.aridirectory.org).*

[41] No comments supported a required disclosure of national average cost information.

prohibit the dissemination of cost information for such products. Manufacturers and associations that choose to provide operating cost information should continue to follow section 323(c) of EPCA (42 U.S.C. § 6293(c)), which requires that any representation regarding the energy use of a covered product must ''fairly disclose'' the results of the DOE test procedure.

Finally, the Final Rule allows heating and cooling equipment retailers to use a variety of means, such as fact sheets, directories, and Internet-based data, to provide customers with access to required energy information prior to purchase. We recognize that some purchasers of residential heating and cooling equipment may not have immediate access to the Internet. Under the amended Rule, sellers who negotiate contracts in customers' homes and who rely on Internet-based data to fulfill the disclosure obligations in section 305.14 must provide customers with instructions to access such information and let them read the information before they agree to purchase the product. The Final Rule provides sellers with flexibility in complying with the requirements to meet the needs of individual customers, including those who do not have Internet access. For example, some retailers may choose to have paper versions of the required information available to provide to customers who do not have immediate Internet access. Others may decide to bring an electronic version of the Internet-based information (*e.g.*, a downloaded directory or fact sheet) themselves using a laptop computer or other device. In limited cases where the retailer does not bring printed material (or a laptop computer) to the customer's home, customers should have ample time to access the information online at a local library or other public access site due to the nature of heating and cooling equipment sales, which often involve more than one visit to the customer's home.[42] As Internet penetration increases in U.S. households, we believe that this matter will become less and less of an issue.[43]

D. Refrigerator Categories

Background: During this proceeding, the Commission explored whether the range categories for refrigerators (used to determine the range of comparability on the EnergyGuide label) should be combined to include models with different door configurations and features. The current labeling requirements designate separate comparability ranges for various refrigerator sub-categories (or styles) such as side-by-side door configurations, models with top-mounted freezers, or those with through-the-door ice service. This allows consumers easily to compare the energy use of similarly configured refrigerators and at a glance to determine a product's energy use in comparison to the entire market for similar models. The current system, however, does not allow for such comparisons across categories. Consumers, however, can employ the energy use and operating cost information on the current labels to compare the product's energy performance to other refrigerators in the showroom regardless of configuration.

This problem is complicated by the fact that some refrigerator configurations are generally less efficient than others. For example, top-mounted freezer models generally use less electricity than comparably sized side-by-side models. As a result, the range information on a particular side-by-side refrigerator label may compare favorably to other side-by-sides, but fail to show that the model uses significantly more energy than an average refrigerator with a top-mounted freezer. As part of its Workshop, the FTC, therefore, sought comments on whether the refrigerator labels should present comparability information for all refrigerators regardless of configurations (*see* 72 FR 6853-6854). The comments varied. Some suggested that the combination of the range information would make it easier for consumers to compare across categories. Others indicated that most consumers do not shop across configurations and, therefore, combining ranges would not be desirable.

In our NPRM, the Commission explained that it was not proposing to alter current range categories for refrigerators because doing so runs counter to the system used by the DOE and the ENERGY STAR programs. For example, ENERGY STAR-qualified side-by-side door models are highly efficient compared to other side-by-side models but not necessarily compared to all other refrigerator-freezers. Therefore, if the comparison range on the EnergyGuide label included all configurations, some ENERGY STAR designated models would appear as less efficient on the range than some non-ENERGY STAR models. This could cause consumer confusion in the showroom and may cause confusion about the ENERGY STAR designation. Accordingly, the Commission indicated that a change in the current range system would not provide significant benefits for consumers.

Although our NPRM did not propose changes to the refrigerator categories, the Commission recognized the need to clarify label information related to product categories. Accordingly, the Commission proposed amending the Rule to require the following explanatory statement on refrigerator labels: ''Size, door attributes, and ice features affect energy use—so other refrigerators may have lower or higher operating costs.'' In addition, the NPRM contained a proposal to require more explicit language on the refrigerator-freezer label to clarify that the range only applies to the specific subcategories of products. For instance, the range for a side-by-side through-the-door ice label would have stated: ''Range for models of similar capacity with automatic defrost, side-mounted freezer, and through-the-door ice.'' The Commission sought comments on these proposals. The NPRM also asked whether the Commission should amend the categories to include refrigerator-freezers with bottom-mounted freezers and through-the-door ice service (a configuration that has recently appeared on the market).

Comments: Some commenters supported the Commission's decision to maintain the existing range categories for refrigerators. AHAM (#527896-00006) stated that consumers rank configuration as a top priority when choosing a refrigerator and, therefore, would not benefit from combined range information on the label. Whirlpool (#527896-00004) similarly explained that consumers identify their model size needs and consider which configuration they want before they begin the shopping process. In AHAM's (#527896-00006) view, the prominent disclosure of operating costs on the label will permit consumers to compare models across all categories using a uniform measurement.

Other commenters, however, urged the Commission to reconsider its decision. ACEEE (#527896-00015) noted that the FTC's label research underscores consumers' lack of

[42] *See, e.g.*, Workshop Transcript, 164.

[43] One commenter suggested that the FTC require the disclosure of product capacity on the product itself. Though the current rule does not require the disclosure of capacities on labels, it does require the disclosure of such information on fact sheets and in directories. In addition, manufacturers must report capacity information to the FTC under existing reporting requirements. Under section 305.14 of the Final Rule, manufacturers must continue to provide capacity as part of the pre-purchase energy disclosures made to consumers. The disclosed capacity under the Rule must be that yielded by the DOE test procedure (*see* 10 CFR section 305.7).

knowledge on this issue, and thus, the need to eliminate separate categories. By eliminating subcategories, ACEEE (#527896-00015) contends the FTC could improve the effectiveness of the label and better meet the original intent of the labeling program. Consumers Union (#527896-00012) suggested that the Commission include ranges for all refrigerator categories on all refrigerator labels to allow consumers to understand the variability in energy use among configurations. CEE (#527896-00016) also urged the Commission to reconsider and argued that ''while the inclusion of some text on the refrigerator label to explain the different operating cost and energy use ranges for the different types of refrigerators might help consumers' understanding of the label, it still does not allow consumers to compare efficiency across different types of refrigerators.''

Several commenters raised concerns with the new statements proposed for the EnergyGuide label related to refrigerator categories. Whirlpool (#527896-00004) indicated that, while it may be appropriate to inform consumers that product features affect energy costs, it is unnecessary to insert a statement identifying the model's configuration category (*e.g.*, ''Range for models of similar capacity with automatic defrost, side-mounted freezer, and through-the-door ice''). AHAM (#527896-00006) argued that neither of these disclosures is desirable. It urged the Commission to rely on the prominence of the operating cost disclosure as the most effective way to allow consumers to compare energy performance across different designs. Regarding the statement identifying the model's category, AHAM (#527896-00006) concluded that the ''the need to address certain variables [such as the range category] is outweighed by the benefit of having a simple universal measurement.'' AHAM (#527896-00006) asserted that both proposed statements on the label are potentially confusing to consumers, redundant, and would create unwanted clutter. On the other hand, Consumers Union (#527896-00012) suggested the statement is not adequate because it may fail to alert consumers to the fact that the range of refrigerator comparisons is ''very narrowly defined.''

In response to questions about labeling refrigerator-freezers with a bottom-mounted freezer and through the door ice, Consumers Union (#527896-00012) stated that the introduction of these models is increasing and should accelerate in the future. It, therefore, urged the Commission to create a separate category. In contrast, AHAM (#527896-00006) and Whirlpool (#527896-00004) argued that these models represent a small portion of total refrigerator sales and the number of models currently available do not warrant the creation of a new category.

Discussion: The Commission has decided to maintain the current refrigerator categories.

As comments from ACEEE (#527896-00006) and Consumers Union (#527896-00012) indicate, combined range information for all refrigerators may provide a benefit by alerting consumers to the fact that the energy use of refrigerators can vary by configuration.[44] As discussed in detail in the NPRM though, we continue to believe that the combination of refrigerator classes would negatively impact the ENERGY STAR program which uses the current refrigerator categories in setting its qualification criteria. Because the ENERGY STAR logo appears on the EnergyGuide label itself, we believe it is very important to align the FTC refrigerator categories with those used by the ENERGY STAR program. Without such alignment, some ENERGY STAR models may fall on the high end of the operating cost range, creating possible confusion and potentially reducing consumer confidence in both the ENERGY STAR program and the EnergyGuide label. This factor alone is dispositive in our decision.

We have also considered the comments in response to our proposal to include more information about the range on the label, as well as the other suggested additions (*e.g.*, identifying the ranges for all configurations on every label and providing the make and model number of the products at the high and low end of the range). We are concerned that the inclusion of such additional information will clutter the label and create confusion without significant benefit to consumers. Likewise, we are concerned that the language proposed in the NPRM, which would have included the complete category description directly under the range, would crowd the label unnecessarily, thereby reducing its overall effectiveness.

At the same time, the comments and the FTC research results (*see* 72 FR 6852) suggest that it is important to provide a complete, accurate description of the model types covered by the displayed range. Accordingly, the Final Rule requires such information at the bottom of the label not only for refrigerators, refrigerator-freezers, and freezers, but for most other covered products bearing an EnergyGuide label. Under the Final Rule, the range itself would bear the simple statement: ''Cost range of similar models.''

With regard to bottom-mount models with through the door ice, the Commission has decided not to amend the Rule to create another refrigerator category because it is unclear whether there will be a large increase in the number of these models available in the future. Without a clear indication that this configuration will be widely available in a large number of different models, we are reluctant to add to the already long list of refrigerator categories. The Commission may consider changes in the future if a significant number of such models appear on the market and we determine that the creation of another category would be beneficial to consumers.

E. Revisions to Ranges of Comparability and Energy Price Information

Background: Under the current Rule, the EnergyGuide label must contain a range of comparability that shows the highest and lowest energy consumption or efficiencies for all similar appliance models.[45] EPCA does not specify when the Commission must change the ranges but states it cannot do so ''more often than annually.'' (42 U.S.C. 6296(c)). Under the Commission's existing regulations, the FTC examines the ranges once a year and revises them on a product by product basis if the upper or lower limit on the applicable range has changed by 15% or more. (16 CFR § 305.10). For some products, the Commission has amended ranges several times over the last few years, for others less frequently. When the Commission makes these changes, manufacturers must change their labels to reflect the new ranges and update the estimated annual operating costs on the labels using new national average fuel costs, published annually by DOE. Accordingly, under the existing approach, the average fuel costs used on the label are tied to the year in which the ranges were last amended. This

[44] We note that the current magnitude of the benefit from combined range information is uncertain. At some model sizes, there are simply no (or very few) models of certain configurations available on the market. For example, there are few side-by-side door models (for automatic defrost refrigerator-freezers) available at sizes under twenty cubic feet. This means, for example, that combining the ranges would provide little benefit to a consumer shopping for an 18 cubic foot refrigerator-freezer. Likewise, there are few top-mount and bottom-mount refrigerator-freezer models available over twenty-three cubic feet in size. In addition, the FTC's consumer research (Q.805) suggested that over half of recent refrigerator purchasers did not consider different model configurations when shopping.

[45] 42 U.S.C. 6294(c)(1)(B).

creates inconsistent cost information on labels across different appliances.

Unfortunately, range changes also can cause the labels on different models of the same appliance, in the same showroom to display inconsistent information,[46] particularly when the models on display have been manufactured at different times. This confusion is exacerbated by frequent range changes. Frequent revisions also impose burdens on manufacturers who must change their product labels with each new revision. The ANPR contained a series of questions about these issues, including whether the FTC should change the frequency with which it examines ranges.

In our NPRM, the Commission proposed amending section 305.10 to change the frequency with which we alter range and national average energy price information to once every five years. We suggested that this approach would minimize problems associated with inconsistent cost and range information on showroom models, and make energy cost information uniform across appliance categories. The Commission also indicated that it would consider changes to range and cost information if substantial fluctuations occurred in the interim period. The NPRM sought comments on this proposal.

Comments: In general, commenters supported the Commission's proposal to establish a multi-year cycle for amending cost and range information. There was some disagreement, however, regarding the appropriate interval. Several commenters supported the proposed five-year schedule.[47] GAMA (#527896-00011), for example, explained that the five-year period will provide consistent cost and range information for products in retail showrooms and, at the same time, will reduce the burdens on manufacturers. CEE (#527896-00016), which indicated that five years was a reasonable span, noted that such an approach should lower compliance costs and decrease uncertainty. In addition, EEI (#527896-00005) suggested that the Commission consider updating the national average cost estimate with a ''rolling average'' using, for example, past and projected fuel price averages based on DOE figures.

Consumers Union (#527896-00012) strongly supported a five-year schedule for changes to national average energy cost information but urged the Commission to shorten the time period for changes to ranges of comparability. It argued that the proposed five-year period is too long because products will drop outside the range over time, leading to consumer confusion and the ''dismissal of the EnergyGuide as a useful tool.'' It suggested that the range should start at 25% below the most efficient product on the market to leave enough room for efficiency improvements.

AHAM (#519870-00006) and Whirlpool (#527896-00004) supported the Commission's proposal to set a regular time period for range and cost updates but believed the interval should be shorter than five years. Whirlpool (#527896-00004), which suggested an interval of three years, argued that a five year period may lead to very large changes in energy costs at the time of updates. AHAM (#527896-00006), which proposed a ''two to three year'' interval, argued that a large number of new products would fall outside of the range of comparability during the five-year period. AHAM (#527896-00006) suggested that such problems would be exacerbated by less frequent reporting requirements. AHAM (#527896-00006) also asked the Commission to explain the process for labeling products that fall outside of the range of comparability.

Several commenters asked the Commission to provide more detail regarding interim amendments to range and cost information as a result of ''dramatic market changes'' within the proposed five year cycle. For example, ACEEE (#527896-00015) urged the Commission to monitor federal efficiency standards, the introduction of new technologies, sustained changes in energy costs, and large increases in energy prices. Consumers Union (#527896-00012) asked for a more specific statement regarding future changes, suggesting that the Commission commit to changing the cost and range information before the end of the five year period if ''energy costs change by more than 25% during the interim.'' CEE (#527896-00016) also asked for more specific guidance on this issue.

Discussion: The Commission amends the Rule as proposed to set a five-year schedule for range of comparability information and annual cost information.[48] Although we recognize the potential benefit of more frequent changes, particularly to range of comparability information, we believe that the need for consistent label information is paramount and, on balance, deserves greater weight than the need for more frequent updates. Our primary concern is the appearance of inconsistent cost and range information on labels in showrooms and catalogs. Such inconsistency could lead to consumer confusion and a lack of confidence in the label. To minimize such concerns, we believe that the five-year schedule strikes the correct balance between maintaining consistent disclosures and providing updates to cost and range information. The five year interval approximates the frequency of changes to the ranges in the past few years. For example, over the last several years, the Commission amended refrigerator ranges in 2001 (Nov. 19, 2001 (66 FR 57867)), and then again in 2006 (Jan. 31, 2006 (71 FR 4983)). Ranges for standard clothes washers changed in 2000 (May 11, 2000 (65 FR 30351), and then 2005 (Jan. 27, 2005 (70 FR 3875). The Commission has amended ranges for other products at intervals greater than five years (*e.g.*, room air conditioners, central air conditioners, furnaces, and water heaters). Only two product categories, dishwashers and compact clothes washers, have changed at less than a five-year interval in the recent past.[49]

As discussed in our NPRM, the Commission will consider changes to cost and range information between the five year updates. We are reluctant to identify a specific threshold for such changes. In fact, the use of such a threshold simply would retain the current Rule's approach, which triggers changes to the ranges using a specific percentage. Under the Final Rule, we believe that any interim changes to range and cost information should be made on a case-by-case basis, and only when such information has changed substantially. Parties who identify the need for such interim changes in the future may petition the Commission.

[46] Inconsistent range information on similar models in the same showroom may confuse consumers as they seek to compare products.

[47] *See* GAMA (#527896-00011), CEE (#527896-00016), ACEEE (#527896-00015), and EEI (#527896-00005) (As discussed further in this section, CEE indicated that the five-year period was reasonable ''provided that the FTC allows exceptions for any dramatic market changes for a given appliance.'')

[48] The Final Rule amends section 305.10(b) as proposed to insert the phrase ''annual operating cost'' in lieu of ''annual energy consumption.''

[49] The new amendments do not alter the longstanding process detailed in section 305.10(c) for labeling new products that fall outside of existing ranges. That provision directs manufacturers to provide the product's annual energy consumption (now estimated operating cost) on the label, but omit placement of that figure on the comparability range. The manufacturers must also add a sentence below the scale indicating that the model's estimated energy cost was not available at the time the range was published.

We also note that the Final Rule does not adopt the suggestion to start the range at 25% below the most efficient product on the market. Although such an approach could provide a cushion for energy efficiency improvements, we are concerned that such information would be difficult to communicate to consumers and could lead to significant confusion. We also are not adopting a ''rolling average'' cost approach at this time. Given the difficultly in predicting future prices, it is unclear whether the use of future projections for the cost information on the label would be helpful for consumers. We are not, however, ruling out consideration of this concept in the future.

Although the Final Rule amends the frequency of changes for the cost and range information on the label, it does not change the frequency of the Rule's reporting requirements. Section 326(b)(4) of EPCA (42 U.S.C. § 6296(b)(4)) requires annual reporting from manufacturers, regardless of the frequency of range changes. Continued annual reporting will be useful to the Commission in reviewing whether the ranges for certain product categories should be changed within the five year cycle and in addressing compliance issues. The submissions, which are placed on the public record pursuant to 16 CFR § 4.9, also provide consumers and other interested parties with information about the energy use of models currently on the market.

F. MEF Descriptor for Clothes Washers

Background: In our ANPR (70 FR 66307, 66310), we asked whether the clothes washer label should disclose the model's efficiency rating using the measure currently required by DOE (the ''Modified Energy Factor'' or ''MEF'')[50] instead of the product's annual energy consumption. Several commenters responded that the Commission should not change current descriptors.[51] In the NPRM, the Commission noted that a recent news report questioned the consistency between the MEF information used for ENERGY STAR ratings and the electricity use information on the EnergyGuide label.[52] Accordingly, the Commission again asked whether MEF information should be provided on the label and whether, under current test procedures, manufacturers can derive annual operating cost information from MEF ratings.

Comments: Several commenters recommended that the Commission continue to provide annual electricity and cost information on the label and recommended that the Commission not include MEF information. Whirlpool (#527896-00004) argued that the inclusion of MEF ratings would not provide any value to the consumer and explained that the MEF could not be used to derive an annual operating cost for the clothes washer alone. Both EEI (#527896-00005) and AHAM (#527896-00007) suggested the inclusion of the MEF information on the label would create consumer confusion. CEE (#527896-00016) suggested that the use of MEF by the ENERGY STAR program is irrelevant because consumers do not need to be familiar with MEF to understand that a product is ENERGY STAR qualified. In contrast, on the EnergyGuide label consumer understanding of an MEF rating would be paramount.

Consumers Union (#527896-00012) disagreed and urged the Commission to include information related to energy needed to dry clothes, a measure which is accounted for in the MEF rating. According to Consumers Union (#527896-00012), such information ''can be readily ascertained . . . simply by assigning 0.5 kW-hours to every pound of moisture that remains at the end of the rinse cycle.''

Discussion: The Commission has decided to retain the annual electricity and cost information for clothes washers. First, we note that no commenters suggested that the current energy use and annual operating cost disclosures on the EnergyGuide label are unreliable or inconsistent with MEF ratings. No one indicated, for example, that some products with relatively high efficiency MEF ratings use large amounts of energy (and thus cost more to operate) compared to similar models. We, however, understand that by taking into account energy performance measures not captured by a washer's energy use alone, an MEF rating can produce a more complete picture of total energy use. Despite this potential benefit, disclosure of the MEF rating on labels poses two potential problems. First, we share the concerns raised by AHAM and EEI that inclusion of MEF information on the label may be confusing to consumers. MEF is unusual in that it takes into account the energy use of a separate appliance category (*i.e.*, dryers). We are concerned that the complexity of describing MEF accurately could render the label too confusing for some consumers and too cluttered to provide any benefit to others. Second, using MEF (instead of electricity use) could cause complications with the calculation and disclosure of the product's annual operating cost. Whirlpool explained that manufacturers cannot derive operating cost from the MEF under current DOE procedures. Therefore, even if MEF appeared on the label, washer energy use would continue to provide the basis for the estimated yearly operating cost disclosure, leaving the incorrect impression that the operating cost estimate stems from the MEF rating. Given these concerns, the Commission is reluctant to provide MEF information in the absence of compelling data that MEF provides more useful information than annual electricity use and operating cost. Accordingly, the Commission has not changed the energy descriptors for clothes washers.

We recognize that the ENERGY STAR and DOE standards programs use MEF as the primary measure of washer energy performance. During this proceeding, we have sought to ensure that the FTC's labeling requirements are compatible with the ENERGY STAR program (*e.g.*, concerns over categorical labeling and combining refrigerator categories). In this case though, there is nothing to indicate that continued disclosure of energy use (and not MEF) on the EnergyGuide label would have negative impacts for the ENERGY STAR program.

G. Placement of the EnergyGuide Label on Covered Products

Background: In our NPRM, the Commission proposed to modify and clarify the requirements for posting labels. The current requirements describe various methods for posting labels (adhesive labels, flap tags, etc.) and various methods for placing the labels on the products themselves. Under the Proposed Rule, manufacturers would have had to affix labels on their products in one of two ways: an adhesive label or hang tag. In either case, the label would have to be attached to the product so that the label was ''prominent to a consumer examining the product.'' In our NPRM, the Commission proposed allowing manufacturers to place the label on the exterior or interior of the product, if it were prominent to consumers examining the appliance and as long as it would not become dislodged during normal handling throughout the chain of distribution. The Commission explained that this directive would set a clear performance-based standard that

[50] MEF is an efficiency rating for clothes washers that takes into account the energy required for the removal of moisture remaining in the wash load after the washer cycle is complete.

[51] Alliance Laundry Systems (#519870-00008), Whirlpool (#519870-00013), AHAM (#519870-00016), NRCAN (#519870-00020), and GE (#519870-00027).

[52] *See* ''Washers & Dryers, Cycles of Change,'' Consumer Reports, Vol. 72, No. 1, Jan. 2007, at 39.

allowed manufacturers to adjust the location of the label depending on the product type and configuration. The Commission invited comment on this proposal.

Comments: The comments generally supported the proposal regarding label placement. For example, Whirlpool (#527896-00004) indicated that the performance criteria suggested by the Commission ''are superior to detailed placement specifications.'' AHAM (#527896-00006) mostly supported the changes but suggested that the Commission prohibit the placement of hang tags on the outside of the product. ''Such tags can be damaged or accidentally removed during distribution,'' explained AHAM (#527896-00006), ''and therefore may be absent when products reach retail.''

Discussion: In response to concerns raised by AHAM (#527896-00006), we have modified the proposal to prohibit the use of hang tags on the exterior surface of covered products. AHAM's comment (#527896-00006) suggests that the use of hang tags on the outside of appliances may cause EnergyGuide labels to become misplaced or damaged easily. The effectiveness of the entire labeling program is compromised if products in showrooms do not have the required labels. Accordingly, we believe it is important that the Rule contain placement requirements that minimize the chance that labels will become dislodged from products. In all other respects, we are amending the placement requirements in the Rule as proposed. We also note that the Final Rule also applies these new placement requirements to heating and cooling equipment labels.

H. Catalog Requirements

Background: The Rule requires any manufacturer, distributor, retailer, or private labeler who advertises a covered product in a catalog, including a website that qualifies as a catalog, to disclose the product's capacity, energy use (or efficiency), and range of comparability information. In the NPRM, the Commission proposed amending the catalog section to require disclosures of estimated annual operating costs for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, room air conditioners, and water heaters. This change would make the catalog requirements consistent with the changes proposed for the EnergyGuide label. The Proposed Rule would have continued to require the disclosure of energy efficiency rating information for central air conditioners and furnaces.

The Proposed Rule also would have eliminated the requirement for catalog sellers to include range information along with their disclosures in the catalogs.[53] Consumers viewing catalogs are likely to see information for a much larger number of models than consumers in a showroom. Thus, catalog shoppers do not have the same need for comparability ranges. In addition, because the range information in the paper catalogs cannot always be presented in the same form as they appear on the label, the display of range information in a catalog may cause confusion or fail to provide significant benefit to consumers. While the benefits of range disclosures in catalogs may be small, the burdens of providing this information can be significant. The burdens often fall on retailers who are not producing and labeling the products themselves. For these reasons, the Commission proposed eliminating the range information from the catalog requirements.

Finally, the NPRM contained several proposed changes to the catalog disclosure requirements in section 305.2(m) and newly-designated section 305.20 to clarify that Internet-based catalogs must also provide ''catalog'' disclosures. The Commission sought comment on these proposed changes.

Comments: The Commission received only two comments in response. Both expressed support for the proposed changes. Whirlpool (#527896-00004) agreed that elimination of the ''range information'' requirement for catalogs will reduce consumer confusion. AHAM (#527896-00006) indicated that ''these changes will allow manufacturers to more clearly present the relevant information needed to consumers when comparison shopping through a catalog or on the internet.''

Discussion: For the reasons explained above and in the NPRM, the Commission has amended the Rule for catalog requirements as proposed. We note that several Internet catalog sellers provide hyperlinks to EnergyGuide label images generated by manufacturers in lieu of creating their own disclosures to meet the Rule's catalog requirements. The Final Rule clarifies that such a practice is acceptable.

I. Fuel Cycle Energy Consumption

Background: In our NPRM, the Commission indicated that earlier comments from the American Gas Association (AGA) (#519870-00014) urged the Commission to include information on the label about ''energy consumption over the full fuel cycle (*i.e.*, total energy efficiency) and externalities such as emissions of criteria air pollutants and carbon dioxide over the full fuel cycle.'' AGA argued that without this information, the label does not allow consumers to ''make truly informed choices'' and provides information that is incomplete and misleading.

In our NPRM, the Commission explained that, under section 324(c)(1)(A) of EPCA (42 U.S.C. 6294(c)(1)(A)), the energy consumption information required on the Energy Guide label must be derived from DOE's test procedures. The current procedures measure end-use energy only and not the type of energy consumption described in AGA's comment. Accordingly, the Commission indicated that it was not proposing to add the information suggested by AGA.

Comments: In response, AGA (#527896-00009) continued to urge the Commission to consider the disclosure of fuel cycle energy information. AGA stated that there ''is no restriction upon the Commission using energy consumption calculations derived from the [DOE] test procedures, such as Energy Factor (EF) for water heaters, to developing full fuel cycle combustion and emissions estimates for subsequent use on the EnergyGuide labels.'' It suggested that the ''mechanics of translating site energy descriptors into full fuel cycle consumption and emissions can be easily developed using available federal government data sources and calculation methods.'' AGA urged the Commission to pursue actively approaches that explore full fuel cycle efficiency and emissions, particularly carbon dioxide emissions. AGA concluded that ''[a]t a time when public policy has begun to grapple with potential restriction of carbon dioxide emissions and possible unintended consequences of regulation, the Commission has an opportunity to address this societal need by providing consumers with better information so that they can make informed, socially-responsible purchase decisions.'' EEI (#527896-00005) disagreed, stating that ''extraneous information that has no relation to appliance energy efficiency, such as source energy estimates, should not be included on any revised FTC label.''

Discussion: The Final Rule does not require disclosures of fuel cycle energy information. Though it may be possible to derive fuel cycle emissions information from the DOE test procedures, those procedures do not specify the means (*e.g.*, necessary assumptions, equations, etc.) for

[53] EPCA indicates that catalogs must ''contain all information required to be displayed on the label, except as otherwise provided by the rule of the Commission.'' (42 U.S.C. 6296(a)).

calculating fuel cycle impacts, including carbon dioxide emissions. In addition, although the labeling provision in EPCA (42 U.S.C. 6294) does not prohibit specifically the possibility of full fuel cycle disclosures, it clearly contemplates the disclosure of site energy use (*e.g.*, ''estimated annual operating cost'') and not broader impacts such as the carbon emissions of covered products. It is likely that such a significant change to the FTC's labeling requirements would require substantial changes to DOE test procedures to allow for offsite energy use calculations as well as additional research and discussion regarding whether such information would be a useful measure of energy consumption for consumers.

J. Clothes Washer Labels

Background: In 2003, the Commission published amendments requiring a special headline on clothes washer labels indicating that the product had been tested under the 2004 DOE test procedure (68 FR 35458 (June 18, 2003)). The FTC added this headline at the request of industry members because the results of the 2004 DOE test differed significantly from the previous test. Although the explanatory language served a useful purpose at the time, we suggested in the NPRM that its continued presence on the label will gradually lose value and could even confuse consumers as the years pass. As the 2004 date becomes more distant, the headline may lead consumers to believe that the label or the product itself is old, or even obsolete. Accordingly, the Commission proposed to amend 305.11 by discontinuing this explanatory language on the clothes washer label.

Comments and Discussion: Both Whirlpool (#527896-00004) and AHAM (#527896-00006) indicated that the language is now redundant and potentially confusing to consumers. No comments opposed the change. Therefore, for the reasons discussed above, the Commission amends the Rule as proposed to eliminate language related to the 2004 DOE test procedure.

L. Television Labeling

Background: Section 324(a) of EPCA requires labels for televisions unless the Commission determines that labeling is not technologically or economically feasible. (42 U.S.C. 6294(a)). In 1979, the Commission determined that television labeling was not economically feasible. At that time, the evidence suggested that there was little variation in the annual energy costs of competing television models, and such costs were a small fraction of the purchase price. The Commission, therefore, indicated it was unlikely that television labels would promote efforts to increase energy efficiency or provide benefits to consumers. (44 FR 66466, 66468 (Nov. 19, 1979)).

As part of the May 2006 Workshop, the FTC sought comment on whether the Rule now should require television labeling in light of technological developments. In response, several commenters urged that the Commission revisit its 1979 decision. According to the Natural Resources Defense Council (NRDC) (#519870-00025), there are now many ''large-screen'' digital televisions on the market that use 500 or more kilowatt-hours per year, as much energy as many new refrigerators.[54] NRDC (#519870-00025) asserted that, in some cases, consumers will pay several hundred dollars in electricity costs for their televisions over the lifetime of the product. NRDC (#519870-00025) also indicated that there is now a large variation in active mode power use among similarly-sized televisions. In its view, there is no reliable, model-specific, source of energy-use information for new televisions. Some comments (*e.g.*, CEE (#522148-00006) supported NRDC's (#519870-00025) suggestion. Others (*e.g.*, Consumer Electronics Association (#522148-00009)), however, questioned the need and feasibility of television labeling.

In our NPRM, the Commission explained that the information provided by commenters suggests that the energy consumption characteristics of televisions are significantly different than when the Commission decided to forgo labeling in the 1970's and that energy labeling for televisions may assist consumers in making purchasing decisions. At the same time, the record suggested that current DOE procedures are inadequate to test most televisions currently on the market. Because the energy information disclosed on an FTC-required television label must stem from test procedures prescribed by DOE (*see* 42 U.S.C. 6294(c)), the Commission indicated that it cannot proceed until the DOE test is revised. Once DOE develops a revised test procedure, the Commission indicated it could consider whether the attributes of televisions on the market warrant energy labeling. The Commission sought further comment on this issue.

Comments: Several comments acknowledged that the outdated DOE test procedure poses a barrier for television labeling but suggested that DOE soon would have an opportunity to update their test procedure.[55] Both CEE (#527896-00016) and ACEEE (#527896-00015) indicated that the international test procedure currently under development should be finished soon. EPA (#527896-00018) reported that it has been working closely with the International Electrotechnical Commission (IEC) to develop the test procedure that will measure the active power mode power of televisions. ACEEE (#527896-00015) expects that a revised DOE procedure would follow as soon as the IEC standard is finalized. ACEEE (#527896-00015) also urged the Commission to ''establish a definite time frame'' for television labeling. CEE (#527896-00016) asked the Commission to commit to promulgating such requirements once the revised DOE procedure becomes available. No other comments were received on this issue.

Discussion: The Commission is not proposing labeling for televisions at this time. Absent a DOE test procedure applicable to today's products, we cannot require labeling that would benefit consumers. The Commission will continue to monitor this issue and may seek further comment on television labeling once DOE issues revised test procedures.

M. Miscellaneous Amendments and Issues

In our NPRM, the Commission proposed several minor substantive and formatting amendments. These include the reorganization of several sections, the inclusion of a new requirement related to refrigerator reporting, and the elimination of obsolete or incorrect references.

Alphabetize Definitions and Update Definition of Refrigerators and Refrigerator Freezers: To make the Rule more user friendly, the Commission proposed to alphabetize the list of definitions in section 305.3 and the descriptions of covered products in section 305.4. We also proposed to amend the definition of ''refrigerators and refrigerator freezers'' at section 305.3(a) so that it is consistent with DOE's current definition (10 CFR § 430.2). We received no comments on this issue. The Rule is, therefore, amended as proposed.

Adjusted Volume Information for Refrigerators: In our NPRM, the Commission proposed amending the Rule to require refrigerator, refrigerator-freezer, and freezer manufacturers to report the adjusted volume of their

[54] At the Workshop, one participant suggested that the average 42-inch plasma televisions draws 334 watts, with a minimum draw of 201 watts and a maximum draw of 520 watts. Workshop Tr. at 198.

[55] *See* EEI (#527896-00005), CEE (#527896-00016), and ACEEE (#527896-00015).

models. Adjusted volume data is essential for determining whether a refrigerator or freezer model meets DOE minimum efficiency standards, and thus whether it should be considered in updating range information for refrigerator labels. Both Whirlpool (#527896-00004) and AHAM (#527896-00006) indicated that they had no issue with this proposal. Whirlpool (#527896-00004) also explained that this provision does not create additional burden for manufacturers. No other comments addressed this issue. Section 305.8 of the Rule is therefore amended as proposed.

Brand Name Reporting: In our NPRM, the Commission proposed amending section 305.8 to clarify that manufacturers report both the manufacturer name and the brand name (if different from the manufacturer) of their models. Both Whirlpool (#527896-00004) and AHAM (#527896-00006) raised concerns about this proposal. In particular, Whirlpool (#527896-00004) explained that some manufacturers sell products to other manufacturers under an original equipment manufacturer arrangement or to retailers under a private label arrangement. Disclosure of brand names in conjunction with manufacturers' names, therefore, is not desirable from a marketing perspective.

The purpose of the proposed amendment was to clarify that manufacturers identify the brand names of their models in data submitted to the FTC, so that data could be posted by model name, not to link particular brands to specific manufacturers.[56] Beginning in 2003, the Commission began posting appliance data on the our website for use by consumers and others interested in the energy efficiency of appliances. This data presents information by brand name, not manufacturer, because brand name is more relevant to consumers. The Commission does not plan to change this practice.

The Commission therefore has amended the Rule to indicate that manufacturers submitting data under 305.8 of the Rule provide the brand name of the models included in their reports. The Final Rule does not require the inclusion of the manufacturer name for each individual model in the report.[57]

[56]All reports submitted to the Commission under section 305.8 the Appliance Labeling Rule become public record information pursuant to the Commission's Rules (16 CFR 4.9(a)(10)(xii)).

[57] Because the identity of manufacturers is readily apparent from the reports submitted to the FTC, it is not necessary to include such information for each model on each line of the data.

Reorganization of Section 305.11: In our NPRM, the Commission proposed splitting section 305.11 into several sections organized by product category to make it easier for manufacturers to identify the requirements applicable to their products. We did not receive comments on this issue. The Rule is, therefore, amended to created the following new sections: § 305.11 Labeling for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, and pool heaters; § 305.12 Labeling for Central Air Conditioners, Heat Pumps, and Furnaces; § 305.14 Energy Information Disclosures for Heating and Cooling Equipment; § 305.15 Labeling for Lighting Products; and § 305.16 Labeling and Marking for Plumbing Products. The Final Rule also contains various amendments throughout to update cross-references.

Applicability of DOE Test Procedures: In our NPRM, the Commission proposed amending section 305.5 to clarify that the Rule does not apply to covered appliance products for which DOE does not have a test procedure. No comments addressed this issue. The Commission, therefore, amends the Final Rule as proposed.

Elimination of Appendix K: In our NPRM, the Commission proposed eliminating the suggested reporting format in Appendix K. Most manufacturers submit data via email using spreadsheet templates provided on the FTC website. In addition, the reporting format in Appendix K does not apply to products that have been added since the Rule was first promulgated in 1979. Accordingly, we believe that Appendix K is no longer needed. No comments addressed this issue, and the Commission, therefore, amends the Final Rule as proposed.

Review of Technological Changes: In our NPRM, the Commission addressed CEE's (#519870-00018) recommendation that the Commission institute a semi-annual process to review technological advancements and modify the scope of labeling accordingly. In our NPRM, we explained that the Commission conducts periodic reviews of all its regulations on a rotating schedule, as it is conducting now for the Appliance Labeling Rule. During these reviews, the Commission seeks comments on the effectiveness of the rule in question, the burden it imposes, and possible improvements. Between such reviews, individuals and organizations may contact the Commission about problems or possible amendments to rules that may be needed. Therefore, the Commission explained that it did not plan to institute formal semi-annual reviews.

In response, Consumers Union (#527896-00012) indicated that many of DOE's test procedures are out-of-date, forcing manufacturers to extrapolate from existing requirements in determining energy performance for appliances, particularly those that contain new features not accounted for by the applicable DOE test. To address this concern, Consumers Union (#527896-00012) urged a mandatory review and update cycle for all DOE appliance test procedures.

We note that questions regarding DOE test procedures should be addressed to DOE. The Commission continues to believe that additional, periodic reviews are not necessary for FTC's rules. We, therefore, decline to adopt semi-annual reviews of technological advancements.

Effective Date of Amendments: Two comments addressed the timing of the Commission's Final Rule. Burnham (#527896-00001), a boiler manufacturer, suggested that the Commission provide manufacturers with at least six months to comply with the new requirements. CEE (#527896-00016) recommended that ''new EnergyGuide label rules be implemented as soon as possible, given the various constraints faced by the FTC and manufacturers.'' CEE (#527896-00016) also urged that the window for the transition from current to new label design be selected so as to minimize the amount of time in which the new and old EnergyGuide labels are present in the market. No other comments addressed this issue.

In the past, the Commission has generally provided industry members three months to implement routine range changes to the labels (see, *e.g.*, 66 FR 57867 (Nov. 19, 2001)). Because the amendments announced here involve a change in the label design for most products, we believe additional time for compliance is warranted. We therefore have set the effective date six months after publication of this Notice.

Consumer Education: CEE (#527896-00016) and ACEEE (#527896-00015) emphasized the importance of consumer education to support the labeling program. ACEEE (#527896-00015) stated that consumer education ''has been a critical component of other public information programs and can help leverage the time and resources invested in program design and implementation to maximize program effectiveness.'' The Commission places a high value, on consumer education and is considering what consumer education efforts are called for to implement effectively the new label design.

VIII. Paperwork Reduction Act

The Rule contains disclosure and reporting requirements that constitute ''information collection requirements'' as defined by 5 CFR § 1320.7(c), the regulation that implements the Paperwork Reduction Act (PRA).[58] OMB has approved the Rule's information collection requirements through August 31, 2009 (OMB Control No. 3084-0069). The Commission has made minor changes in the current Rule's existing recordkeeping, labeling, and reporting requirements. Accordingly, the Commission has submitted the Rule and a Supporting Statement to OMB for review under the PRA.

The Commission's burden estimates for the final amendments are based on data submitted by manufacturers to the FTC under current requirements and the staff's general knowledge of manufacturing practices.

The Final Rule requires manufacturers to change the EnergyGuide labels to the new design. Under the current Rule, manufacturers routinely change labels to reflect new range and cost data. The new label design will require a one-time drafting change for the manufacturers. The Commission estimates that this one time change will take 40 hours per manufacturer. The Commission further estimates that there are approximately 450 manufacturers of affected covered products.[59] Therefore, the label design change will result in a one-time burden of 18,000 hours (450 manufacturers x 40 hours). In calculating the associated labor cost estimate, the Commission assumes that the label design change will be implemented by clerical workers at an hourly wage rate of $14.59 per hour based on Bureau of Labor Statistics information. Thus, the Commission estimates that the new label design change will result in a one-time labor cost of approximately $262,620 (18,000 hours x $14.59 per hour).

As discussed above, the Commission anticipates that the provision of adjusted volume information for refrigerator manufacturers will not result in a significant burden increase. This information should be readily available to manufacturers because it is necessary to determine compliance with DOE conservation standards. Accordingly, the Commission has not made an adjustment to its previous burden estimate due to this *de minimis* increase in reporting of the data already required by the Rule.

The Final Rule also requires retailers who sell through catalogs to disclose information about annual operating cost instead of the annual energy consumption for certain products and provide an explanatory statement in the catalog similar to that which appears on the label. The Rule also eliminates the requirement for catalog sellers to list the range of comparability information. The Commission's previous estimate of the Rule's burden on catalog sellers (including Internet sellers) has assumed conservatively that catalog sellers must enter their data for each product into the catalog each year (*see* 71 FR 78057, 78062 (Dec. 28, 2006)). The rule change does not alter that assumption because the amendments require a one-time change of all products in affected catalogs. This one-time change is consistent with previous burden estimates. Accordingly, the Commission does not believe any change is required to the existing burden estimates for catalog sellers.

IX.Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires that the Commission provide a Final Regulatory Flexibility Analysis (FRFA), if any, with the final Rule, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603-605.

The Commission does not anticipate that the Final Rule will have a significant economic impact on a substantial number of small entities. The Commission recognizes that some of the affected manufacturers may qualify as small businesses under the relevant thresholds. The Commission estimates that these new requirements will apply to about 450 product manufacturers and an additional 150 online and paper catalog sellers of covered products. Out of these companies, the Commission expects that approximately 350 qualify as small businesses. In addition, the Commission does not expect that the Final Rule will have a significant impact on these entities.

We do not expect that the economic impact of implementing the design change will be significant. The Commission has provided industry members with ample time (six months) to implement this new design. Accordingly, this document serves as notice to the Small Business Administration of the FTC's certification of no effect. Although the Commission certifies under the RFA that the amendments in this notice will not have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an FRFA. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

Section 137 of the Energy Policy Act of 2005 (EPACT 2005) (Pub. L. 109-58) requires the Commission to conduct a rulemaking to consider the effectiveness of the consumer products labeling program.

B. Statement of the Objectives of, and Legal Basis for, the Amendments

The objective of the amendments is to improve the effectiveness of the current appliance labeling program. Section 137 of EPACT 2005 amends section 324 of EPCA to require the Commission to examine ''the effectiveness of the consumer products labeling program in assisting consumers in making purchasing decisions and improving energy efficiency.''

C. Small Entities to Which the Proposed Rule Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, refrigerator and laundry equipment manufacturers qualify as small businesses if they have fewer than 1,000 employees (for other household appliances the figure is 500 employees). Appliance retailers qualify as small businesses if their sales are less than $8.0 million annually. The Commission estimates that fewer than 300 entities subject to the Final Rule qualify as small businesses.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

We recognize that the Final Rule will involve some modest increase in compliance costs. Such costs will include some small, one-time drafting costs and reporting requirements for appliance manufacturers. As discussed in this notice, the increase in reporting burden should be *de minimis*. The transition to the use of a new label design should represent a one-time cost that will not be substantial. The Commission does not expect that the labeling requirements will impose significant additional costs on catalog sellers. All of these burdens, including the classes of affected entities and professional skills, if any, needed to comply, are discussed in the Paperwork Reduction Act section of this notice and

[58] 44 U.S.C. 3501-3520.

[59] We have increased this estimate to account for the continued labeling requirements for heating and cooling equipment. The burden for the routine labeling of these products has already been accounted for in the clearance for the underlying Rule (OMB Control No. 3084-0069).

there should be no difference in that burden as applied to small businesses.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the Final Rule.

F. Significant Alternatives to the Final Amendments

As indicated in the NPRM, the Commission has considered delaying the effectiveness of the rule to provide additional time for small business compliance. At least one comment suggested that businesses be given six months to comply with the new requirements. (Burnham (#527896-00001)). Accordingly, the Commission has set the effectiveness date for the new requirements at six months after the publication of this notice.

X. Final Rule Language

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

By direction of the Commission.

Richard C. Donohue,

Acting Secretary.

■ For the reasons set out above, the Commission is amending 16 CFR Part 305 as follows:

PART 305—[AMENDED]

■ 1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. Section 305.2 is revised to read as follows:

§ 305.2 Definitions.

(a) *Act* means the Energy Policy and Conservation Act (Pub. L. 94–163), and amendments thereto.

(b) *ANSI* means the American National Standards Institute and, as used herein, is the prefix for national standards and codes adopted by ANSI.

(c) *ASME* means the American Society of Mechanical Engineers and, as used herein, is the prefix for national standards and codes adopted by ASME.

(d) *Average lamp efficacy* means the lamp efficacy readings taken over a statistically significant period of manufacture with the readings averaged over that period.

(e) *Ballast efficacy factor* means the relative light output divided by the power input of a fluorescent lamp ballast, as measured under test conditions specified in American National Standards Institute (ANSI) standard C82.2–1984, or as may be prescribed by the Secretary of Energy. Copies of ANSI standard C82.2–1984 may be obtained from the American National Standards Institute, 11 West 42nd St., New York, NY 10036.

(f) *Base* for lamps means the portion of the lamp which screws into the socket.

(g) *Bulb shape* means the shape of the lamp, especially the glass portion.

(h) *Catalog* means printed material, including material disseminated over the Internet, which contains the terms of sale, retail price, and instructions for ordering, from which a retail consumer can order a covered product.

(i) *Color rendering index* or *CRI* for lamps means the measure of the degree of color shift objects undergo when illuminated by a light source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature.

(j) *Commission* means the Federal Trade Commission.

(k) *Consumer product* means any article (other than an automobile, as ''automobile'' is defined in 15 U.S.C. 2001(1) [sec. 501(1) of the Motor Vehicle Information and Cost Savings Act]) of a type—

(1) Which in operation consumes, or is designed to consume, energy or, with respect to showerheads, faucets, water closets, and urinals, water; and

(2) Which, to any significant extent, is distributed in commerce for personal use or consumption by individuals; without regard to whether such article or such type is in fact distributed in commerce for personal use or consumption by an individual, except that such term includes fluorescent lamp ballasts, general service fluorescent lamps, medium base compact fluorescent lamps, general service incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets, and urinals distributed in commerce for personal or commercial use or consumption.

(l) *Consumer appliance product* means any of the following consumer products, excluding those products designed solely for use in recreational vehicles and other mobile equipment:

(1) Refrigerators, refrigerator-freezers, and freezers that can be operated by alternating current electricity, excluding—

(i) Any type designed to be used without doors; and

(ii) Any type which does not include a compressor and condenser unit as an integral part of the cabinet assembly.

(2) Dishwashers.

(3) Water heaters.

(4) Room air conditioners.

(5) Clothes washers.

(6) Clothes dryers.

(7) Central air conditioners and central air conditioning heat pumps.

(8) Furnaces.

(9) Direct heating equipment.

(10) Pool heaters.

(11) Kitchen ranges and ovens.

(12) Television sets.

(13) Fluorescent lamp ballasts.

(14) General service fluorescent lamps.

(15) Medium base compact fluorescent lamps.

(16) General service incandescent lamps, including incandescent reflector lamps.

(17) Showerheads.

(18) Faucets.

(19) Water closets.

(20) Urinals.

(21) Any other type of consumer product that the Department of Energy classifies as a covered product under section 322(b) of the Act (42 U.S.C. 6292).

(m) *Correlated color temperature* for lamps means the absolute temperature of a blackbody whose chromaticity most nearly resembles that of the light source.

(n) *Covered product* means any consumer product or consumer appliance product described in §305.3 of this part.

(o) *Distributor* means a person (other than a manufacturer or retailer) to whom a consumer appliance product is delivered or sold for purposes of distribution in commerce.

(p) *Energy efficiency rating* means the following product-specific energy usage descriptors: *annual fuel utilization efficiency (AFUE)* for furnaces; *energy efficiency ratio (EER)* for room air conditioners; *seasonal energy efficiency ratio (SEER)* for the cooling function of central air conditioners and heat pumps; *heating seasonal performance factor (HSPF)* for the heating function of heat pumps; and, *thermal efficiency (TE)* for pool heaters, as these descriptors are determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293). These product-specific energy usage descriptors shall be used in satisfying all the requirements of this part.

(q) *Estimated annual energy consumption and estimated annual operating cost*—

(1) *Estimated annual energy consumption* means the energy or (for products described in sections 305.3(n)–(q)) water that is likely to be consumed annually in representative use of a consumer product, as determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293).

(i) *Kilowatt-hour use per year*, or *kWh/yr.*, means estimated annual energy consumption expressed in kilowatt-hours of electricity.

(ii) *Therm use per year*, or *therms/yr.*, means estimated annual energy consumption expressed in therms of natural gas.

(iii) *Gallon use per year*, or *gallons/yr.*, means estimated annual energy consumption expressed in gallons of propane or No. 2 heating oil.

(2) *Estimated annual operating cost* means the aggregate retail cost of the energy that is likely to be consumed annually in representative use of a consumer product, as determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293).

(r) *Flow restricting or controlling spout end device* means an aerator used in a faucet.

(s) *Flushometer valve* means a valve attached to a pressured water supply pipe and so designed that, when actuated, it opens the line for direct flow into the fixture at a rate and quantity to operate properly the fixture, and then gradually closes to provide trap reseal in the fixture in order to avoid water hammer. The pipe to which this device is connected is in itself of sufficient size that, when opened, will allow the device to deliver water at a sufficient rate of flow for flushing purposes.

(t) *IES* means the Illuminating Engineering Society of North America and, as used herein, is the prefix for test procedures adopted by IES.

(u) *Lamp efficacy* means the light output of a lamp divided by its wattage, expressed in lumens per watt (LPW).

(v) *Lamp type* means all lamps designated as having the same electrical and lighting characteristics and made by one manufacturer.

(w) *Life* and *lifetime* for lamps mean length of operating time of a statistically large group of lamps between first use and failure of 50 percent of the group.

(x) *Light output* for lamps means the total luminous flux (power) of a lamp in lumens.

(y) *Luminaire* means a complete lighting unit consisting of a fluorescent lamp or lamps, together with parts designed to distribute the light, to position and protect such lamps, and to connect such lamps to the power supply through the ballast.

(z) *Manufacturer* means any person who manufactures, produces, assembles, or imports a consumer appliance product. Assembly operations which are solely decorative are not included.

(aa) *New covered product*, as used in § 305.4, means a covered product the title of which has not passed to a purchaser who buys the product for purposes other than resale or leasing for a period in excess of one year.

(bb) *Private labeler* means an owner of a brand or trademark on the label of a consumer appliance product which bears a private label.

(cc) *Range of comparability* means a group of models within a class of covered products, each model of which satisfies approximately the same consumer needs.

(dd) *Range of energy efficiency ratings* means the range of energy efficiency ratings for all models within a designated range of comparability.

(ee) *Range of estimated annual energy cost* means the range of estimated annual energy cost per year of all models within a designated range of comparability.

(ff) *Retailer* means a person to whom a consumer appliance product is delivered or sold, if such delivery or sale is for purposes of sale or distribution in commerce to purchasers who buy such product for purposes other than resale. The term *retailer* includes purchasers of appliances who install such appliances in newly constructed or newly rehabilitated housing, or mobile homes, with the intent to sell the covered appliances as part of the sale of such housing or mobile homes.

(gg) *Water use* means the quantity of water flowing through a showerhead, faucet, water closet, or urinal at point of use, determined in accordance with test procedures under section 323 of the Act, 42 U.S.C. 6293.

(hh) *Wattage* for lamps means the total electrical power consumed by a lamp in watts, after an initial seasoning period and including, for fluorescent lamps, arc watts plus cathode watts.

■ 3. In § 305.3, paragraphs (a)(1), (d), and (r) are revised to read as follows:

§ 305.3 Description of covered products.

(a) * * *

(1) *Electric refrigerator* means a cabinet designed for the refrigerated storage of food at temperatures above 32° F and below 39° F, configured for general refrigerated food storage, and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32° F, but does not provide a separate low temperature compartment designed for the freezing and storage of food at temperatures below 8 °F.

* * * * *

(d) *Water heater* means a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand, including—

(1) Storage type units which heat and store water at a thermostatically controlled temperature, including gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu per hour or less, and electric storage water heaters with an input of 12 kilowatts or less;

(2) Instantaneous type units which heat water but contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instantaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less; and

(3) Heat pump type units, with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, which are products designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function.

* * * * *

(r) *Pool heater* means an appliance designed for heating nonpotable water contained at atmospheric pressure, including heating water in swimming pools, spas, hot tubs and similar applications.

■ 4. In § 305.4, paragraphs (a)(1), (b)(5), and (c) are revised to read as follows:

§ 305.4 Prohibited acts.

(a) * * *

(1) For any manufacturer or private labeler knowingly to distribute in commerce any new covered product unless such covered product is marked and/or labeled in accordance with this part with a marking, label, hang tag, or energy fact sheet which conforms to the provisions of the Act and this part.

* * * * *

(b) * * *

(5) Distribute in commerce any catalog containing a listing for a covered product without the information required by § 305.20 of this part. This subsection shall also apply to distributors and retailers.

(c) Pursuant to section 333(c) of the Act, it shall be an unfair or deceptive act or practice in violation of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) for any manufacturer, distributor, retailer, or

private labeler in or affecting commerce to display or distribute at point of sale any printed material applicable to a covered product under this rule if such printed material does not contain the information required by § 305.19. This requirement does not apply to any broadcast advertisement or to any advertisement in a newspaper, magazine, or other periodical.

* * * * *

■ 5. In § 305.5, paragraph (a) is revised to read as follows:

§ 305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, energy efficiency rating, and water use rate.

(a) Procedures for determining the estimated annual energy consumption, the estimated annual operating costs, the energy efficiency ratings, and the efficacy factors of the following covered products are those located in 10 CFR part 430, subpart B. For the following list of covered products, the requirements of this part apply only to products for which the Department of Energy has adopted and published test procedures for measuring energy usage or efficiency.

(1) Refrigerators and refrigerator-freezers—§ 430.23(a).

(2) Freezers—§ 430.23(b).

(3) Dishwashers—§ 430.23(c).

(4) Water heaters—§ 430.23(e).

(5) Room air conditioners—§ 430.23(f).

(6) Clothes washers—§ 430.23(j).

(7) Central air conditioners and heat pumps—§ 430.23(m).

(8) Furnaces—§ 430.23(n).

(9) Pool Heaters—§ 430.23(p)

(10) Fluorescent lamp ballasts—§ 430.23(q).

* * * * *

■ 6. Section 305.7 (a) and (b) are revised to read as follows:

§ 305.7 Determinations of capacity.

* * * * *

(a) *Refrigerators and refrigerator-freezers.* The capacity shall be the total refrigerated volume (VT) and the adjusted total volume (AV) in cubic feet, rounded to the nearest one-tenth of a cubic foot, as determined according to appendix A1 to 10 CFR part 430, subpart B.

(b) *Freezers.* The capacity shall be the total refrigerated volume (VT) and the adjusted total volume (AV) in cubic feet, rounded to the nearest one-tenth of a cubic foot, as determined according to appendix B1 to 10 CFR part 430, subpart B.

* * * * *

■ 7. In § 305.8, paragraph (a)(1) is revised to read as follows:

§ 305.8 Submission of data.

(a)(1) Each manufacturer of a covered product (except manufacturers of fluorescent lamp ballasts, showerheads, faucets, water closets, urinals, general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent lamps including incandescent reflector lamps) shall submit annually to the Commission a report listing the estimated annual energy consumption (for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters) or the energy efficiency rating (for room air conditioners, central air conditioners, heat pumps, furnaces, and pool heaters) for each basic model in current production, determined according to § 305.5 and statistically verified according to § 305.6. The report must also list, for each basic model in current production: the brand name; the model numbers for each basic model; the total energy consumption, determined in accordance with § 305.5, used to calculate the estimated annual energy consumption or energy efficiency rating; the number of tests performed; and, its capacity, determined in accordance with § 305.7. For those models that use more than one energy source or more than one cycle, each separate amount of energy consumption, measured in accordance with § 305.5, shall be listed in the report. Starting serial numbers or other numbers identifying the date of manufacture of covered products shall be submitted whenever a new basic model is introduced on the market.

* * * * *

§ 305.9 [Removed]

■ 8. Section 305.9 is removed and reserved.

■ 9. Section 305.10 is revised to read as follows:

§ 305.10 Ranges of comparability on the required labels.

(a) *Range of Estimated Annual Operating Costs or Energy Efficiency Ratings.* The range of estimated annual operating costs or energy efficiency ratings for each covered product (except fluorescent lamp ballasts, lamps, showerheads, faucets, water closets and urinals) shall be taken from the appropriate appendix to this part in effect at the time the labels are affixed to the product. The Commission shall publish revised ranges every five years beginning in 2012 in the Federal Register. When the ranges are revised, all information disseminated after 90 days following the publication of the revision shall conform to the revised ranges. Products that have been labeled prior to the effective date of a modification under this section need not be relabeled.

(b) *Representative average unit energy cost.* The Representative Average Unit Energy Cost to be used on labels as required by § 305.11 and disclosures as required by § 305.20 are listed in appendix K to this part. The Commission shall publish revised Representative Average Unit Energy Cost figures every five years beginning in 2012 in the Federal Register. When the cost figures are revised, all information disseminated after 90 days following the publication of the revision shall conform to the new cost figure.

(c) *Operating Costs or Efficiency Ratings Outside Current Range.* When the estimated annual operating cost or energy efficiency rating of a given model of a covered product falls outside the limits of the current range for that product, which could result from the introduction of a new or changed model, the manufacturer shall:

(1) Omit placement of such product on the scale that appears as required by §§ 305.11 and 305.12 of this part, and

(2) Add one of the two sentences below, as appropriate, in the space just below the scale on the label, as follows:

The estimated yearly operating cost of this model was not available at the time the range was published.

The energy efficiency rating of this model was not available at the time the range was published.

■ 10. Section 305.11 is revised to read as follows:

§ 305.11 Labeling for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, and pool heaters.

(a) *Layout.* All energy labels for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, pool heaters, and room air conditioners shall use one size, similar colors, and typefaces with consistent positioning of headline, copy, and charts to maintain uniformity for immediate consumer recognition and readability. Trim size dimensions for all labels shall be as follows: width must be between 5 1/4 inches and 5 1/2 inches (13.34 cm. and 13.97 cm.); length must be between 7 3/8 inches (18.78 cm.) and 7 5/8 (19.34 cm.). Copy is to be set between 27 picas and 29 picas and copy page should be centered (right to left and top to bottom). Depth is variable but should follow closely the prototype labels appearing at the end of this part illustrating the basis layout. All positioning, spacing, type sizes, and line widths should be similar to and

consistent with the prototype and sample labels in appendix L.

(b) *Type style and setting*. The Arial series typeface or equivalent shall be used exclusively on the label. Specific sizes and faces to be used are indicated on the prototype labels. No hyphenation should be used in setting headline or copy text. Positioning and spacing should follow the prototypes closely. Generally, text must be set flush left with two points leading except where otherwise indicated. See the prototype labels for specific directions.

(c) *Colors*. The basic colors of all labels covered by this section shall be process yellow or equivalent and process black. The label shall be printed full bleed process yellow. All type and graphics shall be print process black.

(d) *Label Types*—The labels must be affixed to the product in the form of an adhesive label or a hang tag as follows:

(1) *Adhesive labels*. All adhesive labels should be applied so they can be easily removed without the use of tools or liquids, other than water, but should be applied with an adhesive with an adhesion capacity sufficient to prevent their dislodgment during normal handling throughout the chain of distribution to the retailer or consumer. The paper stock for pressure-sensitive or other adhesive labels shall have a basic weight of not less than 58 pounds per 500 sheets (25''x38'') or equivalent, exclusive of the release liner and adhesive. A minimum peel adhesion capacity for the adhesive of 12 ounces per square inch is suggested, but not required if the adhesive can otherwise meet the above standard.

(2) *Hang tags*. Labels may be affixed to the product in the form of a hang tag using string or similar material. The paper stock for hang tags shall have a basic weight of not less than 110 pounds per 500 sheets (25 1/2''x30 1/2''; index). When materials are used to attach the hang tags to appliance products, the materials shall be of sufficient strength to insure that if gradual pressure is applied to the hang tag by pulling it away from where it is affixed to the product, the hang tag will tear before the material used to affix the hang tag to the product breaks.

(e) *Placement*.

(1) *Adhesive labels*: Manufacturers shall affix adhesive labels to the covered products in such a position that it is easily read by a consumer examining the product. The label should be generally located on the upper-right-front corner of the product's front exterior. However, some other prominent location may be used as long as the label will not become dislodged during normal handling throughout the chain of distribution to the retailer or consumer. The top of the label should not exceed 74 inches from the base of taller products. The label can be displayed in the form of a flap tag adhered to the top of the appliance and bent (folded at 90°) to hang over the front, as long as this can be done with assurance that it will be readily visible.

(2) *Hang tags*. A hang tag shall be affixed to the interior of the product in such a position that it can be easily read by a consumer examining the product. A hang tag can be affixed in any position that meets this requirement as long as the label will not become dislodged during normal handling throughout the chain of distribution to the retailer or consumer.

(f) *Label Content*—(1) Headlines and texts, as illustrated in the prototype and sample labels in appendix L to this part.

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(3) Model number(s) will be the designation given by the manufacturer or private labeler.

(4) Capacity or size is that determined in accordance with § 305.7. For refrigerators, refrigerator-freezers, and freezers, the capacity provided on the label shall be the model's total refrigerated volume (VT) as determined in accordance § 305.7.

(5) Estimated annual operating costs for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, room air conditioners, and water heaters are as determined in accordance with § 305.5 and appendix K to this part. Thermal efficiencies for pool heaters are as determined in accordance with § 305.5 . Labels for clothes washers and dishwashers must disclose estimated annual operating cost for both electricity and natural gas as illustrated in the sample labels in appendix L.

(6) Ranges of comparability for estimated annual operating costs or thermal efficiencies, as applicable, are found in the appropriate appendices accompanying this part.

(7) Placement of the labeled product on the scale shall be proportionate to the lowest and highest estimated annual operating costs or thermal efficiencies, as applicable.

(8) Labels for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, and water heaters must contain the model's estimated annual energy consumption as determined in accordance with § 305.5 and as indicated on the sample labels in appendix L. Labels for room air conditioners and pool heaters must contain the model's energy efficiency rating or thermal efficiency, as applicable, as determined in accordance with § 305.5 and as indicated on the sample labels in appendix L.

(9) Labels must contain a statement explaining information on the label as illustrated in the prototype labels in appendix L and specified as follows by product type:

(i) For refrigerators, refrigerator-freezers, and freezers, the statement will read as follows (fill in the blanks with the appropriate year and energy cost figures):

Your costs will depend on your utility rates and use.

[Insert statement required by § 305.11(f)(9)((ii)].

Estimated operating cost is based on a [Year] national average electricity cost of ___ cents per kWh.

For more information, visit *www.ftc.gov/appliances.*

(ii) For refrigerators, refrigerator-freezers, and freezers, the following sentence shall be included as part of the statement required by § 305.11(f)(10)(i):

(A) For models covered under appendix A1, the sentence shall read:

Cost range based only on refrigerator models of similar capacity with automatic defrost.

(B) For models covered under appendix A2, the sentence shall read:

Cost range based only on models of similar capacity with manual defrost.

(C) For models covered under appendix A3, the sentence shall read:

Cost range based only on models of similar capacity with partial automatic defrost.

(D) For models covered under appendix A4, the sentence shall read:

Cost range based only on models of similar capacity with automatic defrost, top-mounted freezer, and without through-the-door ice.

(E) For models covered under appendix A5, the sentence shall read:

Cost range based only on models of similar capacity with automatic defrost, side-mounted freezer, and without through-the-door ice.

(F) For models covered under appendix A6, the sentence shall read:

Cost range based only on models of similar capacity with automatic defrost, bottom-mounted freezer, and without through-the-door ice.

(G) For models covered under appendix A7, the sentence shall read:

Cost range based only on models of similar capacity with automatic defrost, top-mounted freezer, and through-the-door ice.

(H) For models covered under appendix A8, the sentence shall read:

Cost range based only on models of similar capacity with automatic defrost, side-mounted freezer, and through-the-door ice.

(I) For models covered under appendix B1, the sentence shall read:

Cost range based only on upright freezer models of similar capacity with manual defrost.

(J) For models covered under appendix B2, the sentence shall read:

Cost range based only on upright freezer models of similar capacity with automatic defrost.

(K) For models covered under appendix B3, the sentence shall read:

Cost range based only on chest and other freezer models of similar capacity.

(iii) For room air conditioners, the statement will read as follows (fill in the blanks with the appropriate model type, year, energy type, and energy cost figure):

Your costs will depend on your utility rates and use.

Cost range based only on models [of similar capacity without reverse cycle and with louvered sides; of similar capacity without reverse cycle and without louvered sides; with reverse cycle and with louvered sides; or with reverse cycle and without louvered sides].

Estimated operating cost is based on a [Year] national average electricity cost of ___ cents per kWh.

For more information, visit *www.ftc.gov/appliances.*

(iv) For water heaters covered by Appendices D1, D2, and D3, the statement will read as follows (fill in the blanks with the appropriate fuel type, year, and energy cost figures):

Your costs will depend on your utility rates and use.

Cost range based only on models of similar capacity fueled by [natural gas, oil, propane, or electricity].

Estimated operating cost is based on a [Year] national average [electricity, natural gas, propane, or oil] cost of [___ cents per kWh or $___ per therm or gallon].

For more information, visit *www.ftc.gov/appliances.*

(v) For instantaneous gas water heaters (appendix D4) and heat pump water heaters (appendix D5), the statement will read as follows (fill in the blanks with the appropriate model type, the operating cost, the year, and the energy cost figures):

Your costs will depend on your utility rates and use.

Cost range based only on [instantaneous gas water heater or heat pump water heater] models of similar capacity. Estimated operating cost is based on a [Year] national average [electricity, natural gas, or propane] cost of [___ cents per kWh or $___ per therm or gallon].

For more information, visit *www.ftc.gov/appliances.*

(vi) For clothes washers and dishwashers, the statement will read as follows (fill in the blanks with the appropriate appliance type, the operating cost, the number of loads per week, the year, and the energy cost figures):

Your costs will depend on your utility rates and use.

Cost range based only on [compact/standard] capacity models.

Estimated operating cost is based on [4 washloads a week for dishwashers, or 8 washloads a week for clothes washers] and a [Year] national average electricity cost of ___ cents per kWh and natural gas cost of $___ per therm.

For more information, visit *www.ftc.gov/appliances.*

(vii) For pool heaters, the statement will read as follows:

Efficiency range based only on models fueled by [natural gas or oil].

For more information, visit *www.ftc.gov/appliances.*

(11) The following statement shall appear on each label as illustrated in the prototype and sample labels in appendix L:

Federal law prohibits removal of this label before consumer purchase.

(12) No marks or information other than that specified in this part shall appear on or directly adjoining this label except that:

(i) A part or publication number identification may be included on this label, as desired by the manufacturer. If a manufacturer elects to use a part or publication number, it must appear in the lower right-hand corner of the label and be set in 6-point type or smaller.

(ii) The energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer.

(iii) The manufacturer may include the ENERGY STAR logo on the bottom right corner of the label for qualified products. The logo must be 1 inch by 1 inch in size. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

■ 11. Section 305.12 is revised to read as follows:

§ 305.12 Labeling for Central Air Conditioners, Heat Pumps, and Furnaces.

(a) *Layout.* All energy labels for central air conditioners, heat pumps, and furnaces (including boilers) shall use one size, similar colors, and typefaces with consistent positioning of headline, copy, and charts to maintain uniformity for immediate consumer recognition and readability. Trim size dimensions for all labels shall be as follows: width must be between 5 1/4 inches and 5 1/2 inches (13.34 cm. and 13.97 cm.); length must be between 7 3/8 inches (18.78 cm.) and 7 5/8 (19.34 cm.). Copy is to be set between 27 picas and 29 picas and copy page should be centered (right to left and top to bottom). Depth is variable but should follow closely the prototype labels appearing at the end of this part illustrating the basic layout. All positioning, spacing, type sizes, and line widths should be similar to and consistent with the prototype and sample labels in appendix L.

(b) *Type style and setting.* The Arial series typeface or equivalent shall be used exclusively on the label. Specific sizes and faces to be used are indicated on the prototype labels. No hyphenation should be used in setting headline or copy text. Positioning and spacing should follow the prototypes closely. Generally, text must be set flush left with two points leading except where otherwise indicated. See the prototype labels for specific directions.

(c) *Colors.* The basic colors of all labels covered by this section shall be process yellow or equivalent and process black. The label shall be printed full bleed process yellow. All type and graphics shall be print process black.

(d) *Label Type.* The labels must be affixed to the product in the form of an adhesive label.

All adhesive labels should be applied so they can be easily removed without the use of tools or liquids, other than water, but should be applied with an adhesive with an adhesion capacity sufficient to prevent their dislodgment during normal handling throughout the chain of distribution to the retailer or consumer. The paper stock for pressure-sensitive or other adhesive labels shall have a basic weight of not less than 58 pounds per 500 sheets (25''x38'') or equivalent, exclusive of the release liner and adhesive. A minimum peel adhesion capacity for the adhesive of 12 ounces per square inch is suggested, but not required if the adhesive can otherwise meet the above standard.

(e) *Placement.* Manufacturers shall affix adhesive labels to the covered products in such a position that it is easily read by a consumer examining the product. The label should be generally located on the upper-right-front corner of the product's front exterior. However, some other prominent location may be used as long as the label will not become dislodged during normal handling throughout the chain of distribution to the retailer or

consumer. The top of the label should not exceed 74 inches from the base of taller products. The label can be displayed in the form of a flap tag adhered to the top of the appliance and bent (folded at 90°) to hang over the front, as long as this can be done with assurance that it will be readily visible. Labels for split system central air conditioners shall be affixed to the condensing unit.

(f) *Content of Labels for furnaces.* (1) Headlines and texts, as illustrated in the prototype and sample labels in appendix L to this part.

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(3) The annual fuel utilization efficiency for furnaces is determined in accordance with §305.5.

(4) Ranges of comparability consisting of the lowest and highest annual fuel utilization efficiencies (AFUE) (for furnaces) for all furnaces that utilize the same energy source as indicated in the appendices to this part.

(5) Placement of the labeled product on the scale shall be proportionate to the lowest and highest annual fuel utilization efficiency ratings forming the scale.

(6) The following statement shall appear on furnace labels beneath the range(s) as illustrated in the sample labels in appendix L. Fill in the blanks with the appropriate product subcategory listed in brackets:

Efficiency range based only on [natural gas furnaces; electric furnaces; oil furnaces; mobile home furnaces; gas (except steam) boilers; gas (steam) boilers; oil boilers; or electric boilers].

For more information, visit *www.ftc.gov/appliances.*

(7) The following statement shall appear at the top of the label as illustrated as illustrated in the sample labels in appendix L:

Federal law prohibits removal of this label before consumer purchase.

(8) No marks or information other than that specified in this part shall appear on or directly adjoining this label except that:

(i) A part or publication number identification may be included on this label, as desired by the manufacturer. If a manufacturer elects to use a part or publication number, it must appear in the lower right-hand corner of the label and be set in 6-point type or smaller.

(ii) The energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer.

(iii) The manufacturer may include the ENERGY STAR logo on the bottom right corner of the label for qualified products. The logo must be 1 inch by 1 inch in size. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

(9) Manufacturers of boilers shipped with more than one input nozzle to be installed in the field must label such boilers with the AFUE of the system when it is set up with the nozzle that results in the lowest annual fuel utilization efficiency rating.

(10) Manufacturers that ship out boilers that may be set up as either steam or hot water units must label the boilers with the AFUE rating derived by conducting the required test on the boiler as a hot water unit.

(g) *Content of Labels for central air conditioners and heat pumps.* (1) Headlines and texts, as illustrated in the prototype and sample labels in appendix L to this part.

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(3) The seasonal energy efficiency ratio for the cooling function of central air conditioners is determined in accordance with §305.5. For the heating function, the heating seasonal performance factor shall be calculated for heating Region IV for the standardized design heating requirement nearest the capacity measured in the High Temperature Test in accordance with §305.5. In addition, the energy efficiency rating(s) for split system condenser-evaporator coil combinations shall be either:

(i) The energy efficiency rating of the condenser-evaporator coil combination that is the particular manufacturer's most commonly sold combination for that condenser model; or

(ii) The energy efficiency rating of the actual condenser-evaporator coil combination comprising the system to which the label is to be attached.

(4)(i) Each cooling only central air conditioner label shall contain a range of comparability consisting of the lowest and highest seasonal energy efficiency ratios for all cooling only central air conditioners.

(ii) Each heat pump label, except as noted in paragraph (g)(4)(iii) of this section, shall contain two ranges of comparability. The first range shall consist of the lowest and highest seasonal energy efficiency ratios for the cooling side of all heat pumps. The second range shall consist of the lowest and highest heating seasonal performance factors for the heating side of all heat pumps.

(iii) Each heating only heat pump label shall contain a range of comparability consisting of the lowest and highest heating seasonal performance factors for all heating only heat pumps.

(5) Placement of the labeled product on the scale shall be proportionate to the lowest and highest efficiency ratings forming the scale.

(6) The following statement shall appear on the label beneath the range(s) in bold print (fill in the blank the appropriate unit type):

Efficiency range based only on [single package units or split system units].

[Insert statement required by 305.12(g)(7) if applicable].

For more information, visit *www.ftc.gov/appliances.*

(7) All labels on split system condenser units disclosing energy efficiency ratings for the ''most common'' condenser-evaporator coil combinations must contain one of the following three statements:

(i) For labels disclosing the seasonal energy efficiency ratio for cooling, the statement should read:

This energy efficiency rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating may vary slightly with different coils.

(ii) For labels disclosing both the seasonal energy efficiency ratio for cooling and the heating seasonal performance factor for heating, the statement should read:

This energy efficiency rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating will vary slightly with different coils and in different geographic regions.

(iii) For labels disclosing the heating seasonal performance factor for heating, the statement should read:

This energy efficiency rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating will vary slightly with different coils and in different geographic regions.

Central air conditioner labels disclosing the efficiency ratings for specific condenser/coil combinations do not have to contain any of the above three statements.

(8) The following statement shall appear at the top of the label as illustrated in the sample labels in appendix L:

Federal law prohibits removal of this label before consumer purchase.

(9) No marks or information other than that specified in this part shall appear on or directly adjoining this label except that:

(i) A part or publication number identification may be included on this label, as desired by the manufacturer. If a manufacturer elects to use a part or publication number, it must appear in the lower right-hand corner of the label and be set in 6-point type or smaller.

(ii) The energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer.

(iii) The manufacturer may include the ENERGY STAR logo on the bottom right corner of the label for qualified products. The logo must be 1 inch by 1 inch in size. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

§§ 305.13, 305.14, 305.15, 305.16, 305.17, 305.18, and 305.19 [Redesignated as §§ 305.19, 305.20, 305.21, 305.22, 305.23, 305.24, and 305.25]

■ 12. Sections 305.13, 305.14, 305.15, 305.16, 305.17, 305.18, and 305.19 are redesignated as sections 305.19, 305.20, 305.21, 305.22, 305.23, 305.24, and 305.25 respectively.

§ 305.13 [Reserved]

■ 13. Section 305.13 is reserved.

■ 14. Section 305.14 is added to read as follows:

§ 305.14 Energy Information Disclosures for Heating and Cooling Equipment.

(a) *Required Information*: Manufacturers and private labelers of central air conditioners, heat pumps, and furnaces (including boilers) must provide energy information about the equipment they sell to distributors and retailers, including contractors. This information can be provided through means such as fact sheets, product brochures, and directories. All required information must be disclosed clearly and conspicuously. The information must include:

(1) Name of manufacturer or private labeler which, in the case of a corporation, shall be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used;

(2) Trade name (if different from manufacturer);

(3) Model number(s) given by the manufacturer or private labeler;

(4) Capacity or size as determined in accordance with § 305.7;

(5) Energy efficiency rating as determined in accordance with § 305.5. The energy efficiency rating(s) for split system condenser-evaporator coil combinations shall be either:

(i) The energy efficiency rating of the actual condenser-evaporator coil combination comprising the listed split system; or

(ii) The energy efficiency rating of the condenser-evaporator coil combination that is the particular manufacturer's most commonly sold combination for that condenser model.

(6) Ranges of comparability and of energy efficiency ratings found in the appropriate appendices accompanying this part.

(7) A statement that the energy efficiency ratings are based on U.S. Government standard tests.

(8) If the ''most common'' condenser-evaporator coil combinations are given for central air conditioners and heat pump efficiency ratings pursuant to § 305.14(a)(5)(ii), the statement required by § 305.14(a)(7) as follows:

(i) For information disclosing the seasonal energy efficiency ratio for cooling, the statement should read:

This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating may vary slightly with different coils.

(ii) For information disclosing both the seasonal energy efficiency ratio for cooling and the heating seasonal performance factor for heating, the statement should read:

This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating will vary slightly with different coils and in different geographic regions.

(iii) For information disclosing the heating seasonal performance factor for heating, the statement should read:

This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating will vary slightly with different coils and in different geographic regions.

(9) For central air conditioners disclosing the efficiency ratings for specific condenser/coil combinations pursuant to § 305.14(a)(5)(i), a general disclosure that the efficiency ratings are based on U.S. Government tests.

(b) *Distribution*. (1) Manufacturers and private labelers must give distributors and retailers, including assemblers, the information specified under § 305.14(a) for the central air conditioners, heat pumps, and furnaces (including boilers) they sell to them. This information may be provided in paper or electronic form (including Internet-based access). Distributors must give this information to retailers, including assemblers, they supply.

(2) Retailers, including assemblers, who sell central air conditioners, heat pumps, and furnaces (including boilers) to consumers must make the information specified under § 305.14(a) available to customers in any manner, as long as customers are likely to notice it. For example, it may be available in a display, where customers can take copies of them. It may be kept in a binder or made available electronically at a counter or service desk, with a sign telling customers where the required information is.

(3) Retailers, including assemblers, who negotiate or make sales at a place other than their regular places of business must show the required information to their customers and let them read the information before they agree to purchase the product. If the information is Internet-based, retailers, including assemblers, who negotiate or make sales at a place other than their regular places of business, may choose to provide customers with instructions to access such information in lieu of showing them a paper version of the information. Retailers who choose to use the Internet for the required information, must let customers read such information before the customers agree to purchase the product.

■ 15. Section 305.15 is added to read as follows:

§ 305.15 Labeling for Lighting Products.

(a) *Fluorescent Lamp Ballasts and Luminaires*—(1) *Contents*. Fluorescent lamp ballasts that are ''covered products,'' as defined in §305.2(n), and to which standards are applicable under section 325 of the Act, shall be marked conspicuously, in color-contrasting ink, with a capital letter ''E'' printed within a circle. Packaging for such fluorescent lamp ballasts, as well as packaging for luminaires into which they are incorporated, shall also be marked conspicuously with a capital letter ''E'' printed within a circle. For purposes of this section, the encircled capital letter ''E'' will be deemed ''conspicuous,'' in terms of size, if it is as large as either the manufacturer's name or another logo, such as the ''UL,'' ''CBM'' or ''ETL'' logos, whichever is larger, that appears on the fluorescent lamp ballast, the packaging for such ballast or the packaging for the luminaire into which the covered ballast is incorporated, whichever is applicable for purpose of labeling.

(2) *Product Labeling*. The encircled capital letter ''E'' on fluorescent lamp ballasts must appear conspicuously, in color-contrasting ink, (*i.e.*, in a color that contrasts with the background on which the encircled capital letter ''E'' is placed) on the surface that is normally labeled. It may be printed on the label that normally appears on the fluorescent lamp ballast, printed on a separate label, or stamped indelibly on the surface of the fluorescent lamp ballast.

(3) *Package Labeling*. For purposes of labeling under this section, packaging for such fluorescent lamp ballasts and the luminaires into which they are incorporated consists of the plastic sheeting, or ''shrink-wrap,'' covering pallet loads of fluorescent lamp ballasts or luminaires as well as any containers in which such fluorescent lamp ballasts or the luminaires into which they are incorporated are marketed individually or in small numbers. The encircled capital letter ''E'' on packages containing fluorescent lamp ballasts or the luminaires into which they are incorporated must appear conspicuously, in color-contrasting ink, on the surface of the package on which printing or a label normally appears. If the package contains printing on more than one surface, the label must appear on the surface on which the product inside the package is described. The encircled capital letter ''E'' may be printed on the surface of the package, printed on a label containing other information, printed on a separate label, or indelibly stamped on the surface of the package. In the case of pallet loads containing fluorescent lamp ballasts or the luminaires into which they are incorporated, the encircled capital letter ''E'' must appear conspicuously, in color-contrasting ink, on the plastic sheeting, unless clear plastic sheeting is used and the encircled capital letter ''E'' is legible underneath this packaging. The encircled capital letter ''E'' must also appear conspicuously on any documentation that would normally accompany such a pallet load. The encircled capital letter ''E'' may appear on a label affixed to the sheeting or may be indelibly stamped on the sheeting. It may be printed on the documentation, printed on a separate label that is affixed to the documentation or indelibly stamped on the documentation.

(b) *Lamps*—(1)(i) Any covered product that is a compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp) shall be labeled clearly and conspicuously on the product's principal display panel with the following information:

(A) The number of lamps included in the package, if more than one;

(B) The design voltage of each lamp included in the package, if other than 120 volts;

(C) The light output of each lamp included in the package, expressed in average initial lumens;

(D) The electrical power consumed (energy used) by each lamp included in the package, expressed in average initial wattage;

(E) The life of each lamp included in the package, expressed in hours.

(ii) The light output, energy usage and life ratings of any covered product that is a medium base compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp), shall appear in that order and with equal clarity and conspicuousness on the product's principal display panel. The light output, energy usage and life ratings shall be disclosed in terms of ''lumens,'' ''watts'' and ''hours'' respectively, with the lumens, watts and hours rating numbers each appearing in the same type style and size and with the words ''lumens,'' ''watts'' and ''hours'' each appearing in the same type style and size. The words ''light output,'' ''energy used'' and ''life'' shall precede and have the same conspicuousness as both the rating numbers and the words ''lumens,'' ''watts'' and ''hours,'' except that the letters of the words ''lumens,'' ''watts'' and ''hours'' shall be approximately 50% of the sizes of those used for the words ''light output,'' ''energy used'' and ''life'' respectively.

(iii) The light output, energy usage and life ratings of any covered product that is a medium base compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp), shall be measured at 120 volts, regardless of the lamp's design voltage. If a lamp's design voltage is 125 volts or 130 volts, the disclosures of the wattage, light output and life ratings shall in each instance be:

(A) At 120 volts and followed by the phrase ''at 120 volts.'' In such case, the labels for such lamps also may disclose the lamp's wattage, light output and life at the design voltage (*e.g.*, ''Light Output 1710 Lumens at 125 volts''); or

(B) At the design voltage and followed by the phrase ''at (125 volts/130 volts)'' if the ratings at 120 volts are disclosed clearly and conspicuously on another panel of the package, and if all panels of the package that contain a claimed light output, wattage or life clearly and conspicuously identify the lamp as ''(125 volt/130 volt),'' and if the principal display panel clearly and conspicuously discloses the following statement:

This product is designed for (125/130) volts. When used on the normal line voltage of 120 volts, the light output and energy efficiency are noticeably reduced. See (side/back) panel for 120 volt ratings.

(iv) For any covered product that is an incandescent reflector lamp, the required disclosure of light output shall be given for the lamp's total forward lumens.

(v) For any covered product that is a compact fluorescent lamp, the required light output disclosure shall be measured at a base-up position; but, if the manufacturer or private labeler has reason to believe that the light output at a base-down position would be more than 5% different, the label also shall disclose the light output at the base-down position or, if no test data for the base-down position exist, the fact that at a base-down position the light output might be more than 5% less.

(vi) For any covered product that is a compact fluorescent lamp or a general service incandescent lamp (including an incandescent reflector lamp), there shall be clearly and conspicuously disclosed on the principal display panel the following statement:

To save energy costs, find the bulbs with the (beam spread and) light output you need, then choose the one with the lowest watts.''

(vii) For any covered product that is a general service incandescent lamp and operates with multiple filaments, the principal display panel shall disclose clearly and conspicuously, in the manner required by paragraph (b)(1)(i)—

(iii) and (vi) of this section, the lamp's wattage and light output at each of the lamp's levels of light output and the lamp's life measured on the basis of the filament that fails first.

(2) Any covered product that is a general service fluorescent lamp or an incandescent reflector lamp shall be labeled clearly and conspicuously with a capital letter ''E'' printed within a circle and followed by an asterisk. The label shall also clearly and conspicuously disclose, either in close proximity to that asterisk or elsewhere on the label, the following statement:

*[The encircled ''E''] means this bulb meets Federal minimum efficiency standards.

(i) If the statement is not disclosed on the principal display panel, the asterisk shall be followed by the following statement:

See [Back,Top, Side] panel for details.

(ii) For purposes of this paragraph (b), the encircled capital letter ''E'' shall be clearly and conspicuously disclosed in color-contrasting ink on the label of any covered product that is a general service fluorescent lamp and will be deemed ''conspicuous,'' in terms of size, if it appears in typeface at least as large as either the manufacturer's name or logo or another logo disclosed on the label, such as the ''UL'' or ''ETL'' logos, whichever is larger.

(3)(i) A manufacturer or private labeler who distributes general service fluorescent lamps, compact fluorescent lamps, or general service incandescent lamps (including incandescent reflector lamps) without labels attached to the lamps or without labels on individual retail-sale packaging for one or more lamps may meet the disclosure requirements of paragraphs (b)(1) and (b)(2) of this section by making the required disclosures, in the manner and form required by those paragraphs, on the bulk shipping cartons that are to be used to display the lamps for retail sale.

(ii) Instead of labeling any covered product that is a general service fluorescent lamp with the encircled ''E'' and with the statement described in paragraph (b)(2) of this section, a manufacturer or private labeler who would not otherwise put a label on such a lamp may meet the disclosure requirements of that paragraph by permanently marking the lamp clearly and conspicuously with the encircled ''E''.

(4) Any manufacturer or private labeler who makes any representation on a label of any covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), regarding the cost of operation of such lamp shall clearly and conspicuously disclose in close proximity to such representation the assumptions upon which it is based, including, *e.g.*, purchase price, unit cost of electricity, hours of use, patterns of use.

(5) Any cartons in which any covered products that are general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent lamps (including incandescent reflector lamps), are shipped within the United States or imported into the United States shall disclose clearly and conspicuously the following statement:

These lamps comply with Federal energy efficiency labeling requirements.

■ 16. Section 305.16 is added to read as follows:

§ 305.16 Labeling and Marking for Plumbing Products.

(a) *Showerheads and Faucets.* Showerheads and faucets shall be marked and labeled as follows:

(1) Each showerhead and flow restricting or controlling spout end device shall bear a permanent legible marking indicating the flow rate, expressed in gallons per minute (gpm) or gallons per cycle (gpc), and the flow rate value shall be the actual flow rate or the maximum flow rate specified by the standards established in subsection (j) of section 325 of the Act, 42 U.S.C. 6295(j). Except where impractical due to the size of the fitting, each flow rate disclosure shall also be given in liters per minute (L/min) or liters per cycle (L/cycle). For purposes of this section, the marking indicating the flow rate will be deemed ''legible,'' in terms of placement, if it is located in close proximity to the manufacturer's identification marking.

(2) Each showerhead and faucet shall bear a permanent legible marking to identify the manufacturer. This marking shall be the trade name, trademark, or other mark known to identify the manufacturer. Such marking shall be located where it can be seen after installation.

(3) Each showerhead and faucet shall be marked ''A112.18.1M'' to demonstrate compliance with the applicable ASME standard. The marking shall be by means of either a permanent mark on the product, a label on the product, or a tag attached to the product.

(4) The package for each showerhead and faucet shall disclose the manufacturer's name and the model number.

(5) The package or any label attached to the package for each showerhead or faucet shall contain at least the following: ''A112.18.1M'' and the flow rate expressed in gallons per minute (gpm) or gallons per cycle (gpc), and the flow rate value shall be the actual flow rate or the maximum flow rate specified by the standards established in subsection (j) of section 325 of the Act, 42 U.S.C. 6295(j). Each flow rate disclosure shall also be given in liters per minute (L/min) or liters per cycle (L/cycle).

(b) *Water Closets and Urinals.* Water closets and urinals shall be marked and labeled as follows:

(1) Each such fixture (and flushometer valve associated with such fixture) shall bear a permanent legible marking indicating the flow rate, expressed in gallons per flush (gpf), and the water use value shall be the actual water use or the maximum water use specified by the standards established in subsection (k) of section 325 of the Act, 42 U.S.C. 6295(k). Except where impractical due to the size of the fixture, each flow rate disclosure shall also be given in liters per flush (Lpf). For purposes of this section, the marking indicating the flow rate will be deemed ''legible,'' in terms of placement, if it is located in close proximity to the manufacturer's identification marking.

(2) Each water closet (and each component of the water closet if the fixture is comprised of two or more components) and urinal shall be marked with the manufacturer's name or trademark or, in the case of private labeling, the name or registered trademark of the customer for whom the unit was manufactured. This mark shall be legible, readily identified, and applied so as to be permanent. The mark shall be located so as to be visible after the fixture is installed, except for fixtures built into or for a counter or cabinet.

(3) Each water closet (and each component of the water closet if the fixture is comprised of two or more components) and urinal shall be marked at a location determined by the manufacturer with the designation ''ASME A112.19.2M'' to signify compliance with the applicable standard. This mark need not be permanent, but shall be visible after installation.

(4) The package, and any labeling attached to the package, for each water closet and urinal shall disclose the flow rate, expressed in gallons per flush (gpf), and the water use value shall be the actual water use or the maximum water use specified by the standards established in subsection (k) of section 325 of the Act, 42 U.S.C. 6295(k). Each

flow rate disclosure shall also be given in liters per flush (Lpf).

(5) With respect to any gravity tank-type white 2-piece toilet offered for sale or sold before January 1, 1997, which has a water use greater than 1.6 gallons per flush (gpf), any printed matter distributed or displayed in connection with such product (including packaging and point-of-sale material, catalog material, and print advertising) shall include, in a conspicuous manner, the words ''For Commercial Use Only.''

(c) *Annual Operating Cost Claims for Covered Plumbing Products.* Until such time as the Commission has prescribed a format and manner of display for labels conveying estimated annual operating costs of covered showerheads, faucets, water closets, and urinals or ranges of estimated annual operating costs for the types or classes of such plumbing products, the Act prohibits manufacturers from making such representations on the labels of such covered products. 42 U.S.C. 6294(c)(8). If, before the Commission has prescribed such a format and manner of display for labels of such products, a manufacturer elects to provide for any such product a label conveying such a claim, it shall submit the proposed claim to the Commission so that a format and manner of display for a label may be prescribed.

■ 17. In newly designated § 305.19, paragraph (a)(1) is revised to read as follows:

§ 305.19 Promotional material displayed or distributed at point of sale.

(a)(1) Any manufacturer, distributor, retailer or private labeler who prepares printed material for display or distribution at point of sale concerning a covered product (except fluorescent lamp ballasts, general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent lamps including incandescent reflector lamps, showerheads, faucets, water closets or urinals) shall clearly and conspicuously include in such printed material the following required disclosure:

Before purchasing this appliance, read important information about its estimated annual energy consumption, yearly operating cost, or energy efficiency rating that is available from your retailer.

* * * * *

■ 18. Newly designated § 305.20 is amended as follows:

A. Revise the section heading and paragraph (a).

B. In paragraph (b), remove the reference to ''§ 305.2(o)'' and replace it with ''§ 305.2(l).''

C. In paragraph (c)(1)(i), remove the reference to ''§ 305.11(e)(1)'' and replace it with ''§ 305.15(b)(1).''

D. In paragraph (c)(1)(i), remove the reference to ''§ 305.11(e)(1)(ii)'' and replace it with ''§ 305.15(b)(1)(ii).''

E. In paragraph (c)(1)(ii) introductory text, remove the reference ''§ 305.11(e)(2)'' and replace it with ''§ 305.15(b)(2).''

F. In paragraph (d), remove the reference ''§ 305.11(f)'' and replace it with ''§ 305.16.''

The revisions read as follows:

§ 305.20 Paper catalogs and websites.

(a) Any manufacturer, distributor, retailer, or private labeler who advertises in a catalog, a covered product (except fluorescent lamp ballasts, general service fluorescent lamps, medium base compact fluorescent lamps, general service incandescent lamps including incandescent reflector lamps, showerheads, faucets, water closets, or urinals) shall include in such catalog either the EnergyGuide labels prepared in accordance with §§ 305.11 and 305.12 for products they offer or the following information:

(1) The capacity of the model on each page that lists the covered product.

(2) The estimated annual operating costs for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, room air conditioners, and water heaters as determined in accordance with § 305.5 and appendix K of this part on each page that lists the covered product.

(3) A statement conspicuously placed in the catalog:

(i) For refrigerators, refrigerator-freezers, and freezers (fill in the blanks with the appropriate year and energy cost figures):

Your operating costs will depend on your utility rates and use. The estimated operating cost is based on a [Year] national average electricity cost of [___ cents per kWh].

For more information, visit *www.ftc.gov/appliances.*

(ii) For room air conditioners and water heaters, (fill in the blanks with the appropriate year and energy cost figures):

Your operating costs will depend on your utility rates and use. The estimated operating cost is based on a [Year] national average [electricity, natural gas, propane, or oil] cost of [$ ___ per kWh, therm, or gallon].

For more information, visit *www.ftc.gov/appliances.*

(iii) For clothes washers and dishwashers, (fill in the blanks with the appropriate information such as the year, and the energy cost figures):

Your operating costs will depend on your utility rates and use. The estimated operating cost is based on [4 washloads a week for dishwashers, or 8 washloads a week for clothes washers] and a [Year] national average cost of ___ cents per kWh for electricity and $ ___ per therm for natural gas.

For more information, visit *www.ftc.gov/appliances.*

(4) The energy efficiency or thermal efficiency ratings for pool heaters, central air conditioners, heat pumps, and furnaces (including boilers) as determined in accordance with §305.5 on each page that lists the covered product.

* * * * *

§ 305.22 [Amended]

■ 19. In newly designated § 305.22, remove the reference to ''§ 305.15(b)'' and replace it with ''§ 305.21(b).''

§ 305.25 [Removed]

■ 20. Newly redesignated § 305.25 is removed and reserved.

■ 21. Appendix A1 to Part 305 is revised to read as follows:

APPENDIX A1 TO PART 305—REFRIGERATORS WITH AUTOMATIC DEFROST

Range Information

Manufacturer's Rated Total Refrigerated Volume in Cubic feet	Range of Estimated Annual Operating Costs (Dollars/Year)	
	Low	High
Less than 2.5	$32	$35
2.5 to 4.4	$33	$42
4.5 to 6.4	$32	$58
6.5 to 8.4	$48	$48
8.5 to 10.4	$37	$37
10.5 to 12.4	$35	$35

APPENDIX A1 TO PART 305—REFRIGERATORS WITH AUTOMATIC DEFROST—Continued

Range Information

Manufacturer's Rated Total Refrigerated Volume in Cubic feet	Range of Estimated Annual Operating Costs (Dollars/Year)	
	Low	High
12.5 to 14.4	$33	$33
14.5 to 16.4	$46	$46
16.5 and over	$36	$50

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

■ 22. Appendix A2 to Part 305 is revised to read as follows:

APPENDIX A2 TO PART 305—REFRIGERATORS AND REFRIGERATOR-FREEZERS WITH MANUAL DEFROST

Range Information

Manufacturer's Rated Total Refrigerated Volume in Cubic feet	Range of Estimated Annual Operating Costs (Dollars/Year)	
	Low	High
Less than 2.5	$29	$36
2.5 to 4.4	$29	$37
4.5 to 6.4	$29	$39
6.5 to 8.4	$39	$39
8.5 to 10.4	$24	$36
10.5 to 12.4	$35	$35
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	$36	$43
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)
22.5 to 24.4	$48	$48
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

■ 23. Appendix A3 to Part 305 is revised to read as follows:

APPENDIX A3 TO PART 305—REFRIGERATOR-FREEZERS WITH PARTIAL AUTOMATIC DEFROST

Range Information

Manufacturer's Rated Total Refrigerated Volume in Cubic feet	Range of Estimated Annual Operating Costs (Dollars/Year)	
	Low	High
Less than 10.5	$27	$46
10.5 to 12.4	$33	$33
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

■ 24. Appendix A4 to Part 305 is revised to read as follows:

APPENDIX A4 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH TOP-MOUNTED FREEZER WITHOUT THROUGH-THE-DOOR ICE SERVICE

Range Information

Manufacturer's Rated Total Refrigerated Volume in Cubic feet	Range of Estimated Annual Operating Costs (Dollars/Year)	
	Low	High
Less than 10.5	$35	$49
10.5 to 12.4	$41	$44
12.5 to 14.4	$40	$47
14.5 to 16.4	$40	$48
16.5 to 18.4	$42	$52
18.5 to 20.4	$41	$53
20.5 to 22.4	$44	$56
22.5 to 24.4	(*)	(*)
24.5 to 26.4	$51	$51
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

■ 25. Appendix A5 to Part 305 is revised to read as follows:

APPENDIX A5 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH SIDE-MOUNTED FREEZER WITHOUT THROUGH-THE-DOOR ICE SERVICE

Range Information

Manufacturer's Rated Total Refrigerated Volume in Cubic feet	Range of Estimated Annual Operating Costs (Dollars/Year)	
	Low	High
Less than 10.5	$56	$56
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	$66	$66
20.5 to 22.4	$46	$68
22.5 to 24.4	$59	$73
24.5 to 26.4	$58	$78
26.5 to 28.4	$71	$71
28.5 and over	$62	$73

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

■ 26. Appendix A6 to Part 305 is revised to read as follows:

APPENDIX A6 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH BOTTOM-MOUNTED FREEZER WITHOUT THROUGH-THE-DOOR ICE SERVICE

Range Information

Manufacturer's Rated Total Refrigerated Volume in Cubic feet	Range of Estimated Annual Operating Costs (Dollars/Year)	
	Low	High
Less than 10.5	$46	$54
10.5 to 12.4	$47	$47
12.5 to 14.4	(*)	(*)
14.5 to 16.4	$48	$58
16.5 to 18.4	$50	$59
18.5 to 20.4	$47	$61
20.5 to 22.4	$49	$61
22.5 to 24.4	$62	$62
24.5 to 26.4	$51	$63
26.5 to 28.4	(*)	(*)

APPENDIX A6 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH BOTTOM-MOUNTED FREEZER WITHOUT THROUGH-THE-DOOR ICE SERVICE—Continued

Range Information

Manufacturer's Rated Total Refrigerated Volume in Cubic feet	Range of Estimated Annual Operating Costs (Dollars/Year)	
	Low	High
28.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

■ 27. Appendix A7 to Part 305 is revised to read as follows:

APPENDIX A7 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH TOP-MOUNTED FREEZER WITH THROUGH-THE-DOOR ICE SERVICE

Range Information

Manufacturer's Rated Total Refrigerated Volume in Cubic feet	Range of Estimated Annual Operating Costs (Dollars/Year)	
	Low	High
Less than 10.5	(*)	(*)
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	$43	$43
18.5 to 20.4	(*)	(*)
20.5 to 22.4	$56	$56
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

■ 28. Appendix A8 to Part 305 is revised to read as follows:

APPENDIX A8 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH SIDE-MOUNTED FREEZER WITH THROUGH-THE-DOOR ICE SERVICE

Range Information

Manufacturer's Rated Total Refrigerated Volume in Cubic feet	Range of Estimated Annual Operating Costs (Dollars/Year)	
	Low	High
Less than 10.5	(*)	(*)
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	$59	$69
20.5 to 22.4	$57	$72
22.5 to 24.4	$57	$74
24.5 to 26.4	$60	$78
26.5 to 28.4	$65	$80
28.5 and over	$70	$84

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

■ 29. Appendix B1 to Part 305 is revised to read as follows:

APPENDIX B1 TO PART 305—UPRIGHT FREEZERS WITH MANUAL DEFROST

Range Information

Manufacturer's Rated Total Refrigerated Volume in Cubic feet	Range of Estimated Annual Operating Costs (Dollars/Year)	
	Low	High
Less than 5.5	$29	$35
5.5 to 7.4	$32	$38
7.5 to 9.4	$36	$40
9.5 to 11.4	(*)	(*)
11.5 to 13.4	$44	$44
13.5 to 15.4	$42	$48
15.5 to 17.4	$44	$51
17.5 to 19.4	$46	$51
19.5 to 21.4	$55	$56
21.5 to 23.4	(*)	(*)
23.5 to 25.4	$62	$62
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

■ 30. Appendix B2 to Part 305 is revised to read as follows:

APPENDIX B2 TO PART 305—UPRIGHT FREEZERS WITH AUTOMATIC DEFROST

Range Information

Manufacturer's Rated Total Refrigerated Volume in Cubic feet	Range of Estimated Annual Operating Costs (Dollars/Year)	
	Low	High
Less than 5.5	$51	$52
5.5 to 7.4	(*)	(*)
7.5 to 9.4	(*)	(*)
9.5 to 11.4	$60	$60
11.5 to 13.4	$61	$61
13.5 to 15.4	$60	$70
15.5 to 17.4	$62	$73
17.5 to 19.4	$68	$79
19.5 to 21.4	$71	$82
21.5 to 23.4	$85	$85
23.5 to 25.4	$91	$91
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

■ 31. Appendix B3 to Part 305 is revised to read as follows:

APPENDIX B3 TO PART 305—CHEST FREEZERS AND ALL OTHER FREEZERS

Range Information

Manufacturer's Rated Total Refrigerated Volume in Cubic feet	Range of Estimated Annual Operating Costs (Dollars/Year)	
	Low	High
Less than 5.5	$20	$26
5.5 to 7.4	$25	$37
7.5 to 9.4	$31	$38
9.5 to 11.4	$30	$33
11.5 to 13.4	$35	$39
13.5 to 15.4	$38	$57
15.5 to 17.4	$38	$38
17.5 to 19.4	(*)	(*)
19.5 to 21.4	$46	$51
21.5 to 23.4	$49	$55

APPENDIX B3 TO PART 305—CHEST FREEZERS AND ALL OTHER FREEZERS—Continued

Range Information

Manufacturer's Rated Total Refrigerated Volume in Cubic feet	Range of Estimated Annual Operating Costs (Dollars/Year)	
	Low	High
23.5 to 25.4	$55	$61
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

■ 32. Appendix C1 to Part 305 is revised to read as follows:

APPENDIX C1 TO PART 305—COMPACT DISHWASHERS

Range Information

"Compact" includes countertop dishwasher models with a capacity of fewer than eight (8) place settings. Place settings shall be in accordance with appendix C to 10 CFR part 430, subpart B. Load patterns shall conform to the operating normal for the model being tested.

Capacity	Range of Estimated Annual Operating Costs (Dollars/Year)	
	Low	High
Compact	$19	$34

■ 33. Appendix C2 to Part 305 is revised to read as follows:

APPENDIX C2 TO PART 305—STANDARD DISHWASHERS

Range Information

"Standard" includes dishwasher models with a capacity of fewer than eight (8) or more place settings. Place settings shall be in accordance with appendix C to 10 CFR part 430, subpart B. Load patterns shall conform to the operating normal for the model being tested.

Capacity	Range of Estimated Annual Operating Costs (Dollars/Year)	
	Low	High
Standard	$20	$50

■ 34. Appendices D1 through D5 to Part 305 are revised to read as follows:

APPENDIX D1 TO PART 305—WATER HEATERS—GAS

Range Information

CAPACITY	Range of Estimated Annual Operating Costs (Dollars/Year)			
FIRST HOUR RATING	Natural Gas ($/year)		Propane ($/year)	
	Low	High	Low	High
Less than 21	*	*	*	*
21 to 24	*	*	*	*
25 to 29	*	*	*	*
30 to 34	*	*	*	*
35 to 40	*	*	*	*
41 to 47	*	*	*	*
48 to 55	$285	$309	$479	$520
56 to 64	$295	$309	$496	$520
65 to 74	$273	$314	$458	$529
75 to 86	$273	$331	$458	$529
87 to 99	$285	$331	$471	$557
100 to 114	$276	$345	$466	$557
115 to 131	$276	$380	$466	$578

APPENDIX D1 TO PART 305—WATER HEATERS—GAS—Continued

Range Information

CAPACITY	Range of Estimated Annual Operating Costs (Dollars/Year)			
FIRST HOUR RATING	Natural Gas ($/year)		Propane ($/year)	
	Low	High	Low	High
Over 131	$309	$380	$520	$640

* No data submitted.

APPENDIX D2 TO PART 305—WATER HEATERS—ELECTRIC

Range Information

CAPACITY	Range of Estimated Annual Operating Costs (Dollars/Year)	
FIRST HOUR RATING	Low	High
Less than 21	$503	$503
21 to 24	*	*
25 to 29	$503	$503
30 to 34	$503	$508
35 to 40	$497	$508
41 to 47	$492	$531
48 to 55	$492	$531
56 to 64	$492	$520
65 to 74	$492	$531
75 to 86	$492	$544
87 to 99	$503	$550
100 to 114	$514	$577
115 to 131	$544	$563
Over 131	*	*

* No data submitted.

APPENDIX D3 TO PART 305—WATER HEATERS—OIL

Range Information

CAPACITY	Range of Estimated Annual Operating Costs (Dollars/Year)	
FIRST HOUR RATING	Low	High
Less than 65	*	*
65 to 74	*	*
75 to 86	*	*
87 to 99	*	*
100 to 114	$386	$444
115 to 131	$364	$471
Over 131	$353	$471

* No data submitted.

APPENDIX D4 TO PART 305—WATER HEATERS—INSTANTANEOUS–GAS

Range Information

CAPACITY	Range of Estimated Annual Operating Costs (Dollars/Year)			
FIRST HOUR RATING	Natural Gas ($/year)		Propane ($/year)	
	Low	High	Low	High
Under 1.00	$285	$285	$479	$479
1.00 to 2.00	$280	$285	$456	$471
2.01 to 3.00	$174	$268	$346	$445
Over 3.00	$199	$290	$301	$486

* No data submitted.

APPENDIX D5 TO PART 305—WATER HEATERS—HEAT PUMP

Range Information

CAPACITY	Range of Estimated Annual Operating Costs (Dollars/Year)	
FIRST HOUR RATING	Low	High
Less than 21	*	*
21 to 24	*	*
25 to 29	*	*
30 to 34	*	*
35 to 40	*	*
41 to 47	*	*
48 to 55	*	*
56 to 64	*	*
65 to 74	*	*
75 to 86	*	*
87 to 99	*	*
100 to 114	*	*
115 to 131	*	*
Over 131	*	*

* No data submitted.

■ 35. Appendix E to Part 305 is revised to read as follows:

APPENDIX E TO PART 305—ROOM AIR CONDITIONERS

Range Information

Manufacturer's rated cooling capacity in Btu's/yr	Range of Estimated Annual Operating Costs (Dollars/Year)	
	LOW	HIGH
Without Reverse Cycle and with Louvered Sides:.		
Less than 6,000 Btu	$37	$48
6,000 to 7,999 Btu	$44	$64
8,000 to 13,999 Btu	$59	$112
14,000 to 19,999 Btu	$105	$176
20,000 and more Btu	$166	$338
.		
Without Reverse Cycle and without Louvered Sides:.		
Less than 6,000 Btu	*	*
6,000 to 7,999 Btu	$48	$48
8,000 to 13,999 Btu	$61	$127
14,000 to 19,999 Btu	$124	$140
20,000 and more Btu	*	*
.		
With Reverse Cycle and with Louvered Sides	$61	$192
With Reverse Cycle, without Louvered Sides	$67	$111

* No data submitted for units meeting Federal Minimum Efficiency Standards effective October 1, 2000.

■ 36. Appendix F1 to Part 305 is revised to read as follows:

APPENDIX F1 TO PART 305—STANDARD CLOTHES WASHERS

Range Information

"Standard" includes all household clothes washers with a tub capacity of 1.6 cu. ft. or more.

Capacity	Range of Estimated Annual Operating Costs (Dollars/Year)	
	Low	High
Standard	$10	$71

■ 37. Appendix F2 to Part 305 is revised to read as follows:

APPENDIX F2 TO PART 305—COMPACT CLOTHES WASHERS

Range Information

"Compact" includes all household clothes washers with a tub capacity of less than 1.6 cu. ft.

Capacity	Range of Estimated Annual Operating Costs (Dollars/Year)	
	Low	High
Compact	$19	$49

■ 38. Appendices G1, G2, G3, G4, G5, G6, G7, and G8 are revised to read as follows:

APPENDIX G1 TO PART 305—FURNACES—GAS

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	78.0	96.6

APPENDIX G2 TO PART 305—FURNACES—ELECTRIC

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	100	100

APPENDIX G3 TO PART 305—FURNACES—OIL

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	78.0	86.1

APPENDIX G4 TO PART 305—MOBIL HOME FURNACES

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	75.0	92.1

APPENDIX G5 TO PART 305—BOILERS—GAS (EXCEPT STEAM)

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	80	95.5

APPENDIX G6 TO PART 305—BOILERS—GAS (STEAM)

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	75.8	84.0

APPENDIX G7 TO PART 305—BOILERS (OIL)

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	80.0	92.0

APPENDIX G8 TO PART 305—BOILERS (ELECTRIC)

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	100	100

■ 39. Appendix H is revised to read as follows:

APPENDIX H TO PART 305—COOLING PERFORMANCE FOR CENTRAL AIR CONDITIONERS

Manufacturer's rated cooling capacities (Btu's/hr.)	Range of SEER's	
	Low	High
Single Package Units.		
Central Air Conditioners (Cooling Only): All capacities	10.6	16.5
Heat Pumps (Cooling Function): All capacities	10.6	16.0
Split System Units.		
Central Air Conditioners (Cooling Only): All capacities	10.9	23.0
Heat Pumps (Cooling Function): All capacities	10.9	21.0

■ 40. Appendix I is revised to read as follows:

APPENDIX I TO PART 305—HEATING PERFORMANCE FOR CENTRAL AIR CONDITIONERS

Manufacturer's rated heating capacity (Btu's/hr.)	Range of HSPF's	
	Low	High
Single Package Units.		
Heat Pumps (Heating Function): All capacities	7.0	8.2
Split System Units.		
Heat Pumps (Heating Function): All capacities	7.1	10.2

■ 41. Appendices J1 and J2 are revised to read as follows:

APPENDIX J1 TO PART 305—POOL HEATERS—GAS

Range Information

Manufacturer's rated heating capacity	Range of Thermal Efficiencies (percent)			
	Natural Gas		Propane	
	Low	High	Low	High
All capacities	79.0	95.0	79.0	95.0

APPENDIX J2 TO PART 305—POOL HEATERS—OIL

Range Information

Manufacturer's rated heating capacities	Range of Thermal Efficiencies (percent)	
	Low	High
All capacities	79.0	79.0

■ 42. Appendix K to Part 305 is revised to read as follows:

APPENDIX K TO PART 305—REPRESENTATIVE AVERAGE UNIT ENERGY COSTS

This Table contains the representative unit energy costs that must be utilized to calculate estimated annual operating cost disclosures required under sections 305.11 and 305.20. This Table is based on information published by the U.S. Department of Energy in 2007. Unless otherwise indicated by the Commission, this table will be revised in 2012.

Representative Average Unit Costs of Energy for Five Residential Energy Sources (2007)

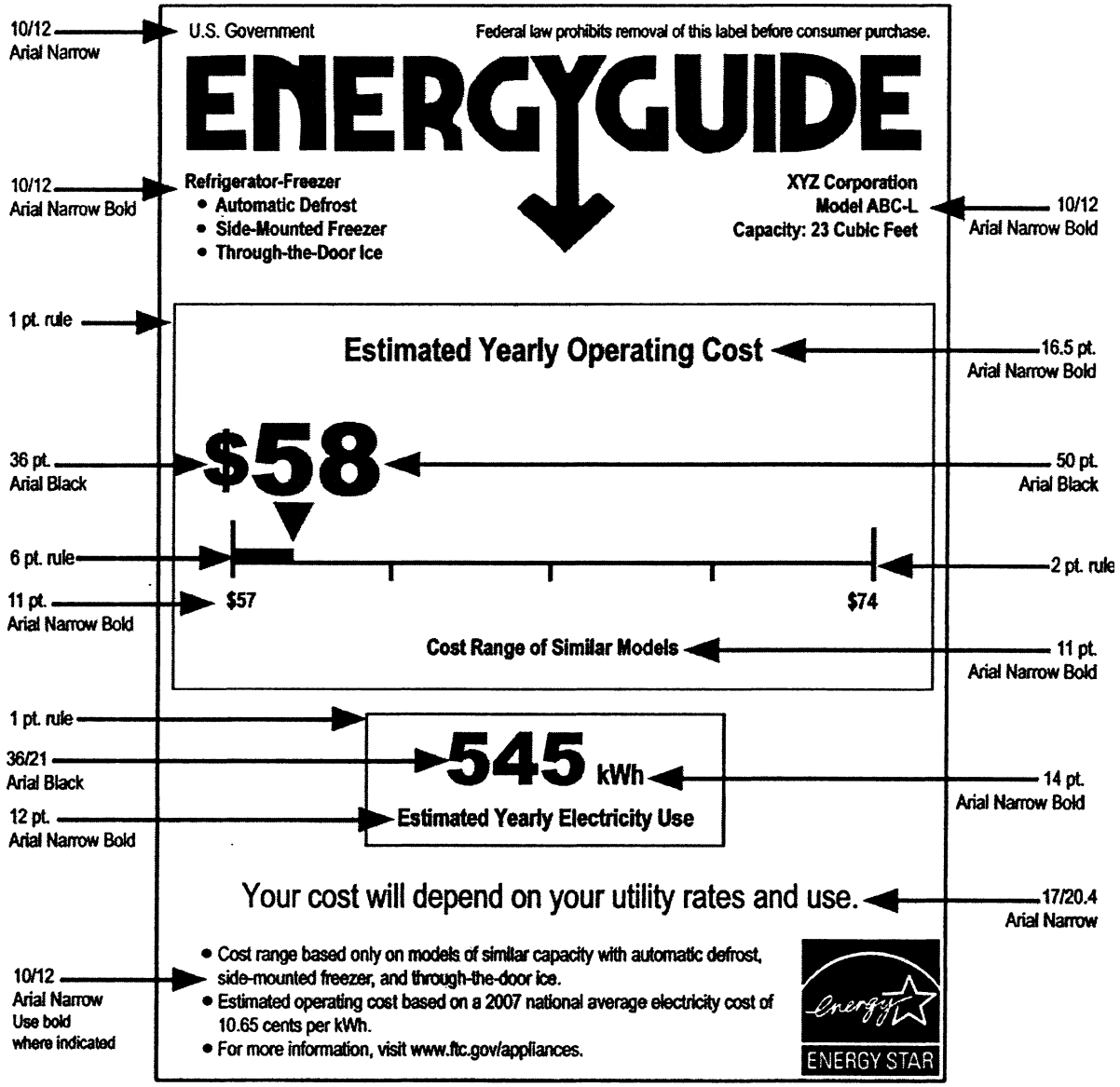
Type of Energy	In Commonly Used Terms	As required by DOE test procedure	Dollars per million Btu[1]
Electricity	10.65¢/kWh[2,3]	$.1065/kWh	$31.21
Natural Gas	$1.218/therm[4] $12.53/MCF[5,6]	$0.00001218/Btu	$12.18
No. 2 heating oil	$2.22/gallon[7]	$0.00001601/Btu	$16.01
Propane	$1.87/gallon[8]	$0.00002047/Btu	$20.47
Kerosene	$2.63/gallon[9]	$0.00001948/Btu	$19.48

[1] Btu stands for British termal unit.
[2] kWh stands for kilo Watt hour.
[3] 1 kWh = 3,412 Btu.
[4] 1 therm = 100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,029 Btu.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, 1 gallon of kerosene has an energy equivalence of 135,000 Btu.

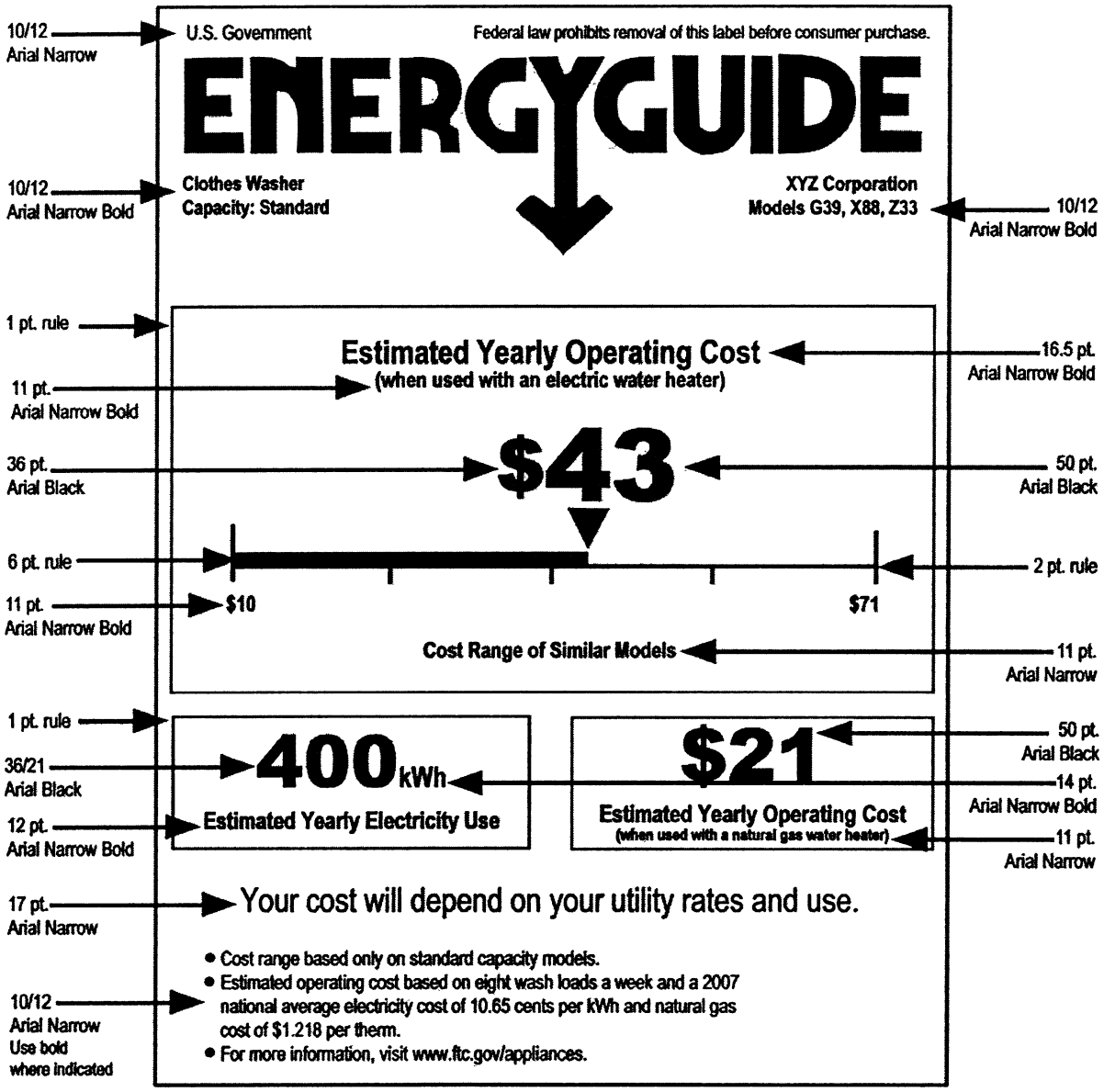
■ 43. In Appendix L, Prototype labels 1 through 4 and Sample labels 1 through 9 are revised to read as follows and Prototype label 5 and Sample labels 10 and 11 are removed:

BILLING CODE 6750–01–S

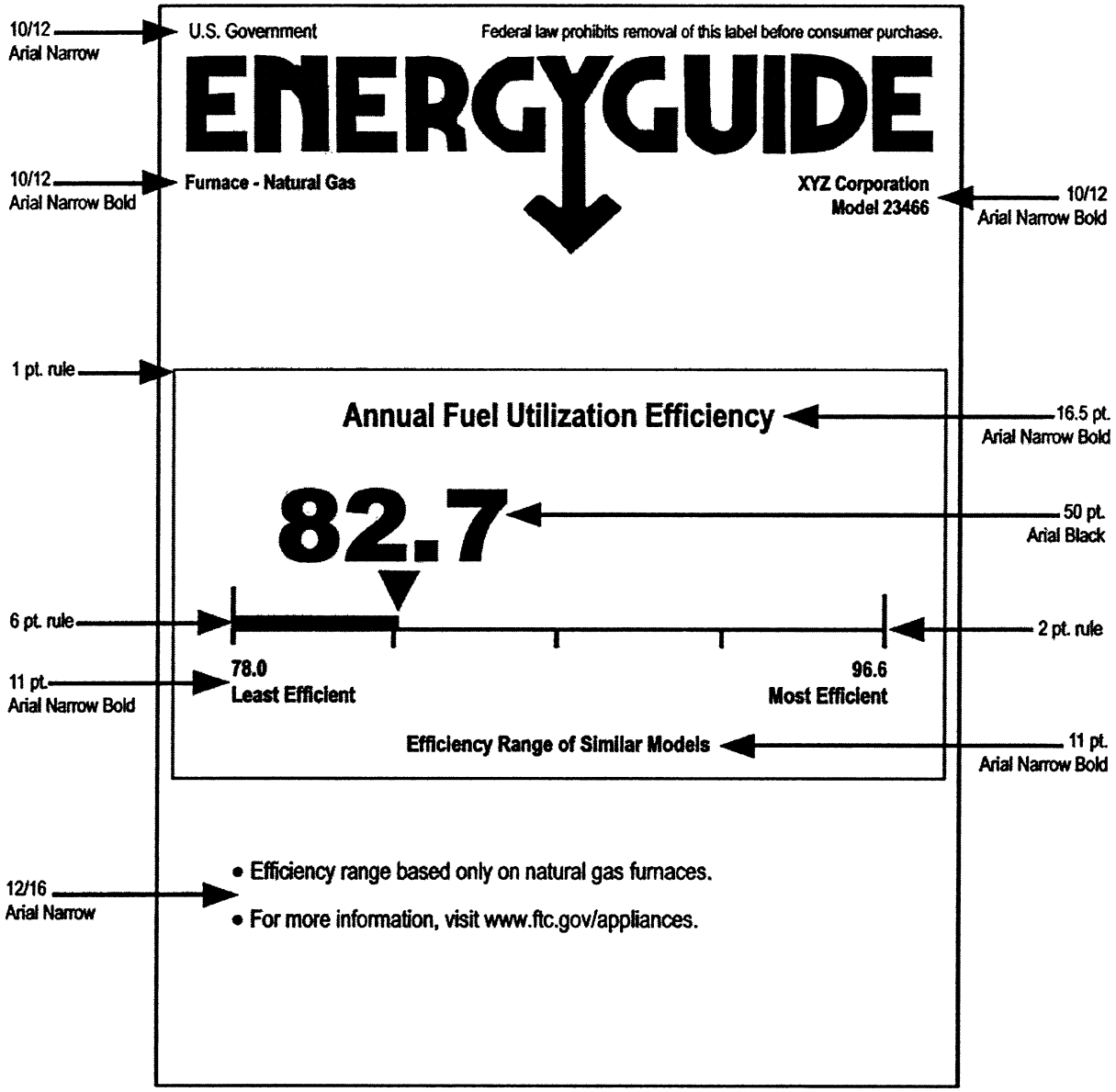
APPENDIX L TO PART 305—SAMPLE LABELS



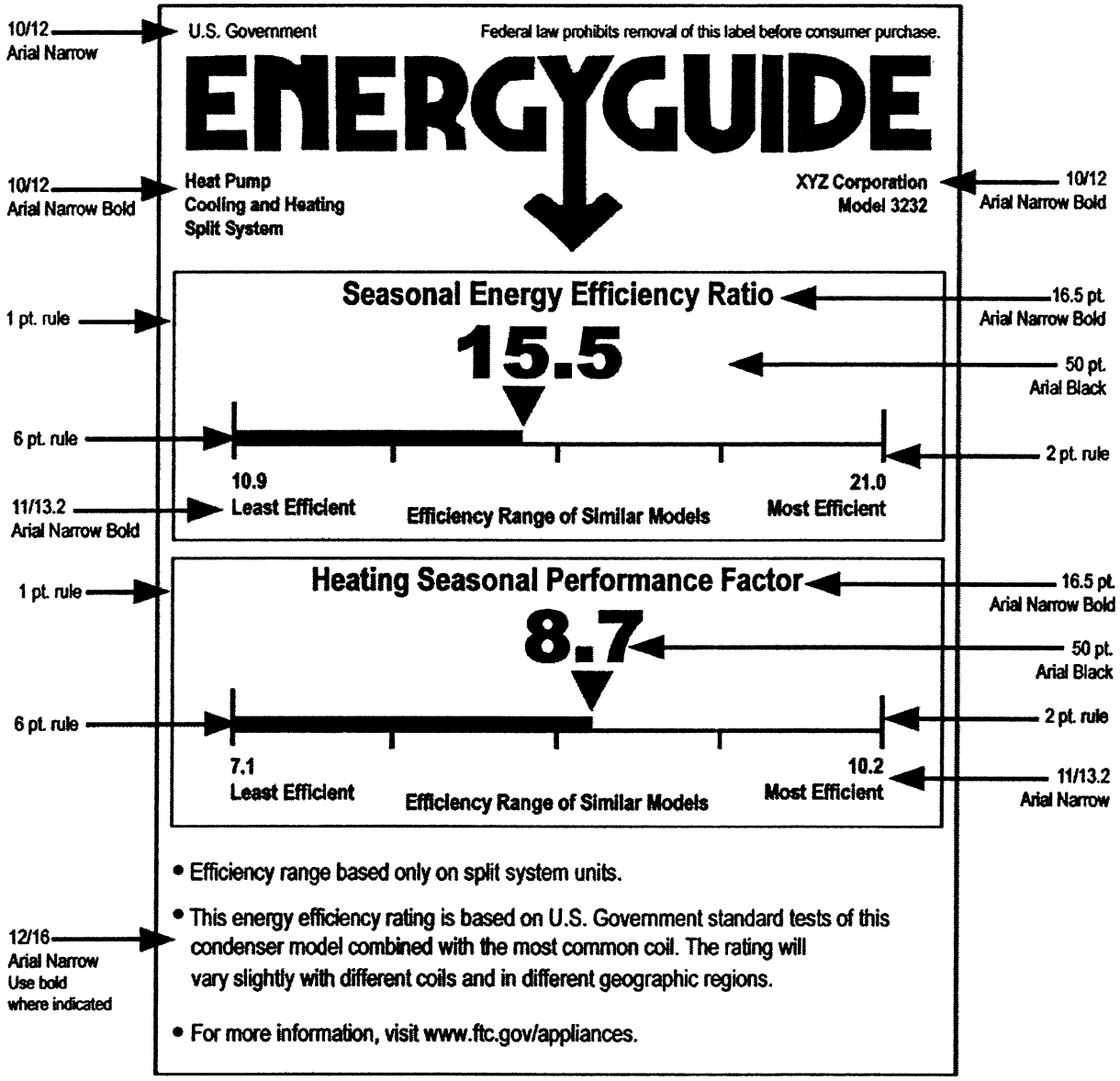
PROTOTYPE LABEL 1



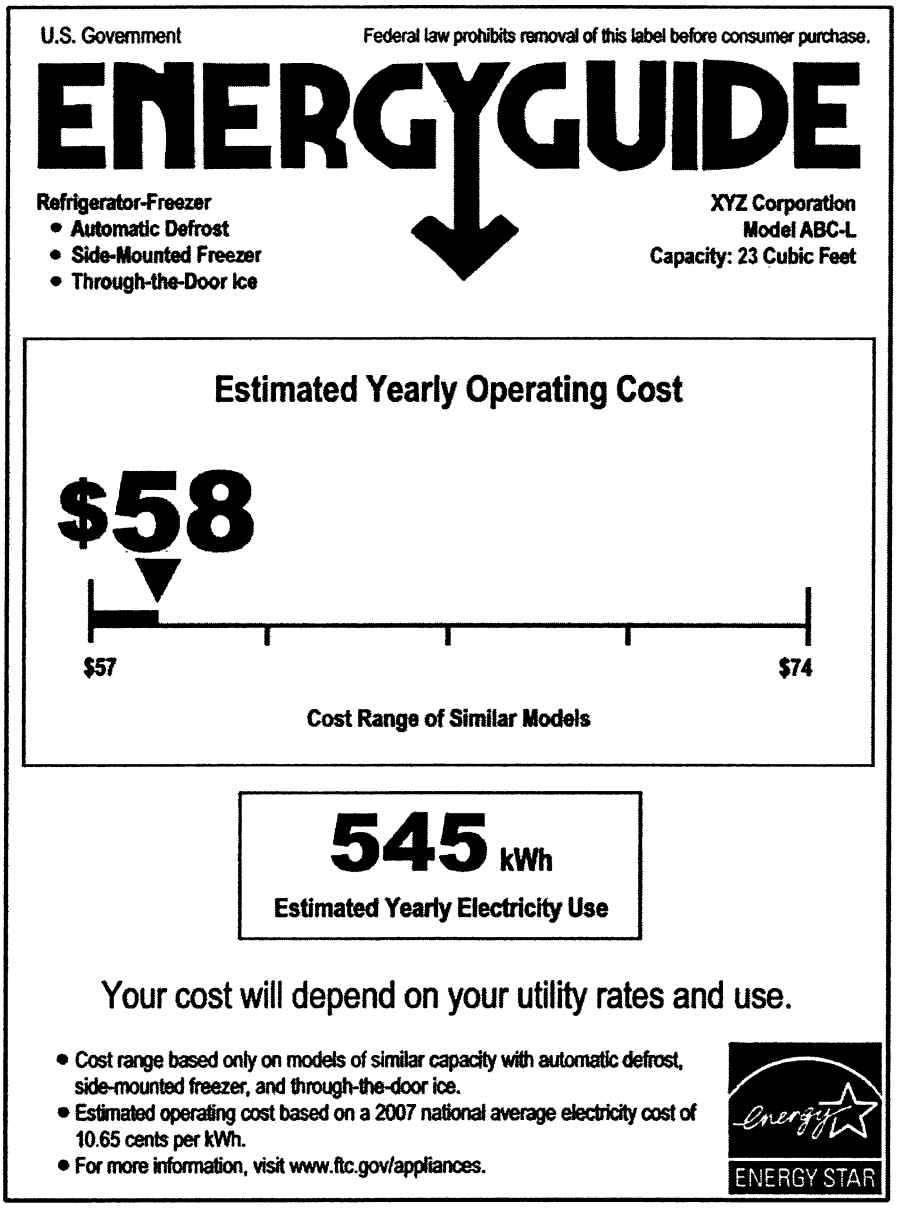
PROTOTYPE LABEL 2



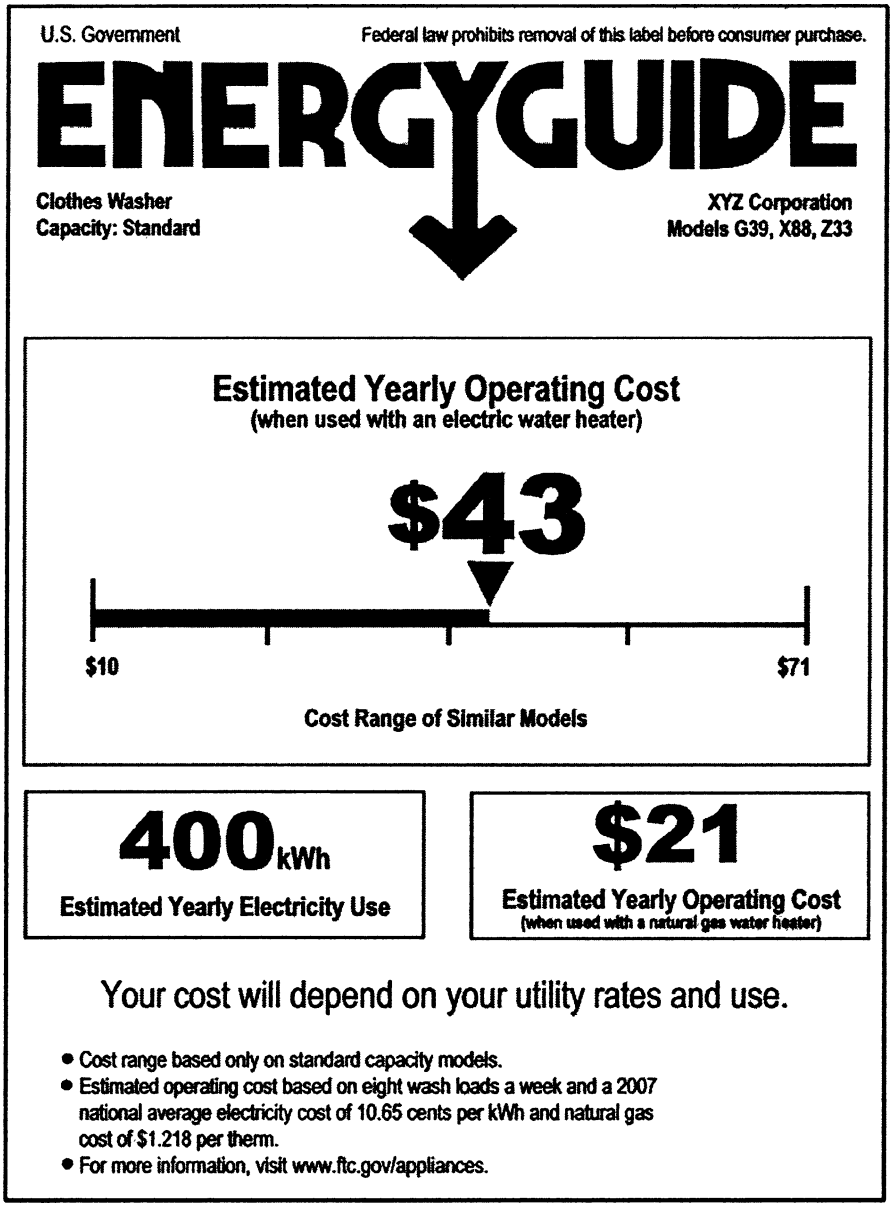
PROTOTYPE LABEL 3



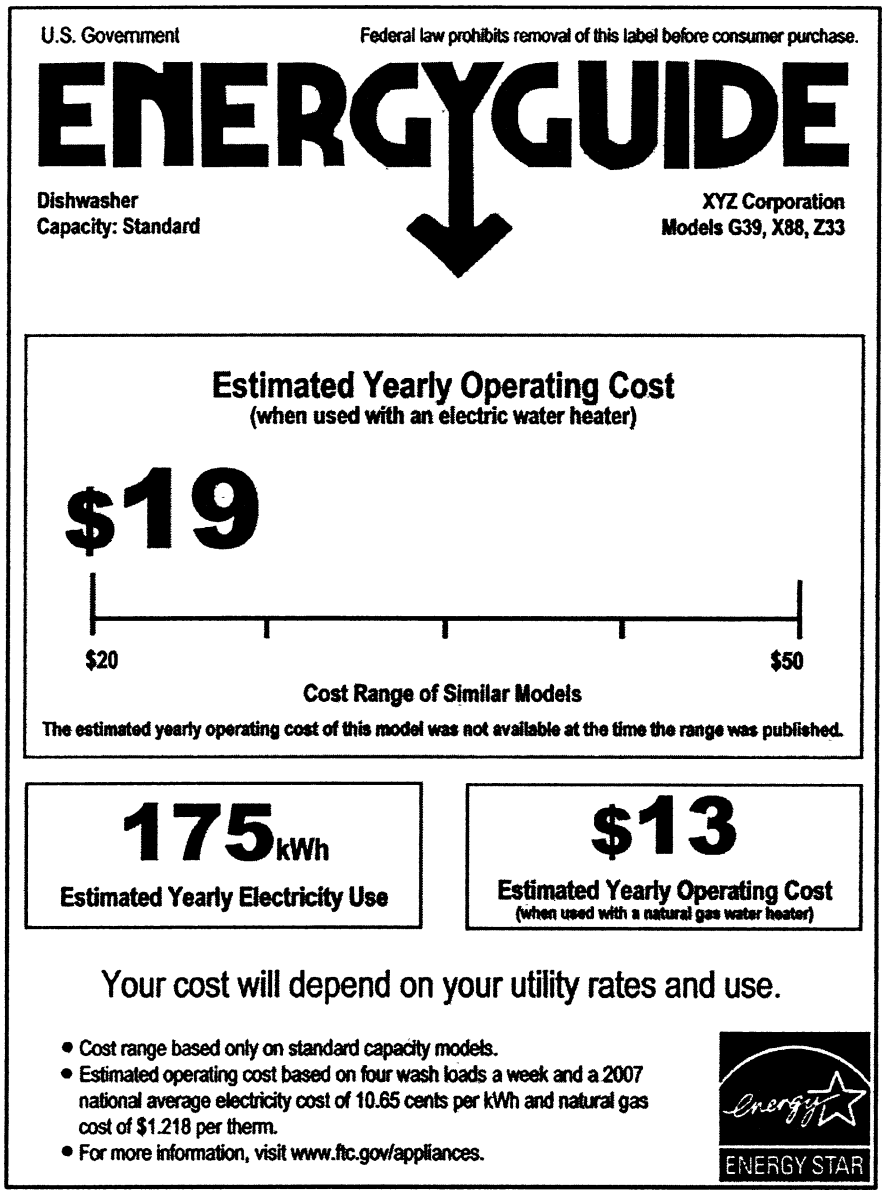
PROTOTYPE LABEL 4



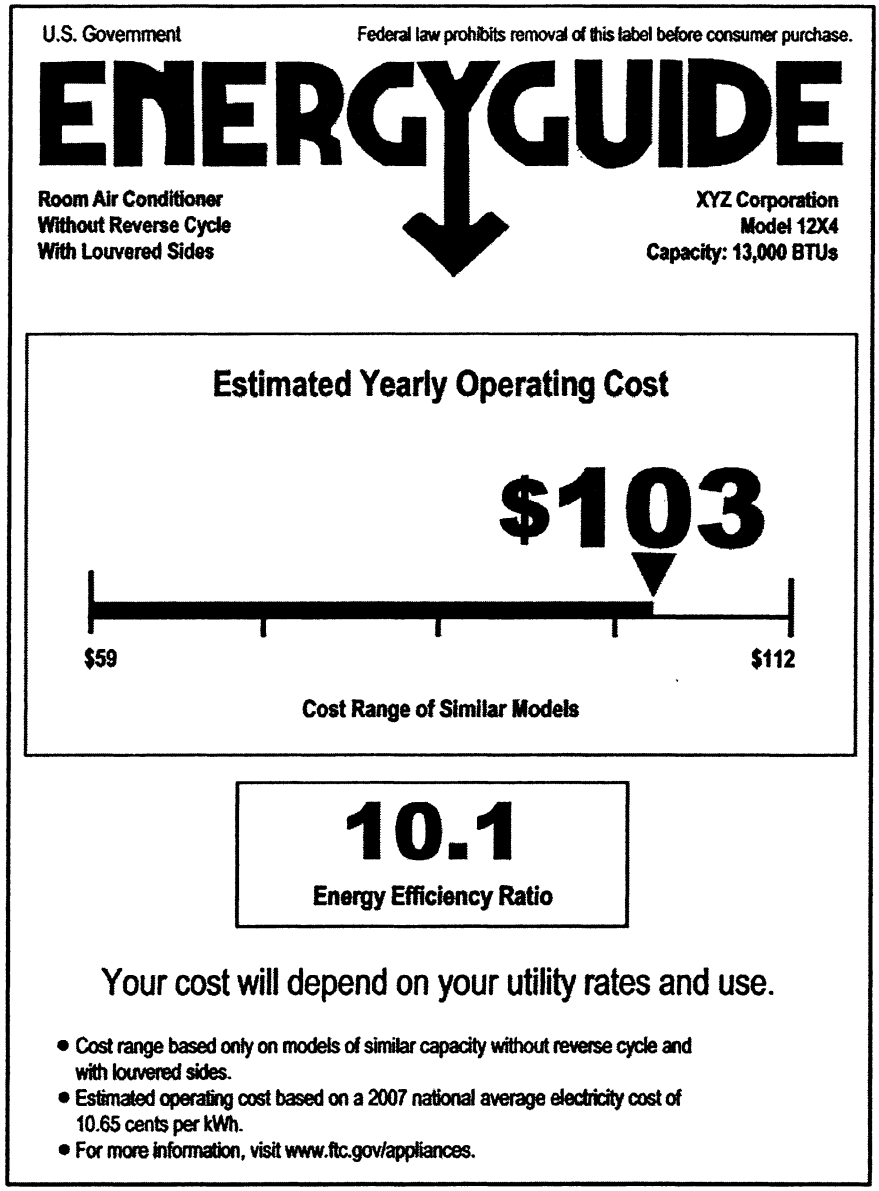
SAMPLE LABEL 1



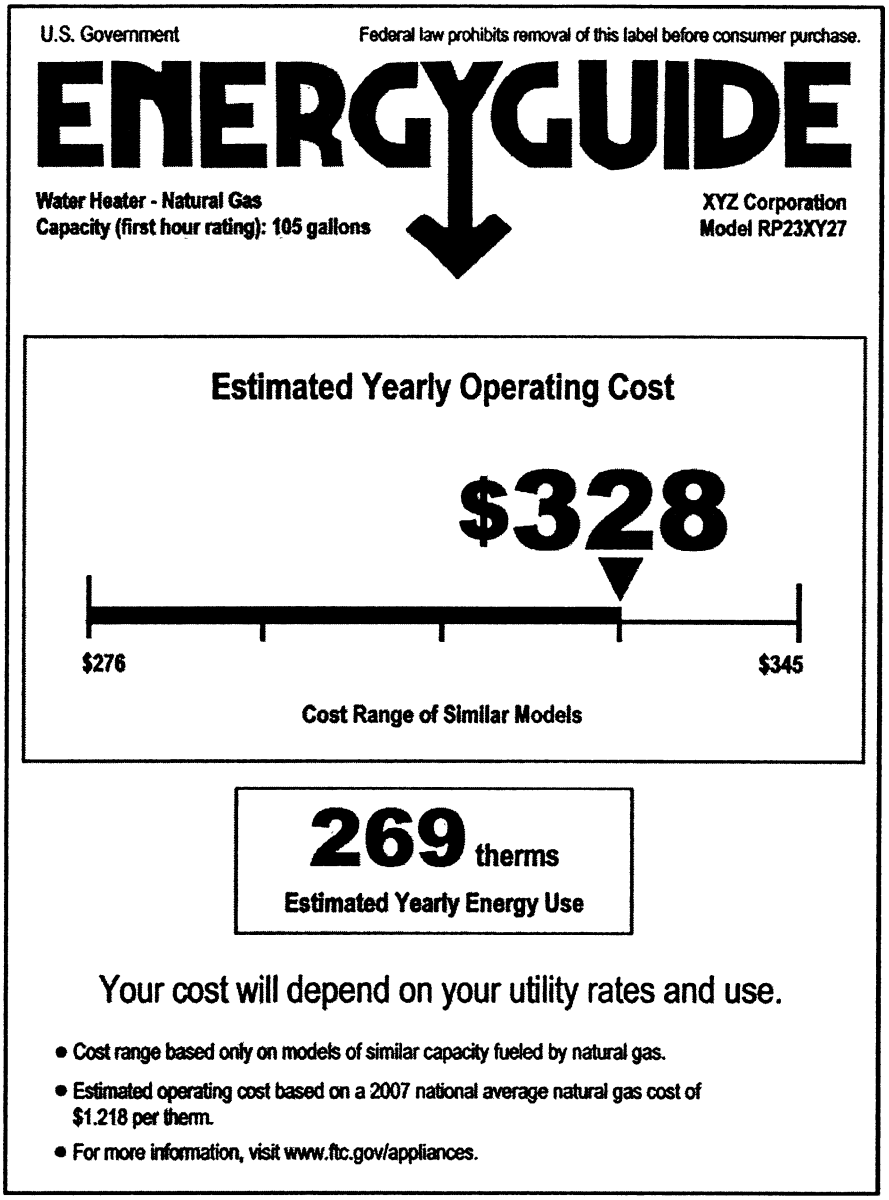
SAMPLE LABEL 2



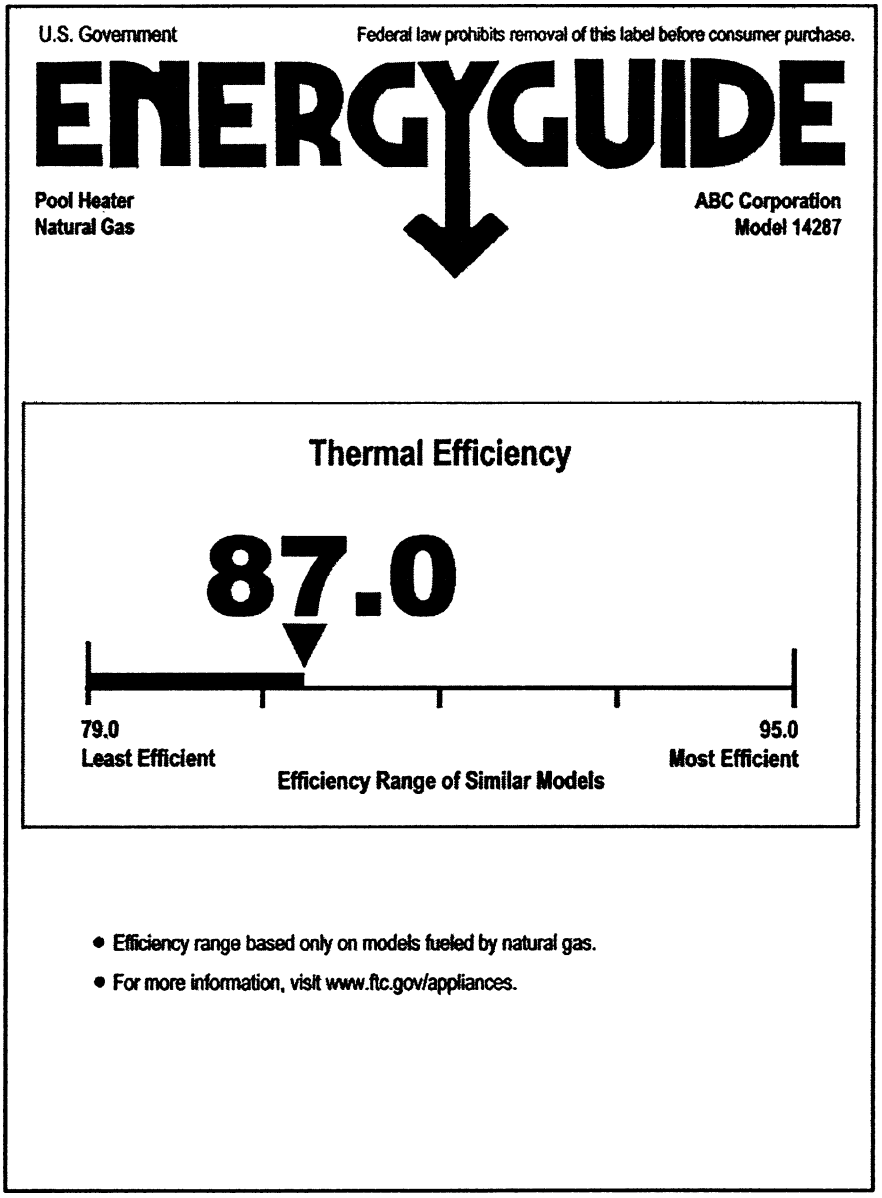
SAMPLE LABEL 3



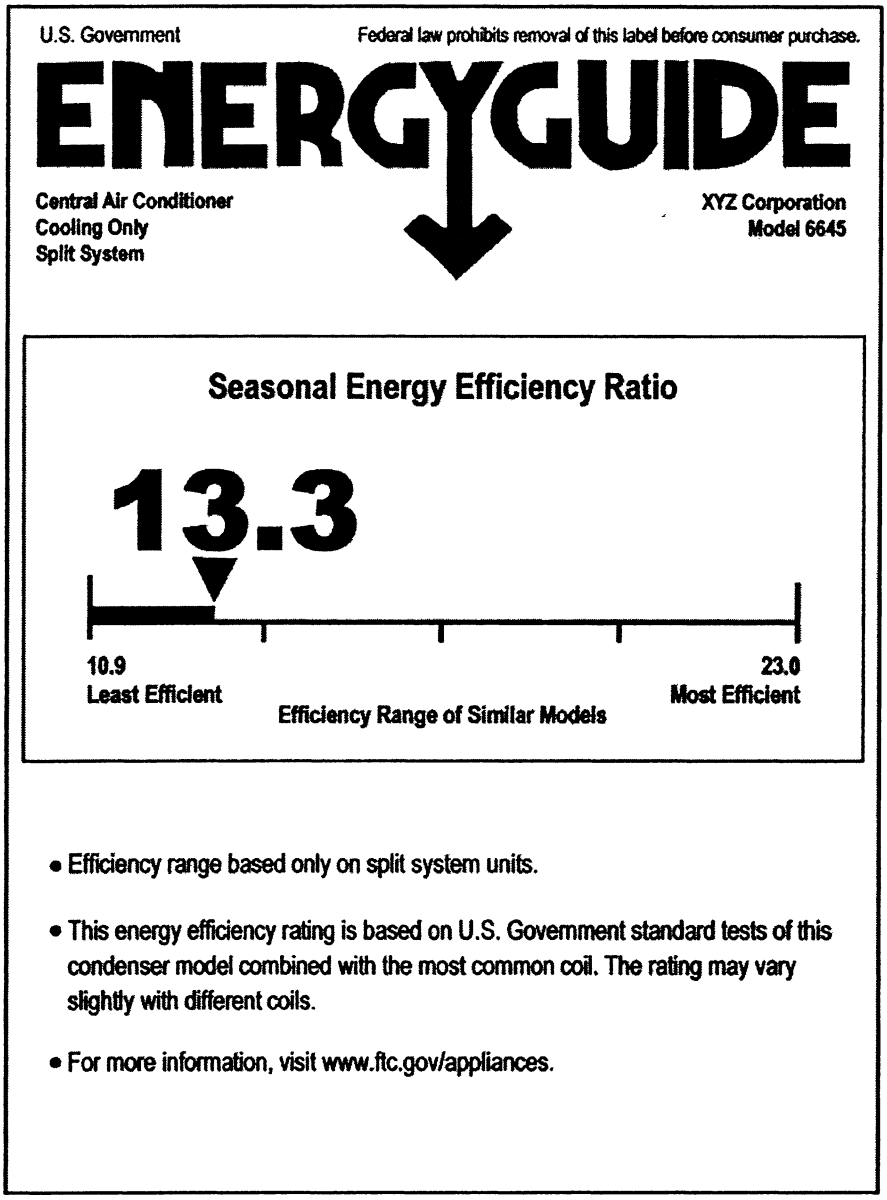
SAMPLE LABEL 4



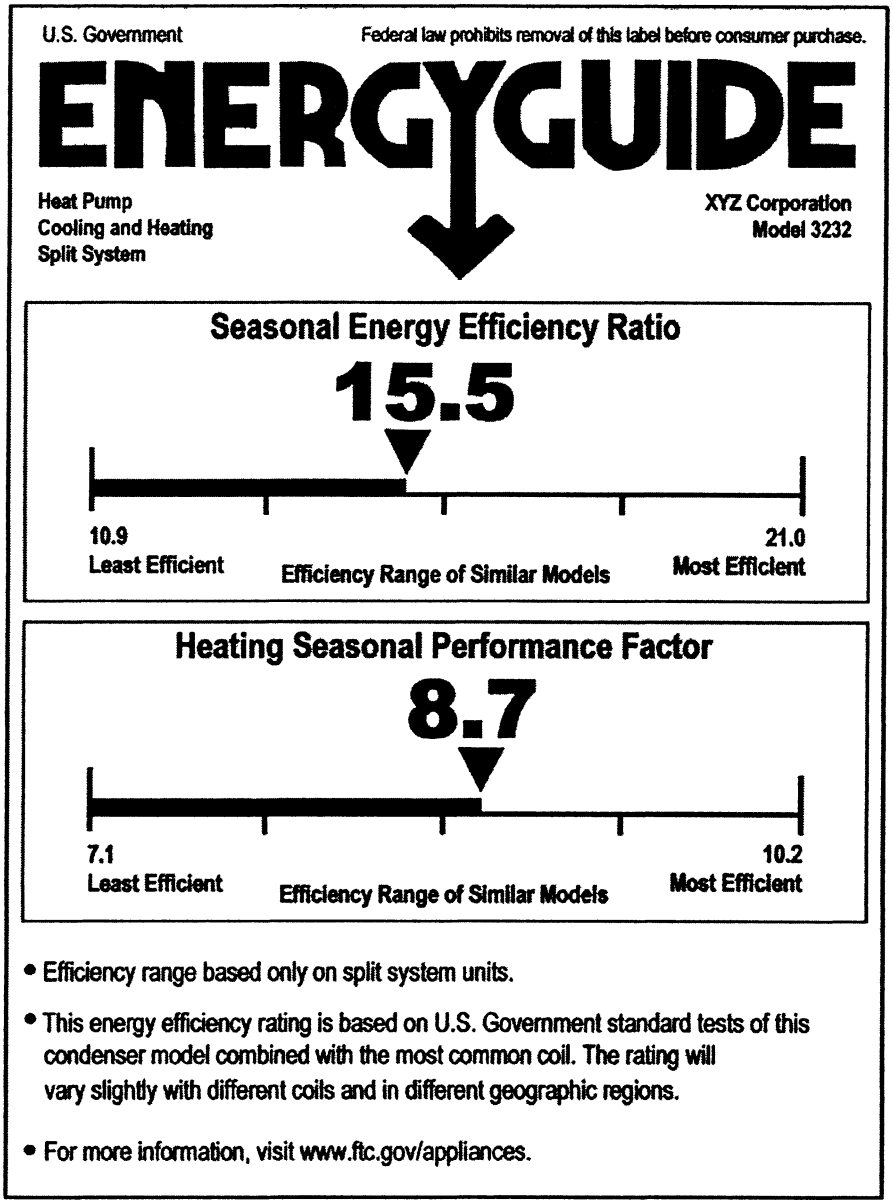
SAMPLE LABEL 5



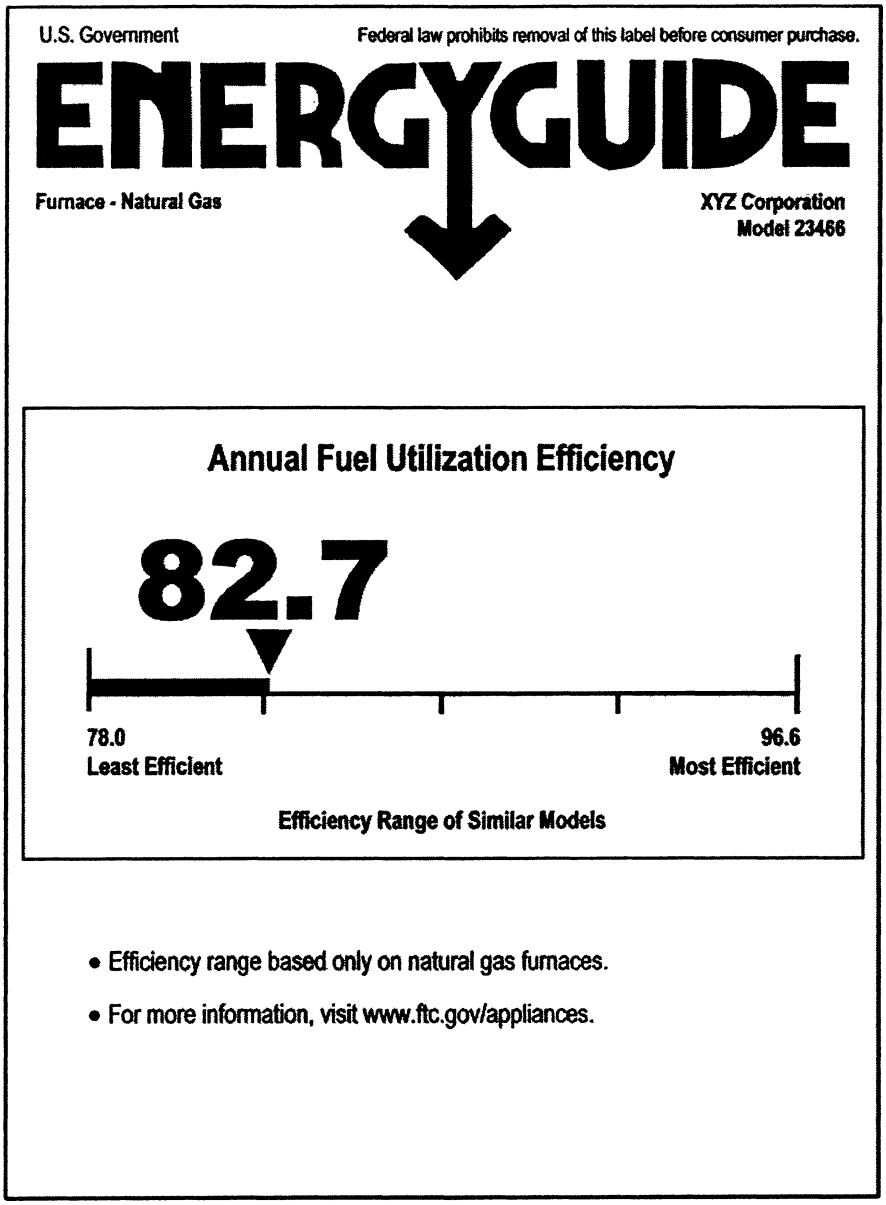
SAMPLE LABEL 6



SAMPLE LABEL 7



SAMPLE LABEL 8



SAMPLE LABEL 9

* * * * *

[FR Doc. 07–4193 Filed 8–28–07: 8:45 am]

BILLING CODE 6750–01–C

Federal Register

Wednesday,
August 29, 2007

Part IV

Federal Communications Commission

47 CFR Parts 2 and 25

Establishment of Policies and Service Rules for the Broadcasting-Satellite Service; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[IB Docket No. 06–123; FCC 07–76]

Establishment of Policies and Service Rules for the Broadcasting-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission adopts processing and service rules for the 17/24 GHz Broadcasting-Satellite Service (BSS). Specifically, the Commission adopts a first-come, first-served licensing procedure for the 17/24 GHz BSS, as well as various safeguards, reporting requirements, and licensee obligations. The Commission also adopts geographic service rules to require 17/24 GHz BSS licensees to provide service to Alaska and Hawaii as discussed herein. In addition, the Commission establishes rules and requirements for orbital spacing, minimum antenna diameter, and antenna performance standards. Also, the Commission establishes limits for uplink and downlink power levels to minimize the possibility of harmful interference. Finally, the Commission stipulates criteria to facilitate sharing in the 24 GHz and 17 GHz bands.

DATES: Effective September 28, 2007.

FOR FURTHER INFORMATION CONTACT: Andrea Kelly, (202) 418–7877, Satellite Division, International Bureau, Federal Communications Commission, Washington, DC 20554. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* (R&O) in IB Docket No. 06–123, FCC 07–76, adopted May 2, 2007 and released on May 4, 2007. The full text of the R&O is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or via e-mail *FCC@BCPIWEB.com*.

Pursuant to the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities by the rules adopted in the R&O. The text of the FRFA is set forth in Appendix A of the R&O.

The actions contained herein have been analyzed with respect to the Paperwork Reduction Act of 1995 at the initiation of the Notice of Proposed Rulemaking in this proceeding, and we have previously received approval of the associated information collection requirements from the Office of Management and Budget (OMB) under OMB Control No. 3060–1097. The Report and Order and Further Notice of Proposed Rulemaking does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Paperwork Reduction Act Requirements

OMB Control Number: 3060–1097.

Title: Service Rules and Policies for the Broadcasting Satellite Service (BSS).

Form No.: Not Applicable.

Type of Review: On-going collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 4 respondents; 24 responses.

Estimated Time per Response: 10 hours.

Frequency of Response: On occasion and annual reporting requirements.

Estimated Total Annual Burden: 240 hours.

Estimated Total Annual Costs: $12,451,700.00.

Privacy Act Impact Assessment: Not Applicable.

Needs and Uses: The purpose of this information collection is to address the Paperwork Reduction Act (PRA) requirements proposed in the Commission's Notice of Proposed Rulemaking (FCC 06–90) to establish policies and service rules for the new Broadcasting Satellite Service under IB Docket No. 06–123. In this NPRM, the Commission proposes three new information collection requirements applicable to Broadcasting Satellite Service licensees: (1) Annual reporting requirement on status of space station construction and anticipated launch dates, (2) milestone schedules and (3) performance bonds that are posted within 30 days of the grant of the license.

Without the information collected through the Commission's satellite licensing procedures, we would not be able to determine whether to permit applicants for satellite licenses to provide telecommunications services in the U.S. Therefore, we would be unable to fulfill our statutory responsibilities in accordance with the Communications Act of 1934, as amended; as well as the obligations imposed on parties to the World Trade Organization (WTO) Basic Telecom Agreement.

Summary of Report and Order

1. With this Report and Order (R&O), the Federal Communications Commission (Commission) adopts processing and service rules for the 17/24 GHz Broadcasting-Satellite Service (BSS). Specifically, the Commission adopts a first-come, first-served licensing procedure for the 17/24 GHz BSS, as well as various safeguards, reporting requirements, and licensee obligations. The Commission also adopts geographic service rules to require 17/24 GHz BSS licensees to provide service to Alaska and Hawaii as discussed herein. In addition, the Commission establishes rules and requirements for orbital spacing, minimum antenna diameter, and antenna performance standards. Also, the Commission establishes limits for uplink and downlink power levels to minimize the possibility of harmful interference. Finally, the Commission stipulates criteria to facilitate sharing in the 24 GHz and 17 GHz bands.

2. In June 2006, the Commission released a *Notice of Proposed Rulemaking* (*NPRM*) in this proceeding, which proposed processing and service rules for the 17/24 GHz BSS. Eight parties filed comments in response to the *NPRM*, and six parties filed reply comments.

3. As the Commission explained in the *NPRM*, the 1992 World Administrative Radio Conference (WARC–92) of the International Telecommunication Union (ITU) adopted an additional frequency allocation for BSS in Region 2. In 2000, the Commission implemented, in large part, the ITU Region 2 allocation for BSS domestically. The Commission recognized that although the allocation would not become effective for several years, its action would provide interested parties with sufficient notice and time to design their systems to use this spectrum in the most efficient manner. Specifically, the Commission adopted the following allocations and designations, which took effect on April 1, 2007: (1) Allocated the 17.3–17.7 GHz band, on a primary basis, to the BSS for downlink transmissions, recognizing that although the ITU Region 2 allocation apportioned the 17.3–17.8

GHz band for BSS use, the U.S. allocation would be limited to 17.3–17.7 GHz to retain spectrum at 17.7–17.8 GHz for the relocation of fixed service (FS) facilities which were being displaced as a result of the new BSS allocation; (2) allocated 300 megahertz of spectrum at 24.75–25.05 GHz on a primary basis for the Fixed-Satellite Service (FSS) (uplink) and limited FSS uplink operations in this band to BSS feeder links; and (3) allocated 200 megahertz of spectrum at 25.05–25.25 GHz for co-primary use between the 24 GHz Fixed Service, formerly known as Digital Electronic Messaging Service (DEMS), and BSS feeder links. The Commission's objective was to accommodate new satellite services while providing adequate spectrum for existing FS operations.

4. In the *NPRM*, the Commission proposed and sought comment on a variety of rules to facilitate the licensing of 17/24 GHz BSS space stations, and various obligations and requirements that will be applied to licensees. Also, the *NPRM* sought comment on technical rules designed to minimize interference and facilitate sharing in certain bands. The rules adopted in this Order establish licensing procedures and technical parameters that will enable prompt delivery of 17/24 GHz BSS satellite services to the public.

5. Four entities—DIRECTV Enterprises, Inc. (DIRECTV), Pegasus Development DBS Corp. (Pegasus), EchoStar Satellite LLC (EchoStar), and Intelsat North America LLC (Intelsat)—have filed applications for 17/24 GHz BSS space station licenses. These applications represent a wide range of system designs and business plans, from complementing existing DBS services to providing a new suite of services which will include standard-definition and high-definition formats. We adopt in this Order a method for processing these applications and accommodating entry by other qualified applicants.

6. First-Come, First-Served Licensing Approach Adopted: In the *NPRM*, the Commission sought comment on the appropriate licensing approach to adopt for the 17/24 GHz BSS. The *NPRM* noted that, in the *First Space Station Licensing Reform Order*, the Commission adopted new licensing procedures for all satellite services except DBS and Digital Audio Radio Service (DARS). The Commission did not explain, however, whether 17/24 GHz BSS should be treated like DBS or other satellite services for purposes of processing applications. Thus, the *NPRM* sought comment on whether to process applications for the 17/24 GHz BSS space stations under the first-come, first-served licensing approach adopted in the *First Space Station Licensing Reform Order* for geostationary satellite orbit (GSO)-like space station applications. Under this approach, GSO-like satellite applications are processed on a first-come, first-served basis. Thus, the Commission will grant a GSO-like application provided the applicant is qualified and the proposed system is not technically incompatible with a previously-licensed satellite or with a satellite proposed in a previously-filed application. Alternatively, we asked whether some other licensing approach would be more appropriate. In this regard, the *NPRM* specifically sought comment as to whether, pursuant to section 309(j) of the Communications Act, a competitive bidding system, or auction, could be designed to assign mutually exclusive applications for the use of this spectrum. The *NPRM* also sought comment on whether and how such an auction could be implemented consistent with the ORBIT Act, the D.C. Circuit's *Northpoint* ruling, and ITU procedures.

7. The majority of commenters maintain that the first-come, first-served licensing queue should be employed for processing applications for 17/24 GHz BSS space stations. EchoStar, however, argues that 17/24 GHz BSS applications should not be processed under this approach, contending that this method does not result in the award of licenses to the applicant that is most able to put the spectrum to productive use. EchoStar believes that we should instead award 17/24 GHz BSS licenses by auction or by a processing round approach. To facilitate auctions, consistent with the ORBIT Act and the *Northpoint* ruling, EchoStar suggests that the Commission could limit 17/24 GHz BSS spectrum rights to the provision of domestic service if all competing applicants agree. Alternatively, EchoStar suggests that the Commission could require a percentage, such as 80%, of the 17/24 GHz BSS satellite's capacity be devoted to serving the United States. EchoStar further suggests that, if the Commission decides against an auctions approach, it should adopt a processing round procedure combined with strict financial requirements. No other commenters support the use of auctions or processing rounds.

8. We find that the first-come, first-served licensing approach is well-suited for processing applications for 17/24 GHz BSS space stations. As noted in the *NPRM*, the proposed 17/24 GHz BSS space stations would provide services similar to those provided by the direct-to-home fixed satellite service (DTH FSS) satellites. We also note that all 17/24 GHz BSS applicants propose to operate GSO satellites. Because GSO satellites and constellations of non-geostationary satellite orbit (NGSO) satellites cannot generally share the same spectrum, and because, as evidenced by the pending applications, GSO technology is better suited to providing DTH video services, we limit operations in the 17/24 GHz BSS to GSO satellites. The Commission licenses GSO satellites and most other satellite services on a first-come, first-served basis. As both Intelsat and DIRECTV point out, the first-come, first-served processing method has proven to be an efficient approach for licensing GSO satellites. Indeed, our experience has shown that this licensing method has allowed the Commission to dramatically reduce the length of time required to process GSO applications. Moreover, with its associated package of safeguards, the first-come, first-served approach has increased the probability that those awarded licenses actually construct and launch their satellite systems. As commenters have noted, prompt deployment in this band is particularly important in light of the fact that the 17/24 GHz BSS spectrum became available for use on April 1, 2007. In addition, the first-come, first-served licensing approach works well in conjunction with the ITU processes for unplanned bands, such as this one.

9. We disagree with EchoStar that the first-come, first-served approach is legally unsound or that such an approach will be more likely to result in spectrum warehousing, speculation, and gamesmanship. To the contrary, as mentioned, this approach has reduced the number of speculative applications. Further, we have previously addressed the Commission's legal authority to adopt a first-come, first-served procedure. EchoStar has not provided any basis for revisiting that issue here.

10. We also are not persuaded that EchoStar's comments warrant a conclusion in this instance that a competitive bidding system would best serve the public interest. Although auctions have proven to be an efficient means of assigning licenses for scarce spectrum resources to those parties that are able to use these resources efficiently and effectively for the benefit of the public, we conclude that restricting the provision of international service solely to remove 17/24 GHz BSS from the auction prohibition of the ORBIT Act is not in the public interest. We are concerned that such a restriction would likely interfere with applicants' business plans and would thus be an impediment to the efficient deployment

of service to consumers. Indeed, as Intelsat notes, three current applicants, including EchoStar, propose to provide international service. Thus, the record does not support agreement by competing applicants to provide 17/24 GHz BSS domestic service only. Further, such restrictions could put U.S.-licensed operators at a competitive disadvantage to foreign-licensed 17/24 GHz BSS systems, which are not similarly restricted in their own domestic markets. For these reasons, we will not award licenses for 17/24 GHz BSS space stations by auction.

11. Further, we are not persuaded by EchoStar's proposal to adopt a processing round procedure. Prior to the adoption of the *First Space Station Licensing Reform Order* in 2003, we employed a processing round procedure in licensing GSO-like applications. Under this procedure, it normally took several years to issue satellite licenses, in one case nearly four years. Eliminating this regulatory delay was one of our primary motives in adopting the first-come, first served approach. Since the first-come, first-served approach has been adopted, the average processing time for GSO-like applications has decreased drastically and the backlog of applications is at an all-time low. The first-come, first-served processing queue provides a workable framework for timely and prompt processing of applications in this band and thereby facilitates the provision of service to the public. Accordingly, for the reasons discussed above, we will adopt the first-come, first-served procedure for processing 17/24 GHz BSS applications.

12. *Space Station Reform Safeguards Adopted, Including Bonds, Milestones, and Limits on the Number of Pending Applications:* In the *NPRM*, the Commission noted that the *First Space Station Licensing Reform Order* adopted a package of safeguards designed to discourage speculative applications and to ensure that licensees remain committed and able to proceed with system implementation in a timely manner. Applying these safeguards to the 17/24 GHz BSS would require licensees to post a $3 million bond with the Commission within 30 days of license grant and construct and launch the satellite consistent with the milestone schedule specified in § 25.164 of the Commission's rules. The bond becomes payable if a licensee fails to meet a milestone, rendering the license null and void. Further, GSO-like applicants are limited to a total of five pending applications and/or licensed but unlaunched satellites in a particular frequency band at any one time, and must submit substantially complete applications or face dismissal, and cannot sell their place in the processing queue. In the *NPRM*, the Commission requested comment on whether we should apply this package of safeguards if we decide to use the first-come, first-served processing approach for 17/24 GHz BSS. The Commission also sought comment on whether there are any public interest rationales for imposing a higher performance bond and/or tighter limits on the number of pending applications and licenses for unbuilt satellites that applicants for 17/24 GHz systems may have at any one time.

13. Commenters generally support applying the first-come, first-served approach safeguards to the 17/24 GHz BSS. Intelsat states that applying the bond requirement and milestone policies should be sufficient to deter speculative filings in the 17/24 GHz BSS. Intelsat also notes that prohibiting the sale of places in the queue will further deter speculative applications. DIRECTV also supports the application of the safeguards that apply to other GSO-like services, *i.e.*, milestones and performance bonds, to 17/24 GHz BSS systems. The Department of Telecommunications of the Government of Bermuda (Bermuda) notes that, although it does not support excessive reliance on the attainment of milestones nor the use of performance bonds for discouraging speculation, it supports the right of each administration to establish its own mechanisms to find a reasonable balance between commercial adventure and undue speculation. EchoStar raises concerns about the use of bonds and milestones to deter speculation and recommends reinstating the financial qualification rules applicable to FSS licensees prior to 2003. EchoStar contends that strict financial qualifications are needed because given the relatively limited number of orbital locations for operation in the 17/24 GHz BSS, the bond and milestone requirements are not enough to protect against speculation and could still result in an orbital location remaining fallow for several years.

14. We adopt our proposal in the *NPRM* to apply the safeguards in place under the first-come, first-serve licensing approach to the 17/24 GHz BSS. Contrary to EchoStar's assertions, our experience with these safeguards has shown them to be an effective measure for discouraging speculative applications. Indeed, the Commission adopted the bond requirement because the financial qualification requirements it had been using—and which EchoStar asks us to reinstate—did not accurately reflect whether a licensee would proceed with construction and launch of its space station. The Commission found requiring a surety company to assess the risk that a licensee would default on a bond would provide a more accurate market-driven determination of a licensee's ability to proceed than would a regulatory determination. EchoStar has not provided any evidence to support its assertion that the previously-used financial standard was more effective. Consequently, we will not adopt EchoStar's proposal. Further, the record does not support more stringent bond requirements or different limits on the number of pending applications/unbuilt satellites for the 17/24 GHz BSS. Thus, we will apply the requirements in place for other GSO-like applicants to 17/24 GHz BSS applicants.

15. Accordingly, we will apply the same safeguards in place for other GSO-like bands to the 17/24 GHz BSS. These safeguards include requiring licensees to post a $3 million bond with the Commission within 30 days of license grant; to construct and launch satellite system(s) consistent with the milestone schedule for GSO satellites; to limit to five, the number of pending applications and/or licenses for unbuilt satellites in this band at any one time; and to file substantially complete applications. The safeguards also prohibit applicants from selling their places in the queue.

16. With respect to the ''substantially complete'' requirement, we require applications to be complete in substance, and to provide all the information required in the application form. Furthermore, applications must not be defective under the Commission's rules, meaning that the applications must be complete with respect to answers to questions and informational showings, and must be free of internal inconsistencies. To be substantially complete, a 17/24 GHz BSS satellite application must include a complete Form 312 and Schedule S, and all the information requested in § 25.114(d) of the Commission's rules. As amended in Appendix B of this Order, § 25.114(d) requires 17/24 GHz BSS satellite applicants to show that the proposed satellite will be able to function in a four-degree spacing environment. Applicants will be required to demonstrate that they comply with the pfd limits in new § 25.208(w), or, if they do not, to demonstrate how they will affect adjacent 17/24 GHz BSS satellite networks, and that the operators of those networks agree to the applicant's proposed operations. Applicants whose proposed orbital locations are offset from the 17/24 GHz BSS orbital

locations listed in Appendix F will be required to show that they do not cause more interference than if they operated at an exact location listed in Appendix F, and that their satellite network's performance objectives will be met assuming that adjacent operators are operating at the maximum allowed power flux density levels.

17. DISCO II Market Access Standard Adopted: The Commission's *DISCO II Order* implemented the market-opening commitments made by the United States in the World Trade Organization (''WTO'') Agreement on Basic Telecommunications Service (''WTO Basic Telecom Agreement''). In particular, the *DISCO II Order* established a framework under which the Commission will consider requests for non-U.S.-licensed space stations to serve the United States. This analysis considers the effect on competition in the United States, eligibility and operating requirements, spectrum availability, and national security, law enforcement, foreign policy, and trade concerns.

18. Under *DISCO II,* the Commission evaluates the effect of foreign entry on competition in the United States in one of two ways. First, in cases where the non-U.S.-licensed space station is licensed by a country that is a member of the WTO and will provide services covered by the U.S. commitments under the WTO Basic Telecom Agreement, the Commission presumes that entry will further competition in the United States. The U.S. commitments include Mobile-Satellite Services (MSS) and many fixed-satellite services, but specifically exclude DTH, DBS, and DARS. In contrast, the Commission conducts an ''ECO–Sat'' analysis for non-U.S.-licensed space stations licensed by countries that are not WTO members and where the foreign operator, regardless of its licensing country's WTO status, proposes to provide a non-covered service. Under this analysis, applicants seeking to access a foreign space station must provide an analysis as part of their application demonstrating that U.S.-licensed space stations have effective competitive opportunities to provide analogous services in the country in which the space station is licensed (''home'' market) and in all countries in which communications with the U.S. earth station will originate or terminate (''route'' markets). In particular, the Commission examines whether there are any *de jure* or *de facto* barriers to entry in the foreign country for the provision of analogous services and whether any such barriers cause competitive distortions in the U.S. market. In the *NPRM,* the Commission proposed to apply this framework to non-U.S.-licensed 17/24 GHz BSS satellite operators seeking to access the U.S. market.

19. With respect to eligibility requirements, the Commission also proposed, in the *NPRM,* to extend to 17/24 GHz BSS operators the *DISCO II* policy that requires foreign-licensed space stations and operators to meet the same legal, technical, and financial requirements that we require U.S. applicants to meet. These include any requirements adopted in this proceeding, such as bond requirements, milestone requirements, geographic service requirements, public interest obligations, and spacecraft end-of-life disposal requirements.

20. Further, as in other satellite services, the Commission also proposed to require entities requesting authority to serve the U.S. market from a non-U.S. satellite to provide the same information concerning the 17/24 GHz BSS satellite as U.S. applicants must provide when applying for a space station license. This allows us to determine whether the foreign-licensed satellite complies with all Commission technical and service requirements, and whether it may cause interference to satellites providing authorized services to U.S. customers.

21. The commenters generally support this approach. EchoStar and SES Americom suggest that we should strictly enforce the ECO-Sat test because it allows us to ensure that U.S.-licensed operators have the same opportunity to provide 17/24 GHz BSS services to foreign countries as the satellites licensed by foreign countries have to serve the United States. In contrast, however, Bermuda notes that consumers would benefit if there was an increased presumption in all cases that entry to the market will further competition.

22. We adopt the Commission's proposal in the *NPRM* to evaluate the applications of non-U.S.-licensed 17/24 GHz BSS satellite operators seeking to access the U.S. market under the *DISCO II* framework. Thus, our analysis will consider the effect on competition in the United States, eligibility and operating requirements, spectrum availability, and national security, law enforcement, foreign policy, and trade concerns. We note in particular that all applications seeking authority to provide DTH services from non-U.S.-licensed 17/24 GHz BSS operators to the U.S. market must include an ECO–Sat analysis. We will not eliminate this analysis in favor of a presumption that entry, in all cases, will further competition, as Bermuda suggests. The ECO–Sat analysis assures us that a foreign entrant will not have a competitive advantage over U.S.-licensed operators derived from their ability to serve countries and customers that U.S. operators may be precluded from serving. Bermuda has not explained why, or to what extent, the 17/24 GHz BSS is so different from other services that we need not be concerned about ensuring a level playing field among these systems. Further, any evaluation of whether to continue to apply the ECO–SAT analysis to non-covered services in general is beyond the scope of this proceeding.

23. Last, as with all other services, we require all 17/24 GHz BSS operators seeking authority to serve the U.S. market from a non-U.S. satellite to provide the same information concerning their proposed 17/24 GHz BSS space stations as U.S. applicants must provide when applying for a space station license. This includes filing FCC Form 312, information required in Schedule S, and all other information required by § 25.114 of the Commission's rules. In addition, all non-U.S-licensed satellite operators must meet the requirements adopted in this proceeding, including but not limited to bond requirements, milestone requirements, geographic service requirements, public interest obligations and spacecraft end-of-life disposal requirements.

24. Licensing at Co-Located 17/24 GHz BSS and DBS Orbital Locations: EchoStar argues that we should award licenses for 17/24 GHz BSS satellites that will be co-located with DBS satellites only to existing DBS licensees at those locations. According to EchoStar, this restriction would minimize the risk of harmful interference which will occur when 17/24 GHz BSS satellites are located at or near the same orbital locations as DBS satellites. SES Americom and Intelsat oppose this proposal, claiming that it is anti-competitive and would block new entrants from the 17/24 GHz BSS.

25. We agree with SES Americom and Intelsat. The effect of accepting EchoStar's argument would be an expansion of the authorizations of DBS licensees to include authority to operate in the 17/24 GHz BSS on the same channel and orbital location at which they are currently operating. We find that providing such rights to existing DBS licensees would hinder competition while conferring a benefit on existing DBS licensees. Further, we note that, in the FNPRM section of this document below, we invite comment on various methods for coordinating DBS and 17/24 GHz BSS satellites when located near each other in the

geostationary orbit, perhaps as close as 0.2° or 0.3° to each other. In light of this, we find that EchoStar's proposal to prohibit non-DBS operators from applying for 17/24 GHz BSS licenses at DBS orbital locations is not necessary to prevent harmful interference between DBS and 17/24 GHz BSS satellites.

26. Fifteen-year and Eight-Year License Terms Adopted, Respectively, for Non-Broadcast and Broadcast 17/24 GHz Licensees: In the *NPRM,* the Commission sought comment on the license term it should apply to 17/24 GHz licenses. The Commission noted that § 25.121 of the Commission's rules provides that licenses for space stations will be issued for a period of 15 years, except licenses for DBS space stations. DBS space stations licensed as broadcast facilities are issued licenses for eight-year terms, and those DBS space stations not licensed as broadcast facilities have 10-year terms. The Communications Act provides for a maximum licensing term of eight years for broadcasting facilities and allows the Commission to determine license terms for particular classes of stations, including satellite space and earth stations. In the *NPRM,* the Commission proposed to adopt a 10-year license term for all non-broadcast 17/24 GHz BSS satellites. For 17/24 GHz BSS satellites that will operate as broadcast facilities, the Commission proposed an eight-year license term, as provided under section 307(c)(1) of the Communications Act.

27. DIRECTV, Intelsat, and Bermuda support a 15-year license term for 17/24 GHz systems. Bermuda states that most commercial satellites being planned or built today are intended for a service life-expectancy of longer than eight years, and notes that a 15-year term would also be consistent with international practices.

28. Pursuant to our statutory authority to implement license terms for different classes of space and earth stations, with the exception of DBS stations, we adopt a 15-year license term for all non-broadcast 17/24 GHz BSS licenses and an eight-year license term for 17/24 GHz BSS licensees operating as broadcasters. As noted by the parties, satellites being built today are intended for longer service life expectancy than in the past and should therefore be assigned a longer license term. A 15-year license term for non-broadcast 17/24 GHz BSS satellites accurately reflects the useful life of most GSO satellites today and therefore, we will extend the license terms applicable to other non-broadcast GSO-like licensees to 17/24 GHz BSS licensees.

29. Streamlined Procedures Adopted: While the Commission has consistently said that all orbital assignments confer no permanent rights of use to the licensee, it has recognized the importance of giving satellite operators some assurance that they will be able to continue to serve their customers from the same orbital location as older satellites are retired. The Commission has stated that, without this assurance, operators may be discouraged from investing the hundred of millions of dollars needed to construct, launch, and operate each satellite. Further, the Commission has said that without follow-on capacity at the same orbit location, customers could experience service disruptions. When an orbit location remains available for a U.S. satellite with the technical characteristics of the proposed replacement satellite, we will generally authorize the replacement satellite at the same location.

30. To facilitate grant of replacement satellites, the Commission has historically processed applications for replacement satellites as they are filed, rather than subjecting them to the procedures that otherwise govern applications for new satellites. Thus, Commission practice is to immediately consider an application for a replacement satellite—and grant it if the applicant is qualified—without subjecting the application to a ''processing queue'' or other procedure by which it considers other applications that may be mutually exclusive with the replacement satellite application. To further expedite replacement satellite licensing, the Commission considers unopposed replacement satellite applications with technical characteristics consistent with those of the satellite to be retired are processed under a grant-stamp procedure. In the *NPRM,* we proposed to treat replacement satellite applications in the 17/24 GHz BSS under these streamlined procedures.

31. DIRECTV and Intelsat support this proposal. Bermuda also supports a replacement policy that allows operators to replace ''like with like,'' i.e., replace a satellite after a premature in-orbit failure (such as caused by solar activity or manufacturing flaw) but cautions against abuses in the satellite replacement grant-stamp process.

32. In order to facilitate grant of 17/24 GHz BSS replacement satellite applications, we adopt the streamlined procedures applicable to the majority of the replacement satellite applications considered by the Commission. We have found that the grant-stamp procedure is an efficient method of processing replacement satellite applications and will apply this procedure to unopposed applications for replacement satellites in the 17/24 GHz BSS. Further, the procedure contains mechanisms against abuse. We will place 17/24 GHz replacement applications on Public Notice, as we do with replacement satellite applications in other services. Thus, interested parties will have an opportunity to comment on all applications. We will address any concerns raised when processing the replacement application and will issue an Order, instead of a grant stamp, when appropriate.

33. Annual Reporting Requirements Adopted: In the *NPRM,* the Commission noted that most space station operators are subject to annual reporting requirements on June 30 of each year. These reports must include, among other things, the status of space station construction and anticipated launch dates. The Commission requested comment on whether we should require 17/24 GHz BSS U.S.-licensees and 17/24 GHz BSS non-U.S. operators that are authorized to access the United States to submit similar annual reports.

34. Bermuda and Intelsat support a reporting requirement, stating that annual reports can be useful for monitoring the progress of milestone compliance and helping to deter speculative applications. Bermuda adds that licensees should file reports regardless of whether they are U.S. operators or non-U.S. operators. Bermuda also states that requiring operators to report at intervals of less than one year would provide an increased opportunity to monitor progress. No party objects to a reporting requirement for 17/24 GHz BSS operators.

35. We adopt the Commission's proposal to require 17/24 GHz BSS U.S.-licensees and 17/24 GHz BSS non-U.S. operators that are authorized to access the United States to submit annual reports similar to the annual reports required of most FSS satellite operators to the Commission on June 30 of each year. We believe such reports, filed on an annual basis, will help keep us apprised of the status of the space station, both while it is being built and once it is in-orbit. We are not convinced that more frequent reporting is needed to achieve this objective. In addition to annual reports, licensees must file documentation that they have met various milestones at each milestone deadline. This provides the most timely way to monitor licensees' compliance with the milestone conditions in their licenses. We also note that the Commission may request at any time additional information if such request is warranted.

36. Operators should file their annual reports with the Commission's International Bureau and the Commission's Columbia Operations Center in Columbia, Maryland. Specifically, the annual reports must include: (1) Status of satellite construction and anticipated launch date, including any major problems or delays encountered; (2) a listing of any non-scheduled transponder outages for more than 30 minutes and the cause or causes of such outage; (3) a detailed description of the utilization made of each transponder on each of the in-orbit satellites, including the percentage of time that the system is actually used for U.S. domestic or transborder transmission, the amount of capacity (if any) sold but not in service within U.S. territorial geographic areas, and the amount of unused system capacity; and (4) identification of any transponder not available for service or otherwise not performing to specifications, the cause of these difficulties, and the date any space station was taken out of service or the malfunction identified.

37. NPRM Proposal Adopted: In the *NPRM*, the Commission proposed that applicants for 17/24 GHz BSS satellites should pay fees associated with the ''Space Stations (Geostationary)'' service in § 1.1107 of the Commission's rules. In addition, we proposed that applicants seeking authority to operate earth stations in the 17/24 GHz BSS should pay fees associated with the ''Fixed Satellite Transmit/Receive Earth Stations'' in § 1.1107. There were no comments on our filing fee proposals and we adopt our fee proposals.

38. DBS and DTH Public Interest Obligations Adopted for 17/24 GHz BSS: § 25.701 of our rules requires DBS providers to comply with certain political broadcast requirements and children's television advertising limits, and to set aside four percent of channel capacity for noncommercial, educational or informational programming. The entities subject to § 25.701 include entities licensed to operate satellites in the 12.2 to 12.7 GHz DBS frequency bands; entities licensed pursuant to part 25 of the Commission's rules to provide FSS via the Ku-band, that sell or lease transponder capacity to a video program distributor that offers a specified number of DTH video channels to consumers; and non-U.S. licensed satellites providing DBS or DTH-FSS services in the United States. The *NPRM* proposed that, to the extent a 17/24 GHz BSS space station is used to provide video programming to consumers in the United States (DBS-like services), the licensee should be subject to the public interest obligations contained in § 25.701. We invited comment on this proposal.

39. Commenters generally support applying public interest requirements to the 17/24 GHz BSS. SES Americom, however, contends that such requirements should be imposed only on 17/24 GHz BSS licensees that distribute programming to end users, and not on 17/24 GHz BSS licensees that are strictly satellite operators with no programming control, because they are not in a position to comply with the obligations. In reply, EchoStar states that if public interest obligations are imposed on any 17/24 GHz BSS licensees, they should be imposed uniformly on all such licensees. DIRECTV also believes that public interest obligations should be imposed equally on all 17/24 GHz BSS licensees, and states that the Commission has previously addressed and rejected SES Americom's arguments.

40. We find that the obligations imposed on DBS providers by § 25.701 should apply uniformly if the 17/24 GHz BSS space station is used to provide video services to consumers in the United States. SES Americom's argument that program distributors using satellite capacity should be ultimately responsible for fulfilling these obligations was specifically addressed and rejected by the Commission when it originally adopted the public interest rules and on reconsideration of those rules. We see no reason to adopt a different approach for operations in the 17/24 GHz BSS. Accordingly, we adopt the proposal to amend § 25.701 to apply to any 17/24 GHz BSS licensee, to the extent that the space station is used to provide video programming to consumers in the United States.

41. Although Media Access Project supports the Commission's proposal to impose public interest obligations on 17/24 GHz BSS licensees that provide DBS-like services, it argues that the Commission should increase the amount of programming that service providers in this band are required to reserve for non-commercial programming of an educational or informational nature. It argues that, given the expansion of spectrum capacity being offered to service providers in this proceeding, the Commission should require that licensees offer an accompanying increase in their public interest programming from the statutory minimum of four percent to the statutory maximum of seven percent. According to Media Access Project, the increase would provide value to the public in return for their use of the scarce public resources of spectrum and orbital locations. EchoStar argues that a public interest programming set-aside requirement of seven percent would be a disincentive to development of the 17/24 GHz BSS and would ''significantly limit'' the capacity available for sought-after services such as local-into-local television broadcast stations and high-definition programming.

42. To the extent that Media Access Project is arguing that the channel reservation requirement should be increased for all DBS providers, including those originally covered by § 25.701, that issue is beyond the scope of this proceeding. With respect to any argument that the reservation be increased for only licensees in the 17/24 GHz BSS, we find that this might prove detrimental to development of this band by placing greater burdens on these licensees than those operating in others bands. Thus, we require 17/24 GHz BSS licensees to reserve four percent of their channel capacity, as defined in § 25.701, for use by qualified programmers for noncommercial programming of an educational or informational nature. See 47 CFR 25.701(c).

43. The *NPRM* also sought comment on whether licensees in the 17/24 GHz BSS qualify to use the compulsory copyright licenses granted under sections 119 and 122 of the Copyright Act and, if so, whether broadcast carriage requirements should apply. *See* 17 U.S.C. 119, 122. These statutory licenses permit satellite carriers, as defined in the Copyright Act, to provide television broadcast signals to their subscribers. Section 119 of the Copyright Act defines ''satellite carrier'' as an entity that uses a satellite operating in the FSS or DBS service for point-to-multipoint distribution of television signals. *See* 17 U.S.C. 119(d)(6). *See also* 47 U.S.C. 339. This section of the Copyright Act allows satellite carriers to offer distant broadcast signals under certain circumstances. Section 122 of the Copyright Act provides a license for local-into-local service and defines ''satellite carrier'' by reference to the definition in section 119. *See* 17 U.S.C. 122(j)(3). *See also* 47 U.S.C. 338.

44. Both DIRECTV and EchoStar, as well as NAB, support allowing 17/24 GHz BSS licensees to qualify to use the compulsory copyright licenses. DIRECTV asserts that while the 17/24 GHZ BSS service is not totally in either the DBS or FSS frequency bands, the uplink for this service is in a frequency band allocated to FSS and, therefore, the copyright license could be construed to cover 17/24 GHz BSS. Alternatively,

DIRECTV asserts that the Commission could amend its definition of ''DBS'' to include use of the 17/24 GHz BSS downlink band. Although we will not offer an opinion on the appropriate construction of the Copyright Act, we believe that sections 338 and 339 of the Communications Act would apply to 17/24 GHz BSS licensees and that operators in this band, to the extent that they provide DBS-like service, qualify for use of the statutory copyright licenses. These licensees will provide point-to-multipoint service, in part using FSS frequencies, and thus they appear to come within the definition of a satellite carrier. Licensees availing themselves of the statutory copyright licenses must, of course, abide by the accompanying broadcast carriage requirements in the statute and in Commission rules, and, if they offer service to more than 5 million customers, must provide television broadcast signals to subscribers in Alaska and Hawaii.

45. EEO Requirements Adopted: The *NPRM* noted that § 25.601 of the Commission's rules requires an entity that owns or leases an FSS or DBS service facility to provide video programming directly to the public on a subscription basis to comply with the equal employment opportunity (EEO) requirements. These requirements are set forth in part 76 of the Commission's rules and apply if the entity exercises control over the video programming it distributes. We proposed to apply § 25.601 to 17/24 GHz BSS licensees to the extent such licensees provide DBS-like services. In addition, we proposed to require 17/24 GHz BSS licensees to comply with any other EEO requirements that may be subsequently adopted or enforced by the Commission for broadcasters and multichannel video service distributors (MVPDs). We sought comment on this proposal.

46. EchoStar states that if we impose EEO obligations on 17/24 GHz BSS licensees, we should apply them uniformly to all licensees. Bermuda states generally that it supports our proposals. We find that it is in the public interest to apply § 25.601 of our rules to 17/24 GHz BSS licensees to the extent such licensees provide DBS-like services, as well as to require 17/24 GHz BSS licensees to comply with any other EEO requirements that may be subsequently adopted or enforced by the Commission for broadcasters and MVPDs. Accordingly, we will apply § 25.601 of our rules to 17/24 GHz BSS licensees to the extent such licensees provide DBS-like services, and 17/24 GHz BSS licensees will be required to comply with any other EEO requirements that may be subsequently adopted or enforced by the Commission for broadcasters and MVPDs.

47. Service Requirements for Alaska and Hawaii Adopted: The Commission is committed to establishing policies and rules that will promote service to all regions in the United States, particularly to traditionally underserved areas, such as Alaska and Hawaii, and other remote areas. To achieve these goals, the *NPRM* proposed to apply geographic service rules for the states of Alaska and Hawaii in the 17/24 GHz BSS. Specifically, to the extent that 17/24 GHz BSS space stations are used to provide video programming to consumers in the United States, we proposed to adopt rules analogous to those in effect for DBS satellites in § 25.148(c) of the Commission's rules. These rules require DBS licensees to provide service to Alaska and Hawaii where such service is technically feasible from the authorized orbital location. DBS applicants who do not propose to serve Alaska and Hawaii at the licensing stage must provide technical analyses to the Commission demonstrating that such service is not feasible as a technical matter or that, while technically feasible, such service would require so many compromises in satellite design and operation as to make it economically unreasonable. The Commission sought comment on this proposal. In addition, the *NPRM* noted that it is likely that many of the satellite operators in the 17/24 GHz BSS will operate multiple satellites. We asked whether, in such instances, we should apply geographic service rules at each orbital location or on a system-wide basis.

48. Commenters generally support adopting rules analogous to the DBS rules. DIRECTV and EchoStar also support applying the rules on a system-wide basis rather than on an orbital location basis. DIRECTV states that applying the rules on a system-wide basis will provide flexibility without compromising the goal of comparable service to all regions of the United States. EchoStar notes that the technical feasibility of service from a particular orbital location may not be the same for the 12 GHz and 17 GHz bands.

49. Accordingly, 17/24 GHz BSS licensees, to the extent that such licensees provide DBS-like services, are required to certify that they will provide service to Alaska and Hawaii comparable to that provided to locations in the 48 contiguous United States (CONUS), unless such service is not technically feasible or not economically reasonable from the authorized orbital location. In addition, we require applicants to design and configure 17/24 GHz BSS satellites to be capable of providing service to Alaska and Hawaii that is comparable to the service that such satellites will provide to CONUS subscribers. Furthermore, we require applicants to design and configure these satellites to be able to provide service to Alaska and Hawaii from any orbital location capable of providing service to either Alaska or Hawaii to which they may be relocated in the future. Thus, regardless of the location to which the satellite is initially authorized to operate from, if moved to a location capable of providing coverage to Alaska and Hawaii, the satellite will be configured to provide service to Alaska and Hawaii at the new orbital location. Applying geographic service requirements to 17/24 GHz BSS operators in this manner will best ensure that 17/24 GHz BSS service provided to Alaska and Hawaii is comparable to that provided to CONUS locations. Although we are applying these requirements to each satellite where technically feasible instead of on a system-wide basis as proposed by DIRECTV and EchoStar, we believe that operators will have sufficient flexibility to design their systems in a manner that will be both technically and economically efficient. We also require licensees to certify that replacement and relocated satellites at locations from which service to Alaska and Hawaii had been provided by another 17/24 GHz BSS satellite will have the capability to provide at least the same level of service to Alaska and Hawaii as the previous 17/24 GHz BSS satellite at that location. 17/24 GHz BSS applicants who do not intend to provide service to Alaska and Hawaii must provide, in their initial application, technical analyses to the Commission demonstrating that such service is not feasible as a technical matter or that, while technically feasible, such service would require so many compromises in satellite design and operation as to make it economically unreasonable.

50. EAS Requirements Adopted: In the NPRM, the Commission noted that, in the *EAS First Report and Order and Further Notice,* the Commission amended part 11 of its rules to require participation in the Emergency Alert System (EAS) by digital broadcast stations, digital cable systems, DBS services, and DARS. The *NPRM* also noted that in the *EAS First Report and Order and Further Notice,* the Commission defined DBS broadly to include the ''vast majority of DTH services, particularly those which viewers may have expectations as to available warnings based on experience

with broadcast television services.'' Because the same concerns the Commission addressed in the *EAS First Report and Order and Further Notice* are presented with the introduction of services by 17/24 GHz BSS providers, the *NPRM* proposed to apply the EAS requirements to providers of those services to the extent that 17/24 GHz BSS licensees provide DBS-like services.

51. Commenters disagree as to whether the Commission should apply EAS requirements to all 17/24 GHz BSS licensees. SES Americom and Intelsat maintain that EAS requirements should apply only to 17/24 GHz BSS licensees that distribute programming to end users and not to FSS licensees that provide satellite capacity, such as SES Americom and Intelsat. According to SES Americom, FSS operators have conclusively demonstrated that placing EAS obligations on the licensee instead of the programming distributor impairs the effectiveness of the EAS program and prevents the Commission from penalizing a programming distributor that fails to deliver a required alert. SES concludes that if the Commission decides to apply EAS requirements to the 17/24 GHz BSS, it should ensure that they are placed only on programming distributors and not on the underlying satellite operators.

52. EchoStar and DIRECTV disagree with SES Americom and Intelsat. On reply, EchoStar and DIRECTV argue that all 17/24 GHz BSS licensees, whether they provide programming or underlying capacity, should be subject to EAS requirements. DIRECTV also notes that the Commission has previously determined that satellite licensees, such as Intelsat, should be subject to EAS requirements for other satellite services. Consequently, DIRECTV argues, unless the Commission changes its policy regarding the application of EAS requirements to other services it should not adopt Intelsat and SES Americom's proposal for the 17/24 GHz service alone.

53. Bermuda also submitted comments in support of applying EAS requirements to all 17/24 GHz BSS licensees that provide DBS-like services. Bermuda argues that imposing this requirement not only insures that all satellite operators providing DTH-like or DBS-like services will be subject to the same requirements, but also means that consumers will receive equal services in the event of an emergency. Bermuda further states that in the broader context of EAS, it has concerns regarding extreme weather conditions and recognizes that resilient communications are necessary for the dissemination of vital information to the public in times of emergency.

54. We believe that customers of the new 17/24 GHz BSS services would likely have similar expectations regarding these services as they do towards those other satellite services where video programming is provided directly to consumers. The particular band in which DTH services are offered has no relevance to customers' expectations regarding their ability to receive warnings. In other words, the EAS obligations for these services should be uniform no matter what portion of spectrum a particular provider chooses for its services. In this regard, we note that, pursuant to the rules adopted in the *EAS First Report and Order*, entities providing DBS services as defined by § 25.701(a) of the Commission's rules, will be subject to the part 11 EAS rules effective May 31, 2007. In light of this precedent and the reasons stated above, we conclude that, where 17/24 GHz BSS space stations are used to provide video services directly to consumers, the EAS requirements will apply. This will ensure consistent application of the EAS requirements irrespective of the different spectrum being used. We note, however, that PanAmSat Corporation, SES Americom, Inc. and Intelsat, Ltd. (collectively the ''FSS Group'') filed a petition for partial reconsideration of the *EAS First Report and Order*, making arguments essentially identical to those raised in their comments in this proceeding. We will address these issues in an Order dealing with the reconsideration petitions in the EAS proceeding.

55. Use of BSS Spectrum at 17.7–17.8 GHz: Although the international allocation for Region 2 BSS in the space-to-Earth direction extends from 17.3–17.8 GHz, in the *18 GHz Report and Order*, the Commission extended the domestic allocation to the BSS only to 17.7 GHz. As discussed in the *NPRM*, the Commission based its decision in part upon the ubiquitous nature of broadcasting-satellite services which we believed would preclude successful coordination with a terrestrial service that was similarly widely deployed, and taking into account the amount of terrestrial fixed spectrum being lost as a result of that proceeding. In the *NPRM*, the Commission recognized that U.S. satellite operators might wish to use the 17.7–17.8 GHz band to provide service to receiving earth stations located within ITU Region 2, but outside of the United States. Accordingly, the Commission proposed to permit U.S. operators to use the international allocation to the BSS, but to limit use of the downlink to international service only, i.e., to receiving earth stations located outside of the U.S. and its possessions. The *NPRM* sought comment on this proposal and any rule changes that might be necessary to effect its implementation. Recognizing that the footprint of satellite beams serving nearby Region 2 countries could illuminate portions of the United States, the *NPRM* also proposed to adopt Power Flux Density (pfd) limits in order to protect terrestrial service antennas from co-frequency interference from space station transmissions. Specifically, it proposed to adopt the same pfd limits that were imposed on FSS transmissions in the 17.7–17.8 GHz band by § 25.208(c) of the Commission's rules prior to the adoption of the *18 GHz Report and Order* in 2002, and are also the same limits that Article 21 of the ITU Radio Regulations currently imposes on FSS operators in this band. *See* Table 21–4 of the ITU Radio Regulations. The *NPRM* sought comment on extension of these proposed pfd limits to the 17/24 GHz BSS.

56. Commenters responding to this issue consistently favor the Commission's proposal to permit use of the 17.7–17.8 GHz band outside of the United States and its possessions. However, many argue that the Commission's proposal did not go far enough with regard to domestic service. DIRECTV and EchoStar both request that the Commission also allow satellite operators to provide service to U.S.-based receiving earth stations on a non-protected, non-interference basis, arguing that there is very little chance that downlink transmissions from a BSS satellite would interfere with the much stronger terrestrial service transmissions in this portion of the band and stating that spectrum should not be required to remain fallow in areas where there is little terrestrial use. Intelsat further argues that coordination with Fixed Service (FS) operators in the 17.7–17.8 GHz band is feasible particularly if FS deployment is frozen after a certain date to permit BSS operators to deploy their earth stations with full knowledge of the locations of FS earth stations. Alternatively, Intelsat suggests that the Commission could grant BSS and FS co-primary status and protect receive earth station sites on a case-by-case basis while permitting FS deployment in the band to continue. Finally, SES Americom states that the Commission should entertain requests for a waiver of the Commission's rules to permit use of the 17.7–17.8 GHz band on a case-by-case basis.

57. The Fixed Wireless Communications Coalition (FWCC) opposes satellite operators' requests for authority to provide domestic service in the 17.7–17.8 GHz band. The FWCC claims that the FS used the band heavily even prior to the 1998 *18 GHz Report and Order* and that the number of FS links continues to increase. It argues that such an action on the Commission's part would be both bad policy and contrary to law as the *NPRM* expressly took such a possibility off the table. The FWCC further argues that satellite operators seek to reopen the issue of terrestrial service and satellite service sharing that has already been thoroughly aired and considered, and urges the Commission to state that the matter is closed. FiberTower also opposes 17/24 GHz BSS domestic use of the 17.7–17.8 GHz band, stating that it would not be possible to effect coordination with ongoing FS operations in the band and that such a reallocation would once again disrupt FS operations in order to rechannelize the 18 GHz band.

58. In the *NPRM*, the Commission made clear that it did not intend to reexamine the question of BSS and FS sharing in the 17.7–17.8 GHz band in this rulemaking. We believe that undertaking examination of such a technically complex issue would only result in a protracted and contentious rulemaking. As stated in the *NPRM*, this could only disserve our goal of establishing technical and service rules for the 17/24 GHz BSS in a timely manner, particularly recognizing the April 1, 2007 date at which the allocation became effective. Moreover, the Commission also stated that no applicant had provided either convincing evidence that terrestrial FS spectrum relocation requirements are less demanding than predicted, or a compelling argument that coordination of widely deployed terrestrial services with ubiquitously located 17/24 GHz BSS receivers would be readily feasible. That remains true to date. For these reasons, we agree with the FWCC's assertion that reopening the issue in this rulemaking is not appropriate, and we decline to consider requests to make the 17.7–17.8 GHz band available for domestic BSS operations as a part of this proceeding.

59. EchoStar, DIRECTV and SES Americom all suggest that reception of some non-protected BSS transmissions at U.S. earth stations might be accommodated successfully in the 17.7–17.8 GHz band. EchoStar notes that a similar approach has been undertaken successfully with FSS DTH antennas in the extended Ku-bands. In certain instances, FSS applicants seeking to use extended Ku-band spectrum for domestic service, have obtained waivers of the Commission's rules and agreed to accept all interference from FS stations as a condition of authorization. However, in the extended Ku-bands, there is an existing primary allocation to the FSS in the 10.95–11.2 GHz and 11.45–11.7 GHz bands, although footnote NG 104 to the United States Table of Frequency Allocations (Table of Allocations) limits FSS use to international systems only. *See* 47 CFR 2.106 and NG 104. In the case of the 17.7–17.8 GHz band, neither a primary nor a secondary domestic allocation to the BSS exists in the space-to-Earth direction. The Commission will not modify the Table of Allocations to provide a secondary allocation to the BSS in this band for the reasons stated above—we do not intend to reexamine BSS/FS sharing issues in this rulemaking.

60. Commenters also support the adoption of pfd limits in the 17.7–17.8 GHz band to protect terrestrial networks. SES Americom and Intelsat agree with the Commission's proposal to apply the pfd limits of Article 21 of the ITU Radio Regulations for FSS systems operating in the 17.7–19.7 GHz band to BSS downlink transmissions in the 17.7–17.8 GHz band. DIRECTV, although proposing a different (graduated) set of pfd values for 17/24 GHz BSS downlink transmissions in general, states that the ITU Article 21 pfd limits are sufficient to protect terrestrial services from interference. EchoStar also proposes a graduated set of pfd values for the entire 17.3–17.8 GHz band and compares its proposed values to the limits proposed in the *NPRM*, noting that at low elevation angles its values are actually 8 dB more stringent than those of Article 21, hence sufficient to protect terrestrial services from interference. Accordingly, as proposed in the *NPRM*, we extend the FSS pfd limits of Article 21 of the ITU Radio Regulations to 17/24 GHz BSS in the 17.7–17.8 GHz band. Consistent with other pfd requirements in our rules, *See*, *e.g.*, 47 CFR 25.208(a)–(c), the maximum values will apply to elevation angles (δ) between 25° and 90° above the horizontal plane. We will restrict pfd values by a factor of $(\delta - 5)/2$ for elevation angles between 5° and 25° above the horizontal plane, and to values of 10 dB lower for elevation angles between 0° and 5° above the horizontal plane.

61. The *NPRM* also sought comment on Tracking, Telemetry and Command (TT&C) operations in the 17.7–17.8 GHz band. Section 25.202(g) of the Commission's rules requires that TT&C functions for all U.S. domestic satellites be conducted at either or both edges of the allocated band(s). *See* 47 CFR 25.202(g). In the case of the 17.3–17.7 GHz allocation, this rule would permit TT&C operations at frequencies just above 17.3 GHz or just below 17.7 GHz. The Commission's rules would not permit TT&C operations into U.S.-based earth stations at frequencies just below 17.8 GHz. Recognizing that reliance upon foreign-based TT&C facilities for on-station operations could adversely affect the U.S. operator's ability to maintain control of its spacecraft, the *NPRM* sought comment on how best to accommodate TT&C operations for those applicants seeking to use the 17.7–17.8 GHz band for international service. The *NPRM* asked further whether there was sufficient spectrum available above 17.3 GHz to accommodate these operations, particularly in light of the reverse-band sharing situation, and potential for out-of-band interference from radar systems operating just below 17.3 GHz.

62. EchoStar proposes that the Commission set aside 10 MHz guardbands at the edges of the 17/24 GHz bands for on-station TT&C operations. In the 17 GHz band, EchoStar asks us to define a guardband at the lower band edge near 17.3 GHz, but not at frequencies near 17.7 GHz because of the planned use by many operators of the entire 17.3–17.8 GHz bandwidth. Rather, EchoStar asserts that the upper guardband is better defined at 17.790–17.800 GHz. At present, § 25.202(g) of our rules does not set aside any specific bandwidth for TT&C transmissions. Instead, it requires only that these functions be conducted at the edges of the allocated band. In the case of DBS satellites, the ITU Radio Regulations' Region 2 BSS and feederlink Plans of Appendices 30 and 30A do designate 12 MHz guardbands at either edge of the allocated band, and our rules require DBS operations to be in accordance with the technical characteristics contained in these appendices. However, the planned-band guardbands are set out in the larger context of a channelization scheme over the entire allocated bandwidth. Similarly, EchoStar makes its request for designated TT&C guardbands in the context of its more general request that the 24 MHz channelization scheme used for DBS satellites be applied to 17/24 GHz BSS satellites. The possibility of channelization schemes are addressed in more detail in this Order below, where the Commission declines to enforce a particular channelization scheme for the 17/24 GHz BSS.

63. Moreover, we do not believe that it is practicable to plan for TT&C operations in the 17.7–17.8 GHz band. Our rules require that TT&C operations take place at the edges of the allocated band. Although we may authorize operators to provide international service in the 17.7–17.8 GHz band, there is no domestic allocation to the BSS in the 17.7–17.8 GHz band, and we have declined to modify the Table of Allocations to provide for one. Accordingly, we do not propose to designate guardbands limited to on-station TT&C operations for 17/24 GHz BSS systems. For these reasons we will make no changes to § 25.202(g).

64. Both EchoStar and Intelsat urge the Commission not to permit TT&C operations at the band edge just below 17.7 GHz, arguing that such transmissions would fall within band for those operators seeking to use the entire 17.3–17.8 GHz band, and as a result, TT&C transmissions of one operator could be incompatible with the communications transmissions of another operator. However, this request is made in conjunction with their assertions that the Commission should permit domestic BSS operations in the 17.7–17.8 GHz band. Commenters do not offer alternatives in the event that the Commission declines this request. In addition, although commenters believe TT&C operations should occur at edge of the 17.7–17.8 GHz band segment, they do not address where to accommodate the TT&C transmissions of future applicants who choose not to provide international service in the 17.7–17.8 GHz band. In addition, the *NPRM* recognized significant interference potential from both adjacent band and secondary in-band government radar systems at frequencies just above 17.3 GHz. DIRECTV cautions that higher frequencies correspond with higher reliability for TT&C operations due to their separation from government radar systems. For these reasons, we believe that operators should be afforded sufficient bandwidth, particularly at higher frequencies, to provide for flexibility and reliability in planning their TT&C operations.

65. Moreover, we are not convinced that TT&C transmissions will present a significant interference problem to the communications transmissions of adjacent satellite operators using the 17.7–17.8 GHz band. The worst interference case likely will occur into small-diameter earth station antennas that receive off-axis telemetry signal transmissions from nearby 17/24 GHz BSS satellites. However, TT&C transmissions are relatively narrow-band—typically a few megahertz—and the resulting interference would be averaged across the much wider bandwidth of the typical BSS signal. In addition, at four degrees or greater of orbital separation the interfering telemetry signal power should be significantly reduced. A somewhat analogous situation occurs in the extended Ku-bands between 11.45–11.7 GHz and the standard Ku-band between 11.7–12.2 GHz. Although the adjacent, extended Ku-band (11.45–11.7 GHz) may be used to provide international service, and many operators choose to make use of the entire 11.45–12.2 GHz bandwidth, the Commission does not preclude TT&C operations at frequencies just above 11.7 GHz. Accordingly, we will not prohibit TT&C operations at frequencies just below 17.7 GHz.

66. Orbital Spacing: The *NPRM* sought comment on whether the Commission should adopt an orbital spacing policy in the 17/24 GHz BSS, and if so, what separation would be appropriate. We asked specifically how best to balance our conflicting goals of making available the maximum GSO orbital capacity while simultaneously minimizing interference into small-diameter receiving antennas. Most commenters recognize the importance of adopting a well-considered orbital spacing policy, noting the critical role that spacing plays in determining required receive antenna diameters, quality of service, efficiency of design and types of services possible to deliver that result as a consequence of orbital separation. Only Bermuda differs in its view, advocating that the Commission should remove the minimum orbital separation requirement from all services, including DBS services, and instead should allow operators to coordinate their services using the procedures in the ITU Radio Regulations. Bermuda does not address how operators within the same administration should reconcile instances of interference arising among each other, which is a primary objective we seek to address by developing appropriate requirements within this proceeding.

67. In their comments, DIRECTV, SES Americom, and Intelsat all propose orbital-separation schemes of four degrees, expressing a preference for alignment with existing Ku- and Ka-band FSS locations, some of which are currently used to provide DTH–FSS services. DIRECTV maintains that four degrees of orbital separation will support deployment of the 60 cm diameter antennas it plans to implement. SES Americom and Intelsat maintain that a four-degree separation scheme will permit their planned use of 45 cm antennas. DIRECTV also argues that a separation scheme of four degrees will facilitate use of hybrid BSS–FSS satellites enabling operators to capture the inherent efficiencies associated with these platforms thereby significantly reducing the cost of providing services. Intelsat supports a four-degree orbital separation scheme, stating that it offers a good balance between the use of small diameter antennas and the need to achieve good coverage of the United States from a reasonable number of orbital positions.

68. In contrast, EchoStar, in its comments, advocates a 4.5-degree orbital separation scheme centered upon current DBS locations. EchoStar plans to employ low-cost single-feed, dual-frequency (12/17 GHz) 45 cm diameter subscriber antennas, utilizing a system design predicated upon near co-location with its DBS satellites. EchoStar argues that a spacing scheme based on four degrees is not workable due to heavy use of many of the integer orbital locations for FSS satellites, and that non-integer (constant offset) spacing would be incompatible with Region 2 BSS Plan assignments used by DBS satellites at many orbital locations. However, in its Reply Comments, EchoStar relaxes its position, stating that what is of primary importance is near co-location with conventional DBS positions, and that the differences between four-degree and 4.5-degree spacing can easily be reconciled.

69. To this end, EchoStar and SES Americom propose a mutually-agreed orbital assignment framework for the portion of the geostationary arc between 56.9° W.L. and 147.6° W.L. This proposal seeks to reconcile the differing business models, system designs and accompanying concerns raised by the various commenters. The proposed orbital locations place new 17/24 GHz BSS satellites close enough to selected U.S. DBS locations to permit single-feed earth stations to simultaneously access downlink transmissions from both. Additionally, the proposal seeks to provide sufficient flexibility to allow alignment with FSS orbital positions as well as to permit any adjustments necessary to avoid other presumed unsuitable satellite positions, including those designated for non-U.S. DBS satellites. The orbital positions proposed by EchoStar and SES Americom range from 4° to 5.9° in separation. In contrast, DIRECTV submits a proposal for the portion of the geostationary arc between 83° W.L. and 123° W.L. that assigns in-orbit satellites at four-degree spacing intervals. DIRECTV argues that this framework

accommodates most commenters' proposals to co-locate 17/24 GHz BSS satellites with FSS satellites. DIRECTV also submits that its proposed framework would preserve the flexibility to locate 17/24 GHz BSS satellites near certain U.S. DBS locations while avoiding orbital locations that are too close to Appendices 30 and 30A Plan assignments of other Region 2 administrations. Intelsat similarly supports assigning satellites at four-degree spacing. Later, in an *ex parte* statement, DIRECTV, EchoStar, and Intelsat proposed another spacing scheme, in which the proposed orbital positions ranged from 4° to 6.5° in separation between 81° and 124° W.L.

70. All operators agree that orbital separations as small as four degrees are feasible and will permit deployment of consumer antennas of a size consistent with their system designs and marketing strategies. Even EchoStar, who initially argued for a 4.5-degree separation requirement, agrees that four degrees of separation can be implemented if we allow some flexibility and in this context supports use of 45 cm antennas. After studying the technical discussions presented, we concur that a minimum orbital separation of four degrees between 17/24 GHz BSS satellites is feasible, and that it best affords all applicants the flexibility to design and deploy systems consistent with their stated plans. Moreover, we believe that such a minimum spacing requirement realizes our mutual goals of maximizing orbital capacity while accommodating small-diameter receiving antennas. Accordingly, we will require that BSS satellite networks operating in the 17/24 GHz BSS be capable of operating at four-degree orbital spacing.

71. In discussing orbital spacing policy, all commenters stress the need for some flexibility relative to mandating adherence to a rigid in-orbit spacing grid. While we agree that some flexibility is beneficial, uniform orbital spacings maximize use of scarce orbital resources and opportunities for competitive entry. Indeed, uniform two-degree spacing has been the cornerstone of the Commission's licensing framework for GSO FSS satellites since 1983, and has served to create a competitive and interference-free operating environment. Therefore, we will require 17/24 GHz BSS licensees to place their satellites in orbit so that all 17/24 GHz BSS satellites are placed at multiples of four degrees away from each other, as set forth in Appendix F of this Order. Allowing complete flexibility in orbital spacing would result in inefficient use of scarce geostationary satellite orbit resources and limit opportunities for competitive entry.

72. Parties opposing uniform four-degree orbital spacing do not provide adequate justification for their positions. First, we find concerns regarding co-location with DBS to be unpersuasive. In the *FNPRM* below, we note that commenters argue that DBS and 17/24 GHz BSS satellites should be able to operate as close as 0.2° to 0.4° away from each other. Furthermore, we find concerns that the orbital assignment plan may need revision in the future to be speculative at best. In any case, the potential need for revision at some time in the future does not warrant allowing inefficient use of the geostationary orbit and limiting opportunities for competitive entry in the interim. Finally, we conclude that parties' concerns regarding potential physical interference between satellites operating with overlapping station-keeping volumes are misplaced. 17/24 GHz BSS satellite licensees will be able to offset their satellites in order to address any undesirable operational constraints arising from satellite co-location.

73. Consequently, we will adopt the orbital spacing framework set forth in Appendix F of this Order. This orbital spacing scheme is consistent with the locations of FSS satellites in the Ku-band and Ka-band, as recommended by DIRECTV and Intelsat. Moreover, we agree with DIRECTV that this framework will accommodate most commenters' proposals for the portion of the geostationary arc between 83° W.L. and 123° W.L. No one has suggested in the record another four-degree spacing configuration that accommodates other commenters' proposals better than DIRECTV's proposal.

74. However, we also agree to some extent with the commenters who argue for some flexibility in orbital assignments. In particular, we recognize that it may not be possible to locate a 17/24 GHz BSS satellite precisely at some of the orbital locations specified in Appendix F, *e.g.*, because there are undesirable operational constraints required to coordinate physical operations with co-located satellites, or because there is a DBS or other ITU Region 2 BSS satellite receiving feeder-link signals in the 17.3–17.8 GHz band at or very near that location. Thus, we will not require that 17/24 GHz BSS satellites be located precisely at the orbital locations specified in Appendix F. However, an applicant seeking an authorization to operate a 17/24 GHz BSS satellite at a location offset from an orbital location specified in Appendix F will be required to make a technical showing that the proposed satellite will not cause any more interference to any 17/24 GHz BSS satellite operating at a location specified in Appendix F, and in compliance with the rules for this service, than if the proposed satellite were positioned precisely at the Appendix F orbital location. In addition, such applicants must also agree to accept any increased interference that may result from adjacent 17/24 GHz BSS space stations that are operating in compliance with the rules for this service. As with all applicants, such applicants must also make a technical showing demonstrating that their system design accommodates any additional interference from adjacent 17/24 GHz BSS space stations operating at the maximum allowed pfd levels, and otherwise in compliance with the rules for this service, that may result from the location offset of their proposed satellite. Applicants that have reached a coordination agreement with an operator at an Appendix F 17/24 GHz BSS orbital location up to 10° away from the location listed in Appendix F from which their proposed satellite is offset to allow that operator to exceed the pfd levels specified in the rules for this service must use those higher pfd levels for the purposes of this showing.

75. DIRECTV's Reference Interference Baseline Not Adopted: In its reply comments, DIRECTV advocates a broad approach proposing that the Commission define a ''reference interference baseline'' for the 17/24 GHz BSS. Under this proposal, we would establish routine processing standards for satellite applications. A 17/24 GHz BSS satellite applicant would be allowed to receive routine processing even if it deviates from standard parameters set forward in the rules, provided it makes offsetting changes to create no additional interference beyond the reference situation. DIRECTV also advocates that applicants be able to receive routine processing by obtaining consent through coordination to operate outside of the reference situation parameters, and that more flexible requirements would apply outside of the domestic arc (i.e., at least four degrees below 83° W.L. or above 123° W.L.). DIRECTV argues that this approach would create opportunities for individual flexibility, eliminate the burden and delay of unnecessary coordination while maintaining the stability of the overall environment.

76. We decline to adopt DIRECTV's approach of defining a reference interference baseline to be used for routine processing of satellite

applications in this proceeding. There is little information or comment on the record to develop or to support what would amount to a rather extensive set of interdependent values. Nor is DIRECTV specific in its proposal other than to say that the baseline should assume four-degree spacing and receiving antennas compliant with ITU Recommendation BO.1213. Accordingly, we find that DIRECTV has not adequately supported its proposal.

77. Minimum Antenna Diameter and Performance Standards—45 cm/ITU–R Recommendation BO.1213–1 Minimum Antenna Standards Adopted: The *NPRM* sought comment on what minimum diameter earth stations the Commission should seek to accommodate in formulating service rules for the 17/24 GHz BSS. In addition, the *NPRM* also asked whether we should afford interference protection to 17/24 GHz BSS systems only to the extent that they meet certain receive-antenna performance characteristics. The Commission also noted that it has typically chosen not to explicitly regulate receive-only antenna characteristics, but rather has opted to regulate other characteristics shaping the interference environment, thereby leaving the choice of antenna characteristics to the operator. However, the *NPRM* recognized that receiving earth station antenna off-axis discrimination performance will affect the interference experienced by BSS subscribers arising from other systems and we asked whether in this instance we should depart from our established policy. In particular, the *NPRM* requested comment on what types of antenna performance regulation, if any, might be appropriate.

78. Most commenters support accommodating a minimum antenna diameter of 45 cm and Intelsat proposes that the Commission adopt a specific 45 cm minimum antenna size requirement. EchoStar and SES Americom advocate less stringent approaches, urging the Commission to adopt rules and policies that would facilitate the deployment of receiving antennas as small as 45 cm or afford interference protection only to receiving antennas no smaller than 45 cm. DIRECTV expressed the view that 60 cm is the minimum antenna diameter that the Commission should accommodate when considering an orbital spacing policy. DIRECTV notes that 60 cm dishes have become more prevalent in recent years and have long been the consumer standard in Europe and elsewhere. DIRECTV states further that BSS operators needing to combine capacity from multiple orbital locations will likely require multi-feed receive antennas with an effective diameter greater than 60 cm. Alternatively, SES Americom argues that limiting interference protection to 17/24 GHz BSS receiving antennas that are greater than 45 cm would preclude new BSS entrants from successfully competing with established DBS operators for a customer base. SES Americom asserts that affording interference protection to receiving antennas as small as those commonly used for DBS today (45 cm) is critical to ensuring the usefulness of the band for new competition.

79. As a general matter, commenters also favor adoption of reference antenna performance characteristics that will ensure sufficient interference protection for subscriber antennas and to establish a baseline for protection in licensing of 17/24 GHz BSS systems. Although advocating different minimum antenna diameters, SES Americom, DIRECTV, and Intelsat all propose that the reference antenna pattern given in ITU–R Recommendation BO.1213–1 be used as an appropriate standard for the protection of receiving antennas in the 17/24 GHz BSS. DIRECTV cautions that while protection should be granted only to the extent that receiving antennas conform to the ITU–R standard, the Commission should continue its policy of letting operators retain the discretion to determine the characteristics of their equipment. As such, DIRECTV believes operators should remain free to deploy non-conforming antennas, but with the understanding that they must accept any resulting increase in interference levels. Bermuda, in contrast, argues that the Commission should not regulate 17/24 GHz BSS receiving antenna performance characteristics, but rather that they should be determined by the requirements of the system in which they are deployed.

80. Although the Commission has historically chosen not to regulate the antenna performance characteristics of non-transmitting earth stations, we recognize that the 17/24 GHz BSS confronts an operating environment different from the one in which most other GSO satellite services, must operate. In particular, the reverse-band sharing situation that exists between BSS receiving antennas and transmitting DBS feeder link earth stations in the 17 GHz band creates significant potential for interference from sources other than neighboring co-frequency space stations. Such an interference environment may not be as satisfactorily managed by the Commission's more traditional approach to regulating the downlink interference environment by establishing an orbital separation scheme and accompanying pfd limits, particularly given the widespread deployment of such small-diameter receiving antennas in a four-degree spacing environment. We agree with DIRECTV that establishing performance standards for receiving antennas could help to create a more stable and predictable interference environment. Moreover, we note that the majority of commenters concur as evidenced by their support for inclusion of the ITU antenna performance standards of Rec. BO.1213–1 in the Commission's rules. Accordingly, we adopt a rule that 17/24 GHz BSS receiving earth stations 45 cm or greater in diameter may claim protection from interference, but only to the extent that they meet the antenna performance characteristics given in ITU–R Recommendation BO.1213–1. This rule does not apply to 17/24 GHz BSS telemetry earth stations that are subject to the antenna performance requirements of § 25.209.

81. In adopting this rule, we recognize that we have already bounded the downlink interference environment by establishing a minimum orbital separation requirement in combination with the downlink pfd limits addressed in section III.E. Thus, by specifying a minimum antenna diameter and reference antenna pattern for interference protection, we are departing from past practice in our treatment of receive-only earth stations and adding an additional interference mitigation requirement. However, as discussed above, we concur with commenters' concerns regarding the need to establish a predictable environment, particularly in light of the unique reverse-band frequency operations in the 17 GHz band. In addition we support DIRECTV's request to preserve operator discretion with regard to choice of antenna characteristics. We note that this new antenna performance standard does not preclude operators from deploying receiving earth stations smaller than 45 cm, or antennas that do not conform to the reference patterns in the ITU–R Recommendation. However, the operator must accept the additional levels of interference that results from its use of the non-conforming antenna.

82. Technical Requirements for Intra-Service Operations—Uplink Power Levels. Standards For Routine/Non-Routine Licensing of Feeder Link Antennas Adopted: In the *NPRM*, the Commission stated that successful implementation of any orbital spacing scheme in the 17/24 GHz BSS will likely require adoption of uplink power density and antenna off-axis performance standards similar to those established for the FSS. However, we

also recognized that space stations in the 17/24 GHz BSS are likely to operate at orbital separations greater than those existing in the FSS, and that feeder uplink earth stations typically operate with larger diameter antennas that exhibit good off-axis rejection properties. Both of these factors will tend to mitigate the problem of off-axis interference into neighboring space stations. Consequently, we sought comment on the need to establish uplink off-axis power limits for this service. Additionally, the Commission's rules currently provide for routine licensing of FSS earth stations when specific antenna performance standards and uplink power levels are met. The *NPRM* sought comment on whether analogous criteria might be developed to expedite licensing of 17/24 GHz BSS feeder link stations, and if so, what criteria might be appropriate.

83. Because, by definition, feeder links operate in the FSS, the *NPRM* stated that the antenna performance standards of § 25.209, *See 47 CFR 25.209*, could be applied to 17/24 GHz BSS feeder link earth stations. The Commission proposed to apply these off-axis performance standards in combination with the highest uplink Equivalent Isotropically Radiated Power (EIRP) density proposed by an applicant, i.e., 5.6 dBW/Hz. We sought comment on this proposal, recognizing that absent a clearly defined orbital separation scheme at that time, the resulting contribution to adjacent satellite interference would be difficult to determine. We also asked what form any uplink off-axis power density requirement should take, and whether it would be most appropriate to specify separate off-axis antenna performance standards and uplink power density requirements, or a single composite off-axis EIRP density curve.

84. Commenters in general acknowledge the need to apply uplink off-axis uplink EIRP limits to 17/24 GHz BSS feeder link stations, recognizing that such limits would help to address off-axis interference concerns as well as facilitate coordination with other services. Intelsat initially stated that such requirements were unnecessary, but, in its reply comments, provides off-axis EIRP density limits that it believes would be adequate.

85. Commenters addressing this issue support applying the Ka-band FSS uplink off-axis power density requirements contained in § 25.138(a)(1)—(4), *See* 47 CFR 25.138(a)(1)–(4), of our rules to feeder link earth stations in the 17/24 GHz BSS. Commenters assert that this rule has been effective in the Ka-band, sets limits that are consistent with levels proposed in applications already before the Commission, and will successfully address adjacent satellite interference concerns. Commenters also agree that in the case of the 17/24 GHz BSS, these values should be scaled to a 1 MHz reference bandwidth rather than the 40 kHz resolution specified in our current rule. In addition, commenters suggest expressing the requirement as a limit on the off-axis EIRP density (rather than as separate off-axis antenna requirements and uplink power density limits) such that the operators must meet this EIRP density value regardless of on-axis absolute EIRP or actual antenna performance.

86. Although the off-axis EIRP density limits favored by commenters are approximately 3 dB greater than those tentatively proposed by the Commission, we agree with the commenters that the higher level has proven effective in the Ka-band FSS two-degree spacing environment and will effectively mitigate adjacent satellite interference in the 17/24 GHz BSS four-degree spacing environment. Accordingly, for routine processing of feeder link antennas transmitting to GSO satellites in the 24.75–25.25 GHz band, we adopt the off-axis antenna performance requirements of § 25.138(a) scaled to a 1 MHz reference bandwidth as follows:

(1) 17/24 GHz BSS earth station antenna off-axis EIRP spectral density for co-polarized signals shall not exceed the following values, within ±3° of the GSO arc, under clear sky conditions:

32.5–25log(θ)	dBW/MHz	for $2° \leq \theta \leq 7°$
11.4	dBW/MHz	for $7° \leq \theta \leq 9.2°$
35.5–25log(θ)	dBW/MHz	for $9.2° \leq \theta \leq 48°$
3.5	dBW/MHz	for $48° \leq \theta \leq 180°$

Where θ is the angle in degrees from the axis of the main lobe.

(2) 17/24 GHz BSS earth station antenna off-axis EIRP spectral density for co-polarized signals shall not exceed the following values, for all directions other than within ±3° of the GSO arc, under clear sky conditions:

35.5–25log(θ)	dBW/MHz	for $2° \leq \theta \leq 7°$
14.4	dBW/MHz	for $7° \leq \theta \leq 9.2°$
38.5–25log(θ)	dBW/MHz	for $9.2° \leq \theta \leq 48°$
6.5	dBW/MHz	for $48° \leq \theta \leq 180°$

Where θ is the angle in degrees from the axis of the main lobe.

(3) The values given in paragraphs (a)(1) and (2) of this section may be exceeded by 3 dB, for values of $\theta > 10°$, provided that the total angular range over which this occurs does not exceed 20° when measured along both sides of the GSO arc.

(4) 17/24 GHz BSS earth station antenna off-axis EIRP spectral density for cross-polarized signals shall not exceed the following values, in all directions other relative to the GSO arc, under clear sky conditions:

22.5–25log(θ)	dBW/MHz	for $2° \leq \theta \leq 7°$
1.4	dBW/MHz	for $7° \leq \theta \leq 9.2°$

Where θ is the angle in degrees from the axis of the main lobe.

87. The off-axis EIRP density curves given in § 25.138(a)(1)–(4) of our rules, *See* 47 CFR 25.138(a)(1)–(4), include the term N, which is defined as the likely maximum number of simultaneously transmitting co-frequency earth stations in the receive beam of the satellite. Commenters do not include this term in their proposed formulae and we have chosen not to include it in our rules. Section 25.138 addresses blanket licensing of FSS earth stations where a number of co-frequency earth stations may be transmitting simultaneously in cases where contention protocols or CDMA may be used. We do not anticipate multiple simultaneous co-frequency transmissions from 17/24 GHz BSS feeder link earth stations, and

as a consequence, these access schemes likely will not be relevant. Commenters do not explicitly address EIRP density envelopes for directions other than within 3 degrees of the GSO arc. Neither do they specifically address envelopes for cross-polarized signals or allowable exceedences, as contained in other parts of § 25.138. Rather, they make more general references to a rule modeled on the framework of § 25.138. We include these requirements here on the strength of those comments, and also because they are consistent with the Commission's approach to off-axis EIRP density limits in general.

88. The *NPRM* also recognized that in some instances applicants might seek to operate at higher EIRP density levels than those permitted under the above requirement. Our current rules provide a mechanism for licensing such non-conforming systems operating in the FSS by placing the burden on the applicant to provide a technical showing to the Commission, and to coordinate its non-conforming operations with adjacent operators. We proposed a similar approach to licensing non-conforming systems in the 17/24 GHz BSS and sought comment on whether our proposal was appropriate to adopt. We also asked over what angular distance coordination should be required, recognizing that the orbital spacing in the 17/24 GHz service could very likely be greater than the two-degree separation typical of the FSS.

89. Commenters consistently favor allowing a mechanism by which operators could be licensed for non-conforming systems seeking to operate at higher off-axis power levels than those permitted for routine licensing. All commenters favor the general approach employed for FSS systems whereby applicants for non-conforming earth stations must submit the necessary technical showing to the Commission and coordinate their non-conforming operations with adjacent space station operators. At present, our rules require non-compliant FSS operators to coordinate with potentially affected neighboring operations over an angular arc of six degrees, corresponding to up to three adjacent positions on each side. At an orbital separation of six degrees, off-axis power levels are decreased by nearly 12 dB relative to those at the nearest neighbor at two degrees, and at a separation of eight degrees, power levels relative to the two-degree neighbor are decreased by more than 13 dB. These values are true for an antenna that complies with FSS antenna gain envelope rules of $29–25*\log10(\theta)$. Accordingly, we believe that an angular arc of ±8 degrees, which in a four-degree spacing environment corresponds to the two nearest possible neighboring co-frequency space stations, is sufficient.

90. Commenters differ somewhat on the precise angular separation over which operators should be required to coordinate their non-conforming operations. DIRECTV and SES Americom, both of whom favor a four-degree orbital spacing scheme, propose coordination arcs of ±8 degrees and ±9 degrees, respectively. EchoStar proposes a slightly more complex coordination arc requirement whereby operators would be required to obtain the agreement only of the immediate neighboring satellites (spaced at approximately four degrees away) for exceedences up to 3 dB, with the additional agreement of the second adjacent operator for exceedences up to 6 dB; no exceedence greater than 6 dB would be permitted. We find that EchoStar's proposal affords significant interference protection to adjacent co-frequency satellites, while reducing the coordination burden on both the conforming and non-conforming parties. However, we also recognize that space stations may not always be located along a perfectly spaced four-degree grid, but sometimes may be offset from the orbital locations specified in Appendix F. To accommodate such instances, we will extend the angular coordination distance proposed by EchoStar by two degrees.

91. Accordingly, we will adopt a requirement that each applicant for an earth station license that proposes off-axis EIRP density levels in excess of those defined above shall certify that all potentially affected parties acknowledge and do not object to the use of the applicant's higher power densities. For proposed power levels less than 3 dB in excess of the limits defined above, the affected parties shall be those co-frequency operators authorized to provide service to the U.S. at up to ±6 degrees away; for excesses of greater than 3 dB and up to 6 dB, affected parties shall be all those co-frequency U.S. licensed operators at up to ±10 degrees away. We will not permit exceedences greater than 6 dB above the limits defined above. Although we take a slightly more flexible approach with regard to coordination of downlink pfd excedeences, we believe that the sharing situation with 24 GHz fixed service systems requires a somewhat more conservative approach. In addition, we require non-compliant operators to coordinate with any future applicants or licenses over these same orbital separation distances. We also require a non-compliant licensee to reduce its power levels should a coordination agreement not be reached. In addition, non-conforming applicants will be required to submit link budget analyses of the operations proposed along with a detailed written explanation of how they have derived each uplink and each transmitted satellite carrier density figure. Applicants will also be required to submit a narrative summary that must indicate whether there are margin shortfalls in any other licensee's current baseline services as a result of the addition the applicant's higher power service, and if so, how the applicant intends to resolve those margin shortfalls.

92. The *NPRM* also sought comment on the need for uplink adaptive power control, particularly in presence of rain fade, noting that § 25.204(g) of our rules, *See* 47 CFR 25.204(g), requires all Ka-band FSS earth stations to employ adaptive power control or other methods of rain fade compensation. Commenters recognize the need for uplink power control in the event of rain fade and cite the specification already contained in our rules, *See*, *e.g.*, 47 CFR 25.138(a)(5), as appropriate for the 17/24 GHz BSS. We realize that systems operating in the 24 GHz band can suffer significant signal attenuation in the event of precipitation and concur that some provision for adaptive uplink power control is necessary. Accordingly, we amend our rules to require 17/24 GHz BSS earth stations to employ adaptive uplink power control or other methods of fade compensation. We also adopt a requirement for the 17/24 GHz BSS analogous to the Ka-band FSS requirement of § 25.138(a)(5), 47 CFR 25.138(a)(5). This rules provides that (1) The required clear-sky uplink off-axis power limits may be exceeded by up to 20 dB in the presence of uplink fading due to precipitation; (2) that the amount of this increase relative to the excess attenuation over the clear sky propagation conditions shall not exceed 1.5 dB or 15% of the actual amount, whichever is greater; and (3) that this should occur with a confidence level of 90% except for transient periods of no more than 0.5% during which the excess shall be no more than 4.0 dB.

93. Some commenters also object to requiring applicants to provide measured radiation patterns as specified in § 25.138(d), 47 CFR 25.138(d), of our rules as a means of demonstrating compliance with off-axis EIRP limits. Intelsat argues that the requirement to provide measured radiation patterns for antennas not yet built is often not practical and unduly burdens the applicant. Intelsat asserts that, instead, the Commission's evaluation process for earth stations in the 17/24 GHz service

should follow the approach for earth stations on vessels (ESVs) contained in § 25.221, 47 CFR 25.221. That approach requires the applicant to submit a series of charts or tables calculated for a production earth station antenna, based on measurements taken on a calibrated antenna range. DIRECTV agrees that it is impractical to submit measured data, and argues further that because these very large feeder link antennas are typically assembled on site, it is simply not necessary to test these antennas on a range. Instead, DIRECTV proposes that 17/24 GHz BSS feeder link antennas be tested as they are built, using in-orbit satellite resources, with the earth station operator responsible for certifying after licensing that the tests were satisfactorily performed, as part of its notification to the Commission that construction has been completed. DIRECTV's proposed approach is based on a proposal submitted by the Satellite Industry Association in the *Biennial Review* docket, and are founded in part upon existing rules for large C- and Ku-band earth stations.

94. At present, our rules extend different earth station licensing requirements to different satellite services. Typically, C- and Ku-band GSO FSS applicants are required to meet the antenna performance requirements of § 25.209, 47 CFR 25.109, and may not exceed specified uplink power density levels and minimum antenna diameters. Those C- and Ku-band applicants who do not meet these requirements may still be licensed via the rules outlined in § 25.220, 47 CFR 25.220. In contrast, Ka-band earth station applicants must meet the off-axis EIRP density requirements of § 25.138(a)(1)–(4), 47 CFR 25.138(a)(4) and demonstrate such by providing the antenna radiation pattern measurements specified in § 25.138(d), 47 CFR 25.138(d). The earth station licensing requirement to submit with its application a series of measured test values over a range of frequencies is applied to any FSS earth station other than ESVs not meeting the antenna performance requirements of § 25.209, as well as to all earth stations operating in the 20/30 GHz service. We find that it will be generally unnecessary to constrain feeder link earth stations applicants in the 24 GHz band in this manner, particularly since such large-diameter earth stations generally comply easily with existing antenna performance requirements. Moreover, we agree with commenters that such a requirement could be both impractical and burdensome for very large diameter antennas typically used for feeder link operations. Accordingly, we do not restrict 17/24 GHz BSS earth station applicants to the approach of § 25.138(d). However, we will retain the option to allow non-compliant applicants to submit measured data.

95. We will require applicants for feeder link earth station licenses operating in the 24.75–25.25 GHz band to provide the particulars of operation identified on Form 312 and associated Schedule B, which may include an affirmative response that the earth station antenna conforms to the gain pattern criteria of § 25.209(a) and (b) and that combined with the input power density entered in schedule B, demonstrates that the off-axis EIRP spectral density envelope set forth above will be met. Alternately, an applicant that does not meet the antenna performance requirements of § 25.209(a) and (b) may demonstrate that it meets the required off-axis EIRP spectral density requirements by providing: (i) A copy of the manufacturer's range test plots of the antenna gain patterns as specified in § 25.132(b)(3) as revised in this Order; and (ii) a series of EIRP density charts or tables similar to the current requirements for ESVs as set forth in § 25.222(b)(1), 47 CFR 25.222(b)(1). Finally, an applicant that meets the antenna performance requirements of § 25.209(a) and (b), but does not provide an input power density value in schedule B that will satisfy the off-axis EIRP spectral density envelope set forth above, may also demonstrate its compliance by providing a series of EIRP density charts or tables. Applicants seeking to operate with off-axis power density values in excess of the specified envelope are subject to the coordination process discussed above.

96. In addition, § 25.132 of our rules sets forth the process for verification of earth station performance requirements. This rule is applicable to earth stations operating in the 24 GHz uplink band. Paragraph (a)(1) of this rule requires applicants to submit manufacturer certification of measurements demonstrating that the antenna is compliant with the requirements of § 25.209, and stipulates that the applicant be prepared to demonstrate these measurements to the Commission upon request. For non-compliant antennas, as discussed above, the requirements of § 25.132(b)(3), as revised in Appendix B of this Order, will apply. Finally, Paragraphs (c) and (d) of this section recognize that while testing is typically performed at the manufacturer's facility, very large earth stations that are assembled on-site may require on-site measurements. Paragraph (d) specifies the on-site verification measurements that must be performed for each new or modified transmitting antenna over three meters in diameter. Thus, for large-diameter 17/24 GHz BSS feeder link antennas, applicants must submit on-site verification measurements to the Commission as part of the notification of completion of the construction process as required in § 25.133, 47 CFR 25.133.

97. Downlink Power Limits. Geographical Downlink PFD Limits Adopted: The downlink power levels transmitted by adjacent co-frequency satellites, when combined with the off-axis performance characteristics of the receiving antenna will determine the carrier-to-interference (C/I) value resulting from adjacent satellite interference. The *NPRM* sought comment on whether we should adopt pfd or other downlink power limits in the 17.3–17.7 GHz band to ensure that receiving antennas are not subject to unforeseen levels of adjacent satellite interference, particularly as newer-generation, higher-powered satellites are brought into use. The *NPRM* asked, in particular, whether the ITU Radio Regulations' pfd limit applicable to FSS systems in the 17.7–19.7 GHz band would be appropriate for BSS transmissions in the 17.3–17.7 GHz band.

98. Commenters favor adopting pfd limits in the 17.3–17.7 GHz band to protect against unforeseen levels of adjacent satellite interference and to obviate the need for time-consuming coordination among co-frequency networks. Intelsat favors adopting the ITU FSS pfd limits and maintains that these limits would satisfy the operational requirements in the band, provided that they are no more restrictive than the FSS pfd limits of Article 21 of the ITU Radio Regulations. All other commenters advocate adopting a system of graduated pfd limits. Under this approach, pfd limits would vary over different geographic regions of the United States, primarily to allow for the resulting signal attenuation arising from the variation in rainfall in different regions of the country. In formulating this approach, commenters considered the planned deployment of both wide-area beams, and more localized, high-power spot beams by 17/24 GHz BSS operators. Due to the expected higher antenna gain for spot beams, in a given geographic area, EIRP imbalances of 10 dB or more may be anticipated between adjacent satellite transmissions. Potentially, the resulting interference could significantly affect quality of service to those consumers receiving

lower-power, wide-area beam signals. The various proposals' utilization of graduated pfd levels in differing regions seeks to balance the competing goals of permitting sufficient flexibility to spot beam operations while simultaneously protecting wide-area beams from unacceptable interference levels. This approach also considers the need to allow higher-power downlink transmissions in regions of the country where they are most needed in order to overcome rain fade effects. As a result, all proposals to adopt graduated power levels for downlink transmissions in the 17/24 GHz BSS recognize the need for the highest power limits in the Southeastern region of the United States, with lower levels in the Northeast and the lowest levels in the West.

99. Although the various proposals to adopt graduated pfd limits are similar in their general approach, they differ in certain respects. EchoStar's proposal advocates four geographic regions with the highest pfd level in the Southeast of −113 dBW/m²/MHz; −114.5 dBW/m²/MHz in the Northeast; −116 dBW/m²/MHz in the Upper Midwest; and −118 dBW/m²/MHz in the West. The westernmost region is defined by the 103° West Longitude line; the northern regions are above the 40° North Latitude line; and the 85° West Longitude line divides the Northeast Region from the Upper Midwest Region. For areas outside of the Contiguous United States (CONUS) including Alaska, Hawaii and Puerto Rico, the pfd limit would be −113 dBW/m²/MHz. EchoStar notes that its proposal does not differ significantly from that of DIRECTV, discussed further below, and maintains that the somewhat lower power limits proposed by DIRECTV result from its plan to offer service using 60 cm diameter antennas contrasted with the 45 cm antennas planned by EchoStar, SES Americom and Intelsat. Accordingly, EchoStar urges the Commission to accommodate the requirements of all operators and to permit pfd levels on the higher side. SES Americom supports EchoStar's proposal.

100. DIRECTV proposes adopting three geographic regions, with the highest power level in the Southeast of –115 dBW/m²/MHz; –118 dBW/m²/MHz in the Northeast; and −121 dBW/m²/MHz in the West. In DIRECTV's proposal the far western region is defined by the 100° West Longitude line and the Northeast and Southeast Regions are divided by the 38° North Latitude line. DIRECTV argues that its somewhat lower pfd levels are more appropriate because CONUS beams cannot match the higher power levels of −113 dBW/m²/MHz proposed by EchoStar and SES Americom, and should the Commission adopt pfd values this high, the result would only be to codify the power disparity between wide-area and spot beams. Later, in an *ex parte* statement, DIRECTV, EchoStar, and Intelsat proposed a jointly-agreed scheme, which proposed geographic regions and pfd levels in a four-degree spacing environment consistent with the values proposed in DIRECTV's original proposal as discussed above. This new scheme also proposes a formula by which pfd levels could be allowed to vary as a function of orbital separation.

101. We agree that there is merit in considering graduated pfd limits in differing regions of the country. We recognize the need to employ both wide-area and spot beams in the 17/24 GHz BSS and appreciate the inherent difficulties encountered in attempting to balance the requirements of both applications. While we wish to protect the more vulnerable wide-area beam receivers from adjacent satellite downlink interference, we also want to permit licensees the flexibility to achieve the power and spectral efficiencies attainable with spot beam transmissions, particularly when broadcasting local programming to restricted geographic areas. We concur with DIRECTV, EchoStar and SES Americom that the use of regional pfd values best balances these competing goals. Although it presents a somewhat more complex regulatory mechanism than does a uniform pfd limit, this approach has been applied to other services, notably MVDDS. Thus, after carefully considering the various regional pfd schemes, and recognizing the agreement among many of the commenting parties with regard to the regional boundaries and pfd levels, we believe that the proposal originally put forward by DIRECTV most successfully balances our goals of accommodating both beam technologies while best meeting the needs of all operators. Accordingly, we adopt the three-region graduated pfd plan presented by DIRECTV. We note that a key difference between DIRECTV's proposal and the approach contained in the *Joint Ex Parte Statement*, is the proposed use of formulae to determine the variation in pfd levels that would be permitted as a function of orbital separation. We decline to adopt this approach. Rather, we will adopt pfd levels consistent with a four-degree spacing environment, but will permit licensees to operate at higher levels subject to coordination, as discussed below.

102. In most cases, commenters propose pfd limits for the entire 17.3–17.8 GHz band and do not separate the question of pfd limits in the 17.7–17.8 GHz band from the issue of pfd limits for BSS downlink transmissions in the 17.3–17.7 GHz band. In adopting the graduated pfd scheme discussed above, the Commission seeks to facilitate intra-service operations by establishing a relatively homogeneous transmitting environment that will accommodate both wide-area and spot beam operations. Because U.S. domestic service is not allocated in the 17.7–17.8 GHz band, we do not believe these intra-service sharing challenges will be present to the same extent. In contrast, pfd limits in the 17.7–17.8 GHz band are intended to facilitate inter-service sharing by protecting terrestrial service receivers from satellite transmissions serving other Region 2 countries, but that may illuminate portions of the United States. We believe that the pfd limits that are adopted in section III.C. of this Order, that vary as a function of elevation angle, will best accomplish that goal. Accordingly, we clarify here that the graduated pfd limits adopted above will apply only to the 17.3–17.7 GHz band, and that the elevation-angle-based pfd limits adopted in section III.C. will apply in the 17.7–17.8 GHz BSS GHz band.

103. Commenters also advocate applying the pfd levels in the 17.3–17.7 GHz band in a manner similar to the Ka-band FSS requirement in § 25.138(a)(6), *See* 47 CFR 25.138(a)(6). Under this approach an applicant seeking to operate outside the required pfd levels must submit a technical showing to the Commission that includes detailed link budgets and a narrative summary indicating whether there are margin shortfalls resulting from the applicant's higher powers, and if so, an explanation of how these shortfalls will be addressed. In addition, a non-conforming applicant must certify that its operations have been coordinated with all affected parties. EchoStar proposes that for non-conforming 17/24 GHz BSS operations, the angular separation over which coordination is required should be linked to the magnitude of the power excess. Specifically, EchoStar proposes that given the wider orbital spacing in the 17/24 GHz BSS as compared to the Ka-band FSS, the agreement of the immediately adjacent operators should be sufficient for excesses of no greater than 3 dB, and that coordination with the second adjacent neighboring satellite should also be required for

excesses between 3 dB and 6 dB. EchoStar also proposes prohibiting power levels greater than 6 dB. DIRECTV and SES Americom support EchoStar's proposal, although DIRECTV argues that power exceedences of greater than 6 dB should be permitted if a coordination agreement can be reached, however unlikely that may be.

104. The Commission has always sought to afford satellite operators the maximum flexibility to design and operate their systems while simultaneously protecting other licensees from unacceptable levels of interference. Thus, we concur with commenter's proposals to provide a mechanism for licensing and coordinating systems operating with non-compliant pfd levels. We also agree that there are advantages in linking the angular separation over which coordination is required to the degree of the power excess, as this approach may avoid placing an unnecessary coordination requirement on the parties. Accordingly, we adopt a requirement for non-compliant systems in the 17/24 GHz BSS similar to the Ka-band requirement of § 25.138(b). However, to account for the different orbital spacing rules that we adopt for the 17/24 GHz BSS environment, as well as the possibility of offset from the locations specified in Appendix F, we will require applicants to coordinate with adjacent satellites within an angular separation of ±6 degrees for exceedences of up to 3 dB, and to coordinate with adjacent operators within an angular separation of ±10 degrees for exceedences of more than 3 dB. In addition, consistent with the Ka-band FSS requirement of § 25.138(c), we require non-compliant operators to coordinate with any future applicants or licensees over these same orbital separation distances. We also require a non-compliant licensee to reduce its power levels should a coordination agreement not be reached.

105. Other Technical Requirements: The *NPRM* sought comment on several additional technical matters, including issues relating to Tracking Telemetry and Control (TT&C) frequencies, full frequency re-use, polarization requirements, cross-polarization isolation requirements, and channelization requirements.

106. Tracking, Telemetry and Command (TT&C) Frequencies. No Additional Rules Adopted: With regard to TT&C frequencies, the *NPRM* recognized the present lack of 17/24 GHz ground facilities to support launch, transfer and testing operations, and sought comment on how best to address the issue. Commenters suggest that the Commission should take a flexible approach toward TT&C requirements, particularly recognizing the absence of the ground network necessary for support during critical launch and early operation phases. DIRECTV also points out that because the 17/24 GHz bands are not allocated for use by BSS satellites outside of Region 2, it is unlikely that such facilities will be deployed in other parts of the world. Commenters generally encourage the Commission to consider requests to use alternate TT&C frequencies on the merits of each individual application, but maintain that applicants should demonstrate their need for such non-standard uses and must coordinate their operations. Accordingly, we make no changes to our existing rules, but will consider the merits and needs for 17/24 GHz BSS systems to use alternate TT&C frequencies on a case-by-case waiver basis. Applicants seeking alternative TT&C frequencies should include a request for waiver in their applications.

107. The *NPRM* also sought comment on the problem of reverse-band interference between receiving 17 GHz telemetry stations and DBS feeder uplink transmissions, and in particular on the ramifications to TT&C operations when such operations are co-located or located in close proximity to one another. DIRECTV states that with careful planning it is possible to coordinate the operations of the two services, even to the point that the earth stations may be co-located. Thus, DIRECTV requests that the Commission not limit operator flexibility by precluding such co-location, or by requiring a minimum separation distance. Rather, DIRECTV supports the Commission's proposal to require that applicants submit a technical showing demonstrating its ability to maintain sufficient telemetry link margin in the presence of the interfering DBS signal. Bermuda also supports this proposal, stating that the applicant could demonstrate compliance through a technical showing and urges the Commission not to preclude the possibility of co-locating DBS feeder link earth stations with 17/24 GHz BSS telemetry stations. EchoStar also argues that interference can be avoided by careful frequency planning.

108. At this time, we will not modify our rules to preclude co-location of DBS and 17/24 GHz BSS TT&C facilities, nor will we require a minimum separation distance between TT&C facilities for the two services. Although there was support for our proposal to require a technical showing on the part of applicants seeking to operate co-located earth stations, we are not prepared to adopt such a requirement at this time. Rather, we recognize that the question of interference into 17/24 GHz BSS telemetry receivers from DBS feeder link transmissions is not separate from the larger issue of reverse-band, ground path interference into 17/24 GHz BSS receiving antennas in general. For this reason, we will not adopt specific rules concerning the question of DBS ground path interference into 17/24 GHz BSS telemetry stations in this Order, but will address this issue in the further notice, within the larger context of ground path interference in the presence of reverse-band operations. We believe that this approach will better permit us to develop the record more fully, treat the issue within its larger context, and ultimately adopt the most appropriate requirements.

109. Polarization and Full Frequency Re-Use Requirements. Full Frequency Re-Use Required: The *NPRM* sought comment on requirements relating to antenna polarization and full frequency re-use. Most commenters agreed that the Commission should mandate full-frequency re-use for 17/24 GHz BSS systems, but that it should maintain flexibility with regard to channelization and polarization, and therefore should not adopt any specific channelization or polarization requirements. DIRECTV argues, however, that all transmissions from a given orbital location should be of the same type, and SES Americom urges the Commission not to divide the spectrum at a given orbital location among multiple entrants as was done for the DBS service. Only EchoStar proposes a standardized polarization and channelization scheme in which the co-frequency polarization senses are alternated among adjacent satellites across the geostationary arc. EchoStar asserts that such a scheme would yield about 1 dB of reduction in adjacent-satellite interference through judicious placement of the guardbands of an interfering satellite within the transponder bandwidth of the victim satellite. DIRECTV notes that applicants have all proposed to implement different channelization schemes, and argues that the cost to re-engineer their business plans cannot justify the modest 1 dB of interference reduction. We concur with DIRECTV that the potential for 1 dB of interference reduction does not compensate for the accompanying loss of flexibility in system design that the Commission has historically sought to afford satellite operators. Accordingly, we will not mandate a polarization or channelization scheme for 17/24 GHz BSS systems. We will, however, mandate full frequency re-use,

through either the use of orthogonal polarizations within the same beam and/or through the use of spatially independent beams.

110. Cross-Polarization Isolation Requirements. 25 dB Space Station Cross-Polarization Isolation Requirements Adopted: Commenters generally support some relaxation of the current FSS requirement for 30 dB cross-polarization isolation contained in § 25.210(i) of the Commission's rules, 47 CFR 25.210(i). All commenters believe that this rule is too restrictive and should be relaxed for 17/24 GHz BSS systems, although they differ in the degree of relaxation that should be provided. SES Americom proposes a reduction of the cross-polarization isolation requirement from 30 dB to 25 dB, stating that this value will adequately protect adjacent operators and that licensees will be able to manage any accompanying intra-system interference (*i.e.*, ''self-interference''). DIRECTV also proposes a less strict value of 27 dB, arguing that this value is more than sufficient to avoid excess levels of intra-system interference, particularly in light of recent advances in digital transmission technology that reduce system sensitivity to cross-polarization interference. EchoStar argues that the Commission's existing FSS requirement is too stringent and notes that most antennas fail to meet this level in only a small part of their service area, usually by no more than a few dB. Accordingly, EchoStar initially proposes a multipart scheme wherein operators would be required to meet the 30 dB level over 90% of the land within its service area, and a value of at least 26 dB within the remaining 10%. In its Reply Comments, EchoStar proposed a compromise to take into account the comments from other parties and amended its proposal to require 27 dB cross-polarization isolation over 90% of the land within its service area and at least 25 dB within the remaining 10%. In its Reply Comments, DIRECTV offered support for EchoStar's original proposal.

111. The Commission adopted its 30 dB FSS cross-polarization isolation requirement in an environment where satellites were predominantly using analog transmissions. Along with the C-band analog video frequency plan of § 25.211(a), 47 CFR 25.211(a), and the polarization switchability requirement of § 25.210(c), 47 CFR 25.210(c), the cross-polarization requirement serves to minimize the interference between adjacent satellites when both are carrying analog video signals that have highly varying (peaked) power density levels. In addition, the cross polarization requirement serves to limit the level of self-interference, thus assuring that operators do not allocate an inordinate proportion of the interference budget to themselves. In this context, it is worth noting that the cross polarization performance of the satellite receive antenna has negligible effect on the interference into other systems.

112. Moreover, in a four-degree spacing environment, the cross-polarization performance of the downlink satellite antenna has only a second-order effect on the interference into the neighboring system. The impact of the satellite downlink antenna's cross polarization transmission is to raise slightly the interference level into the downlink of the victim satellite's wanted polarization. Thus, the earth station receiving the signal from the neighboring victim satellite receives a co-polar interfering signal at a level defined by its own antenna co-polar sidelobe performance. In addition, in the same polarization, it also receives a much lower interfering signal whose level is defined by the interfering satellite's downlink cross-polarization performance. If the satellite antenna meets the 30 dB FSS requirement of § 25.210(i) and if it transmits at the same level in both polarizations, this cross-polarization contribution will increase the co-polar interference level into the adjacent satellite's downlink signal by one part per thousand. This increase corresponds to a decrease in carrier-to-interference ratio (C/I) of 0.004 dB. For 17/24 GHz BSS satellites meeting a cross-polarization isolation requirement of 25 dB, the co-polar interference will increase by about 3 parts per thousand with a corresponding C/I decrease of 0.014 dB. This level of increased interference resulting from the satellite downlink antenna's more relaxed performance remains negligible relative to the main interfering signal.

113. We anticipate that 17/24 GHz BSS system will operate almost exclusively with digital transmissions. We also accept that operators will be able to manage intra-system interference if a more relaxed requirement is adopted. In addition, we agree with the commenters that a more relaxed off-axis cross-polarization isolation requirement should yield only a negligible increase in interference to adjacent satellite systems. Thus, we agree that the 30 dB antenna cross-polarization isolation requirement originally designed for the analog transmission environment is unnecessarily stringent for 17/24 GHz BSS systems. Moreover, we recognize that the Commission has frequently waived the cross-polarization requirement of § 25.210(i) for FSS applicants, allowing these systems to operate with isolation levels less that 30 dB. Consequently, we adopt the 25 dB antenna cross-polarization isolation requirement proposed by SES Americom.

114. Spectrum Allocation Issue. Footnote NG176 Unchanged: The *NPRM* also proposed to modify footnote NG167 of the Domestic Table of Frequency Allocations, *See* 47 CFR 2.106, in order to permit use of the 24.75–25.25 GHz FSS allocation (Earth-to-space) by feeder links operating with the BSS in frequency bands other than 17 GHz, *e.g.*, the 12 GHz DBS band. Only Intelsat supports this proposal asserting that this increase in flexibility of spectrum use would help alleviate groundpath interference problems associated with reverse-band operations. EchoStar disagrees strongly with the proposal, arguing that it would preclude co-location of 17/24 GHz BSS and DBS satellites, and would also be inconsistent with its planned uses of both multiple spot-beam technology, and the 17.7–17.8 GHz band. Finally, DIRECTV responds that, although the flexibility to use this alternative uplink spectrum could be useful in avoiding ground-path interference problems associated with reverse-band operations in the DBS uplink band (17.3–17.8 GHz), users of this band already face the challenges of sharing spectrum with co-primary commercial and government systems. DIRECTV also states that 17/24 GHz BSS operators will likely require more uplink locations than do traditional DBS systems due to the increased atmospheric attenuation at these higher frequencies, which will result in increased site-diversity requirements, further increasing the potential burdens on systems sharing the band. Accordingly, DIRECTV cautions the Commission to weigh carefully the offsetting disadvantages of increased interference in the band. Intelsat disagrees with DIRECTV's comments, which it believes overstate the difficulties associated with additional use of the 24 GHz band. Intelsat argues that, given the limited number of 17/24 GHz BSS feeder link sites anticipated overall, any increase in use of spectrum could still be easily accommodated.

115. In light of the limited support in the record for this proposal, we decline to adopt the *NPRM* proposal to permit the additional use of the 24.75–25.25 GHz band by DBS feeder uplink earth stations. Specifically, only Intelsat offers any support for this proposal, and bases that support on a speculative assumption regarding growth of 17/24

GHz BSS feeder link sites. As a result, in this case, we find DIRECTV's and EchoStar's concerns regarding the potential complexities created by changing the spectrum allocation to be more persuasive.

116. Technical Requirements for Inter-Service Operations: Sharing in the 24 GHz Band. −114 dBW/m²/MHz PFD Coordination Threshold Adopted at Edge of FS License Area: Feeder uplinks for satellites operating in the 17/24 GHz BSS are allocated use of the 24.75–25.25 GHz band on a primary basis in both the U.S. Table of Allocations and the International Tables of Allocations. *See* 47 CFR 2.106 and note NG 167. Domestically, the upper portion of this band from 25.05–25.25 GHz is also allocated on a primary basis to the Fixed Service (FS). Fixed service operations in the band include Digital Electronic Message Service (DEMS) systems as well as a variety of other fixed services licensed throughout the United States by Economic Areas (EAs). In the *18 GHz Report and Order*, the Commission amended the Table of Allocations to allocate spectrum in the 24.75–25.25 GHz band for use by BSS feeder links consistent with the international allocation made at the 1992 World Administrative Radiocommunication Conference. The Commission adopted this shared allocation in part based on the belief that co-frequency operation would be feasible given the limited number of anticipated feeder link earth stations. It noted, however, that the successful implementation of this allocation would require the development of sharing criteria in a future rulemaking.

117. Recognizing the potential for 17/24 GHz BSS feeder link earth stations operating in this portion of the band to interfere with existing and future 24 GHz FS operations, the *NPRM* sought comment on rules we might adopt to facilitate co-frequency operations of these two services. Specifically we asked whether the antenna off-axis performance requirements of § 25.209, 47 CFR 25.109, in combination with earth station power limits in § 25.204, 47 CFR 25.205, would afford sufficient protection to 24 GHz FS systems, or whether changes to our rules are required. The *NPRM* also recognized certain conditions unique to the 24 GHz band that may either facilitate or complicate inter-service sharing, including the relatively small number of anticipated BSS feeder uplink stations, their large diameters and accompanying good off-axis discrimination characteristics, as well as the geographic area licensing of 24 GHz FS systems wherein licensees are not required to file site-specific data.

118. Commenters' responses were similar among the terrestrial and satellite communities. Satellite commenters generally believe that co-frequency operation of 24 GHz FS systems and 17/24 GHz BSS feeder link earth stations should be feasible, given the Commission's well-established procedures for coordination between terrestrial operations and satellite earth stations, in combination with the large-diameter and relatively small number of feeder link antennas, and the large regions of the country where no FS systems are licensed to operate. Terrestrial service commenters assert that the tests and analyses necessary to understand the inter-service sharing situation will be time-consuming and costly, and that the cost of complying with coordination procedures that are eventually developed will be substantial.

119. FiberTower asserts that the technical data and assumptions before the Commission are outdated, and that § 25.204(b) is overly permissive as it does not take into account present-day equipment evolution. FiberTower maintains that reliable answers concerning band sharing criteria will only become available following the substantial expenditure of time and resources devoted to that end. FiberTower details many questions that it believes need to be answered, and additional information it believes must be made available in the record, in order to begin the necessary sharing studies. Consequently, FiberTower asserts that the best course of action is to require 17/24 GHz BSS feeder link earth stations to locate well beyond the boundaries of the FS licensed areas until such studies can be completed and non-interference to FS operations can be assured. Specifically, FiberTower urges the Commission to require 17/24 GHz BSS earth stations to locate at least 100 miles from the edge of any FS licensed area. In addition, FiberTower maintains that the Commission may also need to limit the number of BSS feeder links allowed to no more than five nationally until mutually acceptable analyses and supporting data are available to demonstrate that additional BSS feeder links are actually necessary, and that they can be operated without causing interference to 24 GHz FS systems in existing license areas. The FWCC supports FiberTower's proposals, arguing that the characteristics of the BSS feeder links are not well known, and adding that FS operations are subject to recent developments in available equipment and architectures.

120. DIRECTV and EchoStar take issue with FiberTower's argument that coordination between 24 GHz FS systems and 17/24 GHz BSS feeder link earth stations is unduly complicated. These commenters object to FiberTower's proposals to restrict feeder link earth stations to distances greater than 100 miles from a 24 GHz license area and to limit the number to no more that five. EchoStar and DIRECTV argue that such severe constraints are inequitable given the co-primary status of both services in the band and state further that these restrictions would place undue burden on 17/24 GHz operators. DIRECTV argues further that such draconian rules are unnecessary and that it is possible to establish interference protection criteria between 24 GHz FS and 17/24 GHz BSS systems.

121. We agree that FiberTower's proposed restrictions on BSS earth stations are too severe. This approach would obviate the coordination process traditionally employed in other frequency sharing situations, by placing the entire burden of interference mitigation onto the BSS earth station operator. Such a requirement is not consistent with the Commission's approach to frequency sharing among co-primary services wherein we have typically sought to distribute any coordination burden in an equitable manner among all affected parties. Nor is it consistent with our approach to efficient use of spectrum resources. Rather, the Commission has historically relied upon coordination among affected parties to resolve interference issues, only resorting to less spectrum-efficient methods such as geographic separation in cases where coordination was not considered feasible (*e.g.*, ubiquitously-deployed, small-diameter earth stations.) In addition, we note that many of the technical parameters that FiberTower claims are required to fully understand the frequency sharing situation are best made available as part of the coordination process itself. Accordingly, we continue to believe that coordination is a viable approach to resolving inter-service interference issues in this band, and note that this is also the approach 24 GHz FS licensees use to resolve interference issues among themselves. As all commenters agree, FS facilities are not operating in large parts of the country. These regions will be the likely locations for the majority of BSS feeder link earth stations so that the issue of coordination should be raised relatively infrequently. Moreover, given the relatively small number of anticipated feeder link earth stations in combination with their large-diameter

antennas, we do not believe that the coordination burden on either party will be overly severe.

122. Coordination Threshold: SES Americom states that Commission rules are sufficient to effect coordination and to protect 24 GHz FS operations, and consequently urges the Commission to adopt no new requirements. However, EchoStar and DIRECTV both propose an additional requirement to facilitate sharing in the case of 24 GHz FS and 17/24 GHz BSS earth station operations. They note that the Commission's rules already establish interference protection criteria between adjacent terrestrial license areas in the 24 GHz band. Specifically, § 101.509(e) includes a recommendation that coordination is not necessary if the pfd at the boundary of the adjacent terrestrial licensing area is less than −114 dBW/m²/MHz, and that licensees should be able to deploy with a pfd of up to −94 dBW/m²/MHz at the boundary of the relevant adjacent area without negatively affecting the operations of the adjacent area licensee, *See* 47 CFR 101.509(e). EchoStar and DIRECTV urge the Commission to adopt this same approach for 24 GHz FS and 17/24 GHz BSS systems. They assert that it has worked well among 24 GHz terrestrial service licensees for many years and argue that it will work equally well in the present case. In conjunction with this proposal, commenters submit analyses to demonstrate that with worst-case assumptions, separation distances required to meet this coordination threshold are typically on the order of 50 miles.

123. In its reply comments FiberTower submits a technical analysis to demonstrate the need for a minimum separation of 100 miles from the edge of a 24 GHz FS licensing area. FiberTower states that the results of its preliminary study indicate that pfd level specified in § 101.509(e) of our rules is insufficient and should be reduced from −114 dBW/m²/MHz to at least −142 dBW/m²/MHz to protect FS operations. Consequently, FiberTower asserts that substantial changes are needed in the Commission's rule. Although FiberTower continues to urge the Commission to adopt a 100-mile exclusion zone at the edges of the FS license areas, it proposes as an alternative that the pfd criterion specified in § 101.509(e) should be changed to −142 dBW/m²/MHz, and outlines an accompanying approach for determining compliance with this pfd limit.

124. We adopt a pfd level as a coordination threshold at the edge of the FS license area. Under such a scheme, the operator of a 17/24 GHz BSS feeder link earth station that produces a pfd level greater than the specified threshold value at the boundary of a 24 GHz FS license area would be required to coordinate its operations with the affected FS operations. Such an approach is relatively straightforward, and distributes the burden of coordination equitably among all parties. In addition, it is consistent with the approach currently contained in our rules to permit licensing of co-frequency 24 GHz FS operations in adjacent Economic Areas (EA's). In contrast to requiring an absolute separation distance, this approach will allow operators to take into account the various interference-mitigating factors that will vary at different locations around the country including foliage or terrain-shielding, as well as regional differences in precipitation. Moreover, such an approach will permit operators the flexibility to implement various mitigation techniques and to mutually resolve their coordination problems with as little input from the Commission as possible.

125. DIRECTV and EchoStar assert that the current pfd level in § 101.509(e) can be successfully extended to the case of BSS feeder link earth station transmissions to serve as a threshold for FS/BSS coordination. FiberTower, however, argues that this pfd level should be reduced by 28 dB to afford sufficient protection to 24 GHz FS operations. The pfd coordination threshold of § 101.509(e) was adopted in the *24 GHz Report and Order* to facilitate coordination between U.S. licensed 24 GHz FS operations. The Commission adopted a −114 dBW/m²/MHz value to be consistent with the coordination threshold value in the U.S. and Canada agreement for coordination between administrations in the border areas. Consequently, FiberTower's proposal would create more extensive difficulties in the general ability of 24 GHz FS licensees to coordinate with each other, and possibly with co-frequency operations across the border with Canada as well. Thus, changing the pfd threshold of § 101.509(e) has ramifications far beyond the question of FS/BSS coordination and raises issues well outside the scope of this rulemaking. Accordingly, we decline to reduce the pfd coordination threshold of § 101.509(e) in this rulemaking. Nor do we believe that there is justification for adopting a pfd coordination threshold for 17/24 GHz BSS operations different from the one applied to the transmissions of other co-frequency operations. For these reasons, we extend the pfd coordination threshold value of −114 dBW/m²/MHz value now specified in our rules for coordination of fixed service operations, to BSS feeder link earth stations seeking to operate in the 24 GHz band. Further, to fully protect 24 GHz FS operations from multiple feeder link earth stations, any pfd level used as a coordination threshold at the FS license boundary must be cumulative. Accordingly, when determining whether the pfd threshold limit is exceeded at the 24 GHz FS licensing boundary, a feeder link earth station applicant must take into account not only the transmissions from its own antenna(s), but also those from any previously authorized feeder link earth stations. Thus, if the cumulative pfd level at the FS license boundary is in excess of −114 dBW/m²/MHz, the earth station applicant must either modify its proposed operations such that this value is not exceeded, or enter into coordination with the affected FS licensee.

126. Commenters raise the question of methodology used to compute the pfd level at the boundary of the FS license area. EchoStar states that the pfd calculation should be based on the actual characteristics of the proposed earth station, use a realistic propagation model such as ITU–R Recommendation P.452, with a reasonable probability of occurrence (e.g., 1%), and take into account the topography around the earth station. FiberTower asserts that the pfd should be determined at the boundary of the 24 GHz FS license area by establishing the EIRP of the earth station toward the horizon on the azimuth toward the FS boundary, and then applying the spreading loss for the distance between the feeder link station and the FS boundary. If transmit power control is used, the EIRP value used in the calculation should be the maximum value. We agree with FiberTower that in cases where adaptive uplink power control is used the EIRP value used for calculation should be the maximum. We also agree with EchoStar that calculations should be based on the actual characteristics of the proposed earth station. Consistent with our other pfd requirements, we also take into account only free-space propagation loss when computing the pfd level at the FS license area. Although we recognize that many factors including terrain, atmospheric attenuation and climactic variations will likely further decrease pfd levels, we believe that a coordination threshold should be as simple and straightforward a calculation as possible. Other interference-mitigating factors may be taken into

account should the coordination process be invoked.

127. We are establishing a procedure whereby 17/24 GHz BSS feeder link earth stations may be licensed, subject to coordination with 24 GHz FS licensees when warranted. This procedure presumes that the earth station's location is outside of the 24 GHz FS license area. We need not address the case where 17/24 GHz BSS earth stations and 24 GHz FS systems might operate in the same EA since we do not intend to license 17/24 GHz BSS feeder links to operate in an existing 24 GHz FS license area. Such a sharing situation is considerably more complicated, and in this instance, we agree that more information and study is necessary to develop appropriate sharing criteria. Moreover, we recognize that at some point in the future, additional 24 GHz FS licenses may be awarded, and that these operators may wish to consider locating their operations within an EA where a feeder link earth station has previously been licensed. Commenters have raised the possibility that BSS and FS working groups should complete the necessary technical studies and develop sharing criteria. The Commission supports all such efforts by the industry. It is possible that after further study and the development of more detailed sharing criteria, we may reconsider these requirements.

128. As noted above, we anticipate that additional 24 GHz FS systems may be authorized subsequent to future Commission action. Such systems locating near an authorized 17/24 GHz BSS feeder link earth station may not claim protection from interference from the feeder link earth station's transmissions, provided that these transmissions are compliant with our rules. Rather, future 24 GHz FS applicants will be required to take into account the transmissions from the previously authorized earth station when considering system designs, including the choice of location for its license area. To make these decisions, future FS applicants must have access to relevant feeder link earth station characteristics. Accordingly, we make clear that all applicants for 17/24 GHz BSS feeder link earth stations are subject to the information filing requirements of §§ 25.203 and 25.251 of our rules, whether or not coordination is required on the basis of the pfd levels adopted above.

129. Sharing in the 17 GHz Band. Coordination with NTIA Encouraged: The Radiolocation Service is allocated use of the 15.7–17.3 GHz band on a primary basis, and the 17.3–17.7 GHz band on a secondary basis for U.S. Government systems, *See* 47 CFR 2.106. As stated in the *NPRM*, military services are the largest users of the 15.7–17.3 GHz band and their radiolocation operations include a large number of radar systems, particularly high-powered synthetic aperture radars operating near the 17.3 GHz band edge. The Commission, noting similar concerns of the National Telecommunications and Information Administration (NTIA), anticipated that unwanted emissions from high-power, adjacent-band radiolocation systems, could pose a significant harmful interference threat to 17/24 GHz BSS subscriber earth stations. The Commission also recognized that discussions between the radiolocation and BSS communities could help to resolve potential adjacent band interference issues between the two services. In the *NPRM*, the Commission noted its encouragement of operator-to-operator discussions as a means of resolving interference issues, and sought comment on this approach. Specifically, the Commission asked how best to address the issue of potential adjacent-band interference into 17/24 GHz BSS receivers.

130. The *NPRM* also made available information that NTIA had provided concerning technical and operating characteristics of certain adjacent-band radiolocation systems that it considers likely to impact 17/24 GHz BSS receiving earth stations. We sought comment on the general applicability of the NTIA's findings to planned 17/24 GHz BSS systems. The *NPRM* also sought comment on anticipated BSS receiver sensitivity to unwanted adjacent-band emissions, on the level of protection required, and on any measures 17/24 GHz BSS operators might adopt in order to mitigate such interference. Specifically, it asked whether the Commission should adopt requirements to limit 17/24 GHz BSS receiver susceptibility to unwanted emissions, and specifically what requirements might be appropriate.

131. Finally, the *NPRM* recognized that Federal Government systems use the Radiolocation Service secondary allocation in the 17.3–17.7 GHz band by operating numerous types of radiolocation stations. NTIA indicates that radiolocation systems may seek to continue operating in this spectrum regardless of their allocation status with respect to the BSS, albeit at limited geographic areas and in limited portions of the band. The *NPRM* sought comment on approaches by which BSS operations could co-exist with secondary radiolocation operations.

132. Commenters agree that radar interference into 17/24 GHz BSS receivers is a serious issue that must be addressed as early as possible. Commenters recognized the need for further exchange of information between industry and federal government concerns to better analyze the extent of the interference problem, and to develop appropriate mitigation strategies. Accordingly, commenters encourage the Commission to facilitate this process.

133. EchoStar states that both in-band and adjacent-band interference mechanisms will prevent 17/24 GHz BSS receivers from operating when the radiolocation signal is present. EchoStar maintains that out-of-band interference will most severely affect those frequencies closest to 17.3 GHz, but that frequencies up to 100 MHz from the band edge are likely to be seriously impaired; the in-band interference will prevent receiver function on all channels while the signal is present.

134. DIRECTV presents a generalized, worst-case analysis as well as a detailed examination of four interference scenarios for adjacent-band interference from airborne radar systems. The interference scenarios consider different antenna couplings between the radar and the BSS earth station: Mainbeam-to-mainbeam antenna coupling, mainbeam-to-sidelobe antenna coupling, sidelobe-to-mainbeam antenna coupling, and sidelobe-to-sidelobe antenna coupling. The analysis results for mainbeam-to-mainbeam antenna coupling show significant interference from the adjacent band radars, but the estimated probability of this interference scenario occurring is 3×10^{-8} and the interference event only occurs for approximately 2 seconds. For the mainbeam-to-sidelobe and sidelobe-to-mainbeam antenna coupling again interference is shown, but the estimated probability of this scenario occurring is 2×10^{-4} and again the duration of the interference is around 2 seconds. From the DIRECTV analysis the most likely interference scenario is sidelobe-to-sidelobe antenna coupling. In this scenario the analysis shows that interference-to-carrier ratios as high as 9.1 dB may result, but that interference is limited primarily to the first transponder. In general, the analysis results indicate that for a single radar and BSS receiver interaction that the probability of interference is low and the duration of interference is relatively short. However, if the radars are operated over long durations and large geographic areas the probability and duration of interference can increase. DIRECTV believes that in

order to fully evaluate the potential impact on BSS receivers additional information is needed on the current and future radar systems in the 15.7–17.3 GHz band. We agree with DIRECTV that further exchanges of information are necessary in order to fully assess the potential impact on BSS receiver operations. We encourage the industry representatives to work directly with NTIA to obtain this information.

135. DIRECTV also states that, in the measurement results presented by NTIA, a key finding was that the maximum interference tolerance is directly related to the ratio of the interference pulse length to the information signal length. DIRECTV questions whether error correction coding or data interleaving could significantly mitigate the effects of radar interference as the symbol rates of planned 17/24 GHz BSS systems will result in signal lengths on the order of 1000 times less than those planned for the radar systems. The DIRECTV assessment of the NTIA measurements is based on the in-band pulse characteristics (pulse width and pulse repetition frequency) of the radar systems provided by NTIA. However, the out-of-band radar signal that appears after the front-end filtering of a BSS earth station receiver may not have the same characteristics as the in-band radar signal (*e.g.*, the pulse width may be shorter). Measurements of the effects of out-of-band pulsed interference on the BSS receiver could serve to quantify this effect. For example, as part of the above-mentioned discussion and information exchange between industry and NTIA, equipment representative of the 17/24 GHz BSS earth station receivers could be provided to NTIA for testing and evaluation.

136. Another sharing scenario was raised by NTIA in a letter dated March 21, 2007. In that letter, NTIA, on behalf of the Department of Defense (DoD), requested that we adopt the following footnote to the U.S. Table of Frequency Allocations:

''US402—In the band 17.3–17.7 GHz, existing Federal satellites and associated earth stations in the fixed-satellite service (Earth-to-space) are authorized to operate on a primary basis in the frequency bands and areas listed below. Receiving earth stations in the broadcasting-satellite service within the bands and areas listed below shall not claim protection from Federal earth stations in the fixed-satellite service.

(a) 17.600–17.700 GHz for stations within a 120 km radius of 38°49′N latitude and 76°52′W longitude.

(b) 17.375–17.475 GHz for stations within a 160 km radius of 39°42′N latitude and 104°45′W longitude.''

Additionally, NTIA states that Government Footnote G117 should be modified to limit Federal fixed-satellite use of these bands to military systems.

137. NTIA states that the U.S. Government's implementation of this allocation supports military functions as well as specific national security interests of the United States and further asserts that this allocation is essential for these Federal space systems to perform satisfactorily. In addition, NTIA states that non-federal operations in this band are currently limited to existing transmitting feeder links for the BSS and future receiving BSS earth stations. According to NTIA, the Federal operations are limited to two sites and only utilize a portion of the 17.3–17.7 GHz band and have operated compatibly with the BSS feeder links for many years. We agree with NTIA that protecting these Federal operations at this time will ensure that BSS operators have sufficient time to design their future space-to-Earth systems accordingly.

138. Based on the foregoing, we find that this change to the U.S. Table of Frequency Allocations is related to the exercise of military functions of the United States in support of urgent national security interests. Consequently, we also find that notice and public comment procedures are, for good cause shown, impracticable, unnecessary, and contrary to the public interest. Accordingly, the Commission is authorized to waive the public notice provisions of the Administrative Procedure Act (APA) pursuant to 47 CFR 1.412(b)(1) and 1.412(c). Based on the representations of NTIA that adoption of a national footnote and an amendment of a government footnote specifically supports essential military functions of the national defense, we find that the public interest will best be served by accommodating NTIA's request to expeditiously add United States Footnote US402 to the U.S. Table of Frequency Allocations and amend Government Footnote G117 of the U.S. Table of Frequency Allocations.

139. Finally, with regard to the secondary in-band interference issue, DIRECTV notes the lack of sufficient technical information necessary to perform an analysis of the problem, but suggests that given more information exchange between industry and the Federal Government it may be possible to adopt case-by-case solutions to accommodate such operations. We agree with DIRECTV that further exchanges of information are necessary in order to develop solutions to this issue. We encourage the parties to talk with NTIA directly to develop solutions to this issue.

140. Pending Applications. As noted, we adopted a first-come, first-served licensing procedure for GSO-like applications and a modified processing round approach for NGSO-like applications in the *First Space Station Licensing Reform Order.* In doing so, we recognized that retroactively applying these procedures to all applications pending at that time may not best serve the public interest. Thus, we stated that we would apply the procedures ''in cases where doing so will help further the goals of this proceeding to expedite service to the public and discourage speculation.'' We decided to treat most pending GSO-applications under the first-come, first-served procedure. In other words, in most cases, we would grant a pending application if the applicant was qualified and if the proposed system would not cause harmful interference to any previously licensed satellite or to any satellite proposed in a previously filed application. The Commission adopted a somewhat different procedure for V–band applications, which had been filed pursuant to a processing round cut-off. There, the Commission treated all pending GSO V–band applications as though they were filed at the same time and entitled to concurrent consideration. This meant that if two or more V–band applications were mutually exclusive, the Commission would divide the available spectrum equally among the qualified licensees. The Commission employed a third processing approach for pending Ka–band NGSO applications. There, the Commission had already issued a *Notice of Proposed Rulemaking* in which it proposed a technical solution that would resolve mutual exclusivity and allow NGSO systems to share the same spectrum. Consequently, we determined that we did not need to use the band-splitting approach we adopted for mutually-exclusive NGSO applications in the *First Space Station Reform Order.* Instead, we granted each qualified NGSO Ka-band applicant authority to operate throughout the available spectrum.

141. DIRECTV, EchoStar, and Intelsat make various suggestions as to how to process the pending 17/24 GHz space station applications. DIRECTV generally proposes that we should process the applications under the first-come, first-served approach. Nevertheless, they request that we exempt them from the rule that requires us to treat their amended applications as newly filed, *See* 47 CFR 25.116(b), (d). Newly filed applications move to the bottom of the

processing queue. In contrast, Intelsat recommends that we allow each applicant to amend a single application at a time, in order of the entity's date of filing its first application, ''round-robin'' style. This means that the entity with the oldest filing would be given the opportunity to file an amended application, with its choice of orbital location, first. The next entity to pick would be the remaining entity with the oldest application, and so on. Once all applicants had amended one application, each would be given an opportunity, in turn, to amend a second, third, fourth, and fifth application as warranted. Intelsat suggests that a ''round-robin'' procedure will ensure that orbital locations are assigned in a manner that promotes competition. For the reasons discussed below, we adopt another approach that treats all pending applications as filed simultaneously.

142. There are 22 pending applications for 17/24 GHz BSS space station authorizations. Most of these filings are not at a four-degree-compliant location or request an orbit location less than 4 degrees away from a location sought by another entity. As a result, under any processing method used for the pending applications, we will not be able to grant all the applications as originally filed. We further recognize that applicants will be required to amend their pending applications to conform to the new service and technical rules, including the rule limiting applicants to five pending 17/24 GHz BSS applications. At the same time, we will require applicants to select a location conforming to the four-degree spacing framework adopted today. Moreover, some applicants may choose not to continue prosecuting their pending applications due to changed business plans. Consequently, we expect the amended applications to look materially different than the pending applications.

143. In light of these anticipated material changes and the new rules for the 17/24 GHz BSS, we will treat the applications before us, as amended, as though they were filed at the same time. Accordingly, as in the V-band proceeding, where two or more applications are mutually exclusive, we will divide the available spectrum equally among the applicants pursuant to § 25.158(d). To the extent necessary, we will waive §§ 25.116 and 25.155(c) of our Rules to process the applications in this manner. We find that this approach best serves the public interest by most equitably balancing our goals of maximizing use of scarce spectrum and orbital resources while at the same time retaining opportunities for competitive entry and speeding service to the public.

144. We recognize that where the spectrum will be divided, the authorizations issued under this procedure may not be exactly what the applicants expected. This, by itself, would not bar the adoption of this procedure. As we explained in the *First Space Station Reform Order,* the Commission has the authority to apply new procedures to pending applications if doing so does not impair the rights an applicant possessed when it filed its application, increase an applicant's liability for past conduct, or impose new duties on applicants with respect to ''transactions already completed.'' Applicants do not gain any vested right merely by filing an application. Merely filing an application cannot be considered a ''transaction already completed'' for purposes of this analysis. It would be within our authority to dismiss all the pending applications entirely and start the licensing process anew. Such an action, however, would not serve the policy goals articulated above. Thus, we conclude that there is no legal barrier to our processing the pending applications as filed simultaneously.

145. To implement our decision here, we direct the Bureau to release a Public Notice shortly after these rules become effective, inviting applicants to amend the applications pending as of the date of this order consistent with the rules we adopt today. Applicants can amend their choice of orbital locations consistent with our spacing rules adopted today to reduce the likelihood of mutual exclusivity. In addition, applicants are limited to five pending 17/24 GHz BSS applications. Any application that is not amended by the date specified by the Bureau will be dismissed as defective. The Bureau will review the amended applications to determine whether they are substantially complete and acceptable for filing. The Bureau will place acceptable applications on public notice. The Bureau will return to the applicant as defective any amended applications that are not substantially complete. In the event that two or more amended applications are mutually exclusive, we direct the Bureau to consider the applications together and, if the applicants are qualified, to license them to operate in an equal portion of the spectrum.

146. To facilitate the amendment process, we require each applicant to notify the Commission by letter, within 45 days of release of this Order, whether it intends to go forward with each of its pending applications. If an applicant fails to file a notification of its intent to proceed with a particular application, we will dismiss that application. By identifying applications that will not be pursued in advance of the amendment deadline, the remaining applicants may be in a better position to reach a compromise regarding their orbital assignment requests and minimize, or avoid, mutually exclusive situations.

147. Finally, from the release date of this Order until a date and time designated by the Bureau after the pending applications are amended, we establish a freeze on new applications. The freeze on 17/24 GHz BSS applications applies to any application for authority to provide service to the United States using the 17.3–17.7 GHz (space-to-Earth) and 24.75–25.25 GHz (Earth-to-space) frequency bands or to provide international satellite service using the 17.7–17.8 GHz (space-to-Earth) frequency band. This freeze is limited to applications for licenses for new space stations or for new requests for market access by foreign-licensed space stations. Further, the freeze does not apply to amendments to the 22 pending applications.

148. Conclusion: With this Report and Order, we adopt licensing and service rules for the 17/24 GHz BSS that will facilitate the deployment of new broadband services. These rules include a first-come, first-served processing approach for licensing 17/24 GHz BSS applications, several safeguards (*e.g.*, bond requirements, milestones, and a limit on the number of pending applications), geographic service requirements to provide service to Alaska and Hawaii, and various public service obligations.

Ex Parte Presentations

149. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules as well.

Paperwork Reduction Act

150. The actions contained herein have been analyzed with respect to the Paperwork Reduction Act of 1995 at the initiation of the Notice of Proposed Rulemaking in this proceeding, and we

have previously received approval of the associated information collection requirements from the Office of Management and Budget (OMB) under OMB Control No. 3060–1097. The Report and Order and Further Notice of Proposed Rulemaking does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Final Regulatory Flexibility Analysis

151. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3–17.7 GHz Frequency Band and at the 17.7–17.8 GHz Frequency Band Internationally, and at the 24.75–25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-Directionally in the 17.3–17.8 GHz Frequency Band, Notice of Proposed Rulemaking (*NPRM*), adopted on June 21, 2006. The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, The Report and Order

152. The objective of the Report and Order is to adopt processing and service rules for the 17/24 GHz Broadcasting-Satellite Service (BSS). This service will introduce a new generation of broadband services to the public, providing a mix of local and domestic video, audio, data, video-on-demand, and multimedia services to consumers in the United States. In some cases, these services will complement existing Direct Broadcast Satellite (DBS) services. Specifically, we adopt a first-come, first-served licensing procedure for the 17/24 GHz BSS, as well as various safeguards, reporting requirements, and licensee obligations. We also adopt geographic service rules to require 17/24 GHz BSS licensees to provide service to Alaska and Hawaii. In addition, we establish rules and requirements for orbital spacing, minimum antenna diameter, and antenna performance standards. Also, we establish limits for uplink and downlink power levels to minimize the possibility of harmful interference. Finally, we stipulate criteria to facilitate sharing in the 24 GHz and 17 GHz bands. By these actions, we facilitate the introduction of new and innovative services to consumers in the United States and promote increased competition among satellite and terrestrial services.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

153. There were no comments filed that specifically addressed the IRFA.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

154. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Below, we further describe and estimate the number of small entity licensees that may be affected by the adopted rules.

155. *Satellite Telecommunications.* The SBA has developed a small business size standard for the two broad census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under both categories, a business is considered small if it has $13.5 million or less in annual receipts. The category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

156. The category of Other Telecommunications ''comprises establishments primarily engaged in (1) Providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

157. *Space Stations (Geostationary).* Commission records reveal that there are 44 space station licensees. We do not request nor collect annual revenue information concerning such licensees, and thus are unable to estimate the number of geostationary space station licensees that would constitute a small business under the SBA definition cited above, or apply any rules providing special consideration for geostationary space station licensees that are small businesses.

158. *17 GHz Transmitting Earth Stations.* Currently there are approximately 47 operational earth stations in the 17.3–17.7 GHz bands. The Commission does not request or collect annual revenue information, and thus is unable to estimate the number of earth stations that would constitute a small business under the SBA definition.

159. *Cellular and Other Wireless Telecommunications.* The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunications, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 2002, in this category there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the majority of firms can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

160. Under the Commission's existing rules, all requests for space station

authorizations are required to be in the form of a comprehensive proposal submitted on the relevant FCC forms. Similarly, to obtain an earth station authorization, applicants must file the appropriate forms as required by the Commission's rules. In addition to our existing requirements, in this Report and Order, we adopt certain specific requirements for 17/24 GHz BSS earth and space station applications.

161. Space Station Applications. The rules adopted will require an applicant proposing a satellite to be located at one of the orbit locations specified in Appendix F of the Report and Order and proposing to operate in the 17.3–17.7 GHz frequency band to provide a demonstration that the proposed space station shall comply with the power flux density limits set forth in § 25.208(w) of the Commission's rules. In cases where an applicant will not comply with the power flux density limits set forth in § 25.208(w), the applicant will be required to provide a certification that all potentially affected parties acknowledge and do not object to the use of the applicant's higher power flux densities.

162. In cases where the proposed 17/24 GHz BSS space station will be operated in the 17.3–17.7 GHz band, or operated to provide international service in the 17.7–17.8 GHz band, and cannot be located precisely at one of the nominal 17/24 GHz BSS orbital locations specified in Appendix F of the Report and Order, the applicant must provide a demonstration that the proposed space station will not cause more interference to other 17/24 GHz BSS satellite networks operating in compliance with the rules for this service than if it were located at the precise 17/24 GHz BSS orbital location from which its proposed location is offset.

163. An applicant proposing a 17/24 GHz BSS space station to be located at one of the orbit locations specified in Appendix F of the Report and Order and proposing to provide international service in the 17.7–17.8 GHz band, must demonstrate that it will meet the power flux density limits set forth in § 25.208(c) of the Commission's rules.

164. An applicant proposing a 17/24 GHz BSS space station that proposes to provide ''DBS-like service'' within the meaning of § 25.225 of the Commission's rules, must either certify that it will meet the requirements of § 25.225, or include as an attachment to its application a technical analysis demonstrating that comparable DBS-like service is not feasible as a technical matter or that, while technically feasible, such service would require so many compromises in satellite design and operation as to make it economically unreasonable.

165. An applicant proposing a 17/24 GHz BSS space station must provide an interference analysis to demonstrate the compatibility of its proposed system 4° from any current or future authorized space station in the 17/24 GHz BSS that complies with the Commission's technical rules.

166. Earth Station Applications. Applications for feeder link earth stations operating in the 24.75—25.25 GHz band (Earth-to-space) and providing service to geostationary satellites in the 17/24 GHz BSS must include, for each earth station antenna type, in addition to the particulars of operation identified on FCC Form 312 and associated Schedule B, a series of EIRP density charts or tables, calculated for a production earth station antenna, based on measurements taken on a calibrated antenna range at 25 GHz, with the off-axis EIRP envelope set forth in paragraphs (g)(1)(i) through (g)(1)(iv) of § 25.115 of the Commission's rules. These charts or tables should show (i) Off-axis co-polarized EIRP spectral density in the azimuth plane, for off-axis angles from minus 10° to plus 10° and from minus 180° to plus 180°; (ii) off-axis co-polarized EIRP spectral density in the elevation plane, at off-axis angles from 0° to plus 30°; (iii) off-axis cross-polarized EIRP spectral density in the azimuth plane, at off-axis angles from minus 10° to plus 10°; and (iv) off-axis cross-polarized EIRP spectral density in the elevation plane, at off-axis angles from minus 10° to plus 10°. In lieu of providing such charts or tables, applicants may provide a certification on Schedule B that the antenna conforms to the gain pattern criteria of §§ 25.209(a) and (b) of the Commission's rules, that when combined with input power density (computed from the maximum on-axis EIRP density per carrier less the antenna gain entered in Schedule B), demonstrates that the off-axis EIRP spectral density envelope set forth in §§ 25.223(b)(1) through (4) of the Commission's rules will be met.

167. Earth station applicants seeking authority to use an antenna that does not meet the standards set forth in §§ 25.209(a) and (b) of the Commission's rules, pursuant to the procedure set forth in § 25.220 or § 25.223(c), are required to submit a copy of the manufacturer's range test plots of the antenna gain patterns specified in paragraph (b)(1) of this section.

168. An applicant for an earth station license that proposes levels in excess of those defined in the new § 25.223(b) of the Commission's rules, shall (1) Submit link budget analyses of the operations proposed along with a detailed written explanation of how each uplink and each transmitted satellite carrier density figure is derived; and (2) submit a narrative summary which must indicate whether there are margin shortfalls in any of the current baseline services as a result of the addition of the applicant's higher power service, and if so, how the applicant intends to resolve those margin short falls.

169. The Commission does not expect significant costs to be associated with these rules. Therefore, we do not anticipate that the burden of compliance would be greater for smaller entities.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

170. The RFA requires that, to the extent consistent with the objectives of applicable statutes, the analysis shall discuss significant alternatives such as: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

171. The rules adopted herein are necessary for the efficient operation of the 17/24 GHz BSS, which is expected to introduce a new generation of broadband services to the public. The technical rules adopted here are designed to be the least intrusive in terms of compliance requirements and the most effective in terms of facilitating the licensing of operations in the 17/24 GHz BSS without causing harmful interference to other authorized radiocommunication services. We have considered alternatives and believe these are the most equitable solutions to the potential interference problems posed by the operations in 17/24 GHz BSS. By requiring that technical showings be made prior to operation, we anticipate that there will be far fewer instances of harmful interference. This will have a positive economic impact on all satellite space station and earth station licensees, including small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

172. None.

173. *Report to Congress:* The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

174. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, this *Report and Order is adopted.*

175. *It is further ordered* that part 25 of the Commission's rules *is amended* as set forth in Appendix B. An announcement of the effective date of these rule revisions will be published in the **Federal Register**.

176. *It is further ordered* that from the release date of this Order until a date and time designated by the International Bureau, no applications for authority to provide service to the United States using the 17.3–17.7 GHz (space-to-Earth) and 24.75–25.25 GHz (Earth-to-space) frequency bands or to provide international satellite service using the 17.7–17.8 GHz (space-to-Earth) frequency band will be accepted for filing. The freeze does not apply to amendments to the pending applications listed in Appendix E to conform the applications to the rules adopted in this Order.

177. *It is further ordered* that the International Bureau is delegated authority to issue Public Notices consistent with this *Report and Order.*

178. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center shall send a copy of this *Report And Order,* including the final regulatory flexibility analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with § 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (1981).

179. *It is further ordered* that the Commission *shall send* a copy of this *Report and Order* in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 2

Telecommunications,

47 CFR Part 25

Satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed above, the Federal Communications Commission amends 47 CFR parts 2 and 25 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106 is amended as follows:

■ a. Revise page 48.

■ b. In the list of United States (US) Footnotes, add footnote US402.

■ c. In the list of Non-Federal Government (NG) Footnotes, revise footnotes NG163 and NG167.

■ d. In the list of Federal Government (G) Footnotes, revise footnote G117.

The additions and revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712–01–P

15.35-15.4 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.511			15.35-15.4 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
15.4-15.43 AERONAUTICAL RADIONAVIGATION 5.511D			15.4-15.43 AERONAUTICAL RADIONAVIGATION US260 US211		Aviation (87)
15.43-15.63 FIXED SATELLITE (Earth-to-space) 5.511A AERONAUTICAL RADIONAVIGATION 5.511C			15.43-15.63 AERONAUTICAL RADIONAVIGATION US260 5.511C US211 US359	15.43-15.63 FIXED SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION US260 5.511C US211 US359	Satellite Communications (25) Aviation (87)
15.63-15.7 AERONAUTICAL RADIONAVIGATION 5.511D			15.63-15.7 AERONAUTICAL RADIONAVIGATION US260 US211		Aviation (87)
15.7-16.6 RADIOLOCATION 5.512 5.513			15.7-16.6 RADIOLOCATION G59	15.7-17.2 Radiolocation	Private Land Mobile (90)
16.6-17.1 RADIOLOCATION Space research (deep space) (Earth-to-space) 5.512 5.513			16.6-17.1 RADIOLOCATION G59 Space research (deep space) (Earth-to-space)		
17.1-17.2 RADIOLOCATION 5.512 5.513			17.1-17.2 RADIOLOCATION G59		
17.2-17.3 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) 5.512 5.513 5.513A			17.2-17.3 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active)	17.2-17.3 Radiolocation Earth exploration-satellite (active) Space research (active)	
17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 (space-to-Earth) 5.516A 5.516B Radiolocation 5.514	17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 BROADCASTING-SATELLITE Radiolocation 5.514 5.515 5.517	17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 Radiolocation 5.514	17.3-17.7 Radiolocation US259 G59 US402 G117	17.3-17.7 FIXED-SATELLITE (Earth-to-space) US271 BROADCASTING-SATELLITE US402 NG163 US259	Satellite Communications (25)

Page 48

BILLING CODE 6712–01–C

United States (US) Footnotes

* * * * *

US402 In the band 17.3–17.7 GHz, existing Federal satellites and associated

earth stations in the fixed-satellite service (Earth-to-space) are authorized to operate on a primary basis in the frequency bands and areas listed below. Receiving earth stations in the broadcasting-satellite service within the bands and areas listed below shall not claim protection from Federal earth stations in the fixed-satellite service.

(a) 17.600–17.700 GHz for stations within a 120 km radius of 38° 49′ N latitude and 76° 52′ W longitude.

(b) 17.375–17.475 GHz for stations within a 160 km radius of 39° 42′ N latitude and 104° 45′ W longitude.

Non-Federal Government (NG) Footnotes

* * * * *

NG163 The allocation to the broadcasting-satellite service in the band 17.3–17.7 GHz shall come into effect on 1 April 2007. Use of the 17.3–17.7 GHz band by the broadcasting-satellite service is limited to geostationary satellite orbit systems.

* * * * *

NG167 The use of the fixed-satellite service (Earth-to-space) in the band 24.75–25.25 GHz is limited to feeder links for the broadcasting-satellite service in the band 17.3–17.8 GHz. The allocation to the fixed-satellite service (Earth-to-space) in the band 24.75–25.25 GHz shall come into effect on 1 April 2007.

* * * * *

Federal Government (G) Footnotes

* * * * *

G117 In the bands 7.25–7.75 GHz, 7.9–8.4 GHz, 17.3–17.7 GHz, 17.8–21.2 GHz, 30–31 GHz, 33–36 GHz, 39.5–41 GHz, 43.5–45.5 GHz and 50.4–51.4 GHz, the Federal fixed-satellite and mobile-satellite services are limited to military systems.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 3. The authority citation for Part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 4. Amend § 25.114 by revising paragraph (d)(7) and adding paragraphs (d)(15) and (d)(16) to read as follows:

§ 25.114 Applications for space station authorizations.

* * * * *

(d) * * *

(7) Applicants for authorizations for space stations in the fixed-satellite service must also include the information specified in §§ 25.140(b)(1) and (2) of this part. Applicants for authorizations for space stations in the 17/24 GHz broadcasting-satellite service must also include the information specified in §§ 25.140(b)(1) and (3) of this part.

* * * * *

(15) Each applicant for a space station license in the 17/24 GHz BSS shall include the following information as an attachment to its application:

(i) Except as set forth in paragraph (d)(15)(ii) of this section, an applicant proposing to operate in the 17.3–17.7 GHz frequency band, must provide a demonstration that the proposed space station will comply with the power flux density limits set forth in § 25.208(w) of this part.

(ii) In cases where the proposed space station will not comply with the power flux density limits set forth in § 25.208(w) of this part, the applicant will be required to provide a certification that all potentially affected parties acknowledge and do not object to the use wof the applicant's higher power flux densities. The affected parties with whom the applicant must coordinate are those GSO 17/24 GHz BSS satellite networks located up to 6 away for excesses of up to 3 dB above the power flux-density levels specified in § 25.208(w) of this part, and up to 10 away greater for excesses greater than 3 dB above those levels.

(iii) In cases where the proposed 17/24 GHz BSS space station will be operated in the 17.3–17.7 GHz band, or operated to provide international service in the 17.7–17.8 GHz band, and cannot be located precisely at one of the nominal 17/24 GHz BSS orbital locations specified in Appendix F of the Report and Order, adopted May 2, 2007, IB Docket No. 06–123, FCC 07–76, the applicant must provide a demonstration that the proposed space station will not cause more interference to other 17/24 GHz BSS satellite networks operating in compliance with the rules for this service than if it were located at the precise 17/24 GHz BSS orbital location from which its proposed location is offset.

(iv) An applicant proposing to provide international service in the 17.7–17.8 GHz band must demonstrate that it will meet the power flux density limits set forth in § 25.208(c) of this part.

(16) In addition to the requirements of paragraph (d)(15) of this section, each applicant for a license to operate a 17/24 GHz BSS space station that will be used to provide video programming directly to consumers in the United States, that will not meet the requirements of § 25.225 of this part, must include as an attachment to its application a technical analysis demonstrating that providing video programming service to consumers in Alaska and Hawaii that is comparable to the video programming service provided to consumers in the 48 contiguous United States (CONUS) is not feasible as a technical matter or that, while technically feasible, such service would require so many compromises in satellite design and operation as to make it economically unreasonable.

* * * * *

■ 5. Amend § 25.115 by adding paragraph (g) to read as follows:

§ 25.115 Applications for earth station authorizations.

* * * * *

(g) Applications for feeder link earth stations operating in the 24.75—25.25 GHz band (Earth-to-space) and providing service to geostationary satellites in the 17/24 GHz BSS must include, in addition to the particulars of operation identified on Form 312 and associated Schedule B, the information specified in either paragraph (g)(1) or (g)(2) below for each earth station antenna type:

(1) A series of EIRP density charts or tables, calculated for a production earth station antenna, based on measurements taken on a calibrated antenna range at 25 GHz, with the off-axis EIRP envelope set forth in paragraphs (g)(1)(i) through (g)(1)(iv) of this section superimposed, as follows:

(i) Showing off-axis co-polarized EIRP spectral density in the azimuth plane, for off-axis angles from minus 10° to plus 10° and from minus 180° to plus 180°;

(ii) Showing off-axis co-polarized EIRP spectral density in the elevation plane, at off-axis angles from 0°to plus 30°;

(iii) Showing off-axis cross-polarized EIRP spectral density in the azimuth plane, at off-axis angles from minus 10° to plus 10°; and

(iv) Showing off-axis cross-polarized EIRP spectral density in the elevation plane, at off-axis angles from minus 10° to plus 10°

(2) A certification on Schedule B that the antenna conforms to the gain pattern criteria of §§ 25.209(a) and (b), that when combined with input power density (computed from the maximum on-axis EIRP density per carrier less the antenna gain entered in Schedule B), demonstrates that the off-axis EIRP spectral density envelope set forth in §§ 25.223(b)(1) through (4) of this part will be met.

■ 6. Amend § 25.121 by revising paragraph (a) to read as follows:

§ 25.121 License term and renewals.

(a) *License term.* (1) Except for licenses for DBS space stations and 17/24 GHz BSS space stations licensed as broadcast facilities, licenses for facilities governed by this part will be issued for a period of 15 years.

(2) Licenses for DBS space stations and 17/24 GHz BSS space stations licensed as broadcast facilities will be issued for a period of 8 years. Licenses for DBS space stations not licensed as broadcast facilities will be issued for a period of 10 years.

* * * * *

■ 7. Amend § 25.132 by revising paragraph (b)(3) to read as follows:

§ 25.132 Verification of earth station antenna performance standards.

* * * * *

(b) * * *

(3) Applicants seeking authority to use an antenna that does not meet the standards set forth in §§ 25.209(a) and (b) of this part, pursuant to the procedure set forth in § 25.220 or § 25.223(c) of this part, are required to submit a copy of the manufacturer's range test plots of the antenna gain patterns specified in paragraph (b)(1) of this section.

■ 8. Amend § 25.140 by revising paragraph (b)(2) and adding paragraphs (b)(3) and (c) to read as follows:

§ 25.140 Qualifications of fixed-satellite space station licensees.

(b) * * *

(2) Except as set forth in paragraph (b)(3) of this section, all applicants must provide an interference analysis to demonstrate the compatibility of their proposed system 2 from any authorized space station. An applicant should provide details of its proposed r.f. carriers which it believes should be taken into account in this analysis. At a minimum, the applicant must include, for each type of r.f. carrier, the link noise budget, modulation parameters, and overall link performance analysis. (See, *e.g.*, appendices B and C to Licensing of Space Stations in the Domestic Fixed-Satellite Service (available at address in Sec. 0.445)).

(3) Applicants for licenses for satellites in the 17/24 GHz BSS must provide an interference analysis of the kind described in paragraph (b)(2) of this section, except that the applicant must demonstrate the compatibility of its proposed system 4° from any current or future authorized space station in the 17/24 GHz BSS that complies with the technical rules in this part. The link budget must take into account longitudinal stationkeeping tolerances and any existing orbital location offsets from the nominal 17/24 GHz BSS orbital locations of the adjacent prior-authorized 17/24 GHz BSS space stations. In addition, any 17/24 GHz BSS satellite applicant that has reached a coordination agreement with an operator of another 17/24 GHz BSS satellite located up to ±10°away to allow that operator to exceed the pfd levels specified in the rules for this service, must use those higher pfd levels for the purposes of this showing.

(c) Any space station applicant for a space station authorization in the 17/24 GHz BSS must design its satellite network to be capable of operating with another 17/24 GHz BSS satellite as close as four degrees away from its 17/24 GHz BSS satellite.

■ 9. Amend § 25.201 to add a definition in alphabetical order for ''17/24 GHz Broadcasting Satellite Service'' to read as follows:

§ 25.201 Definitions.

* * * * *

17/24 GHz Broadcasting-Satellite Service. A radiocommunications service using geostationary satellites between one or more feeder link earth stations and other earth stations, in the 17.3—17.7 GHz (space-to-Earth) (domestic allocation), 17.3—17.8 GHz (international allocation) and 24.75—25.25 GHz frequency bands. This service is also known as ''17/24 GHz BSS.'' For purposes of the application processing provisions of this part, 17/24 GHz BSS is a GSO-like service. For purposes of the technical requirements of this part, we will treat 17/24 GHz BSS as if it were FSS. Unless specifically stated otherwise, the 17/24 GHz BSS systems are subject to the rules in this part applicable to FSS.

* * * * *

■ 10. Amend § 25.202 by revising the table in paragraph (a)(1) and adding footnote 18 to paragraph (a)(1) and by adding paragraph (a)(9), to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

(a)(1) * * *

Space-to-Earth (GHz)	Earth-to-space (GHz)
3.65–3.7 [17]	
3.7–4.2 [1]	5.925–6.425 [1]
10.7–10.95 [1 12]	12.75–13.25 [1 12 14]
10.95–11.2 [1 2 12]	13.75–14 [4 12]
11.2–11.45 [1 12]	14–14.2 [5]
11.45–11.7 [1 2 12]	14.2–14.5
11.7–12.2 [3]	17.3–17.8 [9]
12.2–12.7 [13]	24.75–25.05 [18]
18.3–18.58 [1 10]	25.05–25.25 [1 18]
18.58–18.8 [6 10 11]	27.5–29.5 [1]
18.8–19.3 [7 10]	29.5–30
19.3–19.7 [8 10]	47.2–50.2 [1]
19.7–20.2 [10]	
37.5–40 [15 16]	
37.6–38.6	
40–42 [16]	

[1] This band is shared coequally with terrestrial radio communication service.

[2] Use of this band by geostationary satellite orbit satellite systems in the fixed-satellite service is limited to international systems; *i.e.*, other than domestic systems.

[3] Fixed-satellite transponders may be used additionally for transmissions in the broadcasting-satellite service.

[4] This band is shared on an equal basis with the Government radiolocation service and grandfathered space stations in the Tracking and Data Relay Satellite System.

[5] In this band, stations in the radionavigation service shall operate on a secondary basis to the fixed-satellite service.

[6] The band 18.58–18.8 GHz is shared co-equally with existing terrestrial radiocommunication systems until June 8, 2010.

[7] The band 18.8–19.3 GHz is shared co-equally with terrestrial radiocommunication services, until June 8, 2010. After this date, the sub-band 19.26–19.3 GHz is shared co-equally with existing terrestrial radiocommunication systems.

[8] The use of the band 19.3–19.7 GHz by the fixed-satellite service (space-to-Earth) is limited to feeder links for the mobile-satellite service.

[9] The use of the band 17.3–17.8 GHz by the fixed-satellite service (Earth-to-space) is limited to feeder links for broadcasting-satellite service, and the sub-band 17.7–17.8 GHz is shared co-equally with terrestrial fixed services.

[10] This band is shared co-equally with the Federal Government fixed-satellite service.

[11] The band 18.6–18.8 GHz is shared co-equally with the non-Federal Government and Federal Government Earth exploration-satellite (passive) and space research (passive) services.

[12] Use of this band by non-geostationary satellite orbit systems in the fixed-satellite service is limited to gateway earth station operations.

[13] Use of this band by the fixed-satellite service is limited to non-geostationary satellite orbit systems.

[14] Use of this band by NGSO FSS gateway earth station uplink operations is subject to the provisions of § 2.106 NG53.

[15] Use of this band by the fixed-satellite service is limited to ''gateway'' earth station operations, provided the licensee under this Part obtains a license under Part 101 of this Chapter or an agreement from a Part 101 licensee for the area in which an earth station is to be located. Satellite earth station facilities in this band may not be ubiquitously deployed and may not be used to serve individual consumers.

[16] The band 37.5–40.0 GHz is designated as being available for use by the fixed and mobile services and the band 40.0–42.0 GHz is designated as being available for use by the fixed-satellite service.

[17] FSS earth stations in this band must operate on a secondary basis to terrestrial radiocommunication services, except that the band is shared co-equally between certain grandfathered earth stations and the terrestrial radiocommunication services.

[18] Use of the band 24.75–25.25 GHz by the fixed-satellite service (Earth-to-space) is limited to feeder links for space stations in the broadcasting-satellite service, and the sub-band 25.05–25.25 GHz is shared co-equally with terrestrial fixed services. The allocation to the fixed-satellite service (Earth-to-space) in the band 24.75–25.25 GHz shall come into effect on 1 April 2007.

* * * * *

(9) The following frequencies are available for use by the Broadcasting-Satellite Service after 1 April 2007:

17.3–17.7 GHz (space-to-Earth)
17.7–17.8 GHz (space-to-Earth)

Note 1 to Paragraph (a)(9): Use of the 17.3–17.7 GHz band by the broadcasting-satellite service is limited to geostationary satellite orbit systems.

Note 2 to Paragraph (a)(9): Use of the 17.7–17.8 GHz band (space-to-Earth) by the broadcasting-satellite service is limited to transmissions from geostationary satellite orbit systems to receiving earth stations located outside of the United States and its Possessions. In the United States and its Possessions, the 17.7–17.8 GHz band is allocated on a primary basis to the Fixed Service.

* * * * *

■ 11. Amend § 25.203 by adding paragraph (l) to read as follows:

§ 25.203 Choice of sites and frequencies.

* * * * *

(l) Applicants for feeder link earth station facilities operating in the 25.05–25.25 GHz band may be licensed only in Economic Areas where no existing FS licensee has been authorized, and shall coordinate their operations with 24 GHz fixed service operations if the power flux density of their transmitted signal at the boundary of the fixed service license area is equal to or greater than −114 dBW/m² in any 1 MHz.

(1) When uplink adaptive power control is used, the EIRP used for calculation of the power flux density level should be the maximum possible, taking into account the adaptive power increase.

(2) The power flux density levels should be calculated based on the actual off-axis gain characteristics of the earth station antenna, and should assume free space propagation conditions.

(3) When determining whether the power flux density threshold limit is exceeded at the 24 GHz FS licensing boundary, a feeder link earth station applicant must take into account not only the transmissions from its own antenna(s), but also those from any previously authorized feeder link earth stations. Thus, if the cumulative power flux density level at the FS license boundary is in excess of −114 dBW/m²/MHz, the earth station applicant must either modify its proposed operations such that this value is not exceeded, or enter into coordination with the affected FS licensee.

■ 12. Amend § 25.204 by revising paragraph (g) to read as follows:

§ 25.204 Power limits.

* * * * *

(g) All earth stations in the Fixed Satellite Service in the 20/30 GHz band, and feeder link earth stations operating in the 24.75–25.25 GHz band (Earth-to-space) and providing service to geostationary satellites in the 17/24 GHz BSS, shall employ uplink adaptive power control or other methods of fade compensation such that the earth station transmissions shall be conducted at the power level required to meet the desired link performance while reducing the level of mutual interference between networks.

* * * * *

■ 13. Amend § 25.208 by revising paragraph (c) and adding paragraph (w) to read as follows:

§ 25.208 Power flux density limits.

* * * * *

(c) In the 17.7–17.8 GHz, 18.3–18.8 GHz, 19.3–19.7 GHz, 22.55–23.00 GHz, 23.00–23.55 GHz, and 24.45–24.75 GHz frequency bands, the power flux density at the Earth's surface produced by emissions from a space station for all conditions for all methods of modulation shall not exceed the following values:

(1) −115 dB (W/m²) in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane.

(2) −115 + 0.5 (δ-5) dB (W/m²) in any 1 MHz band for angles of arrival d (in degrees) between 5 and 25 degrees above the horizontal plane.

(3) −105 dB (W/m²) in any 1 MHz band for angles of arrival between 25 and 90 degrees above the horizontal plane.

* * * * *

(w) The power flux density at the Earth's surface produced by emissions from a 17/24 GHz BSS space station operating in the 17.3–17.7 GHz band for all conditions, including clear sky, and for all methods of modulation shall not exceed the regional power flux density levels defined below.

(1) In the region of the contiguous United States, located south of 38° North Latitude and east of 100 West Longitude: −115 dBW/m²/MHz.

(2) In the region of the contiguous United States, located north of 38° North Latitude and east of 100° West Longitude: −118 dBW/m²/MHz.

(3) In the region of the contiguous United States, located west of 100 West Longitude: −121 dBW/m²/MHz.

(4) For all regions outside of the contiguous United States including Alaska and Hawaii: −115 dBW/m²/MHz.

■ 14. Amend § 25.209 by revising paragraph (c) to read as follows:

§ 25.209 Antenna performance standards.

* * * * *

(c) (1) Earth station antennas licensed for reception of radio transmissions from a space station in the fixed-satellite service are protected from radio interference caused by other space stations only to the degree to which harmful interference would not be expected to be caused to an earth station employing an antenna conforming to the referenced patterns defined in paragraphs (a) and (b) of this section, and protected from radio interference caused by terrestrial radio transmitters identified by the frequency coordination process only to the degree to which harmful interference would not be expected to be caused to an earth station conforming to the reference pattern defined in paragraph (a)(2) of this section.

(2) 17/24 GHz BSS telemetry earth stations are protected from harmful interference caused by other space stations to the extent set forth in paragraph (c)(1) of this section. Receive-only earth stations in the 17/24 GHz BSS are protected from harmful interference caused by other space stations to the extent set forth in § 25.224 of this part.

* * * * *

■ 15. Amend § 25.210 by revising paragraphs (f) and (i) to read as follows:

§ 25.210 Technical requirements for space stations in the Fixed-Satellite Service.

* * * * *

(f) All space stations in the Fixed Satellite Service in the 3600–3700 MHz, 3700–4200 MHz, 5091–5250 MHz, 5825–5925 MHz, 5925–6425 MHz, 6425–6525 MHz, 6525–6700 MHz, 6700–7025 MHz, 10.7–10.95 GHz, 10.95–11.2 GHz, 11.2–11.45 GHz, 11.45–11.7 GHz, 11.7–12.2 GHz, 12.2–12.7 GHz, 12.75–13.15 GHz, 13.15–13.2125 GHz, 13.2125–13.25 GHz, 13.75–14.0 GHz, 14.0–14.5 GHz, 15.43–15.63 GHz, and 24.75–25.25 GHz bands, or in the Broadcasting-Satellite Service in the 17.3–17.8 GHz band (space-to-Earth), shall employ state-of-the-art full frequency reuse either through the use of orthogonal polarizations within the same beam and/or the use of spatially independent beams.

* * * * *

(i)(1) Space station antennas in the Fixed-Satellite Service, other than antennas in the 17/24 GHz BSS, must be designed to provide a cross-polarization isolation such that the ratio of the on axis co-polar gain to the cross-polar gain of the antenna in the assigned frequency band shall be at least 30 dB within its primary coverage area.

(2) Space station antennas in the 17/24 GHz Broadcasting Satellite Service must be designed to provide a cross-polarization isolation such that the ratio of the on axis co-polar gain to the cross-polar gain of the antenna in the assigned frequency band shall be at least 25 dB within its primary coverage area.

* * * * *

■ 16. Amend § 25.212 by adding paragraph (f) to read as follows:

§ 25.212 Narrowband analog transmissions, digital transmissions, and video transmissions in the GSO Fixed-Satellite Service.

* * * * *

(f) In the 24.75–25.25 GHz band, an earth station that meets the antenna gain pattern requirements set forth in §§ 25.209(a) and (b) of this part may be routinely licensed if the maximum power density into the antenna does not exceed 3.5 dBW/MHz.

■ 17. Amend § 25.220 by revising paragraph (a)(1) introductory text to read as follows:

§ 25.220 Non-conforming transmit/receive earth station operations.

(a)(1) This section applies to earth station applications other than ESV and 17/24 GHz BSS feeder link applications in which:

■ 18. Section 25.223 is added to read as follows:

§ 25.223 Off-axis EIRP spectral density limits for feeder link earth stations in the 17/24 GHz BSS.

(a) This section applies to all applications for earth station licenses in the 17/24 GHz BSS frequency bands, except for applications in which the proposed antenna does not conform to the standards of §§ 25.209(a) and (b), and/or the proposed power density levels are in excess of those specified in § 25.212(f) of this part.

(b) All applications for earth station licenses in the 24.75–25.25 GHz portion of 17/24 GHz BSS shall be routinely processed if they meet the following requirements:

(1) 17/24 GHz BSS earth station antenna off-axis EIRP spectral density for co-polarized signals shall not exceed the following values, within ±3° of the GSO arc, under clear sky conditions:

32.5–25log(θ)	dBW/MHz	for $2° \leq \theta \leq 7°$
11.4	dBW/MHz	for $7° \leq \theta \leq 9.2°$
35.5–25log(θ)	dBW/MHz	for $9.2° \leq \theta \leq 48°$
3.5	dBW/MHz	for $48° \leq \theta \leq 180°$

Where θ is the angle in degrees from the axis of the main lobe.

(2) 17/24 GHz BSS earth station antenna off-axis EIRP spectral density for co-polarized signals shall not exceed the following values, for all directions other than within ±3° of the GSO arc, under clear sky conditions:

35.5–25log(θ)	dBW/MHz	for $2° \leq \theta \leq 7°$
14.4	dBW/MHz	for $7° \leq \theta \leq 9.2°$
38.5–25log(θ)	dBW/MHz	for $9.2° \leq \theta \leq 48°$
6.5	dBW/MHz	for $48° \leq \theta \leq 180°$

Where θ is the angle in degrees from the axis of the main lobe.

(3) The values given in paragraphs (b)(1) and (2) of this section may be exceeded by 3 dB, for values of $\theta > 10°$, provided that the total angular range over which this occurs does not exceed 20° when measured along both sides of the GSO arc.

(4) 17/24 GHz BSS earth station antenna off-axis EIRP spectral density for cross-polarized signals shall not exceed the following values, in all directions greater than +3 relative to the GSO arc, under clear sky conditions:

22.5–25log(θ)	dBW/MHz	for $2° \leq \theta \leq 7°$
1.4	dBW/MHz	for $7° \leq \theta \leq 9.2°$

Where is the angle in degrees from the axis of the main lobe.

(c) Notwithstanding § 25.220 of this part, each applicant for earth station license(s) that proposes levels in excess of those defined in paragraph (b) of this section shall:

(1) Submit link budget analyses of the operations proposed along with a detailed written explanation of how each uplink and each transmitted satellite carrier density figure is derived;

(2) Submit a narrative summary which must indicate whether there are margin shortfalls in any of the current baseline services as a result of the addition of the applicant's higher power service, and if so, how the applicant intends to resolve those margin short falls;

(3) Certify that all potentially affected parties acknowledge and do not object to the use of the applicant's higher power densities. For proposed power levels less than or equal to 3 dB in excess of the limits defined above, the affected parties shall be those co-frequency U.S. licensed 17/24 GHz BSS satellite networks that are located at angular separations of up to ±6° away; for power levels greater than 3 dB and less than or equal to 6 dB in excess of the limits defined above, affected parties shall be all those co-frequency U.S. licensed operators at up to ±10° away. No power levels greater than 6 dB in excess of the limits defined above shall be permitted.

(d) Licensees authorized pursuant to paragraph (c) of this section shall bear the burden of coordinating with any future applicants or licensees whose proposed compliant operations at 10 degrees or smaller orbital spacing, as defined by paragraph (b) of this section, is potentially or actually adversely affected by the operation of the non-compliant licensee. If no good faith agreement can be reached, however, the non-compliant licensee shall reduce its earth station EIRP spectral density levels to be compliant with those specified in paragraph (b) of this section.

(e) For earth stations employing uplink power control, the values in paragraphs (b) (1), (2), and (4) of this section may be exceeded by up to 20 dB under conditions of uplink fading due to precipitation. The amount of such increase in excess of the actual amount of monitored excess attenuation over clear sky propagation conditions shall not exceed 1.5 dB or 15% of the actual amount of monitored excess attenuation in dB, whichever is larger, with a confidence level of 90 percent except over transient periods accounting for no more than 0.5% of the time during which the excess is no more than 4.0 dB.

■ 19. Section 25.224 is added to read as follows:

§ 25.224 Protection of receive-only earth stations in the 17/24 GHz BSS.

(a) Notwithstanding § 25.209(c) of this part, receive-only earth stations operating in the 17/24 GHz broadcasting-satellite service can claim no greater protection from interference than they would receive if the equivalent antenna diameter were equal to or greater than 45 cm and the antenna meets the co-polar and cross-polar performance patterns represented by the following set of formulas (adopted in Recommendation ITU–R BO.1213–1, dated November 2005) that are valid for $D/\lambda \geq 11$:

(1) Co-polar pattern:

$$G_{co}(\varphi) = G_{max} - 2.5 \times 10^{-3}\left(\frac{D}{\lambda}\varphi\right)^2 \text{ for } \quad 0 \le \varphi < \varphi_m$$

where:

$$\varphi_m = \frac{\lambda}{D}\sqrt{\frac{G_{max} - G_1}{0.0025}}$$

$$G_{max} = 10\log\left(\eta\left(\frac{\pi D}{\lambda}\right)^2\right)$$

$$G_1 = 29 - 25\log\varphi_r, \text{ and } \varphi_r = 95\frac{\lambda}{D}$$

$G_{co}(\varphi) = G_1$ for $\varphi_m \le \varphi < \varphi_r$

$G_{co}(\varphi) = 29 - 25\log\varphi$ for $\varphi_r \le \varphi < \varphi_b$ where $\varphi_b = 10^{(34/25)}$

$G_{co}(\varphi) = -5$ dBi for $\varphi_b \le \varphi < 70°$

$G_{co}(\varphi) = 0$ dBi for $70° \le \varphi < 180°$

(2) Cross-polar pattern:

$G_{cross}(\varphi) = G_{max} - 25$ for $0 \le \varphi < 0.25\ \varphi_0$

where:

$$\varphi_0 = 2\frac{\lambda}{D}\sqrt{\frac{3}{0.0025}} = 3 \text{ dB beamwidth}$$

$$G_{cross}(\varphi) = G_{max} - 25 + 8\left(\frac{\varphi - 0.25\,\varphi_0}{0.19\,\varphi_0}\right) \text{ for } 0.25\ \varphi_0 \le \varphi < 0.44\,\varphi_0$$

$G_{cross}(\varphi) = G_{max} - 17$ for $0.44\ \varphi_0 \le \varphi < \varphi_0$

$$G_{cross}(\varphi) = G_{max} - 17 + C\left|\frac{\varphi - \varphi_0}{\varphi_1 - \varphi_0}\right| \text{ for } \varphi_0 \le \varphi < \varphi_1 \text{ where } \varphi_1 = \frac{\varphi_0}{2}\sqrt{10.1875}$$

and $C = 21 - 25\log(\varphi_1) - (G_{max} - 17)$

$G_{cross}(\varphi) = 21 - 25\log\varphi$ for $\varphi_1 \le \varphi < \varphi_2$ where $\varphi_2 = 10^{(26/25)}$

$G_{cross}(\varphi) = -5$ dBi for $\varphi_2 \le \varphi < 70°$

$G_{cross}(\varphi) = 0$ dBi for $70° \le \varphi < 180°$

where:

D: equivalent antenna diameter

λ: wavelength expressed in the same unit as the diameter

φ: off-axis angle of the antenna relative to boresight (degrees)

η: antenna efficiency = 0.65

BILLING CODE 6712–01–C

(b) Paragraph (a) of this section does not apply to 17/24 GHz BSS telemetry earth stations. Those earth stations are subject to the antenna performance

standards of §§ 25.209(a) and (b) of this part.

■ 20. Section 25.225 is added to read as follows:

§ 25.225 Geographic Service Requirements for 17/24 GHz Broadcasting Satellite Service.

(a) Each operator of a 17/24 GHz BSS space station that is used to provide video programming directly to consumers in the 48 contiguous United States (CONUS) must provide comparable service to Alaska and Hawaii, unless such service is not technically feasible or not economically reasonable from the authorized orbital location.

(b) Each operator of a 17/24 GHz BSS space station subject to paragraph (a) of this section must design and configure its space station to be capable of providing service to Alaska and Hawaii, that is comparable to the service that such satellites will provide to CONUS subscribers, from any orbital location capable of providing service to either Alaska or Hawaii to which it may be located or relocated in the future.

(c) If an operator of a 17/24 GHz BSS space station that is used to provide video programming directly to consumers in the United States relocates or replaces a 17/24 GHz BSS space station at a location from which service to Alaska and Hawaii had been provided by another 17/24 GHz BSS space station, the operator must use a space station capable of providing at least the same level of service to Alaska and Hawaii as previously provided from that location.

■ 21. Section 25.262 is added to read as follows:

§ 25.262 Space station coordination requirements in the 17/24 GHz BSS.

(a) Any space station licensee operating a space station in the 17/24 GHz BSS, and required to provide information in its application pursuant to § 25.114(d)(15)(ii) of this part, shall bear the burden of coordinating with any future co-frequency applicants or licensees under the following circumstances:

(1) If the licensee's operations exceed the power flux-density limits set forth in § 25.208(w) of this part by 3 dB or less, the licensee shall bear the burden of coordinating with any future applicants or licensees proposing a satellite in compliance with power flux-density limits set forth in § 25.208(w) of this part and located within ± 6 degrees of the licensee's satellite.

(2) If the licensee's operations exceed the power flux-density limits set forth in § 25.208(w) of this part by more than 3 dB, the licensee shall bear the burden of coordinating with any future applicants or licensees proposing a satellite in compliance with power flux-density limits set forth in § 25.208(w) of this part and located within ± 10 degrees of the licensee's satellite.

(3) If no good faith agreement can be reached, the operator of the 17/24 GHz satellite that does not comply with § 25.208(w) of this part shall reduce its space station power flux-density levels to be compliant with those specified in § 25.208(w) of this part.

(b) Any space station licensee operating a space station in the 17/24 GHz BSS, and required to provide information in its application pursuant to § 25.114(d)(15)(iii) of this part, must accept any increased interference that may result from adjacent 17/24 GHz BSS space stations that are operating in compliance with the rules for this service.

■ 22. Section 25.601 is revised to read as follows:

§ 25.601 Equal employment opportunities.

Notwithstanding other EEO provisions within these rules, an entity that uses an owned or leased fixed-satellite service or direct broadcast satellite service or 17/24 GHz broadcasting-satellite service facility (operating under this part) to provide video programming directly to the public on a subscription basis must comply with the equal employment opportunity requirements set forth in part 76, subpart E, of this chapter, if such entity exercises control (as defined in part 76, subpart E, of this chapter) over the video programming it distributes. Notwithstanding other EEO provisions within these rules, a licensee or permittee of a direct broadcast satellite station operating as a broadcaster must comply with the equal employment opportunity requirements set forth in part 73.

■ 23. Amend § 25.701 by revising paragraph (a)(3) and adding paragraphs (a)(4) and (a)(5) to read as follows:

§ 25.701 Public interest obligations.

(a) * * *

(3) Non U.S. licensed satellite operators in the Ku band that offer video programming directly to consumers in the United States pursuant to an earth station license issued under part 25 of this title and that offer a sufficient number of channels to consumers so that four percent of the total applicable programming channels yields a set aside of one channel of noncommercial programming pursuant to paragraph (e) of this section, or

(4) Entities licensed to operate satellites in the 17/24 GHz BSS that offer video programming directly to consumers or that sell or lease capacity to a video programming distributor that offers service directly to consumers providing a sufficient number of channels so that four percent of the total applicable programming channels yields a set aside of at least one channel of noncommercial programming pursuant to paragraph (e) of this section, or

(5) Non U.S. licensed satellite operators in the 17/24 GHz BSS that offer video programming directly to consumers in the United States or that sell or lease capacity to a video programming distributor that offers service directly to consumers in the United States pursuant to an earth station license issued under part 25 of this title and that offer a sufficient number of channels to consumers so that four percent of the total applicable programming channels yields a set aside of one channel of noncommercial programming pursuant to paragraph (e) of this section.

* * * * *

[FR Doc. E7–16575 Filed 8–28–07; 8:45 am]

BILLING CODE 6712–01–P

Reader Aids

Federal Register

Vol. 72, No. 167

Wednesday, August 29, 2007

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, AUGUST

41885–42270	1
42271–43130	2
43131–43502	3
43503–44028	6
44029–44366	7
44367–44722	8
44723–44950	9
44951–45146	10
45147–45304	13
45305–45610	14
45611–45878	15
45879–46138	16
46139–46372	17
46373–46538	20
46539–46894	21
46895–48218	22
48219–48546	23
48547–48932	24
48933–49126	27
49127–49638	28
49639–50034	29

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

2336 46139

3 CFR

Proclamations:

8164 44723
8165 48219
8166 48545
8167 48929
8168 48931

Executive Orders:

13222 (See Notice of August 15, 2007) 46137
13286 (Amended by 13442) 45877
13362 (Revoked by 13442) 45877
13441 43499
13442 45877
13443 46537

Administrative Orders:

Notices:

Notice of August 15, 2007 46137

5 CFR

451 44367
591 46141
990 45147
2604 49127
3101 48221

Proposed Rules:

315 46410
316 46410
850 46178
1600 44982
1605 44982
1631 44982
1651 44982
1655 44982
1690 44982
1830 45388

6 CFR

Proposed Rules:

5 ..... 43567, 46921, 48346

7 CFR

51 41885
301 ..... 44951, 46373, 48225
319 ..... 43503, 48547
330 43503
340 43503
457 48227
701 45879
916 ..... 44725, 49128
917 ..... 44725, 49128
922 49134
923 44367
959 49136
989 44029
1430 48229
1739 43131
1740 44031

Proposed Rules:

59 44672
319 44425
331 49231
959 44984
984 46183
989 41948
1739 43199

8 CFR

103 ..... 41888, 46142
274a 45611

Proposed Rules:

1 46922
264 46922
299 46922

9 CFR

Proposed Rules:

93 42318
94 45177
121 49231
201 41952

10 CFR

1 ..... 49139, 49352
2 ..... 44951, 49139, 49352
10 49352
13 49139
19 49352
20 49352
21 49352
25 49352
26 49352
32 45147
35 45147
50 49352
51 49352
52 49352
54 49352
55 49352
72 ..... 45880, 49352
73 49352
75 49352
95 49352
110 49139
140 49352
170 49352
171 ..... 44951, 49352

Proposed Rules:

2 ..... 43569, 44988, 49668
32 45181
35 45181
50 46569
72 45948
171 44988
431 44990
905 46570

12 CFR

201 48548

226 44032
229 46143
748 42271
749 42271
Proposed Rules:
535 43570
620 45390
703 41956
704 41956

13 CFR

121 49639
Proposed Rules:
121 49669

14 CFR

23 ....42274, 43137, 44016, 45624
25 ....44016, 44656, 45626
27 44016
29 44016
39 ....43139, 44370, 44728, 44731, 44734, 44737, 44740, 44744, 44746, 44748, 44750, 44753, 45151, 45153, 45305, 45308, 45311, 45312, 45314, 46539, 46541, 46542, 46545, 46549, 46551, 46553, 46555, 46559, 48549, 49155, 49157, 49158, 49161, 49162, 49164, 49168, 49170, 49172, 49173, 49175, 49177, 49180, 49183, 49186, 49188
71 ....44372, 44954, 44955, 45316, 45317, 45318, 45319, 45628, 48231, 48232, 49190, 49349
73 45156
95 43524
97 ....44033, 44379, 48233, 48234
121 45629
Proposed Rules:
39 ....41958, 41963, 41968, 42326, 42328, 43199, 43576, 43578, 44433, 44435, 44813, 45183, 45866, 45949, 45952, 45954, 45956, 45958, 45961, 45963, 45965, 45968, 45970, 45972, 45973, 45976, 45978, 45980, 45982, 45986, 46411, 46572, 46576, 46580, 46582, 48243, 48246, 48591, 48594, 48597, 48948, 49236
71 ....44815, 45699, 45700, 46584, 46930, 49676
121 48950

15 CFR

738 43529
740 43529
744 43529
748 43529
750 43529
752 43529
758 43529
762 43529
772 43529
774 43529
922 45320

16 CFR

305 49948
Proposed Rules:
303 48600

17 CFR

171 42276
210 44924
232 ....46559, 48742
239 ....45110, 48742
240 ....42222, 44924, 45110
242 ....45094, 45542
249 45110
270 48742
274 ....45110, 48742
275 44756
Proposed Rules:
3 45392
36 45185
40 45185
200 45116
210 45600
228 45600
229 45600
230 ....45116, 45600
239 ....45116, 45600
240 ....43466, 43488, 45600
242 45558
249 45600

18 CFR

2 45320
3c 45320
4 45320
5 45320
6 45320
8 45320
11 45320
16 45320
33 ....42277, 45320
35 45320
131 45320
153 45320
154 45320
157 45320
292 45320
300 45320
366 45320
375 45320
376 45320
380 45320
385 45320
Proposed Rules:
35 ....44437, 44438
37 44438
39 43970
40 46413
260 44438
284 44438
385 ....42330, 44438
410 46931

19 CFR

4 48320
122 48320

20 CFR

404 ....44763, 44765
416 ....44763, 44765
436 46139
Proposed Rules:
404 43202
405 45701
411 45191
422 45991

21 CFR

74 45328
101 46375
172 ....46562, 46895
510 45157
522 ....42290, 45158
524 42291
529 45157
558 49191
606 ....45883, 48766
607 45883
610 ....45883, 48766
640 45883
700 45636
866 44380
878 43144
Proposed Rules:
2 44037
347 49070
352 49070
606 45993
607 45993
610 45993
640 45993

22 CFR

22 45888
51 ....45636, 45888
1300 49192
Proposed Rules:
1304 49238

23 CFR

630 45329
635 45329
636 45329
Proposed Rules:
771 44038

24 CFR

320 49124
350 49124
570 46368
990 45872
Proposed Rules:
891 45868

26 CFR

1 ....41890, 41891, 42291, 43146, 44338, 45159, 45338, 45346, 45890, 45891, 48551, 48742, 48933
20 43146
25 43146
26 42291
31 43146
48 48236
53 ....43146, 45894
54 ....43146, 45894
56 43146
301 ....43154, 43157, 44338, 45891, 48236, 48742
602 ....42291, 44338, 45338, 45346, 48236, 48551
Proposed Rules:
1 ....42335, 43938, 45199, 46421, 46932, 48248, 48603, 48952
20 46586
26 ....42340, 48249
53 45997
301 ....45394, 45997, 48249

28 CFR

16 44382
Proposed Rules:
26 44816
549 43205

29 CFR

24 44956
2560 44970
4022 45637
4044 45637
Proposed Rules:
1401 43209
2560 44991

30 CFR

75 45358
Proposed Rules:
740 45592
780 48890
784 48890
816 48890
817 48890
905 45592
910 45592
912 45592
921 45592
922 45592
933 45592
937 45592
939 45592
941 45592
942 45592
947 45592

31 CFR

103 44768
208 46378

32 CFR

199 ....45359, 46144, 46380
229 42298
571 43161
Ch. XVII 45895

33 CFR

1 45900
2 45900
64 45900
100 ....43163, 45639, 45641, 45900, 46386
109 45900
110 45900
117 ....42306, 43533, 43534, 45900, 46145, 46896, 48555
147 45900
150 45900
151 45900
161 45900
165 ....42307, 43535, 44775, 45160, 45162, 45642, 46185, 46897, 48236, 48555, 49193
334 44972
Proposed Rules:
100 48249
117 46586
165 46185

34 CFR

Proposed Rules:
668 44620
674 44620
676 44620
682 44620
685 44620
690 44620
691 ....44050, 44620

36 CFR

1258 46145
Proposed Rules:
5 46426

219 48514
220 45998
1190 48251
1191 48251
1193 ....43211, 48252
1194 ....43211, 48252
1195 48253
1196 45200

37 CFR

1 ....46716, 46899
2 42242
41 46899

Proposed Rules:

1 44992

38 CFR

1 48239

39 CFR

232 49195
447 49195

40 CFR

3 43165
52 ....41891, 41894, 41896, 41900, 41903, 41906, 43169, 43172, 43537, 43539, 44778, 44781, 44784, 45165, 45169, 45378, 46148, 46157, 46158, 46388, 46564, 46903, 48558, 48559, 48936, 49196, 49198, 49203
62 46161
65 48938
81 ....41903, 41906, 43172, 44383, 44784, 45169, 46158, 48558, 48559
97 46388
180 ....41909, 41913, 41931, 44384, 44388, 45643, 45649, 45653, 45656, 46905, 46906, 46914, 49646, 49651, 49654, 49660
271 ....44973, 45663, 45905, 46165
300 ....44816, 44787, 45381, 46171, 48942

Proposed Rules:

3 43212
49 ....45397, 49678
51 49678
52 ....41970, 41975, 42344, 42349, 42354, 43215, 43580, 44816, 44817, 45200, 45705, 46188, 46432, 46939, 49046, 49243, 49679
62 46188
65 48953
81 ....42354, 49046, 49679
82 48956
97 ....45705, 46432
180 ....46939, 49689
271 ....45001, 45712, 46009, 46189
300 ....41976, 44817, 45404, 48981

41 CFR

60–300 ....44393, 46567

Proposed Rules:

300-3 43216
302-3 43216
302-5 43216
302-7 43216
302-12 43216
302-16 43216

42 CFR

400 48870
402 46175
409 43412
410 42470
411 47130
412 ....44284, 47130
413 47130
416 42470
421 48870
482 48562
484 49762
489 47130

Proposed Rules:

73 49244
409 43581
410 ....42628, 43581
411 ....42628, 43581
413 43581
414 ....42628, 43581
415 43581
416 42628
418 43581
419 42628
423 43581
424 ....42001, 43581
440 ....45201, 48604
441 45201
482 ....42628, 43581
484 43581
485 ....42628, 43581
491 43581

43 CFR

Proposed Rules:

5 46426
10 45213

44 CFR

5 43544
64 ....44416, 46394
65 ....46396, 46397

Proposed Rules:

67 ....44451, 46433, 46434

45 CFR

2510 48574
2522 48574
2540 48574
2551 48574
2552 48574

Proposed Rules:

1626 42363

46 CFR

67 ....42310, 49666
68 49666
515 44976

47 CFR

0 48814
1 ....41935, 45908, 48814
2 ....41937, 48814, 50000
6 43546
12 44978
15 41937
22 ....41939, 41940
25 50000
27 ....41939, 41940, 48814
36 46919
54 46920
64 ....43546, 45937
73 ....41946, 44418, 45670, 45693, 49666
76 43560
90 ....44423, 48814

Proposed Rules:

1 ....46010, 46014
2 46939
15 46014
25 46939
73 ....44457, 45712, 45716, 46014, 46949, 49692
74 46014
75 46014
76 46014
101 41940

Proposed Rules:

2 42011
15 42011
73 ....42015, 42016

48 CFR

Ch. 1 ....46324, 46363
1 46326
3 46327
4 46333
12 ....46327, 46333, 46335
14 46333
15 46333
18 46342
19 46345
22 ....46335, 46357
23 46359
25 ....46326, 46357, 46360, 46361
31 46363
32 46363
37 46361
52 ....46326, 46327, 46333, 46335, 46345, 46357, 46360, 46361, 46363
53 46345
202 ....42313, 46534
204 42313
205 42315
210 42313
212 49204
213 42313
215 ....42313, 49204
219 42313
225 42315
247 49204
252 ....42315, 49204
601 45694
602 45694
604 45694
605 45694
606 45694
609 45694
619 45694
622 45694
623 45694
628 45694
631 45694
633 45694
653 45694

Proposed Rules:

33 46950
216 42366
232 ....42366, 45405
252 ....42366, 42367, 45405

49 CFR

171 44930
172 44930
173 44930
175 44930
222 44790
367 48585
390 44792
393 44035
545 46175
571 49207
575 45172
1243 45384

Proposed Rules:

71 44466
195 45002
238 42016
571 46021
611 43328
622 44038
1507 48397
1540 48356
1544 48356
1560 48356

50 CFR

10 48402
13 48402
14 45938
17 ....43560, 48402, 49212
20 ....46403, 49622
21 46403
23 48402
92 49667
216 46846
222 43176
223 43176
229 43186
300 48496
648 ....43188, 44979, 45696, 46568, 48945
660 ....43193, 43563, 45320, 46176
679 ....43564, 43565, 44792, 44793, 44794, 44795, 45697, 48946, 49229
922 42318

Proposed Rules:

17 ....44065, 44069, 44232, 45407, 45717, 46023, 46030, 46189, 48178, 49245
27 46426
622 43583
648 ....43587, 46588
660 44469
665 44074
679 42369

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 29, 2007

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Apricots grown in Washington; published 8-28-07

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Flusilazole; published 8-29-07

Flutriafol; published 8-29-07

Propylene oxide; published 8-29-07

Spinosad; published 8-29-07

HOMELAND SECURITY DEPARTMENT

Coast Guard

Vessel documentation and measurement:

Coastwise trade vessels; lease financing; reporting and recordkeeping requirements; published 8-29-07

INTERIOR DEPARTMENT

Fish and Wildlife Service

Migratory bird hunting:

Alaska; 2007 subsistence harvest regulations; correction; published 8-29-07

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

General Electric; published 8-14-07

Airworthiness standards:

Special conditions—

Boeing Model 787-8 airplane; published 7-30-07

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT

Commodity transactions financed by USAID; applicable rules and procedures; miscellaneous amendments; comments due by 9-7-07; published 7-9-07 [FR 07-03309]

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Dairy Product mandatory Reporting Program; establishment; comments due by 9-4-07; published 7-3-07 [FR 07-03235]

Livestock mandatory reporting:

Swine, cattle, lamb, and boxed beef; reporting regulations reestablishment and revision; comments due by 9-7-07; published 8-8-07 [FR 07-03857]

Walnuts grown in California; comments due by 9-4-07; published 8-17-07 [FR E7-16199]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Phytosanitary treatments:

Plant pests; treatment amendments; comments due by 9-4-07; published 7-5-07 [FR E7-13036]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Grants:

Community Connect Broadband Program; comments due by 9-4-07; published 8-3-07 [FR E7-15108]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands groundfish, crab, salmon, and scallop; correction; comments due by 9-4-07; published 8-2-07 [FR E7-15045]

Northeastern United States fisheries—

Summer flounder, scup, and black sea bass; comments due by 9-5-07; published 8-6-07 [FR E7-15211]

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 9-4-07; published 8-17-07 [FR E7-16234]

Pacific Coast groundfish; comments due by 9-6-07; published 8-8-07 [FR E7-15339]

Western Pacific fisheries—

Precious corals; comments due by 9-6-07; published 8-7-07 [FR E7-15209]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Small Business Rerepresentation; comments due by 9-4-07; published 7-5-07 [FR 07-03279]

EDUCATION DEPARTMENT

Postsecondary education:

Academic Competitiveness Grant and National Science and Mathematics Access to Retain Talent Grant Programs; comments due by 9-6-07; published 8-7-07 [FR E7-15306]

Federal student aid programs; comments due by 9-7-07; published 8-8-07 [FR E7-15314]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Georgia; comments due by 9-4-07; published 8-2-07 [FR E7-14983]

Air quality implementation plans; approval and promulgation; various States:

Arizona; comments due by 9-5-07; published 8-6-07 [FR E7-15118]

Florida; comments due by 9-4-07; published 8-2-07 [FR E7-14981]

Georgia; comments due by 9-4-07; published 8-2-07 [FR E7-15055]

Michigan; comments due by 9-4-07; published 8-3-07 [FR E7-15011]

Cross-media electronic reporting:

Authorized programs; rule deadline extension; comments due by 9-4-07; published 8-3-07 [FR E7-15013]

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Colorado; comments due by 9-3-07; published 8-1-07 [FR E7-14878]

Florida; comments due by 9-3-07; published 8-1-07 [FR E7-14879]

Television broadcasting:

Cable Communications Policy Act; implementation—

Video programming delivery; market competition; comments due by 9-4-07; published 7-18-07 [FR E7-13827]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Small Business Rerepresentation; comments due by 9-4-07; published 7-5-07 [FR 07-03279]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:

General and plastic surgery devices—

Tissue adhesive for topical approximation of skin; reclassification; comments due by 9-4-07; published 7-3-07 [FR E7-12797]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

HOVENSA Refinery, St. Croix, U.S. Virgin Islands; comments due by 9-5-07; published 8-6-07 [FR E7-15160]

HOMELAND SECURITY DEPARTMENT

Privacy Act; implementation; comments due by 9-5-07; published 8-6-07 [FR E7-15198]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Critical habitat designations—

Yadon's piperia; comments due by 9-6-07; published 8-7-07 [FR E7-15193]

Findings on petitions, etc.—

Bliss Rapids snail; comments due by 9-4-07; published 6-6-07 [FR 07-02812]

Utah (desert) valvata snail; comments due by

9-4-07; published 6-6-07 [FR E7-10885]
Importation, exportation, and transportation of wildlife:
Eagle permits—
Bald and Golden Eagle Protection Act; eagle take authorizations; comments due by 9-4-07; published 6-5-07 [FR 07-02697]

LEGAL SERVICES CORPORATION
Aliens; legal assistance restrictions:
Negotiated Rulemaking Working Group solicitations; withdrawn; legal assistance to citizens of Micronesia, Marshall Islands, and Palau residing in U.S.; comments due by 9-4-07; published 8-2-07 [FR E7-15043]

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright office and procedures:
Copywrite claims; online registration; comments due by 9-4-07; published 7-6-07 [FR E7-13194]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Small Business Rerepresentation; comments due by 9-4-07; published 7-5-07 [FR 07-03279]

SECURITIES AND EXCHANGE COMMISSION
Securities:
Electronic filing; Form D and Regulation D; proposed revisions; comments due by 9-7-07; published 7-9-07 [FR E7-13018]
Restricted securities; holding period for affiliates and non-affiliates; comments due by 9-4-07; published 7-5-07 [FR 07-03217]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 9-4-07; published 8-3-07 [FR 07-03774]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 9-4-07; published 8-2-07 [FR E7-15026]
Hawker Beechcraft Corp.; comments due by 9-4-07; published 7-6-07 [FR E7-13088]
International Aero Engines; comments due by 9-7-07; published 7-9-07 [FR E7-13256]
McDonnell Douglas; comments due by 9-6-07; published 7-23-07 [FR E7-14150]
Rolls-Royce Deutschland Ltd. & Co.; comments due by 9-4-07; published 7-6-07 [FR E7-13090]
Airworthiness standards:
Centex Aerospace Inc.; Model SR22; comments due by 9-4-07; published 8-3-07 [FR E7-14935]
Special conditions—
Centex Aerospace, Inc.; Cirrus Design Corp. Model SR22 airplane; comments due by 9-4-07; published 8-2-07 [FR E7-14933]

TREASURY DEPARTMENT
Comptroller of the Currency
Regulatory review amendments; comments due by 9-4-07; published 7-3-07 [FR 07-03206]

TREASURY DEPARTMENT
Internal Revenue Service
Estate and gift taxes:
Estates of decedents dying after August 16, 1954; grantor retained interest trusts; hearing; comments due by 9-5-07; published 6-7-07 [FR E7-11062]
Income taxes:
Domestic production activities; attributable income deduction; comments due by 9-5-07; published 6-7-07 [FR E7-10821]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 2863/P.L. 110–75
To authorize the Coquille Indian Tribe of the State of Oregon to convey land and interests in land owned by the Tribe. (Aug. 13, 2007; 121 Stat. 724)

H.R. 2952/P.L. 110–76
To authorize the Saginaw Chippewa Tribe of Indians of the State of Michigan to convey land and interests in lands owned by the Tribe. (Aug. 13, 2007; 121 Stat. 725)

H.R. 3006/P.L. 110–77
To improve the use of a grant of a parcel of land to the State of Idaho for use as an agricultural college, and for other purposes. (Aug. 13, 2007; 121 Stat. 726)

S. 375/P.L. 110–78
To waive application of the Indian Self-Determination and Education Assistance Act to a specific parcel of real property transferred by the United States to 2 Indian tribes in the State of Oregon, and for other purposes. (Aug. 13, 2007; 121 Stat. 727)

S. 975/P.L. 110–79
Granting the consent and approval of the Congress to an interstate forest fire protection compact. (Aug. 13, 2007; 121 Stat. 730)

S. 1716/P.L. 110–80
To amend the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, to strike a requirement relating to forage producers. (Aug. 13, 2007; 121 Stat. 734)

Last List August 13, 2007

CORRECTION

In the last **List of Public Laws** printed in the *Federal Register* on August 13, 2007, H.R. 2025, Public Law 110-65, and H.R. 2078, Public Law 110-67, were printed incorrectly. They should read as follows:

H.R. 2025/P.L. 110–65

To designate the facility of the United States Postal Service located at 11033 South State Street in Chicago, Illinois, as the "Willye B. White Post Office Building". (Aug. 9, 2007; 121 Stat. 568)

H.R. 2078/P.L. 110–67

To designate the facility of the United States Postal Service located at 14536 State Route 136 in Cherry Fork, Ohio, as the "Staff Sergeant Omer T. 'O.T.' Hawkins Post Office". (Aug. 9, 2007; 121 Stat. 570)

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.